

Combined Water Protection Ordinance of Charles City County
(Effective ~~July 1, 2014~~ _____, 2019)

PART I: GENERAL PROVISIONS

Section 1-1. PURPOSE AND AUTHORITY:

- (a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of Charles City County, Virginia and protect the quality and quantity of state waters from the potential harm of soil erosion, sediment deposition, nonagricultural runoff and other unmanaged stormwater, including protection from land disturbing activities causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby erosion and sediment control, stormwater management, and Chesapeake Bay Preservation Act requirements related to water quality and quantity shall be administered and enforced. The purpose of this Ordinance is also to protect existing high quality state waters; restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; safeguard the clean waters of the Commonwealth from pollution; prevent any increase in pollution; reduce existing pollution; and promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of Charles City County.
- (b) This ~~article~~Ordinance is authorized by the ~~Code of Virginia, Title 62.1, Chapter 3.1 (§ 62.1-44.15:52 et seq.), known as the Virginia~~ Erosion and Sediment Control Law; ~~Title 62.1 Chapter 3.1 (§62.1-44.15:27 et seq.), known as the~~ Virginia Stormwater Management Act; ~~and Title 62.1, Chapter 3.1 (§ 62.1-44.15:74 et seq.) known as~~ the Chesapeake Bay Preservation Act, and the attendant regulations adopted pursuant to such ~~acts~~laws, each as amended.
- (c) This ~~article~~Ordinance shall be known as the "Combined Water Protection Ordinance of Charles City County."

Section 1-2. DEFINITIONS:

In addition to the definitions set forth in the ~~Stormwater Management~~VSMR Regulations, the ~~E&S~~Erosion and Sediment Control Regulations and the Bay Act Regulations, as defined herein, ~~as amended~~, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"*Administrator*" means the administrator of the County's state approved Stormwater Management Program and approved Erosion and Sediment Control Program, whom the Board of Supervisors designates as the Director of ~~Planning~~Community Development. The term shall

include the authorized designee(s) of the Administrator, provided such designee(s) hold the required certificates and/or meet any other state law requirements, when applicable, to undertake such delegated authority.

"*Agreement in lieu of a plan*" means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"*Agreement in lieu of a stormwater management plan*" means a contract between the County and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the County in lieu of a ~~stormwater management plan~~ Stormwater Management Plan.

"*Agricultural lands*" means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock.

"*Applicant*" means any person ~~submitting an application~~ applying for a permit or requesting issuance of a permit under this Ordinance.

"*Bay Act Regulations*" means the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC-25-830-10 et seq., as amended.

"*Best management practice*" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

"*Board of Supervisors*" means the Board of Supervisors of Charles City County, Virginia.

"*Buffer Area*" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"*Certified Inspector*" means an employee or agent of Charles City County who (i) holds a certificate of competence from the State Water Control Board ~~in the area of~~ for project inspection or (ii) is enrolled in the State Water Control Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

"*Certified Plan Reviewer*" means an employee or agent of Charles City County who (i) holds a certificate of competence from the State Water Control Board ~~in the area of~~ for plan review, or (ii) is enrolled in the State Water Control Board's training program for plan review and completes such program within one (1) year after enrollment, or (iii) is identified as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et ~~seq~~ seq.) of Chapter 4 of Title 54.1.

[PH1]: This clarifying change is needed due to references to various state agency and district boards and the County's Wetland Board having regulatory jurisdiction over the programs addressed in this Ordinance and that are referenced in various sections.

"*Certified Program Administrator*" means an employee or agent of Charles City County who (i) holds a certificate of competence from the State Water Control Board ~~in the area of~~ for program administration or (ii) is enrolled in the State Water Control Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

"Chesapeake Bay Preservation Act" or "Bay Act" means the Chesapeake Bay Preservation Act, Article 2.5 of the State Water Control Law, Va. Code §§ 62.1-44.15:67 et seq., as amended.

"*Chesapeake Bay Preservation Act* ~~land-disturbing activity~~Land-Disturbing Activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of the County designated as a Chesapeake Bay Preservation Area.

"*Chesapeake Bay Preservation Area*" or "*CBPA*" means any land so designated by the Board of Supervisors pursuant to the Bay Act Regulations, and which shall consist of all Resource Protection Areas and Resource Management Areas.

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

[PH2]:
Inclusion and consistent use of a defined term and shorthand reference for the Virginia Code is needed to overcome various forms of citation to the Virginia Code in the existing Ordinance.

"*Clearing*" means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

"Code of Virginia" or "Va. Code" means the Code of Virginia, as amended.

"*Common plan of development or sale*" means a contiguous area where separate and distinct construction activities may be taking place at different times on difference schedules. For the purpose of this Ordinance, the term shall not include individual lots within existing residential, commercial or industrial site plans and subdivision plans that were platted prior to July 1, 2004, and which are considered separate land-disturbing activities.

"*Construction footprint*" means the area of all impervious surface including, but not limited to, buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

"*Control measure*" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"*County*" means the County of Charles City, Virginia.

"County Wetlands Board" means the Charles City County Wetlands Board created pursuant

[PH3]: This definition is added for clarity due to multiple references in this Ordinance to the County Wetlands Board as a reviewing body.

to Va. Code § 28.2-1303.]

~~“DCR” means the Virginia Department~~ “DCR” means the Virginia Department of Conservation and Recreation.

[PH4]: This term, used elsewhere in the Ordinance, was previously undefined.

"DEQ" means the Virginia Department of Environmental Quality.

“Daylighted stream” means a stream that had been previously diverted into an underground drainage system and has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51 of the Code of Virginia, and where the adjacent lands would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the Board of Supervisors under this Ordinance.

[PH5]: This change reflects the current position title. Also, including "his/her designee" in the definition allows for appropriate staff-level delegation of duties while avoiding repetitive reference to such delegation in many places of the CWPO.

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

"Diameter at Breast Height (DBH)" means the diameter of a tree measured outside the bark at a point 4.5 feet above ground.

"Director" means the director of DEQ.

~~“Director of Planning Community Development” means the Charles City County Director of Planning or the director's~~ “Director of Planning Community Development” means the Charles City County Director of Planning or the director's Community Development or his/her designee.

"Distance" means to be measured on the horizontal.

"District" or "Soil and Water Conservation District" means the Colonial Soil and Water Conservation District, a political subdivision of the Commonwealth organized in accordance with Title 21, Chapter 1, of the Virginia Code.

"Dripline" means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

“Erosion and Sediment Control Law” or “E&SC Law” means the Virginia Erosion and Sediment Control Law, Article 2.4 of the State Water Control Law, Va. Code §§ 62.1-44.15:51 et seq., as amended.

"Erosion and ~~sediment control plan~~ Sediment Control Plan" or "~~E&S-plan~~ SC Plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion and Sediment Control Regulations" or “E&SC Regulations” means the Virginia

Erosion and Sediment Control Regulations, 9VAC 25-840-10, et seq., as amended.

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

"*Excavating*" means any digging, scooping or other methods of removing earth materials.

"*Filling*" means any depositing or stockpiling of earth materials.

"*Flood Plain*" means all lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval.

"*Flood Plain Ordinance*" means the flood plain zoning ordinance as adopted by Charles City County.

"*General ~~permit~~ Permit*" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES ~~found in Part XIV~~ (9VAC25-880-1 et seq.) ~~of issued pursuant to the Stormwater Management Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia~~ VSMP Regulations.

"*Governing Body*" means the Board of Supervisors of Charles City County, Virginia

"*Grading*" means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

~~"*Highly Erodible Soils*" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.~~

~~"*Highly Permeable Soils*" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soils having permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the National Soil Survey Handbook of November 1996 in the Field Office Technical Guide of the U.S. Department of Agriculture Natural Resources Conservation Service.~~

[PH6]: The terms "Highly erodible soils" and "Highly permeable soils" have been deleted based on removal of related ordinance provisions per DEQ suggested changes to the CWPO and move to a County-wide RMA designation except where RPAs exist.

"*Impervious Cover*" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

[HK7]: As discussed with County planning staff, this defined term and other related IDA provisions in the revised CWPO allows for potential designation without having to revise the CWPO later.

“*Intensely Developed Area*” or “*IDA*” means an intensely developed area as that term is defined in the Bay Act Regulations.

“*Land disturbance*” or “*land-disturbing activity*” means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include the applicable exemptions specified in Sections 2-2 and Section 3-2 of this Ordinance.

[PH8]: “Land-Disturbing” is the better description of the activity being permitted, and use of one consistent term for this permit will improve clarity of the Ordinance.

~~“*Land-disturbing permit*” or “*E&S permit*”~~ “*Disturbing Permit*” means a permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth in Part III of this Ordinance and which may be issued when a Stormwater Management Permit is not required pursuant to Part II of this Ordinance.

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

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

“*Nonconforming Use*” means a building, structure, or other use of a property that existed in a Chesapeake Bay Preservation Area as of the effective date of this Ordinance – or as of the effective date of any amendment to this Ordinance rendering the building, structure, or use subject to this Ordinance – where such building, structure, or other use was not in conformity with the provisions of this Ordinance as of such effective date.

“*Non-Point Source Pollution*” means surface water runoff consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

“*Non-Tidal Wetlands*” means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined in 33 C.F.R. 328.3b by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act, ~~in 33 C.F.R. 328.3b~~.

“*Noxious Weeds*” means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multi-flora rose.

“*Operator*” means the owner or operator of any facility or activity subject to regulation under

this Ordinance.

“Ordinance” means the Combined Water Protection Ordinance of Charles City County, as amended.

“Other County Land Development Ordinances” means the County’s Coastal Primary Sand Dune Ordinance, Floodplain Ordinance, Septic System Control Ordinance, Site Plan Ordinance, Wetlands Ordinance, Subdivision Ordinance, and Zoning Ordinance, all as amended.

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

“Peak flow rate” means the maximum instantaneous flow from a given storm condition at a particular location.

“Permittee” means the person to whom a permit authorized by this Ordinance has been issued, or for the purposes of Part III of this Ordinance, the person who certifies that the approved ~~erosion and sediment control plan~~ E&SC Plan will be followed.

[PH9]: This term better comports with the land use and site plan review process used by the County and is more consistent with CBPA statutory and regulatory requirements for review of land development.

“Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

“Public Plan of Development” means the ~~process for~~ site plan or subdivision plan ~~review~~ reviewed to ensure compliance with ~~Section Va. Code § 62.1-44.15:74 of the Code of Virginia~~ and this Ordinance, prior to any clearing or grading of a site or the issuance of a building permit.

“Public Road” means a publicly-owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (~~§ 62.1-44.15:51 et seq. of the Code of Virginia~~) and (ii) ~~The~~ the Virginia Stormwater Management Act (~~§ 62.1-44.15:24 et seq. of the Code of Virginia~~). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

“Redevelopment” means the process of developing land in a Chesapeake Bay Preservation Area that is or has been previously developed in the same location without an overall increase in the amount of impervious cover.

“Resource Management Area ~~(“ or “RMA)”~~” means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land

types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area ~~and are set forth, as further described~~ in Section 4-44.

"Resource Protection Area ~~(“ or “RPA)”) means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters ~~and are set forth, as further described~~ in Section 4-3.~~

"Responsible land ~~disturber" or “RLD” means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a responsible land ~~disturber~~ certificate of competence, (ii) holds a current certificate of competence from the State Water Control Board in the areas of combined administration, program administration, inspection, or plan review, (iii) holds a current contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to ~~Article 1 (Sec. Va. Code §§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.~~~~

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

"Silvicultural" means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Va. Code §10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under Va. Code § 58.1-3230 of the Code of Virginia 3230.

"Single-family residence" means a noncommercial dwelling that is occupied exclusively by one family.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

"State" means the Commonwealth of Virginia.

"State Water Control Board" or "SWCB" means the State Water Control Board of Virginia, established and continued pursuant to Va. Code §§ 62.1-44.7 et seq. of the State Water Control Law.

"State erosion and sediment control program," "VESCP," or "~~state program~~ State E&SC Program" means the program administered by the SWCB pursuant to the ~~Code of Virginia including regulations designed to minimize erosion and sedimentation~~ E&SC Law and the E&SC

Regulations.

"State waters" means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"State Water Control Law" means Chapter 3.1 (~~§62.1-44.2 et seq.~~) of Title 62.1 of the Code of Virginia: (Va. Code §§ 62.1-44.2 et seq.).

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

"Stormwater Management Fee Schedule" means the current schedule of fees for applications for Land-Disturbing Permits and Stormwater Management Permits and modifications thereto, review of plans and Water Quality Impact Assessments, and other assessments made by the County as provided in this Ordinance, as approved by the Board of Supervisors.

"Stormwater Management Permit" or "VSMP Authority Permit" means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after evidence of General ~~permit~~Permit coverage has been provided by the ~~Department~~DEQ, when required.

"Stormwater ~~management plan~~Management Plan" means a document or compilation of documents containing materials meeting the requirements of Section 2-5 of this Ordinance.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document or compilation of documents meeting the requirements of Section 2-4 of this Ordinance, and which include, at minimum, an approved ~~erosion and sediment control plan~~Erosion and Sediment Control Plan, an approved ~~stormwater management plan~~Stormwater Management Plan, and a pollution prevention plan.

~~"Stormwater Regulations" means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9 VAC 25-870-10 et seq., as amended.~~

"Subdivision" means any subdivision of land as defined in the Charles City County Subdivision Ordinance.

"Substantial Alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2500 square feet in the Resource Management Area only.

"Tidal Shore or Shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

[PH10]: This term is variously referenced in a number of provisions of the Ordinance and needs a standard definition for reference and consistency. It would be most convenient if all fees charged by the County in connection with administration of the Stormwater Management, E&SC, and CBPA programs were included in one schedule. Within the one schedule, use of different tables for each program's fees seems okay, which is consistent with many of the existing references to the program fees. Related changes are reflected elsewhere in this proposed amended Ordinance.

"*Tidal Wetlands*" means vegetated and non-vegetated wetlands as defined in ~~Section 28.2-1300 of the~~ Va. Code of Virginia § 28.2-1300.

"*Total maximum daily load*" or "*TMDL*" means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"*Town*" means an incorporated town.

"*Transporting*" means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

"Use" means an activity on the land other than development including, but not limited to, agriculture, horticulture and silviculture.

"Va. Code" means the Code of Virginia, as amended.

[PH11]:
Inclusion and consistent use of a defined term and shorthand reference for the Virginia Code is needed to overcome various forms of citation to the Virginia Code in the existing Ordinance.

"*Virginia Erosion and Sediment Control authority*" or "*VESCP authority*" means the policies and provisions of Part III of this Ordinance including the methods and procedures employed by Charles City County to regulate land-disturbing activities and thereby implement, administer and enforce such policies and provisions of such Ordinance and of the Virginia Erosion and Sediment Control Handbook, Part IV of this Ordinance and the Virginia Erosion and Sediment Control Regulations (VR 625.02.00) as currently in effect.

~~"Use" means an activity on the land other than development including, but not limited to, agriculture, horticulture and silviculture.~~

"*Virginia erosion and sediment control program*," "*VESCP*," or "*E&S program*" means the program established by the County for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, as approved by the State.

"VPDES permit" means a Virginia Pollutant Discharge Elimination System permit issued pursuant to the State Water Control Law, Va. Code §§ 62.1-44.2 et seq., and 9VAC25-31.

"*Virginia Stormwater BMP Clearinghouse website*" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management ~~Act~~ and associated regulations.

"*Virginia Stormwater Management Act*" or "*Stormwater Act*" means Article 2.3 ~~(§ of the~~

State Water Control Law, §§ 62.1-144.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Virginia Stormwater Management Program," "VSMP," or "Stormwater Management Program" means the program established by the County to manage the quality and quantity of runoff resulting from land-disturbing activities in accordance with state law, and which has been approved by the ~~VSWCB~~ Virginia State Water Control Board.

"Virginia Stormwater Management Program ~~authority~~ Authority" or "VSMP ~~authority~~ Authority" means the County.

"VSMP Regulations" means the Virginia Stormwater Management Program Regulations, 9 VAC 25-870-10 et seq., as amended.

"Water Body/Bodies with Perennial Flow" means, for the purposes the requirements of Section 4-5(a) of this Ordinance, a body of water flowing that flows in a natural or man-made channel year-round, except during periods of drought. The term "water body with perennial flow" includes perennial during a year of normal precipitation, including but not limited to, streams, estuaries, and tidal embayments. Lakes and ponds that form the source of a perennial stream, and tidal embayments. Such may also include drainage ditches or channels constructed in wetlands or from former natural drainageways, which convey perennial flow. Lakes and ponds with perennial streams flowing into, out of or through which the perennial stream flows, them are a part of the perennial stream. For non-tidal water bodies the width of the perennial stream extends from top of bank to top of bank of the channel or to the limits of the normal water level for a pond or lake. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. In the absence of pollution or other man-made disturbances, a perennial stream is capable of supporting aquatic life.

"Water Dependent Facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) loading facilities for barges, ships, and other marine vessels and ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

"Water Quality Impact Assessment" or "WQIA" shall mean a "water quality impact assessment" as described in 9VAC25-830-140 of the Bay Act Regulations and as set forth in Section 4-8 of this Ordinance.

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

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support,

[HK12]: This term has been previously defined in the ordinance, but that definition does not match DEQ program guidance definition of this term. The regulations don't define it either. Accordingly, the definition has been revised to match DEQ's guidance definition.

[PH13]: Per discussion with Heather Mackey of DEQ 7/22/19. This limitation of applicability allows the County to use USGS maps as the basis for adjusting RPA boundaries where the County initiates an RPA boundary review based on updated maps or other circumstances.

a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

PART II: STORMWATER MANAGEMENT

Section 2-1. STORMWATER MANAGEMENT PROGRAM ESTABLISHED

Pursuant to Va. Code § 62.1-44.15:27 of the Code of Virginia, 27, the County hereby establishes a Stormwater Management Program for land-disturbing activities and adopts the applicable ~~Stormwater Management~~ VSMR Regulations that specify standards and specifications for such programs ~~promulgated by the State~~ for the purposes set out in Part I of this Ordinance. The Board of Supervisors hereby designates the Director of Planning Community Development, or designee, as the Administrator of the Stormwater Management Program.

Section 2-2. STORMWATER MANAGEMENT PERMIT REQUIREMENT

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a Stormwater Management Permit has been issued by the Administrator in accordance with the provisions of this Ordinance.
- (b) Notwithstanding any other provisions of this Ordinance the following activities are exempt from the requirement in subsection (a) of this Section, unless otherwise required by federal law:
 - (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Water Control Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 ~~(§ 10.1-1100 et seq.)~~ of Title 10.1 of the Code of Virginia (Va. Code §§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in ~~Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia~~ Va. Code § 10.1-1163.B;
 - (3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures.
 - (4) Land disturbing activities that disturb less than ~~one acre of land area except for land-~~

[HK14]: With a jurisdiction-wide RMA, VSMP requirements for Chesapeake Bay Land Disturbing Activities (equal to or greater than 2,500 square feet) apply County-wide.

~~disturbing activity exceeding an area of 2,500 square feet in all areas of the County designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations in accordance with Part IV of this Ordinance, or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance~~2,500 square feet;

- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a ~~State~~state or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
- (8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven (7) days of commencing the land-disturbing activity and compliance with the requirements of Section 2-5 of this Ordinance is required within ~~thirty (30)~~ days of commencing the land-disturbing activity.

Section 2-3. SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS:

- (a) No ~~stormwater management permit~~Stormwater Management Permit shall be issued by the Administrator; until the following ~~items~~ have been ~~submitted to and approved by the Administrator as prescribed herein~~satisfied:
 - (1) A permit application has been submitted to and approved by the Administrator as prescribed herein that includes a General ~~permit~~Permit registration statement which, among other things, certifies that a Stormwater Pollution Prevention Plan (SWPPP) has been prepared in accordance with state law;
 - (2) An ~~erosion and sediment control plan~~E&SC Plan or an agreement in lieu of a plan has been submitted to and approved by the Administrator in accordance with Part III of this Ordinance, and;
 - (3) A ~~stormwater management plan~~Stormwater Management Plan that meets the requirements of Section 2-5 of this Ordinance or an executed agreement in lieu of a Stormwater Management Plan ~~that meets the requirements of Section 2-5 of this Ordinance~~has been submitted to and approved by the Administrator as prescribed herein;
 - (4) Evidence of General Permit coverage, as required, is obtained from DEQ and

submitted to the Administrator;

- (5) The Stormwater Management Permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved Stormwater Management Permit;
- (6) The fees required to be paid pursuant to Section 7-1, are received, and a reasonable performance bond required pursuant to Section 7-2 of this Ordinance has been received; provided, however, that Applicants seeking to conduct land disturbing activities associated with a single-family residence and who are not required to submit a General Permit registration statement in accordance with subsection (e) of this section are not required to pay the state portion of the permit fee.
- ~~(b) No stormwater management permit shall be issued until evidence of General permit coverage is obtained from DEQ, where required.~~As a condition of permit approval, a construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator upon completion of construction. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. Construction record drawings may not be required for stormwater management facilities for which maintenance agreements are not required pursuant to Section 5-1(b).
- (c) All fees and performance bonds required pursuant to Part VII of this Ordinance shall be timely paid and posted.
- ~~(d) (e)~~Notwithstanding any other provision of this Section, an Applicant seeking to conduct a Chesapeake Bay Preservation Act Land-Disturbing Activity after June 30, 2014 shall not be required to provide the permit applicationGeneral Permit registration as set forth in Section 2-3(a)(1), nor provide or, except as otherwise provide in this subsection, be required to comply with the requirements of Section 2-4 pertaining to SWPPPs, nor shall evidence of General Permit coverage, which coverage is not required for such activities. Except as otherwise required in this subsection, the Applicant shall not be required. However, such Chesapeake Bay Preservation Act Land-Disturbing Activity shall be requiredsubject to comply with the following technical criteria and program and administrative requirements of Section 2-4[SWPPP].:
- (1) An erosion and sediment control plan, consistent with the requirements of the Part III of this Ordinance, must be prepared by the Applicant and approved by the Administrator prior to commencing land-disturbing activities and then implemented during land disturbing activities.
- (2) A Stormwater Management Plan, consistent with the requirements of Section 2-5 of this Ordinance, must be prepared by the Applicant and approved by the Administrator prior to commencing land-disturbing activities and then implements

during land disturbing activities. Exceptions may be requested in accordance with Section 2-8.

(3) The following shall apply to the site, be achieved, and otherwise be performed, all in accordance with Section 2-7:

(i) Long-term maintenance of stormwater management facilities;

(ii) Water quality design criteria;

(iii) Water quality compliance shall be achieved;

(iv) Channel protection and flood protection;

(v) Offsite compliance options available to Chesapeake Bay Preservation Act land-disturbing activities; and

~~(d) No stormwater management permit shall be issued until the fees required to be paid pursuant to Section 6-4, are received, and a reasonable performance bond required pursuant to Section 6-5 of this Ordinance has been received, however Applicant's seeking to conduct land disturbing associated with a single family residence and who are not required to submit a General Permit registration statement in accordance with subsection~~

(vi) ~~(d) above~~ are not required to pay the state portion of the permit fee. Design storm and hydrologic methods, linear development controls, and criteria associated with stormwater impoundment structures or facilities.

(e) Notwithstanding the foregoing requirements or any other requirements of this Ordinance, for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale, no General Permit registration statement is required, nor is payment of the ~~Department~~ DEQ portion of the permit fee, provided that all state regulatory requirements are met. The land-~~disturbing-disturbance~~ remains subject to the remaining provisions of this Ordinance, including but not limited to the SWPPP requirements set forth in Section 2-4 and Section 2-7, except as otherwise provided by law.)

[PH15]: This text reflects exemption from stormwater permitting requirements for certain Chesapeake Bay Land Disturbing Activities and related conditions per state regulation.

~~(f) No stormwater management permit shall be issued unless and until the stormwater management permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved stormwater management permit.~~

(f) ~~(g)~~ No grading, building or other local permit shall be issued for a property unless a stormwater management permit Stormwater Management Permit as required pursuant to this Part II has been issued by the Administrator, and, where such Stormwater Management Permit is issued, the Applicant provides a certification that all land clearing, construction, disturbance, land development and drainage will be done

[PH16]:
Clarifying
revisions have
been made here
to account for
potential
exemptions
from the need
for a
Stormwater
Management
Permit.

~~according~~performed pursuant to the approved permit conditions.]

- ~~(h) As a condition of permit approval, a construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator upon completion of construction. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. Construction record drawings may not be required for stormwater management facilities for which maintenance agreements are not required pursuant to Section 5-1(b).~~

Section 2-4. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

The Stormwater Pollution Prevention Plan (SWPPP) that is required to be prepared before a registration statement for General ~~permit~~Permit coverage may be submitted to ~~DEQ~~the Administrator for approval (as referenced in Section 2-3(a)(1)) shall include the content specified by 9VAC25-870-54, 9VAC25-870-55, ~~9VAC25-880-70, 56~~, and any other applicable ~~regulations~~VSMP Regulations, including, but not limited to ~~i) a stormwater management plan~~(i) a Stormwater Management Plan that meets the requirements of this Ordinance, (ii) a County-approved Erosion and Sediment Control plan approved pursuant to Part III of this Ordinance, and ~~3-~~(iii) a pollution prevention plan that meets the requirements of 9VAC25-870-56.

- (a) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP. The SWPPP shall also be amended by the operator, if an inspection reveals that the SWPPP is inadequate to satisfy applicable regulations.
- (b) The SWPPP must be maintained by the operator at a central location onsite for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site. The SWPPP must be made available for public review in an electronic format or in hard copy as required by the Regulations.

Section 2-5. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

- (a) The Stormwater Management Plan, required in ~~Section 2-5~~Sections 2-3(a)(3) and 2-4(a) of this Ordinance, must apply the stormwater management technical criteria set forth in Section 2-7 of this Article to the entire land-disturbing activity. Individual lots in new residential, commercial or industrial developments shall not be considered separate land-disturbing activities. A ~~stormwater management plan~~Stormwater Management Plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:

- (1) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
- (2) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and ~~postdevelopment~~post-development drainage areas;
- (3) A narrative that includes a description of current site conditions and final site conditions unless the County allows this information to be provided and documented during the review process;
- (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
- (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge;
- (6) Hydrologic and hydraulic computations, including runoff characteristics;
- (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 2-7 of this Ordinance; ~~and~~ and
- (8) A map or maps of the site that depicts the topography of the site and includes:
 - (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;

- (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 2-7 of this Ordinance ~~through the use of~~ by using off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the ~~applicant~~ Applicant's land-disturbing activity, except as otherwise allowed by Va. Code § 62.1-~~144.15:35 of the Code of Virginia.~~ 44.15:35.
- (c) Elements of a ~~stormwater management plan~~ Stormwater Management Plan that include activities regulated under Chapter 4 (~~§54.1-400 et seq.~~) of Title 54.1 of the Code of Virginia (Va. Code §§ 54.1-400 et seq.) shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to ~~Article 1 (§Va. Code §§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.~~
- (d) Individual lots in new residential, commercial or industrial developments shall not be considered separate land-disturbing activities.

Section 2-6. REVIEW OF STORMWATER MANAGEMENT PLANS.

- (a) The Administrator shall review ~~stormwater management plans~~ Stormwater Management Plans and shall approve or disapprove such plans as follows:
- (1) The Administrator shall determine the completeness of a plan in accordance with Section 2-5 of this Ordinance, and shall notify the ~~applicant~~ Applicant, in writing, of such determination, within ~~fifteen (15)~~ sixty (60) calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
 - (2) The Administrator shall have an additional ~~sixty (60)~~ sixty (60) calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator or agent shall have ~~sixty (60)~~ sixty (60)

calendar days from the date of submission to review the plan.

- (3) The Administrator shall review any plan that has been previously disapproved, within forty-five (45) calendar days of the date of resubmission.
 - (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his/her designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.
 - (5) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.
- (b) Approved ~~stormwater management plans~~Stormwater Management Plans may be modified as follows:
- (1) Modifications to an approved ~~stormwater management plan~~Stormwater Management Plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have sixty (60) calendar days to respond in writing either approving or disapproving such request.
 - (2) The Administrator may require that an approved ~~stormwater management plan~~Stormwater Management Plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.
- (c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities once construction is completed. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 5-1.

Section 2-7. TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES:

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the ~~Stormwater~~VSMP Regulations, as amended, which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in ~~Subsections~~subsection (b) of this Section.
- (b) Notwithstanding the foregoing, any land-disturbing activities shall be subject to Part II.C of the VSMP Regulations technical criteria provided that such activities satisfy the following requirements:

□

~~(1) The land-disturbing activity proposed to occur pursuant to i) a plan of development was the subject of or a part of a proffered as part of a condition rezoning and approved by the governing body; ii) any other or conditional zoning plan, zoning with a plan of development or, preliminary or final subdivision plat, preliminary or final site plan approved by the County, including, or any plan approved pursuant to a rezoning request, a variance request, or a request for a special use permit; iii) an approved preliminary or final subdivision plat where the approval was granted, where any of which (a) was approved by the County prior to July 1, 2012, and for which no coverage under the general permit has been issued and land disturbing did not commence prior to July 1, 2014, shall be considered grandfathered and shall not be subject to the technical criteria of Part II B [of the Stormwater Regulations], but shall be subject to the technical criteria of Part II C [of the Stormwater Regulations] for those areas that were included in the approval, provided that the Administrator or agent, finds that the following criteria apply: (1) The plat or plan includes conceptual drawing(s) (b) included one or more conceptual drawings sufficient to provide for the specified stormwater management facilities required at the time of approval; (2) The resulting land-disturbing activity will be compliant with the requirements of, (c) will comply with Part II C [of the Stormwater Regulations]; and (3) In the event that the approved plat is of the VSMP technical criteria, and (d) has not been subsequently modified or amended in a manner such that there is no resulting in an increase over the previously approved plat in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.~~□

[PH17]:
 Subsection 2-7(b) is being revised to reflect current grandfathering provisions of the state stormwater management regulations (9VAC25-870-48).

~~(2) A General Permit for such land-disturbing activity has not been issued prior to July 2014; and~~□

~~(3) Such land-disturbing activity did not commence prior to July 1, 2014.~~

(c) For local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the Department of Conservation and Recreation has approved a ~~stormwater management plan~~ Stormwater Management Plan prior to July 1, 2012, such projects shall be considered grandfathered by the County and shall be subject to the technical requirements of Part II C of the ~~Stormwater VSMP~~ Regulations for those areas that were included in the approval, provided ~~general permit~~ General Permit coverage has not been issued prior to July 1, 2014 and land ~~disturbance~~ did not commence prior to July 1, 2014..

(d) Land-disturbing activities grandfathered ~~Sections~~ pursuant to subsections (b) or (c) of this Section, shall remain subject to Part ~~HC II.C~~ technical criteria of the Regulations for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to the technical requirements of Subsection (a) above.

In cases where governmental bonding or public debt financing has been issued for a

project prior to July 1, 2012, such project shall be subject to the technical requirements ~~of Part II C~~ of the ~~Stormwater~~ VSMP Regulations, as adopted by the County in Subsection (b) of this Section.

- (e) Plats or plans grandfathered pursuant to the provisions of this section remain subject to the vesting requirements set forth in Va. Code ~~of Virginia~~ § 15.2-2307.

Section 2-8. EXCEPTIONS TO TECHNICAL CRITERIA.

- (a) In approving a Stormwater Management Plan as set forth in Section 2-6 of this Ordinance, the Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the ~~Stormwater~~ VSMP Regulations, provided the Administrator finds the following:
- (1) The exception is the minimum necessary to afford relief;
 - (2) Reasonable and appropriate conditions are imposed so that the intent of the Stormwater Act, the VSMP Regulations, and this Ordinance are preserved;
 - (3) Granting the exception will not confer any special privileges that are denied in other similar circumstances, and;
 - (4) The exception requests is not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
- (b) Exceptions to the requirement that the land-disturbing activity obtain a required ~~stormwater management permit~~ Stormwater Management Permit shall not be given by the Administrator or agent, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
- (c) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.
- (d) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

PART III. EROSION AND SEDIMENT CONTROL

Section 3-1. EROSION AND SEDIMENT CONTROL PROGRAM ESTABLISHED

Pursuant to Va. Code § 62.1-44.15: ~~54 of the Code of Virginia, 54~~, the County hereby establishes an Erosion and Sediment Control Program for the effective control of soil

erosion, sediment deposition, and nonagricultural runoff associated with a land ~~disturbing~~ activity and to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. The County hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the State Water Control Board pursuant to the E&SC Law, including but not limited to the ~~"Virginia Erosion and Sediment Control~~E&SC Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

- (a) The program and regulations provided for in this article shall be made available for public inspection at the office of community development.
- (b) The Board of Supervisors hereby designates the Director of PlanningCommunity Development as the Administrator of the County's Erosion and Sediment Control Program, and designates the Department of PlanningCommunity Development as the certified plan reviewer for the County.

Section 3-2. PERMIT REQUIREMENT

- (a) Except as provided herein, no person may engage in any land-disturbing activity until ~~an E&S permit~~ a Land-Disturbing Permit has been issued by the Administrator ~~in accordance with~~ as required and pursuant to the provision of ~~this part~~ Part III of this Ordinance ~~[Part III]~~, or a Stormwater Management Permit has been issued ~~pursuant to and~~ as required by and pursuant to Part II of this Ordinance. [NOTE: Construction or installation of septic system tank lines or drainage fields is a form of land disturbing activity subject to this subsection (a).]
- (b) No ~~E&S~~ Land-disturbing Permit shall be issued until an ~~erosion and sediment control plan~~ E&SC Plan is reviewed and approved by the Administrator, or an agreement in lieu of a plan is executed by the County and the Applicant, ~~however issuance of an E&S permit shall not be required if a Stormwater Management Permit is required pursuant to Part II of this Ordinance. If a Stormwater Management Permit is required, the Applicant shall still be required to obtain approval of an E&S plan or provide an executed agreement in lieu of a plan, in accordance with this Part of the Ordinance, and as required by Section 2-3, in Part II of this Ordinance.~~
- (c) Notwithstanding any other provisions of this Ordinance the following activities are exempt from the requirement in subsections (a) and (b) of this ~~Section~~ section, unless otherwise required by federal law:
 - (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
 - (2) Individual service connections;
 - (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the

land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;

~~(4) Septic tank lines or drainage fields located outside a Chesapeake Bay Preservation Area unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system. Septic tank lines or drainage fields which lie i) in a Chesapeake Bay Preservation Area and/or ii) in soils areas designated as highly erodible contiguous to an RMA, are not exempt and therefore any land disturbance over 2,500 sq. ft in such areas is a land disturbing activity.~~

~~(4)~~ (5) Surface or deep mining regulated by the state or federal government. Unregulated mining will be subject to this Ordinance as a land disturbing activity;

~~(5)~~ (6) Exploration or drilling for oil and/or gas, including the well site, roads, feeder lines and offsite disposal areas;

~~(6)~~ (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations, including engineering operations, and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Article 2 (Va. Code § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, the exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Va. Code § 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture use as described in subsection B of Va. Code § 10.1-~~1163~~ 1163;

~~(7)~~ (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

~~(9) Disturbed land areas that are:~~

~~a. Areas of less than 10,000 square feet in size and outside both the CBPA and areas contiguous to the CBPA which are identified as having highly erodible soils except that land disturbance of less than 10,000 square feet on individual lots in a residential development shall not be exempt in the total land disturbance in the development is equal or greater than 10,000 square feet; or~~

~~b. Areas of 2,500 sq. ft. or less and within either the CBPA or land areas contiguous to the CBPA which has been identified as having highly erodible soils;~~

(8) Land-disturbances that are less than 2,500 square feet in area;

[HK18]: The definition of "land disturbing activity" in the E&S Control Law excludes areas of less than 10,000 square feet generally or less than 2,500 square feet when located within a CBPA. 9 VAC 25-830-130.5 requires any land disturbing activity exceeding 2,500 square feet within a CBPA to comply with E&S control requirements. With a jurisdiction-wide RMA as set forth in Part IV below, E&S control requirements will apply County-wide at the lower threshold.

~~(9)~~ ~~(10)~~ Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

~~(10)~~ ~~(11)~~ Shore erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; ~~however, provided that~~ any associated land that is disturbed outside of this exempted area shall remain subject to this Ordinance; and

~~(11)~~ ~~(12)~~ Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved ~~erosion and sediment control plan~~ E&SC Plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.

- (d) No ~~E&S plan~~ SC Plan shall be approved until the fees required to be paid pursuant to ~~the Fee Schedule attached as Appendix A~~ Section 7-2 of this Ordinance are received, and no ~~E&S~~ Land-disturbing Permit shall be issued until the required performance bond pursuant to Section ~~67-52~~ of this Ordinance has been posted. ~~Notwithstanding the foregoing, where fees and bonding is required of the Applicant pursuant to Part II of this Ordinance, all applicable fees and all bond amounts may be consolidated and paid or posted at the same time. Any consolidated bond must separately identify the amount posted for each of the activities bonded.~~
- (e) A statement describing the maintenance responsibilities of the permittee shall be included in the approved ~~erosion and sediment control plan~~ E&SC Plan.
- (f) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the ~~applicant~~ Applicant submits with his/her application an approved ~~erosion and sediment control plan~~ E&SC Plan and certification that the plan will be followed and, upon the development of an online reporting system by DCR, but no later than July 1, 2014, evidence of General ~~permit~~ Permit coverage where it is required.
- (g) The Administrator may require changes to an approved plan in the following cases:
- (1) Where an inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 - (2) Where the person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Ordinance and of state law, are agreed to by the County and the person responsible for carrying out the plans.
- (h) Where land-disturbing activities involve lands under the jurisdiction of more than

Virginia erosion and sediment control program, an ~~erosion and sediment control plan~~E&SC Plan may, at the request of one or all of the program authorities, be submitted to DCR for review and approval rather than to each jurisdiction concerned. DCR may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. The County may enter into an agreement with an adjacent VESCP regarding the administration of multi-jurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or part of the administrative procedures.

Section 3-3. REVIEW OF EROSION AND SEDIMENT CONTROL PLANS; CERTIFICATES OF COMPETENCE REQUIRED; AGREEMENTS IN LIEU OF A PLAN.

The Administrator shall review E&~~S-plans~~SC Plans submitted and shall provide written notice to the Applicant within forty-five (45) days, of any plan that is found to be inadequate and disapproved. The notice of disapproval shall specify the modifications, terms and conditions that will permit approval of the plan.

- (1) The Administrator shall act on any E&~~S-plan~~SC Plan that has been previously disapproved within forty-five (45) days after the plan has been revised, resubmitted for approval, and deemed adequate.
 - (2) If notice of inadequacy is not provided with forty-five (45) days, the E&~~S-plan~~SC Plan shall be deemed adequate and shall be reviewed by the Administrator for compliance with this Ordinance.
- (b) For all E&~~S~~SC Plans that are determined to be adequate, the Administrator shall review and approval such plans within sixty (60) days of the receipt of the plan if it determines that the plan meets the requirements of this Ordinance, the E&~~S~~SC Regulations, and state law; and provided the person carrying out the plan certifies that he will properly perform the erosion and control measures included in the plan and shall comply with all applicable legal requirements.
 - (c) If no action is taken by the Administrator within the times specified in subsection (b) above, the E&~~S-plan~~SC Plan shall be deemed approved and the person authorized to proceed with the proposed activity.
 - (d) Notwithstanding any other provision of this Ordinance, before engaging in any land-disturbing activities shown on an approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the Administrator, as provided by Va. Code of Virginia, § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

(e) The requirement for having a certificate of competence may be waived where an agreement in lieu of a plan for construction of a single family residence has been executed, provided that if a violation occurs during the land-disturbing activity, the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by Va. Code ~~of Virginia~~, § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this Ordinance.

(f) When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an ~~erosion and sediment control plan~~E&SC Plan shall be the responsibility of the owner.

In accordance with Va. Code ~~of Virginia~~, § 62.1-44.15:55, any person engaging in more than one jurisdiction, in the creation and operation wetland mitigation bank or stream restoration bank or banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the ~~Department of Environmental Quality~~DEQ, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with DEQ for review and approval consistent with guidelines established by the SWCB.

(g) State agency projects are exempt from the provisions of this article except as provided for in the Va. Code ~~of Virginia~~, § 62.1-44.15:56.

Section 3-4. TECHNICAL CRITERIA FOR ~~REQUIRED~~REQUIRED EROSION AND SEDIMENT CONTROL PLANS.

(a) The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended and are hereby adopted and shall be utilized by the Administrator in considering the adequacy of a submitted E&~~S-plan~~SC Plan.

(b) As provided by Va. Code ~~of Virginia~~, § 62.1-44.15:52, stream restoration and relocation projects that incorporate natural channel design concepts are not considered man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in applicable regulations.

(1) Any E&~~S-plan~~SC Plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release

over a 24-hour period the expected rainfall resulting from the one (1) year, 24- hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in applicable regulations.

- (2) For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater ~~Management~~-Act (§ 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with 9 25-870-48 of the ~~Virginia Stormwater Management Program (VSMP) Permit~~VSMP Regulations.

Section 3-5. VARIANCES FROM TECHNICAL CRITERIA FOR EROSION AND SEDIMENT CONTROL PLANS.

- (a) The Administrator may waive or modify any of the standards adopted in Section 3-4 that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
 - (1) At the time of plan submission, an ~~applicant~~Applicant may request a variance to become part of the approved ~~erosion and sediment control plan. The applicant~~E&SC Plan. The Applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the Administrator shall be documented in the ~~E&S plan~~SC Plan.
 - (2) During construction, the person responsible for implementing the approved ~~plan~~E&SC Plan may request a variance in writing from the Administrator. The Administrator shall respond in writing either approving or disapproving such a request. If the Administrator does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the ~~applicant~~Applicant may resubmit a variance request with additional documentation.
- (b) The Administrator shall consider variance requests judiciously, keeping in mind both the need of the ~~applicant~~Applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
- (c) The Administrator shall not approve any variance from the Technical Criteria required in Section 3-4, pursuant to this section when Part II is applicable. Variances from Section 3-4 shall only be granted pursuant to Section 3-5 of this Ordinance.

Section 3-6. PLAN RESUBMISSION REQUIREMENTS.

Should a land-disturbing activity not begin during the 180-day period following E&~~S~~planSC Plan approval or cease for more than one hundred eighty (180) days, the County may require the resubmission of the plan, with all appropriate applications and review fees, to evaluate the existing approved ~~erosion and sediment control plan~~E&SC Plan to determine whether the ~~plan~~E&SC Plan still satisfies local and state erosion and sediment control criteria, and to verify that all design factors are still valid. If the Administrator finds the previously filed ~~plan~~E&SC Plan to be inadequate, a modified ~~plan~~E&SC Plan shall be submitted and approved prior to the resumption of land-disturbing activity.

Section 3-7. EROSION IMPACT AREAS.

- (a) The Board of Supervisors may designate areas in the County which shall be classified as erosion impact areas. Any such designation and classification shall be deemed to be a component of the Erosion and Sediment Control program.
- (b) Consistent with this Ordinance, and in order to prevent further erosion, the County may require the approval of an ~~erosion and sediment control plan~~E&SC Plan for any erosion impact area. Such ~~plan~~E&SC Plan shall be subject to all review, bonding, inspection and enforcement provisions of this Ordinance which apply to approved land-disturbing permits.

[PH19]: As indicated by the changes below, the County is electing to place the entire jurisdictional area of the County into either an RPA or and RMA, so the entire County is now one or the other form of an CBPA. The deletion of the former last sentence of this paragraph reflects this change.

PART IV. CHESAPEAKE BAY PRESERVATION

~~SECTION~~Section 4-1. **PURPOSE AND INTENT**

~~[In addition to the water quality and water quantity requirements of Part II and Part III, this part of the Ordinances is intended to establish additional criteria used by Charles City County in granting, denying, or modifying requests to subdivide or develop land in a Chesapeake Bay Preservation Area. This part shall only apply to areas designated or determined to be Chesapeake Bay Preservation Area (CBPA Areas (CBPAs)).]~~

[PH20]: This provision is needed to ensure proper coordination of the applicability of the requirements of Part IV with the exemptions and exceptions from such requirements.

Section 4-2. DESIGNATION OF CHESAPEAKE BAY PRESERVATION AREAS

~~The~~Subject to the exemptions set forth in Section 4-17 and exceptions allowed pursuant to Section 4-18, the requirements of this Part IV of the Ordinance shall apply to all lands ~~in a~~within the jurisdictional boundaries of the County. CBPAs consist of Resource Protection Areas (~~RPA~~RPAs) and Resource Management Areas (~~RMA~~RMAs), which are subject to the use restrictions and regulations in this Part ~~[IV]~~. RPAs are protected from most development because, left intact, they function to improve and protect water quality. RMAs, the landward component of CBPAs, are regulated to protect both the associated RPA and water resources from degradation resulting from inappropriate use and development.

Section 4-3. RESOURCE PROTECTION AREAS

(a) Resource Protection Areas (RPAs) shall consist of sensitive lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or that are sensitive to uses or activities such that the use results in significant degradation to the quality of State Waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff entering the bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

(b) RPAs shall include:

(1) Tidal wetlands:

(2) Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or ~~water bodies~~ Water Bodies with ~~perennial flow~~ Perennial Flow;

(3) Tidal shores: and

(4) A 100 -foot buffer area measured horizontally located adjacent to and landward of the components listed in subsections ~~a-e~~ (b)(1) through (b)(3) above and along both sides of any ~~water body with perennial flow~~ Water Body with Perennial Flow, and the full buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with this ordinance.

~~(e)~~ Designation of the components listed in ~~subparagraphs 1-4 of~~ this subsection ~~b of this section~~ (b) shall not be subject to modification unless based on reliable, site-specific information as provided for in this ~~ordinance~~ Ordinance.

~~(c)~~ ~~(d)~~ For the purpose of generally determining whether water bodies have perennial flow, water bodies depicted as perennial on the most recent U.S. Geological Survey 7½ minute topographic quadrangle map (scale 1:24,000) will be considered as having perennial flow. However, for purposes of review of a plan of development or Water Quality Impact Assessment (WQIA), site-specific determinations of perennial flow shall be made or confirmed by the Director of Community Development pursuant to Section 4-5(a) of this Ordinance using the definition of “Water Bodies with Perennial Flow” as defined in Section 1-2 of this Ordinance.

~~(d)~~ The County may elect not to designate an RPA adjacent to a daylighted stream; provided, however, that for development on any property adjacent to such daylighted stream, a WQIA pursuant to Section 4-8 shall be performed to ensure that the proposed development does not result in the degradation of the stream and is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution.

[PH21]: DEQ staff review notes indicated this sentence should be removed. However, this option for general determination of perennial stream flow is allowed by 9VAC25-830-80.D. WM has discussed this issue with DEQ, and DEQ staff has agreed that this provision may remain if the next sentence as shown here is added to ensure site-specific determinations are addressed as required by regulation and § 4-5(a) of the CWPO.

[PH22]: This new provision reflects language in the CBPA regulation allowing flexibility to localities in RPA designation near daylighted streams.

[PH23]: The section reflects the election to consider the entire County, other than RPAs, as one County-wide RMA. This change will simplify RMA and RPA determinations for project review and reflects current site plan review and approval process under County Site Plan ordinance.

[PH24]: Former § 4-9 has been merged into § 4-5 to avoid duplication of treatment of this subject and simplify language. Also, portions of the original § 4-5 have been reorganized to improve ease of use and clarity.

Section 4-4. RESOURCE MANAGEMENT AREAS

- (a) The purpose of the ~~Resource Management Area~~RMA is to provide significant water quality protection through the employment of the performance standards set forth in Section 4-~~10~~11 and to prevent diminishing the functional value of the ~~Resource Protection Area~~RPA.
- (b) ~~The Resource Management Area shall include the following lands:~~All lands and surface waters within the County that are not RPAs shall be designated as an RMA.
 - 1) ~~Those areas contiguous to any Resource Protection Area where there is an overlap of soils delineated as highly erodible and soils delineated as highly permeable.~~
 - 2) ~~Those areas contiguous to any Resource Protection Area that are delineated as a 100-year floodplain.~~
 - 3) ~~An area 25 feet in width landward and contiguous to the entire inland boundary of the Resource Protection Area.~~

Section 4-5. SITE SPECIFIC DELINEATION OF CBPARPA BOUNDARIES

- ~~(a) The above designation criteria which define the boundaries of RPAs and RMAs are incorporated by reference in the definition section of the Charles City Zoning Ordinance to the extent that the ordinance addresses either RPAs or RMAs. A CBPA map is provided but should be considered a planning tool. Boundaries shall be delineated by the applicant during the plan of development process (Section 4-13).~~
- (a) ~~(b) The Director of Planning shall insure or confirm that as~~As part of the ~~plan~~Plan of ~~development~~Development review process pursuant to Section 4-13, or during the review of a ~~water quality impact assessment that:~~1) WOIA pursuant to Section 4-8 of this ordinance, a reliable, site-specific evaluation ~~is~~shall be conducted by the Applicant and approved by the Director of Community Development to determine whether ~~water bodies on or adjacent to the development site have perennial flow; and,~~there is a Water Body with Perennial Flow, as defined in Section 1-2 of this Ordinance, located on or adjacent to the proposed development site. The RPA boundaries for the site shall then be adjusted, as necessary, based on this evaluation. CBPA maps may be provided by the County and used as a guide to the general location of RPAs; however, they do not, by themselves, meet the requirement for a site-specific evaluation.
- (b) In the event an adjusted boundary delineation is contested by the Applicant, the Applicant may seek relief, in accordance with the provisions of Section 6-1 of this Ordinance.
- (c) Upon request by an Applicant wishing to construct a single-family residence, the Director of Community Development may waive the requirement for the Applicant to perform a site-specific RPA evaluation. In such case, the Director of Community Development shall perform the site-specific RPA evaluation using remote sensing, hydrology, soils, plant

species, and other data and in consultation with appropriate resources, as necessary. However, an Applicant shall remain responsible for preparing and submitting a WQIA pursuant to Sections 4-8, 4-12, and 4-13 of this Ordinance.

~~2) Resource Protection Area boundaries are adjusted, as necessary, on the site, based on this evaluation of the site.~~

(d) For purposes of addressing RPAs or RMAs as part of the County’s Zoning Ordinance, the definitions of “Resource Protection Area” and “Resource Management Area” set forth in Section 1-2 of this Ordinance are incorporated by reference in the definition section of the County’s Zoning Ordinance.

Section 4-6. USE REGULATIONS

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

Section 4-7. LOT SIZE

Lot size shall be subject to the requirements of the underlying zoning district(s) and subdivision ordinance; In this regard, any RPA within any lot shall be included when determining whether a lot has sufficient size for a particular use, provided that there must be sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards in ~~Section 4-10,~~ Sections 4-11 and 4-12.

Section 4-8. ~~REQUIRED CONDITIONS~~ WATER QUALITY IMPACT ASSESSMENTS

~~(a) All development and redevelopment, either of which includes land disturbance exceeding 2500 square feet in a Chesapeake Bay Preservation Area shall be subject to a plan of development process, as set forth below, and other such requirements as set forth in other land development ordinances.~~

~~(b) Development in RPAs may be allowed only if it:~~

- ~~1) is water dependent;~~
- ~~2) constitutes redevelopment;~~
- ~~3) is a new use established in accordance with this ordinance;~~
- ~~4) is a road or driveway crossing satisfying the conditions set forth in this article; or~~
- ~~5) is a flood control or stormwater management facility satisfying the conditions set forth in Section 2-7.~~

~~(c) A water quality impact assessment shall be required for any proposed land disturbance,~~

[PH25]: This provisions has been relocated here for better context and further edited for greater clarity.

[PH26]: This subsection has been revised to improve clarity and rely on definitions of RMA and RPA that incorporate the delineation criteria for each in sections 4-4 and 4-3, respectively.

[PH27]: The County needs to amend the Zoning Ordinance to incorporate these designation criteria. Once that occurs, this provision is likely no longer necessary.

[PH28]: The former contents of Section 4-8 have been relocated to other sections for better aggregation of similar topics and requirements and overall better clarity. In their place, § 4-8 not includes new provisions for Water Quality Impact Assessments that incorporate new options for minor water quality impact assessments and major water quality impact assessments based on location and area of land disturbance activity. While WQIA requirements had been found previously in the RPA specific performance standards, it is possible for WQIAs to pertain to development within the RMA as well, per Bay Act Regulations requiring WQIAs. The consolidation of the specific

~~development or redevelopment within RPAs and for any development within RMAs.~~

~~**Section 4-9. INTERPRETATION OF RESOURCE PROTECTION AREA BOUNDARIES**~~

- ~~(a) The applicant shall have the burden of delineating CBPA boundaries through the performance of an environmental site assessment, subject to approval of the Director of Planning and in accordance with Section 4-13, Plan of Development of this ordinance.~~
- ~~(b) The Director of Planning, when requested by an applicant wishing to construct a single family residence, may waive the requirement for an environmental site assessment and perform the delineation. The Director of Planning may use remote sensing, hydrology, soils, plant species, and other data, and consult other appropriate resources as needed to perform the delineation.~~
- ~~(c) Where the applicant has provided a site specific delineation of the RPA, the Director of Planning, will verify the accuracy of the boundary delineation. In determining the site specific RPA boundary, the Director of Planning may render adjustments to the applicant's boundary delineation, in accordance with Section 4-13, Plan of Development Process of this Ordinance. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section 6-2, Appeal by Applicant.~~

~~**Section 4-10. PERFORMANCE STANDARDS IN CHESAPEAKE BAY PRESERVATION AREAS**~~

- ~~(a) Consistent with the requirements of Part II of this Ordinance, the purpose and intent of the requirements in this Part are to implement the following objectives: Purpose. The purpose of the Water Quality Impact Assessment (WQIA) is to identify the impacts of proposed development on water quality and lands in the RPA and, in certain cases, in the RMA, consistent with the goals and objectives of the Bay Act, the Bay Act Regulations, this Ordinance, and local programs, and to determine specific measures for mitigation of those impacts.~~
 - ~~1) For new development, the total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-870-65.~~
 - ~~2) For development on prior developed lands:
 - ~~a. For land disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.~~~~

- ~~b. For regulated land disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.~~
- ~~c. For land disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions a or b above, shall be applied to the remainder of the site.~~
- ~~d. In lieu of subdivision c, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.~~
- ~~3) For agricultural and silvicultural lands, a 40% reduction in non point source pollution.~~

(b) Applicability. A WQIA is required for (1) any proposed development within a Resource Protection Area, including any buffer area modification or encroachment as provided for in Section 4-12(b) of this Ordinance, or (2) for any development within a Resource Management Area when deemed necessary by the Director of Community Development due to unique characteristics of the site or the intensity of the development. Depending on the area and location of land-disturbance, either a minor WQIA or a major WQIA shall be required.

[HK29]: DEQ notes that 5,000 SF is standard in peer localities for differentiating between major and minor WQIAs.

(c) Minor Water Quality Impact Assessment. A minor WQIA shall be required for a development or redevelopment (A) entailing less than 5,000 square feet of land-disturbance within the RPA, or (B) when the Director of Community of Development determines that a WQIA is necessary for any development within the RMA due to unique characteristics of the site or the intensity of the development within the RMA. A minor WQIA shall:

- (1) Provide adequate justification for the proposed encroachment;
- (2) Incorporate any site-specific evaluation for Water Bodies with Perennial Flow, as required pursuant to Section 4-5(a);
- (3) Include a restoration plan that includes the replacement of vegetation that is proposed for removal from the RPA buffer area in connection with the development or redevelopment, ensuring that the type, quantity and density of replacement vegetation shall be capable of retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff;
- (4) Demonstrate that the combination of undisturbed RPA buffer area, restoration plantings, and identified best management practices or measures will be effective in

retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff; and

(5) Include a site drawing, to scale if practicable and certified as complete and accurate by a professional engineer or a certified land surveyor, that shows the following:

- (i) The location and boundaries of the affected portions of the RPA and adjacent RMA;
- (ii) The location, nature and quantification of proposed encroachments into the RPA, including type of material proposed to be used for access paths, areas of clearing or grading, location of any structures, drives or other impervious surfaces;
- (iii) Location and density of existing vegetation on site, including the number and type of trees and other vegetation proposed for removal in the RPA buffer area as a result of the encroachment or modification and location of the replacement vegetation called for in the restoration plan; and
- (iv) The type and proposed location of any best management practice facilities or measures to mitigate the proposed RPA encroachment and/or adverse impacts.

(d) Major Water Quality Impact Assessment. A major WOIA shall be required for any development that (A) would result in at least 5,000 square feet of land-disturbance within the RPA; or (B) would disturb any portion of the seaward 50 feet of the 100-foot buffer area or any other component of an RPA. The information required in this section shall be considered a minimum, unless the Director of Community Development determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land. A major WOIA shall:

[HK30]: This sentence is typically included in ordinances addressing major WQIAs and provides flexibility for needed relief, as applicable.

- (1) Provide adequate justification for the proposed encroachment;
- (2) Incorporate any site-specific evaluation for Water Bodies with Perennial Flow, as required pursuant to Section 4-5(a);
- (3) Describe the existing physical characteristics of the affected portions of the RPA and the RMA, as applicable, including:
 - (i) Topography, soil characteristics, erosion potential and hydrology;
 - (ii) Any wetlands and their functions and values;
 - (iii) Any streams and other surface water bodies; and
 - (iv) The location and density of existing vegetation, including the number and

type of trees and other vegetation categorized by type (e.g. shrubs, trees, groundcover) within 50 feet of the proposed land-disturbance;

- (4) Describe the proposed encroachment into the RPA, including type and size of proposed areas of clearing or grading, improvements, structures, roads, drives, access paths, other impervious surfaces, irrigations systems, lighting systems, sewage disposal systems and reserve drainfields, and other utilities;
- (5) Include a restoration plan that includes the replacement of vegetation that is proposed for removal from the RPA buffer area in connection with the development or redevelopment, ensuring that the type, quantity and density of replacement vegetation shall be capable of retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff;
- (6) Demonstrate that the combination of undisturbed RPA buffer area, restoration plantings, and identified best management practices or measures will be effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from run-off;
- (7) Include any other information deemed by the Director of Community Development to be necessary to evaluate potential water quality impacts of the proposed activity; and
- (8) Include a site drawing, to scale if practicable and certified as complete and accurate by a professional engineer or a certified land surveyor, that shows the following:
 - (i) The locations and boundaries of the affected portions of the RPA and adjacent RMA;
 - (ii) The locations of the affected RPA components, including any tidal wetlands or shores, Water Bodies with Perennial Flow, nontidal wetlands and the 100-foot buffer;
 - (iii) The location, nature, and quantification of the proposed encroachment into the RPA and related components specified in subsection (d)(8)(ii) above;
 - (iv) The location and density of existing vegetation on site, including the number and type of trees and other vegetation proposed for removal in the RPA buffer area as a result of the encroachment or modification and location of the replacement vegetation called for in the restoration plan;
 - (v) The location of existing and proposed stormwater outfalls from the site; and
 - (vi) The type and proposed location of any best management practice facilities or measures to mitigate the proposed RPA encroachment and/or adverse impacts.

[PH31]: Text has been moved to and incorporated within § 4-5.

(e) During the review of a WOIA, the Director of Community Development shall ensure or confirm that any RPA boundary adjustments as required pursuant to Section 4-5 are made.

[PH32]: This text has been struck due to the provisions being superseded by new Stormwater Management Plan criteria and duplication of provisions in § 4-11 below, as revised

Section 4-9. RESERVED

Section 4-10. RESERVED

Section 4-11. GENERAL PERFORMANCE STANDARDS FOR DEVELOPMENT AND REDEVELOPMENT IN CHESAPEAKE BAY PRESERVATION AREAS

(a) Land -disturbance shall be limited to the area necessary to provide for the proposed use or development.

[PH33]: This text has been relocated from § 4-8(a) and revised for improved clarity.

(1) ~~1) In accordance with an approved site plan, the~~ The limits of land -disturbance, including clearing or grading shall be accurately defined. These limits shall be and delineated on submitted plans and physically marked on the development site prior to clearing or grading.

[PH34]: This subsection has been added to ensure compliance with Bay Act Regulation (9VAC 25-830-130.2) performance standard addressing protection of indigenous vegetation.

(2) ~~2)~~ Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Director of ~~Planning~~ Community Development.

(3) ~~(b) Area~~ The area of land -disturbance shall be reasonable for ~~the development proposed~~ and consistent with the proposed use and development ~~proposed and in accordance with the Virginia Erosion and Sediment Control Handbook~~.

(b) ~~(e) Except as otherwise permitted under the General Permit requirements, land~~ Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.

[PH35]: This text has been revised for improved clarity.

(c) Any development or redevelopment involving land-disturbance of 2,500 square feet or more shall be subject to a Plan of Development process, as set forth in Section 4-13, and other such requirements as set forth in the Other County Land Development Ordinances.

[PH36]: This revised text incorporates current language of state CBPA regulation general performance standard at 9VAC25-830-130.7.a addressing on-site sewage disposal systems. A corresponding revision to § 4.3 of the County Septic System Control Ordinance is needed and has been drafted.

(d) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the proposed use or development.

(e) ~~(d)~~ Notwithstanding any other ~~provisions~~ provision of this Part ~~or exceptions or exemptions thereto~~ IV, any land -disturbing activity in a designated Chesapeake Bay Preservation Area exceeding 2,500 square feet or more in a designated CPBA, including construction of all single-family houses, septic tanks, and drainfields, shall ~~comply with~~ be subject to the applicable requirements of ~~Part~~ Parts II and III of this Ordinance.

(f) ~~(e)~~ All on-site sewage disposal systems located within a CBPA and not requiring an VPDES permit shall comply with one of the following standards:

(1) ~~Such system shall~~ be pumped out at least once every five years, ~~however, in lieu of requiring proof of septic tank pump out every five years, owners~~ (5) years;

(2) Owners of on-site sewage treatment systems may submit documentation every five (5) years, certified by ~~a sewage handler permitted by the Virginia Department of Health an operator or onsite soil evaluator licensed or certified under Va. Code §§ 54.1-2300 et seq. as being qualified to operate, maintain, or design onsite sewage systems,~~ that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it; ~~or~~

(3) ~~If deemed appropriate by the local health department and subject to conditions the local health department may set, have a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.~~

(g) ~~(f) For new construction, a~~ reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989 if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local ~~Health Department~~ health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system, which operates ~~under apursuant to a VPDES permit issued by the State Water Control Board, until the structure is served by public sewer.~~

(h) ~~(g) For any~~ Subject to the applicable provisions of Part II of this Ordinance, stormwater runoff from development or redevelopment in a Chesapeake Bay Preservation Area, ~~stormwater runoff~~ shall be controlled by ~~the use of~~ using best management practices consistent with the water quality protection provisions of the ~~Stormwater Management VSMP Regulations, 9 VAC 25-870-62 et seq.~~ that achieve the water quality design criteria as set forth in ~~Section 4-10 above, unless an exception is granted pursuant to Section 2-8~~ Part II of this Ordinance.

(i) ~~(h) Prior to initiating grading or other on-site activities in any Chesapeake Bay Preservation Area, (1) all wetlands permits required by federal, state, and local laws and regulations shall be obtained, and (2) evidence of such permits shall be submitted to the Director of Community Development.~~

(j) ~~(i) Land~~ A soil and water quality conservation assessment shall be performed for land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the ~~local government, shall have a~~ County. Such soil and water quality conservation assessment ~~conducted that evaluates~~ shall evaluate the effectiveness

[PH37]: This text has been revised to better reflect state Bay Act regulation addressing septic systems for new construction. 9VAC25-830-130.7.5 makes clear that the required reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site, as currently required by current CWPO § 4-11(f), applies to new construction, though current § 4-11(f) does not make that clear. A corresponding revision to § 4.3 of the County Septic System Control Ordinance is needed and has been drafted.

[PH38]: This text has been amended to ensure accurate reference to applicable stormwater management requirements of Part II of CWPO.

[PH39]: This revised text merges the wetland permitting obligations into one subsection for clarity and easier reference to related obligations.

of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides and, where necessary, shall result in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Bay Act Regulations and this Ordinance.

[PH40]: This text has been revised for improved syntax and clarity.

~~and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Bay Act and this Ordinance.~~

(1) Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the “Virginia Agricultural BMP Manual” of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

□

(i) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as “T,” as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an “ACS”, as defined in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service.

□

(ii) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 50-85).

□

(iii) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the “Virginia Pest Management Guide” or other Extension materials related to pest control.

[PH41]: Subsections (1) through (3) added per 9 VAC 25-830-130.8.a-c.

(2) A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to RPAs. However, if the landowner or operator of such a tract also has RMA fields or tracts in his/her operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation.

When such an expanded assessment is completed, priority must return to RPA fields and tracts.

(3) The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the Colonial Soil and Water Conservation District Board, which will be the plan-approving authority.

~~(k) Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide." The Virginia Department of Forestry will oversee and documentation of the installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas~~ Part IV pursuant to Section 4-17(b) of this Ordinance.

~~(k) Charles City County shall require evidence of all wetlands permits required by law prior to authorizing grading or other on-site activities to begin.~~

Section 4-12. ALLOWABLE USES AND SPECIFIC PERFORMANCE STANDARDS FOR DEVELOPMENT AND REDEVELOPMENT IN RESOURCE PROTECTION AREAS

~~The following criteria shall apply specifically~~ This section sets forth those uses, development and redevelopment that are allowed within Resource Protection Areas and their associated specific performance standards that supplement the general performance criteria in Section 4-11 above.

~~a) Allowable development~~

(a) Subject to general performance criteria set forth in Section 4-11, the results of any WOIA performed pursuant to Section 4-8 and as required for any proposed land-disturbance in the RPA, the specific performance standards of this section, as well as other applicable requirements, exemptions, and exceptions provided for in this Ordinance, the following uses, development and redevelopment may occur within an RPA:

~~(1) Those that are water-dependent, provided that, for new or expanded water-dependent facility may be allowed provided that~~ facilities, the following criteria are satisfied:

~~(i) It does~~ Such facilities do not conflict with the comprehensive plan;

~~(ii) It complies~~ Such facilities comply with the performance criteria set forth in this ~~part~~ Part IV;

~~(iii) Any non-water dependent component is located outside of Resource Protection Areas; and~~

[PH42]: This text (and the section title) has been revised to reflect that § 4-12 addresses allowable uses and performance standards for the RPA

[PH43]: Section 4-12(a) has been revised and restructured to improve organization and clarify scope of allowable activities and uses and associated criteria.

- (iv) ~~iv)~~ Access will be provided with the minimum disturbance necessary. ~~Where and, where~~ possible, a single point of access will be provided;
- (2) ~~2) Redevelopment shall be permitted in the RPA only if~~ Those that constitute redevelopment, provided that, there is no increase in the amount of impervious coverage and no further encroachment into the RPA and ~~it conforms that they conform~~ to all applicable erosion and sediment control and stormwater management ~~and erosion and sediment control criteria in this part.~~ requirements of other state and federal agencies;
- (3) Those that constitute development or redevelopment within a designated Intensely Developed Area;
- (4) A new use encroaching into the 100-foot buffer area, pursuant to Section 4-12(b)(4);
- (5) ~~3) Roads and driveways not exempt under this Ordinance may be constructed in or across Resource Protection Areas if each of~~ A road and driveway crossing, provided that, if not exempt pursuant to Section 4-17, it satisfies the following conditions ~~are met:~~

 - (i) ~~i)~~ The Director of PlanningCommunity Development makes a finding that there are no reasonable alternatives to aligning the road, driveway or driveway crossing in or across the Resource Protection Area;
 - (ii) ~~ii)~~ The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the Resource Protection Area and adverse effects on water quality;
 - (iii) ~~iii)~~ The design and construction of the road or driveway satisfy all applicable criteria of ~~these regulations~~ this Ordinance, including submission of a ~~water quality impact assessment;~~ WQIA as may be required; and
 - (iv) ~~iv)~~ The Director of ~~Planning reviews~~ Community Development ~~coordinates the review of~~ the plan for the proposed road or driveway ~~proposed~~ in or across the Resource Protection Area in coordination with local government site plan, subdivision, and plan of development approvals; or
- (6) ~~6) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas, provided that~~ (but not a best management practice that collects and treats runoff from only an individual lot or some portion of a lot to be located within a RPA) that satisfy the following criteria:

 - (i) ~~i)~~ The Director of PlanningCommunity Development has conclusively established that location of the facility within the Resource Protection Area is the optimum location;

- (ii) ~~ii)~~ The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
- (iii) ~~iii)~~ The facility must be consistent with a comprehensive ~~stormwater management plan~~ Stormwater Management Plan developed and approved in accordance with 9VAC25- 870-92 of the Virginia Stormwater Management Program regulations;
- (iv) ~~iv)~~ All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, ~~the Virginia Department of Environmental Quality~~ DEQ, and the Virginia Marine Resources Commission;
- (v) ~~v)~~ ~~Approval~~ The facility must be ~~received from Charles City~~ approved by the County prior to construction; and
- (vi) ~~vi)~~ Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. ~~It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.~~

(b) e) Buffer Area Requirements

- (1) ~~1) To~~ In accordance with Sections 4-2 (Designation of Chesapeake Bay Preservation Areas) and 4-13 (Plan of Development Process) of this ordinance, the landward component of the RPA shall consist of a 100-foot wide vegetated buffer to minimize the adverse effects of human activities on the other components of ~~Resource Protection Areas~~ the RPA, state waters, and aquatic life, ~~a 100-foot. The~~ buffer area of vegetation that is ~~shall be~~ effective in retarding runoff, preventing erosion, and filtering non-point ~~nonpoint~~ source pollution from runoff ~~shall be retained if present and established where it does not exist in any Resource Protection Area.~~
- ~~2) The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the Resource Protection Area, in accordance with Sections 4-2 (Designation of Chesapeake Bay Preservation Areas) and 4-13 (Plan of Development Process) of this ordinance.~~ ~~3) The 100-foot~~ The 100-foot wide buffer area shall be deemed to achieve a seventy-five percent (75%) reduction of sediments and a forty percent (40%) reduction of nutrients, or such other reductions as may be applicable per the Riparian Buffers Modification and Mitigation Guidance Manual, the BMP Clearinghouse or the Chesapeake Bay Program modeling framework.
- ~~4) The buffer area shall be maintained to meet the following additional performance standards.~~ 100-foot width of the buffer area shall be retained if present, established where it does not exist, and shall not be reduced in width notwithstanding permitted

[PH44]: These provisions have been reorganized to aggregate similar concepts and improve overall clarity and otherwise ensure that current Bay Act Regulation requirements are properly reflected.

uses, encroachments, and vegetation clearing as set forth in this section. ¶

(i) Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter.

(ii) In Intensely Developed Areas, the County may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, the County shall may require measures that would establish vegetation in the buffer area in Intensely Developed Areas over time to maximize water quality protection, pollutant removal, and water resource conservation

(3) ~~§~~ In order to maintain the functional value of the buffer area, and subject to approval by the County, indigenous vegetation may be removed ~~subject to approval by Charles City County~~ only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(i) ~~§~~ Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff;

(ii) ~~§~~ Any path shall be constructed and surfaced so as to effectively control erosion;

(iii) ~~§~~ Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multi-flora rose) may be removed and thinning of trees may be allowed, pursuant to sound horticultural practice incorporated into locally-adopted standards: and

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

(4) Permitted encroachments into a buffer area.

(i) ~~§~~ When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Director of PlanningCommunity Development may permit encroachment into the buffer area in accordance with Section 4-13-~~(Plan of Development~~

~~Process~~) and the following criteria:

(A) ~~a~~)-Encroachment to the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;

(B) ~~b~~)-Where practicable, a vegetated area shall be established elsewhere on the lot or parcel that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area ~~shall be established elsewhere on the lot or parcel~~; and

(C) ~~e~~) ~~In no case shall the reduced portion of the buffer area be less than 50-feet in width.~~ The encroachment may not extend into the seaward 50- feet of the buffer area.

(ii) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be allowed in accordance with Section 4-13 and the following criteria:

(A) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(B) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(C) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(D) The criteria in subsection (b)(4)(i) of this section shall be met.

(iii) Encroachments into or modifications of the buffer area may be allowed on agricultural lands, provided that the following measures are satisfied:

(A) ~~vi~~) On agricultural lands, the ~~agricultural~~ buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area, and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and ~~multi-flora~~multiflora rose) from invading the buffer area ~~Agricultural activities may encroach into the buffer area as follows:~~

(B) ~~a~~)-Agricultural activities may encroach into the landward 50-feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation

[PH45]:
Provisions from Bay Act Regulation addressing both modification of and encroachment into buffer area on agricultural lands have been consolidated here for ease of reference.

district board, addresses the more predominant water quality issue on the adjacent land ~~-~~ erosion control or nutrient management ~~-~~ is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC~~-550-1585~~) administered by the Virginia Department of Conservation and Recreation.

~~(C) b)~~ Agricultural activities may encroach within the landward 75-feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T,” as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC~~-550-1585~~) administered by ~~the Virginia Department of Conservation and Recreation~~ DCR. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

~~(D) e)~~ The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the Colonial Soil and Water Conservation District ~~board~~ Board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

~~(E) d)~~ If specific problems are identified pertaining to agricultural activities which are causing pollution of the nearby ~~water body~~ Water Body with ~~perennial flow~~ Perennial Flow or violate performance standards pertaining to the vegetated buffer area, the ~~local government~~ Director of Community Development, in cooperation with Colonial Soil and Water Conservation District, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into implementing the corrective measures is greatest.

~~(E) e)~~ In cases where the landowner or his/her agent or operator has refused

assistance from the Colonial Soil and Water Conservation District in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the ~~local government. The local government~~Director of Community Development. The Director of Community Development shall require the landowner to correct the problems within a specified period of time not to exceed eighteen (18) months from their initial notification of the deficiencies to the landowner. The ~~local government~~Director of Community Development, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

~~f) The Colonial Soil and Water Conservation District may enforce this ordinance as it applies to agriculture, in addition to County officials~~

~~vii) Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100 foot wide buffer shall be reestablished. In re-establishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this article.~~

~~viii) A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within the Resource Protection Area consistent with this Part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts.~~

[PH46]: Subsections (a) and (a)(1) have been revised and restructured to clarify and consolidate language and references that both a site plan and water quality impact assessment are required, and to clarify permissible waivers of plan elements

Section 4-13. PLAN OF DEVELOPMENT ~~PROCESS~~REQUIREMENTS

(a) Applicability and Scope

(1) ~~a) Any development or redevelopment with land disturbance in a Chesapeake Bay Preservation Area exceeding 2,500 square feet in area and located in a Chesapeake Bay Preservation Area shall be accomplished through the following plan of development process. Approval of the as set forth in this section and as required in the County Site Plan Ordinance. In such case, an approved plan of development, where required, shall be a prerequisite for issuance of any building permit. The Applicant is encouraged to coordinate and combine the elements of the proposed plan of~~

[PH47]: This text has been revised to more clearly incorporate by reference applicable Site Plan Ordinance process requirements and procedures.

development into one application package.

- (2) ~~i)~~ In addition to any other requirements of ~~the Charles City~~ Other County Land Use Development Ordinances, the plan of development ~~process shall consist of~~ include the ~~appropriate elements identified below. The applicant is encouraged to coordinate and combine the elements into one document, as deemed complete by the Director of Planning. The Director of Planning~~ elements set forth in Section 4-13(b) below; provided, however, that [the Director of Community Development may waive elements of ~~the plan of development, except elements 2(vi) and (vii) (b)(4) and/or (b)(5) of this Section]~~ with a finding that ~~they either or both~~ are unnecessary due to the scope and nature of the proposed land disturbance.

[PH48]: Other elements of POD or WQIA requirements cannot be waived per Bay Act Regulations.

- (b) ~~2) Plan of~~ The plan of development shall include those elements required pursuant to the Other County Land Development Elements—The Ordinances as well as the following elements ~~shall comprise the plan of development, as appropriate:~~

- (1) ~~i)~~ A site plan in accordance with the provisions of the Virginia Statewide Building Code or a subdivision plat in accordance with the ~~Charles City~~ County Subdivision Ordinance.
- (2) ~~ii)~~ A delineation of Chesapeake Bay Preservation ~~Area~~ Areas and components appropriate in detail for the nature and amount of land disturbance being proposed. Wetland delineations shall be performed utilizing the methodology of the Corps of Engineers for determining jurisdictional wetlands under §404 of the Clean Water Act, 33 U.S.C. 1344.
- (3) ~~iii)~~ Identification of Water ~~bodies with perennial flow shall be identified~~ Bodies with Perennial Flow using a scientifically valid system of in-field indicators of perennial flow as determined by the Director of ~~Planning~~ Community Development. Acceptable methods include but are not limited to the methods determined by ~~the Department of Environmental Quality~~ DEQ to be scientifically valid.
- (4) An E&SC Plan in accordance with the provisions of Part III of this Ordinance for land-disturbance in a Chesapeake Bay Preservation Area exceeding 2,500 square feet.
- (5) A Stormwater Management Plan in accordance with the provisions of Part II of this Ordinance, for land-disturbance in a Chesapeake Bay Preservation Area exceeding 2,500 square feet.
- (6) A WQIA prepared in accordance with [Section 4-8 of this Ordinance] and approved by the Director of Community Development.

[PH49]: As noted, the revised WQIA requirements are now located at § 4-8.

- (c) Plan of Development Submission and Review Requirements.

- (1) Five copies of all site drawings and other applicable information as required by Section 4-13 shall be submitted to the Director of Community Development for

review.

(2) ~~iv)~~ RPA boundary ~~delineation studies~~ assessments and delineations shall be sealed by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia.

(3) ~~v)~~ Any work performed by other firms or individuals not under the responsible charge of the licensed professional sealing the study shall be identified and sealed by that individual as appropriate.

~~vi) An erosion and sediment control plan in accordance with the provisions of Part III of this Ordinance for land disturbance in a Chesapeake Bay Preservation Area exceeding 2500 square feet.~~

~~vii) A stormwater management plan in accordance with the provisions of Part II of this Ordinance, for land disturbance exceeding 2500 square feet.~~

~~viii) A water quality impact assessment for any proposed development within a Resource Protection Area, including any buffer area modification or encroachment as provided for in Section 4-12(c)(5) of this Ordinance, or for any development within a Resource Management Area when deemed necessary by the Director of Planning due to unique characteristics of the site or the intensity. The Water Quality Impact Assessment shall:~~

~~i) display the boundaries of the RPA;~~

~~ii) display and describe the location and nature of the proposed encroachment into and/or impacts to the RPA, including any clearing, grading, impervious surfaces, structures, utilities, and sewage disposal systems;~~

~~iii) provide justification for the proposed encroachment into and/or impacts to the RPA;~~

~~iv) describe the extent and nature of any proposed disturbance or disruption of wetlands;~~

~~v) display and discuss the type and location of proposed best management practices to mitigate the proposed RPA encroachment and/or adverse impacts;~~

~~vi) demonstrate the extent to which that the proposed activity will comply with all applicable performance criteria of this Section; and~~

(4) As part of the plan of development review process or during the review of a WOIA, the Director of Community Development shall ensure or confirm that:

~~vii) provide any other information deemed by the Director to be~~

~~necessary to evaluate potential water quality impacts of the proposed activity.~~

(i) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow; and

~~viii) the assessment shall be of sufficient specificity, as determined by the Director of Planning, to demonstrate compliance with the performance standards for Chesapeake Bay Preservation Areas in Section 4-10 of this Ordinance.~~

(ii) Resource Protection Area boundaries on the site are adjusted as necessary.

~~ix) the assessment shall include a landscape element depicting any modification proposed to vegetation in the Resource Protection Area not allowed under Section 4-12(c) of this Ordinance.~~

(5) All information required in this section shall be certified as complete and accurate to the satisfaction of the Director of Community Development.

Section 4-14. EVALUATION OF PLAN OF DEVELOPMENT

~~a) Submission and Review Requirements.~~

~~1) Five copies of all site drawings and other applicable information as required by Section 111 shall be submitted to the Director of Planning or review.~~

(a) The Director of Community Development shall review the application for the Plan of Development to determine whether it is generally complete and notify the Applicant of his/her completeness determination pursuant to County Site Plan Ordinance Section 9.1

(b) ~~2) All information required in this section shall be certified as complete and accurate to the satisfaction of~~ Within sixty (60) days of determining that the application is complete, (i) the County reviewing departments shall review the application and provide their comments and recommendations to the Director of Community Development, and (ii) the Director of Planning ~~Community Development shall review and approve or disapprove the proposed Plan of Development within 45 days of certifying it complete.~~

(c) ~~The Director of Planning~~ Community Development shall approve the plan ~~Plan of development only if he finds that the plan of development meets~~ Development only if he or she finds that it satisfies requirements of Section 4-13 of this Ordinance and that it demonstrates that the performance criteria of Parts II and III, Section 4-1011 and Section 4-12 of this Ordinance will be satisfied. ~~The Director of Planning~~ Community Development may recommend conditions or modifications to the plan ~~Plan of development~~ Development that will result in mitigation of those ~~any~~ impacts that would otherwise cause the plan ~~Plan of development~~ Development to fail to meet these requirements or performance criteria of Section 4-10 of this Ordinance.

[PH50]: This section has been revised generally for additional clarity and to account for the application completeness review and the substantive/technical review processes contemplated by the County Site Plan Ordinance.

[PH51]: Section 10 of the County Site Plan Ordinance states that the County's reviewing departments must review a proposed Plan of Development and make recommendations to the Administrator within 5 days of the determination that the plan application is complete. The Administrator is then required to make a decision on the plan within 45 days of receiving the reviewing departments' comments and recommendations. Also, state or federal agencies may be called on to comment as well. Therefore, 60 days is a reasonable timeline here to accommodate these "internal" and "external" review and decision-making periods.

[PH52]: This clause ensures that the bonding requirements noted here are considered in the context of and to avoid conflict with the requirements of the new Part VII for fees and performance bonds.

Section 4-15. INSTALLATION AND BONDING REQUIREMENTS

a) ~~Except as otherwise required by Part VII and~~ any other provision of this Ordinance, the following installation and bonding requirements shall apply to activities regulated pursuant to this Part of the Ordinance:

~~(1) 1)~~ Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan of development are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved ~~site plan~~ ~~2)~~ ~~When~~ of development; provided, however, that, when the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan of development, a temporary certificate of occupancy may be issued ~~only~~ if the ~~applicant~~ Applicant provides to ~~Charles City~~ County a form of surety satisfactory to the Director of Planning Community Development in amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or other specifications and/or maintenance costs for any required stormwater management facilities:

~~(2) 3)~~ All required landscaping shall be installed and approved during the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to ~~Charles City~~ County:

~~(3) 4)~~ All required stormwater management facilities or other specifications shall be installed and approved within eighteen (18) months of project commencement. Should the ~~applicant~~ Applicant fail, after proper written notice, to initiate, complete or maintain appropriate actions required by the approved plan of development, the surety shall be forfeited to ~~Charles City~~ the County. ~~Charles City, in which case the~~ County may collect from the ~~applicant~~ Applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held:

~~5)~~ After all required actions of the approved ~~site~~ plan of development have been completed, the ~~applicant~~ Applicant must submit a written request for a final inspection. If the requirements of the approved plan of development have been completed to the satisfaction of the Director of Planning Community Development, such unexpended or unobligated portion of the surety held shall be refunded to the ~~applicant~~ Applicant or terminated within sixty (60) days following the receipt of the ~~applicant~~ Applicant's request for final inspection. The Director of Planning Community Development may require a certificate of substantial completion from a Professional Engineer or Class III - B Surveyor before making a final inspection: and

~~(4) 6)~~ The owner or agent of the subject property must complete and maintain in good order all facilities required by this section.

[PH53]: The term "Nonconforming Use" has been defined in Section 1-2 to more clearly establish the meaning of that term and to improve the clarity of this text of this provision allowing continuation of Nonconforming Uses.

Section 4-16. NONCONFORMING USES AND NONCOMPLYING STRUCTURES

a) ~~The lawful use of a building or structure which existed in a Chesapeake Bay Preservation Area on~~ Any Nonconforming Use may be continued after the effective date of this Ordinance; or ~~which exists at the time of any amendment to this Ordinance, and which is not in conformity with the provisions of this ordinance may be continued.~~ any amendment thereto that expands the applicability of this Ordinance to such Nonconforming Use.

b) ~~Repair or reconstruction of any such non-conforming use shall be allowed without further approval provided the land disturbance required for this repair or reconstruction is not in excess of 2500 square feet~~ Nonconforming Use as a result of a casualty loss shall be allowed subject to applicable requirements and limitations of Parts II and III of this Ordinance, Section 24-6 of the County Zoning Ordinance, and other County Land Development Ordinances.

[PH54]: This provision has been set apart given its distinct applicability to Nonconforming Uses and now includes clearer cross-references to other provisions that may affect implementation of this subsection.

c) ~~b)-~~ No change or expansion of use Nonconforming Use shall be allowed ~~with the exception~~ except that the Director of PlanningCommunity Development may grant a nonconforming use and development waiver for buildings or structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming buildings or structures, provided that:

(1) ~~1)-~~ There will be no increase in non-point source pollution load;

(2) ~~2)-~~ Any development or land ~~disturbance~~ disturbance exceeding an area of ~~2500~~ 2,500 square feet complies with all requirements of Part II and Part III of this Ordinance.

(3) ~~3)-~~ An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Director of PlanningCommunity Development and shall include:

(i) ~~i)-~~ Name The name and address of ~~applicant~~ Applicant and property owner;

(ii) ~~ii)-~~ Legal The legal description of the property and the type of proposed use and development;

(iii) ~~iii)-~~ A sketch of the dimensions of the lot or parcel, area of proposed land-disturbance, existing vegetation, location of buildings ~~and,~~ proposed additions, and other impervious surfaces relative to lot lines, and the boundary of the RPA; and

(iv) ~~iv)-~~ Location The location and description of any existing private water supply or sewage system.

(4) ~~4)-~~ A nonconforming use and development waiver shall become null and void twelve (12) months from the date issued if no substantial work has commenced within that period.

~~(5) 5)~~—An application for the expansion of a nonconforming principle building or structure may be approved by the Director of Community Development ~~Director~~ through an administrative review process, provided that the following findings are made:

- ~~(i) i)~~—The request for the waiver is the minimum necessary to afford relief;
- ~~(ii) ii)~~—Granting the waiver will not confer upon the ~~applicant~~Applicant any specific privileges that are denied by this Ordinance to other property owners in similar situations;
- ~~(iii) iii)~~—The waiver is in harmony with the purpose and intent of this Ordinance and does not result in water quality degradation;
- ~~(iv) iv)~~—The waiver is not based on conditions or circumstances that are self-created or self-imposed;
- ~~(v) v)~~—Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
- ~~(vi) vi)~~—Other findings, as appropriate and required by the County ~~of Charles City,~~ are ~~met~~satisfied; and
- ~~(vii) vii)~~—In no case shall this provision apply to accessory structures.

Any ~~applicant~~Applicant may appeal the Director of ~~Planning~~Community Development's decision to the Board of Supervisors in accordance with Section 4-18.

Section 4-17. EXEMPTIONS

- a) Exemptions for Utilities, Railroads and Facilities from Part IV of this Ordinance.
 - 1) Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic and telephone transmission lines, railroads and public roads and their appurtenant structures are deemed to comply with Part IV of this Ordinance if such activities are performed in accordance with the (i) ~~regulations promulgated pursuant to the Erosion and Sediment Control Law (Section 10.1-560 et seq. of the Code of the E&SC Law and the~~ Virginia) ~~and the Stormwater Management Act (Section 10.1-603.1 et seq of the Code of Virginia),~~ (ii) an erosion and sediment control plan and stormwater management plan approved by the Virginia Department of Environmental Quality, (ii) an E&SC Plan and Stormwater Management Plan approved by DEQ, as required, or (iii) local water quality protection criteria that are at least as stringent with the above requirements ~~will be deemed to constitute compliance with these regulations. The;~~ provided that the aforementioned exemption as applied to public roads ~~exemption~~—is further ~~conditional to~~conditioned on

optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize ~~(i)~~ encroachment in the ~~Resource Protection Area~~RPA and ~~(ii)~~ adverse impacts on water quality.

Construction, installation, and maintenance of water, sewer, and local gas lines, underground telecommunication and cable television lines owned, permitted or both by ~~Charles City~~the County or regional service authority shall be exempt from the requirements of the ordinance, provided that:

- (i) ~~ii)~~ To the degree possible, the location of such utilities and facilities shall be outside RPAs;
- (ii) ~~iii)~~ No more land shall be disturbed than is necessary to provide for the proposed utility installation;
- (iii) ~~iiii)~~ All construction, installation, and maintenance of such utilities and facilities shall ~~be in compliance~~comply with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality;
- (iv) ~~iv)~~ Any land ~~disturbance~~ exceeding an area of ~~2500~~2,500 square feet complies with ~~all Charles City County erosion and sediment control requirements~~Parts II and III of this Ordinance.

b) Exemptions for Silvicultural Activities - Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this article provided silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the ~~January 1997 edition~~Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality in Virginia Technical GuideManual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

c) Exemptions in Chesapeake Bay Preservation Areas - ~~In~~The following uses and land-disturbances located in Chesapeake Bay Preservation Areas ~~the following land disturbances will be~~are deemed exempt from the provisions of this Part IV of this Ordinance:

- 1) Minor land ~~disturbing~~ activities involving less than 2,500 square feet, such as home gardens and individual home landscaping, repairs and maintenance work;
- 2) Individual utility service connections;
- ~~3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land disturbing activity is confined to the area of the road, street or~~

~~sidewalk which is hard surfaced;~~

- ~~3) 4) Installation of fence and sign posts or telephone and electric poles and other kinds of posts and poles;~~
 - ~~4) 5) Shore erosion control projects on tidal water when the projects are approved by the Charles City County Wetlands Board, the Marine Resources Commission or the United States Corps of Engineers; and, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements;~~
 - ~~5) 6) Emergency work to protect life, limb or property, and emergency repairs; and~~
 - ~~6) 7) Normal roadway maintenance operations to include grading, road repair and ditch maintenance.~~
- d) Exemptions in Resource Protection Areas - ~~The following land~~ Land-disturbances in Resource Protection Areas ~~may be exempt from the criteria of this part provided that they comply with subsections A-D below~~ (i) associated with water wells; (ii) historic preservation and archaeological activities, and passive recreation facilities such as boardwalks, trails, and pathways; ~~and (iii) historic preservation and archaeological activities~~ may be exempt from ~~ordinance requirements~~ the criteria of this Part IV, provided that ~~it is~~ the following are demonstrated to the satisfaction of the Director of ~~Planning that~~ Community Development:
- 1) Any required permits, except those to which this exemption specifically applies, shall have been issued;
 - 2) Sufficient and reasonable proof is submitted to the Director of Community Development that the intended use will not deteriorate water quality;
 - 3) The intended use does not conflict with nearby planned or approved uses; and
 - 4) Any land disturbance exceeding an area of 25002,500 square feet shall comply with erosion and sediment control criteria of Part II and III of this Ordinance.

Section 4-18. EXCEPTIONS

- a) A request for ~~an~~ a permissible exception to ~~the~~ applicable requirements of provisions of this Part IV of this Ordinance, other than those contemplated in Sections 4-6 ~~[use regulations]~~ 11 and 4-12 ~~[specific performance standards]~~ shall be made in writing to the Director of ~~Planning~~ Community Development. The Director of ~~Planning~~ Community Development may grant these exceptions, provided that:
 - 1) Exceptions to the requirements are the minimum necessary to afford relief; ~~and~~

- 2) Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purposed and intent of this Ordinance is preserved; and
 - 3) Exceptions to the requirement for a ~~stormwater management plan~~Stormwater Management Plan shall only be provided in accordance with Part II of this Ordinance.
- b) A request for an exception to the requirements of ~~Section~~Sections 4-11 and 4-12 of this ~~ordinance~~Ordinance shall be made in writing to the ~~Charles City~~ County Wetlands Board. ~~It~~ The request shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a ~~water quality impact assessment~~WQIA which complies with the provisions of Section 4-~~12(e)(5)(viii)~~.8.
- 1) The ~~Charles City~~ County Wetlands Board shall notify the affected public of any such request for an exception ~~requests~~ and shall consider these requests in a public hearing in accordance with Va. Code § 15.2-~~2204 of the Code of Virginia~~,2204, except that only one hearing shall be required.
 - 2) The ~~Charles City~~ County Wetlands Board shall review the request for an exception and the ~~water quality impact assessment~~WQIA and may grant the request for an exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Ordinance if the County Wetlands Board finds:
 - (i) ~~Granting~~The special privileges granted by the exception will ~~not confer upon the applicant any special privileges denied by this Ordinance to other property owners in the CBPA~~be limited to the Applicant and will not apply to other similarly situated property owners;
 - (ii) ~~The~~ request for an exception ~~request~~ is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 - (iii) ~~The~~ request for an exception ~~request~~ is the minimum necessary to afford relief;
 - (iv) ~~The~~ request for an exception ~~request~~ (A) will be in harmony with the purpose and intent of this ~~part~~Part IV of this Ordinance, (B) will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and ~~is~~ (C) will not ~~of~~result in a substantial detriment to water quality; and
 - (v) ~~Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a~~where necessary to ensure that the request for an exception will not result in degradation of water quality.
 - 3) If the County Wetlands Board cannot make the required findings or refuses to grant

[HK55]:
Reworded for
clarity.

the request for an exception, the County Wetlands Board shall return to the Applicant the request for an exception and the WOIA together with ~~the water quality impact assessment and~~ the written findings and rationale for the decision ~~to the applicant~~.

[PH56]: This Part has been retitled to reflect the relocation of enforcement provisions from Part VI. See additional comment below.

PART V. **MAINTENANCE, MONITORING AND INSPECTIONS OF FACILITIES, COMPLIANCE AND ENFORCEMENT**

Section 5-1. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES:

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. As required by Part II of this Ordinance, such requirements shall be set forth in an instrument recorded in the local land records prior to ~~general permit~~General Permit termination or earlier as required by the Administrator and shall at a minimum:
- (1) Be submitted to the Administrator and the County Attorney for review and approval prior to the approval of the ~~stormwater management plan~~Stormwater Management Plan;
 - (2) Recite that they are intended to "run with the land";
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator in accordance with the requirements of this Ordinance; and
 - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.
- (c) If a recorded instrument is not required pursuant to subsection (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator or any duly authorized agent of the Administrator.

Section 5-2. MONITORING ~~AND~~, INSPECTIONS, AND RECORDS

(a) All erosion and sediment control structures and systems and stormwater BMPs must be maintained, inspected and repaired as needed to ensure continued performance of their intended function.

(b) The Administrator shall inspect the land-disturbing activity during construction for:

- (1) Compliance with the approved ~~erosion and sediment control plan~~ E&SC Plan and to determine whether the measures required in the ~~plan~~ E&SC are effective in controlling erosion and sedimentation;
- (2) Compliance with the approved ~~stormwater management plan~~ Stormwater Management Plan;
- (3) Development, updating, and implementation of a pollution prevention plan; and
- (4) Development and implementation of any additional control measures necessary to address any TMDL.

~~(c) The Administrator shall inspect the land disturbing activity in accordance with the Charles City County alternative inspection program approved by the Virginia Soil and Water Conservation Board to ensure compliance with the approved E&S plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation, or the Board approved Alternative VSWCB. The owner, permittee, or~~

~~person responsible for carrying out the plan shall be given reasonable notice of any inspections. All inspections shall be conducted by a certified inspector. Inspections by the County shall be conducted by a certified inspector and shall be performed upon reasonable notice to the owner, permittee, or person responsible for carrying out the approved E&SC Plan.~~

(c) Except as otherwise set forth in an alternative inspection program as described herein, inspections by on or behalf of the Administrator shall be performed (i) during or immediately following initial installation of erosion and sediment controls, (ii) at least once in every two-week period within 48 hours following any runoff producing storm event, and (iii) at the completion of the project prior to the release of any performance bonds. However, inspections may instead be performed pursuant to a written alternative inspection program approved by the Virginia Soil and Water Conservation Board or the State Water Control Board, as applicable, prior to implementation and based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction and documented by inspection records.

[PH57]: This provision reflects the optional requirements for locality inspections set forth in 9VAC25-840-6 0.B and the transition in state agency oversight from the Virginia Soil and Water Conservation Board to the State Water Control Board.

~~(d) The Administrator may require monitoring and reports from:~~

~~(1) the permittee to ensure compliance with the Stormwater Management Permit and to determine whether the measures required in the permit provide effective stormwater management~~

~~(2) the person responsible for carrying out the erosion and sediment control plan to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.~~

(d) Notwithstanding the provisions of subsections (c) and (d) of this section or any other provision of this Ordinance:

(1) ~~(e)~~ The Administrator may, at reasonable times and under reasonable circumstances, enter any building or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance; and

(2) ~~(f)~~ In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any building or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(e) Post-construction inspections of stormwater management facilities shall be required by the County one (1) year after installation and every two (2) years thereafter. The County may utilize the inspection reports provided by the Owner if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the State Water Control Board.

(f) The Administrator may require monitoring and reports from:

(1) the permittee to ensure compliance with the Stormwater Management Permit and to determine whether the measures required in the permit provide effective stormwater management

(2) the person responsible for carrying out the E&SC Plan to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(g) ~~(e)~~ In accordance with Va. Code § 62.1-44.15:40 of the Code of Virginia,40, the Administrator may require every ~~stormwater management permit applicant~~Stormwater Management Permit Applicant or permittee, or any such person subject to ~~stormwater management permit~~Stormwater Management Permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other

pertinent information as may be necessary to determine the effect of such person's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.

~~(h) Post construction inspections of stormwater management facilities shall be required by the County one year after installation and every two years thereafter. The County may utilize the inspection reports provided by the Owner if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the State Board.~~

SECTION 5-3. NOTICE OF VIOLATION AND STOP WORK ORDERS

Ⓢ If the Administrator determines that there is a failure to comply with ~~a conditions~~any condition of a Stormwater Management Permit issued pursuant to Part II of this Ordinance, notice shall be served upon the permittee or the person responsible for carrying out the permit conditions by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the Stormwater Management Permit conditions and shall specify the time within which such measures shall be completed.

- (1) Upon failure to comply with the time specified in a notice of violation, a stop work order may be issued in accordance with subsection (2) of this subsection or the Stormwater Management Permit may be revoked.
- (2) If a permittee fails to comply with a notice issued in accordance with subsection (f) above, within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.
- (3) Such orders shall be issued in accordance with the County's local enforcement procedures, and shall become effective upon service on the person by certified mail, return receipt requested, sent to his/her address specified in the land records of the locality, or by personal delivery by an agent of the County.
- (4) If the Administrator determines that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing,

after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

(b) ~~(f)~~ Where ~~Part II of this Ordinance is not applicable, and~~ the Administrator determines that ~~there is a failure~~ land-disturbing activities fail to comply with Part III or Part IV of this Ordinance, notice of such violation shall be served upon the permittee or person responsible for ~~carrying out the plan~~ such land-disturbing activities by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities, or to the property owner. The notice shall specify the measures needed to comply with ~~the plan~~ any issued land-disturbing permit, E&SC Plan, or other applicable requirements of Part III or Part IV of this Ordinance, and shall specify the time within which such measures shall be completed.

[PH58]: This subsection has been amended to clarify authority to issue notices of violations and stop work orders for violations of Part III and for unauthorized encroachments into the RPA in violation of Part IV.

- (1) Upon failure to comply with the time specified in a notice of violation, a stop work order may be issued in accordance with subsection (2) of this subsection or the ~~E&S~~ Land-disturbing Permit may be revoked.
- (2) In conjunction with or subsequent to a notice of violation ~~as specified in subsection (g)~~, the Administrator may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved E&S SC Plan, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.
- (3) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved ~~erosion and sediment control plan~~ E&SC Plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice ~~to comply~~ of violation as specified in this subsection (gb).
- (4) A stop work order issued for failure to comply with an approved E&S ~~plan~~ SC Plan shall be served in the manner set forth in this subsection (gb) ~~above~~, and shall remain in effect for seven (7) days from the date of service pending application by the County or the alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court.
- (5) A stop work order issued for land -disturbance without an approved E&S ~~plan~~ SC Plan or permits shall be served upon the owner by registered or certified mail to the address specified in the land records of the County and shall be posted on the site where the disturbance is occurring. The order shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

- a. If the alleged violator has not obtained an approved ~~erosion and sediment control plan~~ E&SC Plan or any required permits within seven (7) days from the date of service of the order, the Department of Community Development or the chief administrative officer or his/her designee on behalf of the County may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved ~~erosion and sediment control plan~~ E&SC Plan and any required permits have been obtained.
- b. The subsequent order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the County in which the site is located.
- c. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court.
- d. Any person violating or failing, neglecting, or refusing to obey an order issued by the Department of Community Development or the chief administrative officer or his/her designee on behalf of the County may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- e. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- f. Nothing in this section shall prevent the Department of Community Development, the Board of Supervisors, or the chief administrative officer or his/her designee on behalf of the County from taking any other action specified in Section ~~65-34~~ of this Ordinance.

(c) ~~(f)~~ If a person who has been issued ~~an~~ a stop work order is not complying with the terms thereof, the Administrator may institute an injunctive proceeding in accordance with Section ~~6-3(A)(e), 5-4~~, in addition to any other administrative and/or judicial proceedings initiated.

[PH59]: This section addressing enforcement has been relocated to Part V due to its closer relationship with and more clearly coordinate with compliance provisions already contained in Part V, as well as to help lay a clearer foundation for the appeals and judicial review provisions in Part VI. In addition, various revisions have been made to this section to improve its structure and clarity and remove duplicative text and conflicting sub-headings, as well as to ensure that full authority for erosion and sediment control and Chesapeake Bay Preservation Act program enforcement, as set forth in relevant statutes, is included.

~~PART VI. HEARINGS, APPEALS,~~ Section 5-4, ENFORCEMENT

~~Section 6-1. HEARINGS~~

~~(a) Any applicant for a Stormwater Management Permit or an E&S Permit under the provisions of Part II or Part III of this Ordinance who is aggrieved by any action of the County or its agent in disapproving plans submitted pursuant to requirements of such parts, shall have the right to apply for and receive a review of such action by the Board provided an appeal is filed within 30 days from the date of the action.~~

~~(1) Any applicant who seeks an appeal hearing before the Board shall be heard at the next regularly scheduled Board public hearing provided that the Board and other involved parties have at least 30 days prior notice.~~

~~(2) In reviewing the agent's actions, the Board shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Board may affirm, reverse or modify the action.~~

~~(b) In the event the final plan or any component of the plan of development process required in Part IV is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Board. In granting an appeal, the Board must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards. If the Board finds that the applicant's plan does not meet the above stated criteria, it shall deny approval of the plan in writing.~~

~~Section 6-2. APPEALS.~~

~~(a) Any applicant seeking a Stormwater Management permit or a Stormwater Management permittee regulated pursuant to Part II of this Ordinance who is aggrieved by a permit or enforcement decision of the County, is entitled to judicial review thereof, provided an appeal is filed within 30 days from the date of the decision being appealed.~~

~~(b) All final decisions by the County issued pursuant to Part III or Part IV of this Ordinance shall be subject to judicial review, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.~~

~~Section 6-3. ENFORCEMENT~~

~~(a) Part A—Violations of Part II of this Ordinance.~~

~~(1) (a) Any person who violates any provision of PartParts II of this Ordinance or who fails, neglects or refuses to comply with any order of the County shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. In imposing a civil penalty pursuant to this subsection (a), the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.~~

~~(i) (1) Violations for which a penalty may be imposed under this subsection~~

shall include but not be limited to the following:

- (A) ~~a.~~ Failing to have a General ~~permit~~ Permit registration;
- (B) ~~b.~~ Failing to prepare a SWPPP;
- (C) ~~e.~~ Having an incomplete SWPPP;
- (D) ~~d.~~ Not having a SWPPP available for review as required by law;
- (E) ~~e.~~ Failing to have an approved ~~erosion and sediment control plan~~ E&SC Plan;
- (F) ~~f.~~ Failing to install stormwater BMPs or erosion and sediment controls as required by this Ordinance and/or state law;
- (G) ~~g.~~ Having stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- (H) ~~h.~~ Operational deficiencies; and
- (I) ~~i.~~ Failure to conduct required inspections, or having incomplete, improper, or missed inspections.

(ii) ~~(2)~~ The County may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate circuit court. In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance. Any civil penalties assessed by a court as a result of a summons issued by the County pursuant to this subsection shall be paid into the treasury of the County for the purposes of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

~~(2)~~ ~~(3)~~ With the consent of any person who has violated or failed, neglected or refused to obey any provision of Part II of this Ordinance, any condition of a Stormwater Management Permit or state permit, or any regulation or order of the County imposed pursuant to Part II of this Ordinance, the County may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the ~~limit~~ limits for civil penalties specified in this section. Such civil charges shall be ~~instead~~ in lieu of any appropriate civil penalty that could be imposed under this ~~section~~ subsection (a).

~~a. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection (b) of this Section.~~

~~b. Any civil penalties assessed by a court as a result of a summons issued by the County pursuant to this section shall be paid into the treasury of the County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.~~

~~(3)~~ (3) Notwithstanding any other civil or equitable remedy provided by this subsection related to Part II of this Ordinance, any person who willfully or negligently violates any provision of Part II of this Ordinance, any order of the County, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve (12) months and a fine of not less than \$2,500 nor more than \$32,500, either or both.

~~(4)~~ (4) Any person who knowingly violates any provision of ~~Part II~~ this Ordinance, any regulation or order of the ~~VSWCB~~ Virginia State Water Control Board or DEQ, or the County imposed pursuant to Part II, any condition of a permit or any order of a court as herein provided, or who knowingly makes any false statement in any form required to be submitted under Part II or knowingly renders inaccurate any monitoring device or method required to be maintained under Part II, shall be guilty of a felony punishable by a term of imprisonment of not less than one (1) year nor more than three (3) years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve (12) months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

~~(5)~~ (5) Any person who knowingly violates any provision of Part II of this Ordinance, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two (2) years nor more than fifteen (15) years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

~~(6)~~ (6) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Locality County or any provisions of ~~this chapter imposed pursuant to Part~~ Parts II of this Ordinance may be compelled in a proceeding instituted in any appropriate court by the County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be

subject, in the discretion of the court, to a civil penalty as set forth in this subsection (a) ~~of this Section~~.

(7) ~~(7)~~ In any action to enjoin a violation or a threatened violation of the provision of Part II of this Ordinance, the County may apply to the appropriate court in any jurisdiction wherein the land lies and is not required to show that an adequate remedy at law does not exist.

(b) ~~Part B~~—Violations of Part III of this Ordinance.

(1) ~~(1)~~ Violators of Part III of this ordinance ~~shall be guilty of~~ is subject to punishment for a Class 1 misdemeanor.

(2) Any person who has violated or failed, neglected, or refused to obey the provisions of Part III of this Ordinance or any order issue pursuant thereto, or any condition of a permit imposed pursuant thereto, shall, upon a finding of an appropriate court, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of \$10,000. Such assessment shall otherwise be in accordance with the uniform schedule of civil penalties adopted by the County pursuant to Va. Code § 62.1-44.15:54. The County may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the County to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Assessment of a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under this subsection (b).

(3) The County, DEQ, or the owner of property located in the County that has sustained damage or which is in imminent danger of being damaged may apply to the Circuit Court for the County of Charles City or other appropriate court to enjoin a violation or a threatened violation under Part III of this Ordinance without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he or she has notified in writing the person who has allegedly violated Part III, DEQ, and the Director of Community Development that a violation of Part III has allegedly caused, or allegedly creates a probability of causing, damage to his/her property, and (ii) neither the person who has allegedly violated Part III, the Department, nor the County has taken corrective action within fifteen (15) days to eliminate the conditions that are alleged to have caused, or allegedly create the probability of causing, damage to his/her property.

[PH60]:
Revisions to this portion of this subsection more accurately reflect current statutory language of Va. Code § 62.1-44.15:54.

[PH61]:
Revisions to this portion of this subsection more accurately reflect current statutory language of Va. Code § 62.1-44.15:54. Note that, upon adoption of a combined VSMP/E&SC program regulation by the State Water Control Board, these provisions are no longer authorized by statute. See 2016 Acts of Assembly, c. 68.

(4) In addition to any criminal or civil penalties provided under this subsection (b), any person who violates any provision of Part III may be liable to the County or the DEQ, as appropriate, in a civil action for damages.

(5) ~~(4)~~ Without limiting the remedies which may be obtained in this ~~section~~ subsection (b), any person violating or failing, neglecting, or refusing to obey any injunctions, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the ~~Program~~ Administrator. ~~(4)~~ Any civil penalties assessed by a court pursuant to this subsection (b)(5) shall be paid into the treasury of ~~Charles City County, except that where the violator is the locality itself, or its agent, the court shall~~ the County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct ~~the penalty to be paid into the state treasury.~~

(6) ~~(4)~~ With the consent of any person who has violated or failed, neglected, or refused to obey ~~any regulation or~~ Part III of this Ordinance or any order, notice, or requirement of the County, any condition of a permit ~~or any provision of this ordinance~~ issued pursuant to Part III, the County ~~of Charles City~~ may provide, in an order issued by the County against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in ~~this section~~ subsection (b)(5). Such civil charges shall be instead of any appropriate civil penalty ~~which~~ that could be imposed under ~~this section~~ subsections (b)(2) or (b)(5).

(7) ~~(4)~~ The Commonwealth's Attorney shall, upon request of the Program Administrator or the permit issuing authority, take legal action to enforce the provisions of Part III of this ~~ordinance~~ Ordinance.

(8) ~~(4)~~ Compliance with the provisions of Part III of this ~~ordinance~~ Ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

[PH62]: Note that, upon adoption of a combined VSM/P/E&SC program regulation by the State Water Control Board, this provisions is no longer authorized by statute. See 2016 Acts of Assembly, c. 68.

(c) ~~Part C~~—Violations of Part IV of this Ordinance.

(1) ~~(m)~~ For Part IV, the ~~owner~~ The owner of any parcel of land ~~affected by~~ subject to Part IV this Ordinance is responsible for compliance with the provisions of this Ordinance as it may affect that parcel. ~~Any person who fails to comply with Part IV of this Ordinance shall be guilty of a misdemeanor and may be punished as a Class 2 misdemeanor.~~

(2) Any person who fails to comply with Part IV of this Ordinance is subject to punishment for a Class 2 misdemeanor.

(3) The County may exercise its police and zoning powers to protect the quality of State

waters consistent with the provisions of Part IV of this Ordinance.

(4) Any person who (i) violates any provision of Part IV of this Ordinance or (ii) violates or fails, neglects, or refuses to obey any final notice, order, rule, regulation, or variance or permit condition issued by the County or Administrator pursuant to or pertaining to implementation of Part IV of this Ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the County, in such a manner as the court may direct by order.

(5) With the consent of any person who (i) violates any provision of this Ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any notice, order, rule, regulation, or variance or permit condition issued by the County or the Administrator pursuant to or pertaining to implementation of Part IV of this Ordinance, the County may issue an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the County. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under this subsection (c), provided that such civil charges may be in addition to the cost of any restoration required or ordered by the Administrator.

[PH63]: These provisions are authorized pursuant to current Va. Code § 62.1-44.15:74.

PART VI. APPEALS AND JUDICIAL REVIEW

Section 6-1. HEARINGS

(a) Any Applicant for a Stormwater Management Permit or a Land Disturbing Permit under the provisions of Part II or Part III of this Ordinance who is aggrieved by any action of the County or its agent in disapproving plans submitted pursuant to requirements of such parts, shall have the right to apply for and receive a review of such action by the Board of Supervisors provided an appeal is filed within thirty (30) days from the date of decision for such action is made in writing and is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the Applicant or its registered agent.

(1) Any Applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing, provided that the Board of Supervisors and other involved parties have at least thirty (30) days' prior notice.

(2) In reviewing the County's or the agent's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved Applicant, the County

and the agent. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the action.

(b) Any Applicant who is aggrieved by an RPA boundary adjustment determination made by the Director of Community Development pursuant to Section 4-5 may appeal such determination to the Board of Supervisors within thirty (30) days of the date of such determination is made in writing and is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the Applicant or its registered agent.

(1) Upon receiving notice of such appeal, the Director of Community Development shall promptly transmit to the County Wetland Board copies of the following for its review: the Plan of Development application, any site-specific RPA boundary evaluation and any WOIA, any County staff report or recommendations addressing the boundary adjustment or WOIA, and the determination from which the appeal is being taken. The County Wetland Board shall consider this information and shall provide its written recommendations, if any, to the Board of Supervisors concerning the merits of the appeal or may appear as a party at the Board of Supervisors' hearing on the appeal, or both.

(2) Any Applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing, provided that the Board of Supervisors, County Wetland Board and other involved parties have at least thirty (30) days' prior notice of such appeal hearing.

(3) In review of the Applicant's appeal of the Director Community Development's determination, the Board of Supervisors shall consider the following evidence: (A) the site-specific evaluation performed by the Applicant and any other information relied upon by the Director of Community Development as to the location of the Water Bodies with Perennial Flow and the adjustment of the RPA boundary; (B) any additional evidence and opinions presented by or on behalf of the aggrieved Applicant; and (C) any recommendations provided by the County Wetland Board. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the determination of the Director of Community Development and, as appropriate, remand the determination for further action consistent with the decision of the Board of Supervisors.

(4) Any appeal taken from the Director of Community Development's determination of RPA boundary line adjustment may be heard by the Board of Supervisors at the same time any other appeal of the Plan of Development or any component thereof as provided in subsection (c) below.

(c) Except as otherwise provided in subsection (b) above, in the event the final Plan of Development or any component of the Plan of Development required in Part IV is disapproved or recommended conditions or modifications are unacceptable to the Applicant, the Applicant may appeal such administrative decision to the Board of

Supervisors within thirty (30) days of the date of such determination is made in writing and is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the Applicant or its registered agent. To rule for the Applicant, the Board of Supervisors must find such Plan of Development to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such Plan of Development meets the purpose and intent of the performance standards. If the Board of Supervisors finds that the Applicant's Plan of Development does not meet the above stated criteria, it shall deny approval of the Plan of Development in writing.

(d) Any appeal as provided in this Section 6-1 shall stay all proceedings in furtherance of the action appealed from unless the Administrator or Director of Community Development, as applicable, certifies to the Board of Supervisors that, by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board of Supervisors or by a court of record, on application and on notice to the Administrator or Director of Community Development, as applicable, and for good cause shown.

Section 6-2. JUDICIAL REVIEW

- (a) Following any available proceedings as provided in Section 6-1 of this Ordinance, any Applicant seeking a Stormwater Management Permit or any Stormwater Management Permit holder, or any other party engaging in land-disturbing activities, who is aggrieved by a final decision or action of the County in connection with (1) the issuance, denial or modification of a Stormwater Management Permit pursuant to Part II of this Ordinance, or (2) any alleged noncompliance by such party with a Stormwater Management Permit or requirement of Part II of this Ordinance brought pursuant to Part V of this Ordinance, shall be entitled to judicial review of such final decision or action. An appeal shall be filed by the aggrieved party within thirty (30) days from the date the final decision or action is rendered in writing.
- (b) Following any available proceedings as provided in Section 6-1 of this Ordinance, all final decisions by the County adversely affecting the rights, duties or privileges of a person subject to the provisions of Part III, Part IV, or Part V shall be subject to judicial review. An appeal shall be filed by the aggrieved person within thirty (30) days from the date the final decision or action is rendered in writing.

[PH64]: The provisions addressing fees and performance bonds, formerly included in Part VI addressing the Hearings, Appeals and Enforcement, are better organized here in their own new Part VII of the Ordinance. Relevant cross-references to fees and performance bonds in other Parts of this Ordinance have been corrected accordingly.

PART VII. FEES AND PERFORMANCE BONDS

Section 67-4.1. FEES

- (a) Fees for coverage under the General Permit and fees for Chesapeake Bay Preservation Act ~~land-disturbing activities~~ Land-Disturbing Activities shall be imposed by the County in accordance with Table 1 of the County's Stormwater Management Fee Schedule. Sites

purchased for development within a previously permitted common plan of development or sale shall be subject to fees in accordance with the disturbed acreage of the site or sites according to Table 1.

- (b) Fees for permit modifications (not including minor modifications) or transfer of registration statements from the General Permit shall be imposed in accordance with Table 2 of the County's Stormwater Management Fee Schedule. The fee assessed shall be based on the total disturbed acreage of the site, in accordance with Table 2.
- (c) Fees for annual permit maintenance shall be imposed in accordance with Table 3 of the County's Stormwater Management Fee Schedule, including fees imposed on expired permits that have been administratively continued. The maintenance fees shall apply until the permit coverage is terminated.
 - a. General ~~permit~~Permit coverage maintenance fees shall be paid annually to the County by the anniversary date of ~~general permit~~General Permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General ~~permit~~Permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

(d) Where fees and bonding are required of the Applicant pursuant to Part II of this Ordinance, all applicable fees and all bond amounts may be consolidated and paid or posted at the same time. Any consolidated bond must separately identify the amount posted for each of the activities bonded.

(e) ~~(e)~~ No permit application fees will be assessed to:

- a. Permittees who request minor modifications to permits, however any such permit modification that results in any change to an approved ~~stormwater management plan~~Stormwater Management Plan that requires additional review by the Administrator shall not be exempt pursuant to this section.
- b. Permittees whose permits are modified or amended at the request of the Department of Community Development, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

(f) ~~(e)~~ Fees for review of an ~~Erosion and Sediment Control~~E&SC Plan shall be imposed in accordance with Fee Schedule, Table 4.

(g) ~~(f)~~ All incomplete payments will be deemed as nonpayments, and the ~~applicant~~Applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in Va. Code § 58.1-15 ~~of the Code of Virginia~~ and is calculated on a monthly basis at the applicable periodic rate. A ten percent (10%) late payment fee shall be charged to any delinquent (over ninety (90) days past due) account. The County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

(h) ~~(e)~~ The Stormwater Management Fee Schedule shall be adopted by the Board of Supervisors by Resolution, and may be amended by the Board of Supervisors, from time to time, in the same manner, provided that the amount of fees charged shall conform to state law requirements.

Section ~~67-5.2~~. PERFORMANCE ~~BOND~~BONDS

Prior to issuance of any Stormwater Management Permit, the Applicant may be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County Attorney, to ensure that measures could be taken by ~~Charles City~~ County at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him/her by the permit conditions as a result of his/her land -disturbing activity. If ~~Charles City~~ County takes such action upon such failure by the Applicant, the County may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within sixty (60) days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

(a) Where fees and bonding are required of the Applicant pursuant to Part II of this Ordinance, all applicable fees and all bond amounts may be consolidated and paid or posted at the same time. Any consolidated bond must separately identify the amount posted for each of the activities bonded.

(b) ~~(b)~~ All Applicants for ~~E&S permits~~ Land-Disturbing Permits pursuant to Part III of this Ordinance and all persons otherwise conducting encroachments into the RPA subject to regulation pursuant to Part IV of this Ordinance shall provide a performance bond with surety, cash escrow, or an irrevocable letter of credit (or any combination thereof, from a Virginia lending institution acceptable to the Zoning Administrator and the County Attorney, to ensure that measures could be taken by the County at the ~~applicant~~ Applicant's expense should the ~~applicant~~ Applicant fail, after proper notice, within the time specified to initiate or maintain appropriate stabilization, conservation, mitigation and corrective measures required of him/her by the approved ~~plan~~ E&SC Plan or by Part IV as a result of his/her land-disturbing activity or encroachment into the RPA, as applicable.

[PH65]: This revised language accounts for the variety of potential on-site or off-site actions needed to comply with the permits, plans or orders issued by the County for which a surety is a reasonable financial protection for the County.

(1) The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain ~~appropriate~~ required stabilization, conservation-~~action, mitigation and corrective actions, as applicable,~~ based on unit price for new public or private sector construction in the County and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ~~25~~ twenty-five percent (25%) of the cost of the conservation ~~action or mitigation actions.~~ Should it be necessary for ~~Charles City~~ the County to take such stabilization,

conservation ~~action, mitigation, or corrective actions, or some combination thereof,~~
the County may collect from the ~~applicant~~ Applicant any costs in excess of the
amount of the surety held.

- (2) Within sixty (60) days of adequate site stabilization, conservation, mitigation, or
corrective measures having been achieved, as determined by a certified inspector in
any project or section of a project, such bond, cash escrow or letter of credit, or the
unexpended or unobligated portion thereof, shall be either refunded to the ~~applicant~~
Applicant or terminated, based upon the percentage of stabilization, conservation,
mitigation, or corrective measures accomplished in or for the project or project
section.

(c) ~~(e)~~ Certified checks shall be made payable to the Charles City County Treasurer.

PART VIII. MISCELLANEOUS

Section 68-6.1. SEVERABILITY

If any court of competent jurisdiction invalidates any provision of this Ordinance, the
remaining provisions shall not be effected and shall continue in full force and effect.

[PH66]: This
new Part VIII
for
"Miscellaneous"
provisions better
isolates
generalized
ordinance
administration
terms, such as
the severability
clause. This
clause had been
previously
misplaced as a
section within
Part VI
addressing
"Hearings,
Appeals and
Enforcement."

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