

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

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 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.
- (c) This article 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 Regulations, the E&S 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 designates as the Director of Planning. 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.

"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 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" 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 project inspection or (ii) is enrolled in the State Board's training program for project inspection and successfully completes such program within one 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 plan review, or (ii) is enrolled in the State Board's training program for plan review and completes such program within one 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) of Chapter 4 of Title 54.1.

"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 program administration or (ii) is enrolled in the State Board's training program for program administration and successfully completes such program within one year after enrollment.

"Chesapeake Bay Preservation Act 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 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.

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

"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.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"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" means the Charles City County Director of Planning or the director's 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 plan" or *"E&S 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" 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" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Stormwater Management Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

"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.

"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.

"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.

"Land-disturbing permit" or *"E&S 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.

"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 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.

"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 will be followed.

"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 Development" means the process for site plan or subdivision plat review to ensure compliance with Section 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 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 (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 in Section 4-4

"Resource Protection Area (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 in Section 4-3.

"Responsible land disturber" 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 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. 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 §10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under §58.1-3230 of the Code of Virginia

"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 Board" or *"SWCB"* means the State Water Control Board.

"State erosion and sediment control program," "VESCP," or *"state program"* means the program administered by the SWCB pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.

"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.

"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 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 coverage has been provided by the Department, when required.

"Stormwater 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, an approved 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.

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

"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.

"Virginia Erosion and Sediment Control authority" or *"VESCO 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.

"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 "Act" means Article 2.3 (§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 Stormwater Management Program authority" or "VSMP authority" means the County.

"Water Body with Perennial Flow" means a body of water flowing in a natural or man-made channel year-round, except during periods of drought. The term "water body with perennial flow" includes perennial streams, estuaries, and tidal embayments. Lakes and ponds that form the source of a perennial stream, or through which the perennial stream flows, 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 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, 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 § 62.1-44.15:27 of the Code of Virginia, the County hereby establishes a Stormwater Management Program for land-disturbing activities and adopts the applicable Stormwater Management 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 hereby designates the Director of Planning, 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 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 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;

- (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-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;
- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a 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 days of commencing the land-disturbing activity and compliance with the requirements of Section 2-5 of this Ordinance is required within 30 days of commencing the land-disturbing activity.

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

- (a) No 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:
 - (1) A permit application that includes a General 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 or an agreement in lieu of a plan approved in accordance with Part III of this Ordinance, and;
 - (3) A stormwater management plan or an executed agreement in lieu of a Stormwater Management Plan that meets the requirements of Section 2-5 of this Ordinance.
- (b) No stormwater management permit shall be issued until evidence of General permit coverage is obtained from DEQ, where required.

- (c) Notwithstanding any other provision of this Section, an Applicant seeking to conduct a Chesapeake Bay Preservation Act Land-Disturbing Activity shall not be required to provide the permit application set forth in Section 2-3(a)(1), nor provide 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 to comply with the requirements of Section 2-4[SWPPP].
- (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 (d) above are not required to pay the state portion of the permit fee.
- (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 portion of the permit fee, provided that all state regulatory requirements are met. The land disturbing 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.
- (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.
- (g) No grading, building or other local permit shall be issued for a property unless a stormwater management permit has been issued by the Administrator, and the Applicant provides a certification that all land clearing, construction, disturbance, land development and drainage will be done according 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.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) that is required to be prepared before a registration statement for General permit coverage may be submitted to DEQ for approval (as referenced in Section 2-3(a)(1)) shall include the content specified by

9VAC25-870-54, 9VAC25-880-70, and any other applicable regulations including, but not limited to 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.) a pollution prevention plan that meets the requirements of 9VAC25-870-56.

- (b) 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.
- (c) 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 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 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 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.
- (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 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's land-disturbing activity except as otherwise allowed by § 62.1-144.15:35 of the Code of Virginia.
- (c) Elements of a stormwater management plan that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 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 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, in writing, of such determination, within 15 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 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 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 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 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 may be modified as follows:
- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
 - (2) The Administrator may require that an approved 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 Regulations, as amended, which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (b) of this Section.
- (b) Notwithstanding the foregoing, any land-disturbing activity proposed to occur pursuant to
 - i) a plan of development proffered as part of a condition rezoning and approved by the governing body;
 - ii) any other plan of development or site plan approved by the County, including 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 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) 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 Part II C [of the Stormwater Regulations]; and
 - (3) In the event that the approved plat is subsequently modified or amended in a manner such that there is no 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.
- (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 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 Regulations for those areas that were included in the approval, provided 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 (b) or (c) of this Section, shall remain subject to Part IIC 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.
- (e) 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

Part IIC of the Stormwater Regulations, as adopted by the County in Subsection (b) of this Section.

- (f) Plats or plans grandfathered pursuant to the provisions of this section remain subject to the vesting requirements set forth in *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 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 Act, the 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 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

- (a) Pursuant to § 62.1-44.15:54 of the *Code of Virginia*, 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 Board, including but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

- (b) The program and regulations provided for in this article shall be made available for public inspection at the office of community development.
- (c) The Board hereby designates the Director of Planning as the Administrator of the County's Erosion and Sediment Control Program, and designates the Department of Planning 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 has been issued by the Administrator in accordance with the provision of this part of this Ordinance [Part III], or a Stormwater Management Permit has been issued pursuant to and as required by Part II of this Ordinance.
- (b) No E&S Permit shall be issued until an erosion and sediment control 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, 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.

- (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.
- (6) Exploration or drilling for oil and/or gas, including the well site, roads, feeder lines and offsite disposal areas.
- (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 (§ 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 § 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.
- (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,
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
- (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 any associated land that is disturbed outside of this exempted area shall remain subject to this Ordinance; and
- (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, 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 shall be approved until the fees required to be paid pursuant to the Fee Schedule attached as Appendix A of this Ordinance are received, and no E&S Permit shall be issued until the required performance bond pursuant to Section 6-5 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.
- (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 submits with his application an approved erosion and sediment control 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 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 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.

- (a) The Administrator shall review E&S plans submitted and shall provide written notice to the Applicant within 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 that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.
 - (2) If notice of inadequacy is not provided with 45 days, the E&S plan shall be deemed adequate and shall be reviewed by the Administrator for compliance with this Ordinance.
- (b) For all E&S 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 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 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 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 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 shall be the responsibility of the owner.
 - (g) In accordance with *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, 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.

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

Section 3-4. TECHNICAL CRITERIA FOR 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.
- (b) As provided by *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 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 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 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 may request a variance to become part of the approved erosion and sediment control 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.
 - (2) During construction, the person responsible for implementing the approved 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 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the 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 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 plan approval or cease for more than 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 to determine whether the 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 to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

Section 3-7. EROSION IMPACT AREAS.

- (a) The Board 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 for any erosion impact area. Such plan shall be subject to all review, bonding, inspection and enforcement provisions of this Ordinance which apply to approved land-disturbing permits.

PART IV. CHESAPEAKE BAY PRESERVATION

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).

Section 4-2. DESIGNATION OF CHESAPEAKE BAY PRESERVATION AREAS

The requirements of this Part of the Ordinance shall apply to all lands in a CBPA, which shall include lands that meet the designation criteria in this part. CBPAs are divided into Resource Protection Areas (RPA) and Resource Management Areas (RMA) 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 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 with perennial flow.
 - (3) Tidal shores.
 - (4) A 100 foot buffer area measured horizontally located adjacent to and landward of the components listed in subsections a-c above and along both sides of any water body with perennial flow. 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.

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

Section 4-4. RESOURCE MANAGEMENT AREAS

- (a) The purpose of the Resource Management Area is to provide significant water quality protection through the employment of the performance standards set forth in Section 4-10 and to prevent diminishing the functional value of the Resource Protection Area.
- (b) The Resource Management Area shall include the following lands:
 - 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. DELINEATION OF CBPA 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).
- (b) The Director of Planning shall insure or confirm that as part of the plan of development review process or during the review of a water quality impact assessment that:
 - 1) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow; and,
 - 2) Resource Protection Area boundaries are adjusted, as necessary, on the site, based on this evaluation of the site.

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; 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.

Section 4-8. REQUIRED CONDITIONS

- (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, 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:

- 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.

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

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

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

- 2) Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Director of Planning.
- (b) Area of land disturbance shall be reasonable for the development proposed and consistent with the use and development proposed and in accordance with the Virginia Erosion and Sediment Control Handbook.
- (c) Except as otherwise permitted under the General Permit requirements, land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.
- (d) Notwithstanding any other provisions of this Part or exceptions or exemptions thereto, any land disturbing activity in a designated Chesapeake Bay Preservation Area exceeding 2,500 square feet, including construction of all single-family houses, septic tanks, and drainfields, shall comply with the requirements of Part II of this Ordinance.
- (e) All on-site sewage disposal systems not requiring an VPDES permit 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 of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.
- (f) 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. 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 a permit issued by the State Water Control Board, until the structure is served by public sewer.
- (g) For any development or redevelopment in a Chesapeake Bay Preservation Area, stormwater runoff shall be controlled by the use of best management practices consistent with the water quality protection provisions of the Stormwater Management 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 of this Ordinance.
- (h) Prior to initiating grading or other on-site activities in any Chesapeake Bay Preservation Area, all wetlands permits required by federal, state, and local laws and regulations shall be obtained.
- (i) 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 soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides

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.

- (j) 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.
- (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. SPECIFIC PERFORMANCE STANDARDS FOR DEVELOPMENT AND REDEVELOPMENT IN RESOURCE PROTECTION AREAS

The following criteria shall apply specifically within Resource Protection Areas and supplement the general performance criteria in Section 4-11 above.

- a) Allowable development
 - 1) A new or expanded water-dependent facility may be allowed provided that:
 - i) It does not conflict with the comprehensive plan;
 - ii) It complies with the performance criteria set forth in this part;
 - iii) Any non-water dependent component is located outside of Resource Protection Areas;
 - iv) Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.
 - 2) Redevelopment shall be permitted in the RPA only if there is no increase in the amount of impervious coverage and no further encroachment into the RPA and it conforms to applicable stormwater management and erosion and sediment control criteria in this part.
 - 3) Roads and driveways not exempt under this Ordinance may be constructed in or across Resource Protection Areas if each of the following conditions are met:
 - i) The Director of Planning makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;

- 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) The design and construction of the road or driveway satisfy all applicable criteria of these regulations, including submission of a water quality impact assessment;
 - iv) The Director of Planning reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision, and plan of development approvals.

- (b) 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:
 - i) The Director of Planning has conclusively established that location of the facility within the Resource Protection Area is the optimum location;
 - ii) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
 - iii) The facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program regulations.;
 - 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, and the Virginia Marine Resources Commission;
 - v) Approval must be received from Charles City County prior to construction; and
 - 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.

- c) Buffer Area Requirements
 - 1) To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering non-point 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 buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients, or such other reductions as may be applicable per the BMP Clearinghouse.
- 4) The buffer area shall be maintained to meet the following additional performance standards.
- 5) In order to maintain the functional value of the buffer area, 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.
 - 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.
 - v) 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 Planning may permit encroachment into the buffer area in accordance with Section 4-13 (Plan of Development Process) and the following criteria:
 - 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) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment and is equal to the of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
 - c) 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.
- 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 rose) from invading the buffer area Agricultural activities may encroach into the buffer area as follows:
- 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 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 Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation.
 - 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 5-15) administered by the Virginia Department of Conservation and Recreation. 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.

- c) 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, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.
 - d) If specific problems are identified pertaining to agricultural activities which are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, 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) In cases where the landowner or his 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 shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, 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.

Section 4-13. PLAN OF DEVELOPMENT PROCESS

- a) Any development or redevelopment with land disturbance in a Chesapeake Bay Preservation Area exceeding 2,500 square feet shall be accomplished through the following plan of development process. Approval of the plan of development, where required, shall be a prerequisite for issuance of any building permit.
 - 1) In addition to any other requirements of the Charles City Land Use Ordinances, the plan of development process shall consist of 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 may waive elements of the plan of development, except elements 2(vi) and (vii) with a finding that they are unnecessary due to the scope and nature of the proposed land disturbance.
 - 2) Plan of Development Elements - The following elements shall comprise the plan of development, as appropriate:
 - 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.
 - ii) A delineation of Chesapeake Bay Preservation Area 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.
 - iii) Water bodies with perennial flow shall be identified using a scientifically valid system of in-field indicators of perennial flow as determined by the Director of Planning. Acceptable methods include but are not limited to the methods determined by the Department of Environmental Quality to be scientifically valid.
 - iv) RPA boundary delineation studies 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.
 - 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
 - vii) provide any other information deemed by the Director to be necessary to evaluate potential water quality impacts of the proposed activity.
 - 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.
 - 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.

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.
 - 2) All information required in this section shall be certified as complete and accurate to the satisfaction of the Director of Planning.
- b) The Director of Planning shall review and approve or disapprove the Plan of Development within 45 days of certifying it complete. The Director of Planning shall approve the plan of development only if he finds that the plan of development meets the performance criteria of Section 4-10 of this Ordinance. The Director of Planning may recommend conditions or modifications to the plan of development that will result in mitigation of those impacts that cause the plan of development to fail to meet the performance criteria of Section 4-10 of this Ordinance.

Section 4-15. INSTALLATION AND BONDING REQUIREMENTS

- a) Except as otherwise required by 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) Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan 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 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, a temporary certificate of occupancy may be issued only if the applicant provides to Charles City County a form of surety satisfactory to the Director of Planning 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.
 - 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.
 - 4) All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper written notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety shall be forfeited to Charles City County. Charles City County may collect from the 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 have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Director of

Planning, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The Director of Planning may require a certificate of substantial completion from a Professional Engineer or Class III - B Surveyor before making a final inspection.

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

Section 4-16. NONCONFORMING USE AND NONCOMPLYING STRUCTURES

- a) The lawful use of a building or structure which existed in a Chesapeake Bay Preservation Area on 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. 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.
- b) No change or expansion of use shall be allowed with the exception that the Director of Planning may grant a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:
 - 1) There will be no increase in non-point source pollution load;
 - 2) Any development or land disturbance exceeding an area of 2500 square feet complies with all requirements of Part II and Part III of this Ordinance.
 - 3) An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Director of Planning and shall include:
 - i) Name and address of applicant and property owner.
 - ii) Legal description of the property and type of proposed use and development;
 - iii) A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to lot lines, and the boundary of the RPA;
 - iv) Location and description of any existing private water supply or sewage system.
 - 4) A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.

- 5) An application for the expansion of a nonconforming principle structure may be approved by the Development Director through an administrative review process provided that the following findings are made:
- i) The request for the waiver is the minimum necessary to afford relief;
 - ii) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Ordinance to other property owners in similar situations;
 - iii) The waiver is in harmony with the purpose and intent of this Ordinance and does not result in water quality degradation;
 - iv) The waiver is not based on conditions or circumstances that are self-created or self-imposed;
 - v) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
 - vi) Other findings, as appropriate and required by the County of Charles City are met; and
 - vii) In no case shall this provision apply to accessory structures.

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

Section 4-17. EXEMPTIONS

- a) Exemptions for Utilities, Railroads and Facilities.
 - 1) Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic and telephone transmission lines, railroads and public roads and their appurtenant structures 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 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, (iii) local water quality protection criteria at least as stringent with the above requirements will be deemed to constitute compliance with these regulations. The public roads exemption is further conditional to optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse impacts on water quality.
 - 2) Construction, installation, and maintenance of water, sewer, and local gas lines, underground telecommunication and cable television lines owned, permitted or both

by Charles City County or regional service authority shall be exempt from the requirements of the ordinance provided that:

- i) To the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - ii) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
 - iii) All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality;
 - iv) Any land disturbance exceeding an area of 2500 square feet complies with all Charles City County erosion and sediment control requirements.
- 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 of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide." 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 Chesapeake Bay Preservation Areas the following land disturbances will be exempt from the provisions of this Part IV of this Ordinance:
- 1) Minor land disturbing activities 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;
 - 4) Installation of fence and sign posts or telephone and electric poles and other kinds of posts and poles;
 - 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
 - 6) Emergency work to protect life, limb or property, and emergency repairs.

- 7) Normal roadway maintenance operations to include grading, road repair and ditch maintenance.
- d) Exemptions in Resource Protection Areas - The following 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) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities may be exempt from ordinance requirements provided that it is demonstrated to the satisfaction of the Director of Planning that:
 - 1) Any required permits, except those to which this exemption specifically applies, shall have been issued;
 - 2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
 - 3) The intended use does not conflict with nearby planned or approved uses; and
 - 4) Any land disturbance exceeding an area of 2500 square feet shall comply with Part II and III of this Ordinance.

Section 4-18. EXCEPTIONS

- a) A request for an exception to the requirements of provisions of this Part of this Ordinance other than Sections 4-6 [use regulations] and 4-12 [specific performance standards] shall be made in writing to the Director of Planning. The Director of Planning 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 purpose and intent of this Ordinance is preserved.
 - 3) Exceptions to the requirement for a 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 4-11 and 4-12 of this ordinance shall be made in writing to the Charles City County Wetlands Board. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 4-12(c)(5)(viii).
 - 1) The Charles City County Wetlands Board shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with §15.2-2204 of the Code of Virginia, 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 and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Ordinance if the Board finds:
 - i) Granting the exception will not confer upon the applicant any special privileges denied by this Ordinance to other property owners in the CBPA;
 - ii) The 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 exception request is the minimum necessary to afford relief;
 - iv) The exception request will be in harmony with the purpose and intent of this part of this Ordinance, not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
 - v) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- 3) If the Wetlands Board cannot make the required findings or refuses to grant the exception, the Board shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.

PART V. MAINTENANCE, MONITORING AND INSPECTIONS OF FACILITIES

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 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;
 - (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.

- (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 and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation;
 - (2) Compliance with the approved 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.

- (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.
- (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.
- (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.
- (g) In accordance with § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every stormwater management permit applicant or permittee, or any such person subject to 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.
- (i) If the Administrator determines that there is a failure to comply with a conditions of 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 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.
- (j) Where Part II of this Ordinance is not applicable, and the Administrator determines that there is a failure to comply with Part III of this Ordinance, notice shall be served upon the permittee or person responsible for carrying out the plan 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. The notice shall specify the measures needed to comply with the plan 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 E&S 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 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 or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection (g).
- (4) A stop work order issued for failure to comply with an approved E&S plan shall be served in the manner set forth in subsection (g) 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 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 or any required permits within seven (7) days from the date of service of the order, the Department or the chief administrative officer or his 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 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 or the chief administrative officer or his 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, the Board, or the chief administrative officer or his designee on behalf of the County from taking any other action specified in Section 6-3 of this Ordinance.
- (k) If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute an injunctive proceeding in accordance with Section 6-3(A)(e), in addition to any other administrative and/or judicial proceedings initiated.

PART VI. HEARINGS, APPEALS, 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

Part A – Violations of Part II of this Ordinance.

(a) Any person who violates any provision of Part 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.

(1) Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:

- a. Failing to have a General permit registration;
- b. Failing to prepare a SWPPP;
- c. Having an incomplete SWPPP;
- d. Not having a SWPPP available for review as required by law;
- e. Failing to have an approved erosion and sediment control plan;
- f. Failing to install stormwater BMPs or erosion and sediment controls as required by this Ordinance and/or state law;
- g. Having stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- h. Operational deficiencies;
- i. Failure to conduct required inspections, or having incomplete, improper, or missed inspections.

(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.

(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, any regulation or order of the County imposed pursuant to Part II, 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 specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section.

- 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.
- (b) 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 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both.
- (c) Any person who knowingly violates any provision of Part II this Ordinance, any regulation or order of the VSWCB 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 year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 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.
- (d) 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 years nor more than 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.
- (e) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Locality or any provisions of this chapter imposed pursuant to Part 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 subsection (a) of this Section.

- (f) 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.

Part B – Violations of Part III of this Ordinance.

- (g) Violators of Part III of this ordinance shall be guilty of a Class 1 misdemeanor.
- (h) Without limiting the remedies which may be obtained in this section, 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.
- (i) Any civil penalties assessed by a court 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 direct the penalty to be paid into the state treasury.
- (j) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, the County of Charles City may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section.
- (k) The Commonwealth's Attorney shall, upon request of the Program Administrator or the permit issuing authority, take legal action to enforce the provisions of this ordinance.
- (l) Compliance with the provisions of this 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.

Part C – Violations of Part IV of this Ordinance

- (m) For Part IV, the owner of any parcel of land affected by 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.

Section 6-4. FEES

- (a) Fees for coverage under the General Permit and fees for Chesapeake Bay Preservation Act 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 coverage maintenance fees shall be paid annually to the County by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.
- (d) 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 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, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.
- (e) Fees for review of an Erosion and Sediment Control Plan shall be imposed in accordance with Fee Schedule, Table 4.
- (f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 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.
- (g) The Stormwater Management Fee Schedule shall be adopted by the Board by Resolution, and may be amended by the Board, from time to time, in the same manner, provided that the amount of fees charged shall conform to state law requirements.

Section 6-5. PERFORMANCE BOND

- (a) 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 by the permit conditions as a result of his 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 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.

(b) All Applicants for E&S permits 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's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity.

(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 conservation action 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 percent of the cost of the conservation action. Should it be necessary for Charles City County to take such conservation action, the County may collect from the applicant any costs in excess of the amount of the surety held

(2) Within 60 days of adequate stabilization, 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 or terminated, based upon the percentage of stabilization accomplished in the project or project section.

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

Section 6-6. 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.