

**ORDINANCE NO. 2024-11**

**AN ORDINANCE AMENDING CHAPTER 110 (ZONING) TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN PERTAINING TO STORM DRAINAGE FACILITIES, EROSION AND SEDIMENT CONTROL, AND CHESAPEAKE BAY PRESERVATION.**

**BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 1, §1.1 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

§ 1.1. LEGAL PROVISIONS

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§ 1.1.5. Delegation of authority

Whenever a provision appears requiring the zoning administrator, the director of public works or the director of community development and planning to perform an act or duty, that provision shall be construed as authorizing the city manager, or the director of community development and planning, the director of public works, the ~~V~~S~~S~~M~~P~~ VESMP administrator, or the zoning administrator to delegate that responsibility to other city employees.

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**BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 4, §4.5 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

§ 4.5. LANDSCAPING

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§ 4.5.4. General

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B. Tree conservation plan required

A tree conservation plan shall be submitted in conjunction with required site plans (see §6.8) in accordance with all requirements of §4.5 and prior to any land disturbing activities exceeding 2,500 square feet to comply with requirements of 4.18. Plans shall be prepared and signed by an International Society of Arboriculture Certified Arborist or other qualified professional as approved by the zoning administrator

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§4.5.6. Tree conservation during land development

A. 10-year tree canopy requirements

~~All land development for which site plan approval is required (see §6.8) shall provide for the conservation of trees on site such that, after ten (10) years, minimum canopy is projected and shall apply in the respective districts.~~

The following requirements shall provide for the conservation of trees for site development that exceeds 2,500 square feet of land disturbance, such that, after 10

years, minimum canopy is projected and shall apply in the respective districts as follows:

ZONING DISTRICTS		TREE CANOPY (PERCENT)
RESIDENTIAL DISTRICTS		
RL	Residential Low	25
RM	Residential Medium	20
RH	Residential High	20
RT-6	Residential Townhouse	15
RT	Residential Townhouse	15
RMF	Residential Multifamily	10
NONRESIDENTIAL DISTRICTS		
CL	Commercial Limited	10
CO	Commercial Office	10
CR	Commercial Retail	10
CU	Commercial Urban	10
CG	Commercial General	10
IL	Industrial Light	10
IH	Heavy Industrial	10
PLANNED DEVELOPMENT DISTRICTS		
PD-R	Planned Development Residential	20
PD-M	Planned Development Mixed Use	10
PD-C	Planned Development Commercial	10
PD-I	Planned Development Industrial	10

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**BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 4, §4.16 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

**§4.16. EROSION AND STORMWATER MANAGEMENT AND STORM DRAINAGE FACILITIES**

**§4.16.1. Purpose**

- A. The purpose of §4.16 to define ~~these~~ the erosion and stormwater management and storm drainage facilities which must be provided by landowners to control rainfall runoff from and across their property in a manner not detrimental to other inhabitants of the city and to preserve, where possible, presently existing natural creek channels. It is the further purpose of §4.16 to minimize the adverse effects of stormwater runoff on downstream drainageways within the city.
- B. Article 2.3 (§62.1-44.15:27) of Chapter 3.1 of Title 62.1 of the Code of Virginia establishes the requirement for localities to establish a an erosion and stormwater management program. §4.16 is adopted pursuant to Chapter 3.1 of Title 62.1 of the Code of Virginia (§62.1-44.15:25 and ~~§62.1-44.15:28~~ §62.1-44.15:27 et seq.).

**§4.16.2. Performance standards for facilities**

Stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be designed and maintained in such a manner as to minimize economic and environmental costs to the city and its inhabitants in accordance with §4.16.7.

**§4.16.3. Performance requirements**

Performance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be as specified in §4.16.8.

**§4.16.4. Design, construction, inspection and maintenance requirements**

Design, construction, inspection and maintenance requirements shall be as defined in the city storm drainage facility specifications as they may be hereafter promulgated by the city engineer and approved by the city council from time to time.

§4.16.5. Usage, improvement and preservation of creeks and channels

- A. Natural creeks and drainage channels may be used where available to route stormwater runoff from the city.
- B. Natural drainage systems will be improved where necessary in accordance with ~~9VAC25-870-66~~ 9VAC25-875-600 of the Regulations. To the maximum degree possible, these improvements shall be made in such a manner as to preserve, enhance or restore the vegetation, including trees, along the creek line so that the aesthetic, environmental and ecological values of the vegetation are not lost to the community.
- C. Land disturbances within resource protection areas or resource management areas may require a water quality impact assessment in accordance with §4.18.8.
- D. Land disturbances shall comply with §4.5 and §4.18.

§4.16.6. Landowner's duties and responsibilities

- A. ~~Erosion and Stormwater~~ stormwater management permit requirement; exemptions
  - 1. Except as provided herein, no person may engage in any land-disturbing activity until a ~~VSMP-VESMP~~ authority permit has been issued in accordance with the provisions of §4.16. A land-disturbing activity shall be subject to:
    - (a) An erosion and sediment control plan as outlined in §4.16.6.B;
    - (b) A stormwater management plan, as outlined under §4.16.6.C;
    - (c) A Stormwater Pollution Prevention Plan as outlined in §4.16.6.D;
    - (d) A Pollution Prevention Plan as outlined in §4.16.6.E;
    - (e) The technical criteria and administrative requirements for land-disturbing activities outlined in §4.16.7;
    - (f) Payment of all fees as outlined in §4.16.7.G;
    - (g) Payment of all bonds as outlined in §4.16.7.H; and
    - (h) The requirements for long-term maintenance of control measures outlined under §4.16.8.K.
  - 2. In addition to the provisions in §4.16.6.A.1., a land disturbing activity that disturbs one (1) acre or greater or is part of a common plan of development or sale that disturbs one acre or greater shall also be subject to:
    - (a) A VPDES Construction General Permit Registration Statement;
    - (b) Documentation of an individual VPDES permit authorizing discharge of construction stormwater or coverage under the VPDES General Permit for Discharges of Stormwater from Construction Activities.
  - 23. A ~~Chesapeake Bay Preservation Act~~ Land-Disturbing Activity land-disturbing activity that disturbs 2,500 sq. ft. or greater and less than one acre for a single family detached residential structure, including additions or modifications to existing single-family detached residential structures, and is not part of a common plan or development or sale that disturbs one acre or greater, shall be subject to:
    - (a) ~~an~~ An erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, as outlined in §4.16.6.B;
    - (b) a A stormwater management plan, as outlined under §4.16.6.B, §4.16.6.C;
    - (c) ~~the~~ The technical criteria and administrative requirements for land-disturbing activities outlined in §4.16.7;
    - (d) Payment of all fees as outlined in §4.16.7.G;
    - (e) Payment of all bonds as outlined in §4.16.7.H; and
    - (f) ~~the~~ The requirements for long-term maintenance of control measures outlined under §4.16.8.K.
  - 3. ~~Notwithstanding any other provisions of §4.16, the following activities are exempt, unless otherwise required by federal law:~~
    - (a) ~~Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;~~

- (b) ~~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 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.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of §10.1-1163;~~
  - (c) ~~Single family residences separately built and disturbing less than 2,500 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single family detached residential structures;~~
  - (d) ~~Land disturbing activities that disturb less than 2,500 square feet of land area, or activities that are part of a larger common plan of development or sale that is 2,500 square feet or greater of disturbance;~~
  - (e) ~~Discharges to a sanitary sewer or a combined sewer system;~~
  - (f) ~~Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;~~
  - (g) ~~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 re-establishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this; and~~
  - (h) ~~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 VSMP administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of §4.16.6.B.1(a) is required within 30 days of commencing the land-disturbing activity.~~
4. Land disturbance associated with routine maintenance. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of a project shall be subject to:
- (a) An erosion and sediment control plan as outlined in §4.16.6.B.;
  - (b) Payment of all fees as outlined in §4.16.7.G; and
  - (c) Payment of all bonds as outlined in §4.16.7.H.
- The paving of an existing road with a compacted or impervious surface and re-establishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this.
5. Land disturbance associated with a state or federal reclamation program. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use shall be subject to
- (a) An erosion and sediment control plan as outlined in §4.16.6.B.;
  - (b) Payment of all fees as outlined in §4.16.7.G; and
  - (c) Payment of all bonds as outlined in §4.16.7.H.
6. 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 VESMP administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of §4.16.A. is required within 30 days of commencing the land-disturbing activity.

#### B. Erosion and sediment control plan; contents of plan

1. An erosion and sediment control plan, which is a component of the erosion and stormwater management plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control 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 in 9VAC25-875-560. The erosion and sediment control plan may include:

- (a) Appropriate maps;
  - (b) An appropriate soil and water plan inventory and management information with needed interpretations; and
  - (c) A record of decisions contributing to conservation treatment.
2. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity prior to issuance of a VESMP authority permit.
  3. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan.
  4. Land-disturbing activity of less than 2,500 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 2,500 square feet.
  5. The erosion and sediment control plan shall demonstrate location of vegetation that is to be preserved in compliance with §4.5.

BC. Stormwater management plan; contents of plan

1. The stormwater management plan, required in §4.16.7.D, must adhere to the performance standards and performance requirements set forth in §4.16.2 and §4.16.3, respectively, and apply the stormwater management technical criteria set forth in §4.16.8.C to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities. The 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:
  - (a) 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 pre-development and post-development drainage areas;
  - (b) 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;
  - (c) A narrative that includes a description of current site conditions and final site conditions;
  - (d) 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;
  - (e) Information on the proposed stormwater management facilities, including:
    - (1) The type of facilities;
    - (2) Location, including geographic coordinates;
    - (3) Acres treated;
    - (4) The surface waters or karst features, if present, into which the facility will discharge;
    - (5) Hydrologic and hydraulic computations, including runoff characteristics;
    - (6) Documentation and calculations verifying compliance with the water quality and quantity requirements of §4.16.8.C;
    - (7) A map or maps of the site that depicts the topography of the site and includes:
      - (i) All contributing drainage areas;
      - (ii) Existing drainage facilities and creeks and channels, including all 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 lots, 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.
2. Off-site compliance options such as the purchase of nutrient credits shall not be utilized in contravention of local water quality-based limitation as outlined in by §62.1-44.15:35 B. of the Code of Virginia. If an An operator intends to may meet the water quality and/or quantity requirements set forth in §4.16.8.C through the use of off-site compliance options, where applicable, if it has been determined that on-site mitigation is infeasible. If off-site compliance options are used, 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 §62.1-44.15:35, Code of Virginia.
  3. Elements of the stormwater management plans 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 state pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1, Code of Virginia.
  4. A construction record drawing for permanent stormwater management facilities shall be submitted to the ~~V~~S~~M~~P administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the state, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

ED. Stormwater pollution prevention plan; contents of plan

1. The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section ~~9VAC25-870-54~~ 9VAC25-875-500 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit.
2. 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.
3. The SWPPP must be maintained by the operator at a central location on site. If an on site location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

DE. Pollution prevention plan; contents of plan

1. A pollution prevention plan, as required by ~~9VAC25-870-56~~ 9VAC25-875-520, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
  - (a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  - (b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
  - (c) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
2. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

- (a) Wastewater from washout of concrete, unless managed by an appropriate control;
  - (b) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - (d) Soaps or solvents used in vehicle and equipment washing.
3. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

EF. Maintenance of facilities

Maintenance provisions shall be set forth in an instrument recorded in the local land records and facilities shall be maintained by the landowner in accordance with §4.16.8.K.

§4.16.7. City responsibilities

A. City-owned drainage system

The city shall maintain and control natural drainage systems and other facilities constructed by or dedicated to the city. In no event will the city be financially responsible for maintenance of private systems.

B. City-owned drainage system development impacted

The city shall specify, design and construct off-site improvements to the storm drainage system when such improvements are made necessary by changes in land use and when additional runoff caused by such changed land use cannot be adequately accommodated by facilities designed in accordance with the technical criteria specified in §4.16.8.C. Inadequacy must be sufficiently demonstrated through a request for exception, as specified in ~~9VAC25-870-57 and in accordance with 9VAC25-870-122~~ 9VAC25-875-170. Further, such off-site improvements are to be paid for by those landowners whose land alteration made the improvements necessary.

C. Stormwater management program established; submission and approval of plans; prohibitions

1. Pursuant to §62.1-44.15:27 of the Code of Virginia, The city of Fairfax hereby establishes a Virginia erosion and stormwater management program (VESMP) for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for ~~VSMPs~~ VESMPs promulgated by the State Board for the purposes of §4.16.1. The city of Fairfax hereby designates the Department of Public Works as the ~~VSMP~~ VESMP administrator of the ~~Virginia stormwater management program~~ VESMP.
2. No ~~VSMP~~ VESMP authority permit shall be issued by the ~~VSMP~~ VESMP administrator until the following items have been submitted to and approved by the ~~VSMP~~ VESMP administrator as prescribed herein:
  - (a) A permit application that includes a general permit registration statement, except for the construction of a single-family detached residential structure within or outside a common plan of development or sale, where no registration statement is required;
  - (b) An erosion and sediment control plan approved ~~in accordance with §4.17 that meets the requirements of §4.16.6.B;~~ and
  - (c) A stormwater management plan that meets the requirements of §4.16.6.B §4.16.6.C.
3. No ~~VSMP~~ VESMP authority permit shall be issued until evidence of general permit coverage is obtained.
4. No ~~VSMP~~ VESMP authority permit shall be issued until the fees required to be paid pursuant to §4.16.7.G, are received, and a reasonable performance bond required pursuant to §4.16.7.H has been submitted.
5. No ~~VSMP~~ VESMP authority permit shall be issued unless and until the 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 permit.



6. No grading, building or other local permit shall be issued for a property unless a ~~VSMP~~ VESMP authority permit has been issued by the ~~VSMP~~ VESMP administrator.

D. Review of erosion and sediment control and stormwater management plans

1. The ~~VSMP~~ VESMP administrator shall review the erosion and sediment control plan and the stormwater management plans and shall approve or disapprove a the erosion and sediment control plan and the stormwater management plan according to the following:
  - (a) The ~~VSMP~~ VESMP administrator shall determine the completeness of a plan in accordance with §4.16.6.B and 4.16.6.C, 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.
  - (b) The ~~VSMP~~ VESMP 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 subsection (a), above, then the plan shall be deemed complete and the ~~VSMP~~ VESMP administrator shall have 60 calendar days from the date of submission to review the plan.
  - (c) The ~~VSMP~~ VESMP administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.
  - (d) 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 §4.16.
  - (e) If a plan meeting all requirements of §4.16 is submitted and no action is taken within the time provided above in §4.16.8 for review, the plan shall be deemed approved.
2. The VESMP administrator may waive or modify any of the erosion and sediment control plan requirements that are deemed inappropriate or too restrictive for site conditions, by granting a VESMP variance. A VESMP variance may be granted under these conditions:
  - (a) At the time of plan submission, an applicant may request a VESMP variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting VESMP variances in writing. Specific VESMP variances which are allowed by the VESMP administrator, shall be documented in the plan.
  - (b) During construction, the person responsible for implementing the approved plan may request a VESMP variance in writing from the VESMP administrator. The VESMP administrator shall respond in writing either approving or disapproving such a request. If the VESMP administrator does not approve a VESMP variance within ten (10) working days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a VESMP variance request with additional documentation.
  - (c) The VESMP administrator shall consider VESMP variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect offsite properties and resources from damage.
23. Approved stormwater plans may be modified as follows:
  - (a) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the ~~VSMP~~ VESMP administrator. The ~~VSMP~~ VESMP administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
  - (b) The ~~VSMP~~ VESMP administrator may require that an approved stormwater management plan be amended, within a time prescribed by the ~~VSMP~~ VESMP administrator, to address any deficiencies noted during inspection.
  - (c) The ~~VSMP~~ VESMP administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The ~~VSMP~~ VESMP administrator may elect not to require construction record



drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to §4.16.8.K.2.

E. Hearings

1. Any permit applicant or permittee, or person subject to requirements of §4.16 aggrieved by any action of the city of Fairfax taken without a formal hearing, or by inaction of the city of Fairfax, may demand in writing a formal hearing by the city council causing such grievance, provided a petition requesting such hearing is filed with the ~~VSMP~~ VESMP administrator within 30 days after notice of such action is given by the ~~VSMP~~ VESMP administrator.
2. The hearings held under §4.16 shall be conducted by the city council at a regular or special meeting of the city council.
3. A verbatim record of the proceedings of such hearings shall be taken and filed with the circuit court of the county. Depositions may be taken and read as in actions at law.
4. The circuit court of the county or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

F. Appeals

1. Final decisions of the ~~VSMP~~ VESMP administrator under §4.16 may be appealed to the city council, provided an appeal is filed within 30 days from the date of any written decision by the ~~VSMP~~ VESMP administrator which adversely affects the rights, duties or privileges of any permit applicant or permittee, or person subject to ordinance requirements.
2. Final decisions of the city council under §4.16 may be subject to review by the circuit court of the county, provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of any permit applicant or permittee, or person subject to ordinance requirements.

G. Fees

1. Issuance of general permit coverage  
Fees to cover costs associated with implementation of a ~~VSMP~~ VESMP related to land disturbing activities and issuance of general permit coverage and ~~VSMP~~ VESMP authority permits shall be imposed in accordance with the ~~VSMP~~ VESMP Fee Schedule. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the ~~VSMP~~ VESMP Fee Schedule, as specified in §6.2.3.D.
2. Modifications or transfer of permit coverage  
Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with the ~~VSMP~~ VESMP Fee Schedule, as specified in §6.2.3.D. If the general permit modifications result in changes to stormwater management plans that require additional review by the city of Fairfax, such reviews shall be subject to the fees established in the ~~VSMP~~ VESMP Fee Schedule, as specified in §6.2.3.D. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in the ~~VSMP~~ VESMP Fee Schedule, as provided within the permit application package.
3. Annual permit maintenance fee  
The following annual permit maintenance fee shall be imposed in accordance with the ~~VSMP~~ VESMP Fee Schedule, as specified in §6.2.3.D, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. General permit coverage maintenance fees shall be paid annually to the city of

Fairfax by April 1st of each year. 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.

4. The fees set forth in subsections 1 through 3, above, shall apply to:
  - (a) All persons seeking coverage under the general permit.
  - (b) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
  - (c) Persons whose coverage under the general permit has been revoked shall apply to the department for an Individual VPDES Permit for Discharges of Stormwater from Construction Activities discharges associated with the construction activity.
  - (d) Permit and permit coverage maintenance fees, as adopted by the city outlined under subsection 3, above, may apply to each general permit holder.
5. No general permit application fees will be for:
  - (a) Minor modifications to general permits as defined in §4.16.6.B. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the ~~VSMP~~ VESMP administrator shall not be exempt pursuant to §4.16.
  - (b) General permits modified or amended at the initiative of the department, excluding errors in the registration statement identified by the ~~VSMP~~ VESMP administrator or errors related to the acreage of the site.
6. Incomplete payments  
All incomplete payments will be deemed as non-payments, 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 percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The city of Fairfax shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

#### H. Performance bond

Prior to issuance of any permit, the applicant shall 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 city attorney, to ensure that measures could be taken by the city of Fairfax 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 the city of Fairfax takes such action upon such failure by the applicant, the city 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.

#### I. ~~Illicit discharges~~

1. ~~It shall be unlawful for any person to discharge to or allow the discharge to the city's municipal separate storm sewer system any substance not composed entirely of stormwater. Unlawful discharges shall include any unauthorized runoff or illicit storm sewer connections on any property in the city of Fairfax that causes or allows by storm or floodwater the pollution of any state waters.~~
2. ~~The following activities shall be exempt from §4.16:~~
  - (a) ~~Discharges authorized by a valid national pollutant discharge elimination system (NPDES) permit, waiver or discharge order, a Virginia pollutant discharge elimination system (VPDES) permit, waiver or discharge order, or a Virginia pollution abatement (VPA) permit;~~
  - (b) ~~Discharges from firefighting, other life-saving activities or training related to those activities;~~
  - (c) ~~Discharges specified in writing by the city as necessary for public health and safety;~~
  - (d) ~~Any activity by a governmental entity in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems;~~

- (e) ~~Any activity by the city, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system;~~
  - (f) ~~Dye testing, provided verbal notification to the city prior to the time of test;~~
  - (g) ~~Diverting stream flows or rising groundwater, or infiltration of uncontained groundwater;~~
  - (h) ~~Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;~~
  - (i) ~~Water line flushing;~~
  - (j) ~~Landscape irrigation; including watering of lawns;~~
  - (k) ~~Air conditioning condensate;~~
  - (l) ~~Individual car washing on residential properties;~~
  - (m) ~~Swimming pool water provided that it has been de-chlorinated to the satisfaction of the VSMP administrator or designee; and~~
  - (n) ~~Incidental water from street and parking lot sweeping operations.~~
3. ~~Exempt activities listed in subsection I.2, above, that are found to be sources of pollution to state waters, shall be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters, as directed by city of Fairfax. Failure to comply with any such order shall be unlawful and in violation of §4.16.~~
  4. ~~The city of Fairfax shall have authority to carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance or noncompliance with the provisions of §4.16. The city shall notify any person in violation of §4.16 with a written warning notice specifying the particulars of the violation and requesting immediate investigation and resolution of the matter. Nothing in §4.16 shall limit the city from taking emergency action or other enforcement action without issuing a warning notice.~~
  5. ~~The city of Fairfax shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.~~
  6. ~~A willful violation of the provisions of §4.16 shall constitute a Class 1 misdemeanor. Each day that a continuing violation of §4.16 is maintained or permitted to remain shall constitute a separate offense.~~
  7. ~~Any person who commits any act prohibited by §4.16 shall be liable to the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.~~
  8. ~~Any person who commits any act prohibited by §4.16 shall be subject to a civil penalty in an amount not to exceed \$1,000 for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.~~
  9. ~~The remedies set forth in §4.16 shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, which one or more of the remedies set forth herein has been sought or granted.~~

#### §4.16.8. Specifications

##### A. Purpose

§4.16.8 specifies design, construction, inspection and maintenance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities to be used within the city.

##### B. Applicability

The design, construction, inspection and maintenance of all stormwater BMPs, on-site detention facilities, and on-site drainage facilities, whether privately or municipally owned, are to be accomplished in accordance with applicable provisions of §4.16.8.

##### C. Design requirements

1. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city of Fairfax hereby adopts the technical criteria for regulated land-disturbing activities set forth in 9VAC25-870-62, Part II-B of the Regulations, as amended, expressly



- to include ~~9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [off site compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; 9VAC25-870-85 [stormwater management impoundment structures or facilities]; and 9VAC25-870-92 [comprehensive stormwater management plans]~~ in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9VAC25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to §4.16, except as expressly set forth in §4.16.8.C.2.
2. Any land disturbing activity shall be considered grandfathered by the ~~VSM~~VESMP authority and shall be subject to the ~~Part II C technical criteria (9VAC25-870-93 through 9VAC25-870-99) of the VSM Regulation~~ provided shall be subject to the technical requirements Part IIC of the VESMP Regulations (9VAC25-875-670 et. seq.):
    - (a) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in ~~9VAC25-870-10 9VAC25-875-20~~, (iii) will comply with the Part II C technical criteria of the ~~VSM~~VESMP Regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
    - (b) A state permit has not been issued prior to July 1, 2014; and
    - (c) Land disturbance did not commence prior to July 1, 2014.
  3. Locality, state and federal projects shall be considered grandfathered by the ~~VSM~~VESMP authority and shall be subject to the ~~Part II C technical criteria (9VAC25-870-93 through 9VAC25-870-99) of the VSM Regulation~~ shall be subject to the technical requirements Part IIC of the VESMP Regulations (9VAC25-875-670 et. seq.) provided:
    - (a) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;
    - (b) A state permit has not been issued prior to July 1, 2014; and
    - (c) Land disturbance did not commence prior to July 1, 2014.
  4. Land disturbing activities grandfathered under subsections 2 and 3, above, shall remain subject to the ~~Part II C technical criteria (9VAC25-870-93 through 9VAC25-870-999VAC25-875-670 et. seq.) of the VSM~~ VESMP Regulations for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.
  5. 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 criteria of Part II C (~~9VAC25-870-93 through 9VAC25-870-999VAC25-875-670 et. seq.~~).
  6. The ~~VSM~~VESMP administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and §4.16 are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are 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 §4.16.
    - (a) Exceptions to the requirement that the land-disturbing activity obtain required ~~VSM~~VESMP authority permit shall not be given by the ~~VSM~~VESMP administrator, nor shall the ~~VSM~~VESMP 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 department.

- (b) Exceptions to requirements for phosphorus reductions shall not be allowed unless off site options otherwise permitted pursuant to ~~9VAC25-870-69~~ 9VAC25-875-610 have been considered and found not available.

7. Nothing in §4.16 shall preclude an operator from constructing to a more stringent standard at their discretion.

D. On-site drainage facilities

1. On-site drainage

On-site drainage shall be adequate to prevent flooding or damage to any structure located on the site.

2. Gutters and inlets

Gutters and inlets shall be adequate to limit the spread of water in the street to half a travel lane plus its gutter, or eight feet.

3. Primary drainage facilities

- (a) Where culverts, storm sewers or other enclosed conduits have been approved for use by the director of public works as storm drainage transport they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flood damage to private or public property. Conduits used in conjunction with gutters and inlets shall be adequate to limit the system hydraulic grade line to no higher than one foot below the grade of the gutter.

- (b) Where on-site drainage facilities are proposed, the applicant shall make provision or identify for:

- (1) Safety factors;
- (2) Materials; and
- (3) Cleaning, maintenance, inspection.

4. Design storms shall be as specified:

Usage	Design storm
Streets, gutters and inlets	10-year storm
Culverts/storm sewers	100-year storm [1]

[1] In the absence of potentially damaged private or public property the 25-year design storm shall be used as a minimum

E. On-site detention facilities

The design of on-site detention facilities, as may be requested or approved by the ~~VSMF~~ VESMP administrator, shall be as set forth in Part II B of the Regulations, ~~9VAC25-870-66~~ 9VAC25-875-600 [water quantity], as specified in §4.16.8.C.

F. Municipal creeks and channels

Where primary channels or other open conduits have been approved for use by the director of public works as storm drainage transports they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flooding outside of any floodplain area designated in this chapter. The design storm for channels to be used for conveyance shall be the 100-year storm.

~~G. Municipal drainage facility~~

~~Design criteria shall be as set forth in §4.16.8.D where applicable.~~

~~H.G.~~ Municipal detention facilities

Design criteria shall be as set forth in §4.16.8.E where applicable.

H. Municipal drainage facility

Design criteria shall be as set forth in §4.16.8.D where applicable.

I. Construction requirements

All construction shall conform to the ASTM standards, the state department of transportation road and bridge specifications, as amended, and the Virginia Uniform Statewide Building Code, as amended.

J. Inspection requirements

Periodic inspections shall be performed by the city to ensure that the facilities are being built in accordance with the plans and specifications.

1. The ~~VSMP~~ VESMP administrator, or any duly authorized agent of the ~~VSMP~~ VESMP administrator, shall inspect the land-disturbing activity during construction for:
  - (a) Compliance with the approved erosion and sediment control plan;
  - (b) Compliance with the approved stormwater management plan;
  - (c) Development, updating, and implementation of a pollution prevention plan; and
  - (d) Development and implementation of any additional control measures necessary to address a TMDL.
2. The ~~VSMP~~ VESMP administrator, or any duly authorized agent of the ~~VSMP~~ VESMP administrator, may, at reasonable times and under reasonable circumstances, enter any establishment or any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of §4.16.
3. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the ~~VSMP~~ VESMP administrator may also enter any establishment 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.
4. Pursuant to §62.1-44.15:40 of the Code of Virginia, the ~~VSMP~~ VESMP administrator may require every ~~VSMP~~ VESMP authority permit applicant or permittee, or any such person subject to ~~VSMP~~ VESMP authority permit requirements under §4.16, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of §4.16.
5. Post-construction inspections of stormwater management facilities required by the provisions of §4.16 shall be conducted by the ~~VSMP~~ VESMP administrator, or any duly authorized agent of the ~~VSMP~~ VESMP administrator, pursuant to the city's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five years except as may otherwise be provided for in §4.16.8.K.

K. Long-term maintenance of permanent stormwater facilities

1. Provisions for long-term responsibility and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff are required by the ~~VSMP~~ VESMP administrator provisions shall be set forth in an instrument recorded in the local land records prior to general permit termination, or earlier, as may be required by the ~~VSMP~~ VESMP administrator and shall at a minimum:
  - (a) Be submitted to the ~~VSMP~~ VESMP administrator for review and approval prior to the approval of the stormwater management plan;
  - (b) Be stated to run with the land;
  - (c) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (d) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the ~~VSMP~~ VESMP administrator; and
  - (e) Be enforceable by all appropriate governmental parties.
2. Natural drainage channels on private property  
Where natural drainage channels pass through a landowner's property, it shall be the responsibility of the landowner to maintain the natural channel in a manner that will not be detrimental to other inhabitants of the city. No change shall be made in the contours of any land which affects the course, width or elevation of any floodplain or natural or other drainage channel in any manner which will obstruct, interfere with or change the drainage of such land without providing adequate drainage in connection therewith, as approved by the ~~VSMP~~ VESMP administrator. The bounds of the natural stream channel are to be considered as extending to the water level identified for the 100-year storm as defined in Article



9. All natural stream modifications and maintenance are to be accomplished in accordance with the city storm drainage facility specifications as they may be promulgated by the ~~VSMP~~ VESMP administrator and approved by the city council from time to time.

3. Maintenance of facilities

- (a) The landowner and his successors in title to the facilities and the site served thereby shall be responsible for the repair, replacement and other maintenance of the facility.
- (b) The landowner and his successors shall perform periodic maintenance on the facilities and such other repairs, replacements or maintenance thereon as may be required by the ~~VSMP~~ VESMP administrator.
- (c) The ~~VSMP~~ VESMP administrator, his agent or representative, may inspect the facilities from time to time to determine the necessity of repair, replacement or other maintenance thereof.
- (d) If the facilities are determined to be in need of repair, replacement or other maintenance, the ~~VSMP~~ VESMP administrator, his agent or representative, shall serve on the landowner a written notice describing the condition of the facilities and specifying the required repairs, replacements or other maintenance to be made to correct such deficiencies.
- (e) Any landowner aggrieved by the determination of the ~~VSMP~~ VESMP administrator, his agent or representative, may appeal such determination to the city in accordance with §4.16.7.F.
- (f) Upon refusal or neglect by the landowner or his successors to comply with the repairs, replacements or other maintenance required by the ~~VSMP~~ VESMP administrator, the city, through its agents or employees, may repair, replace or otherwise maintain such facilities.
- (g) If the city, through its agents or employees, repairs, replaces or otherwise maintains any facility after complying with the notice requirements of §4.16, the costs or expenses thereof shall be charged to and paid by the landowner and/or his successors and may be collected by the city as taxes and levies are collected.
- (h) Every charge authorized by §4.16 with which the landowner or his successors has been assessed and which remains unpaid shall constitute a lien against the property.

§4.16.9. Enforcement

- A. If the ~~VSMP~~ VESMP administrator determines that there is a failure to comply with the ~~VSMP~~ VESMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served 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.
  - 1. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with §4.16.8 or the permit may be revoked by the ~~VSMP~~ VESMP administrator.
  - 2. If a permittee fails to comply with a notice issued in accordance with §4.16 within the time specified, the ~~VSMP~~ VESMP 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. Such orders shall be issued in accordance with §6.14. Such orders 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 city, or by personal delivery by an agent of the ~~VSMP~~ VESMP administrator. However, if the ~~VSMP~~ VESMP administrator finds 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 state 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. If a person who has been issued an order is not complying with the terms thereof, the ~~VSMP~~ VESMP administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with §4.16.2).

- B. In addition to any other remedy provided by §4.16, if the ~~VSMP~~ VESMP administrator determines that there is a failure to comply with the provisions of §4.16, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with §4.16.9.
- C. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the ~~VSMP~~ VESMP administrator may be compelled in a proceeding instituted in circuit court of the county by the city to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- D. Any person who violates any provision of §4.16 or who fails, neglects, or refuses to comply with any order of the ~~VSMP~~ VESMP administrator, 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 §4.16 shall include but not be limited to the following:
    - (a) No state permit registration;
    - (b) No SWPPP;
    - (c) Incomplete SWPPP;
    - (d) SWPPP not available for review;
    - (e) No approved erosion and sediment control plan;
    - (f) Failure to install stormwater BMPs or erosion and sediment controls;
    - (g) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
    - (h) Operational deficiencies;
    - (i) Failure to conduct required inspections;
    - (j) Incomplete, improper, or missed inspections; and
    - (k) Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.
  - 2. The ~~VSMP~~ VESMP administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  - 3. In imposing a civil penalty pursuant to §4.16, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
  - 4. Any civil penalties assessed by a court as a result of a summons issued by the city shall be paid into the treasury of the city to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the city and abating environmental pollution therein in such manner as the court may, by order, direct.
- E. Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of §4.16, any order of the ~~VSMP~~ VESMP administrator, 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 or a fine of not less than \$2,500 nor more than \$32,500, or both.

§4.16.10. Erosion, stormwater management, and ~~Storm~~ storm drainage facilities-related definitions

In addition to the definitions set forth in ~~9VAC25-870-10~~ 9VAC25-875-20 of the Virginia Erosion and Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in §4.16 have the

following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

**APPLICANT:** Any person, including any authorized agent, submitting an application for a permit or requesting issuance of a permit under §4.16.

**BEST MANAGEMENT PRACTICE OR BMP:** ~~Schedules of activities, prohibitions of practices, including both structural and non-structural 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.~~

**CHESAPEAKE BAY PRESERVATION ACT LAND-DISTURBING ACTIVITY:** ~~A land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, §62.1-44.15:67 et seq.~~

**CLEAN WATER ACT OR CWA:** ~~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.~~

**COMMON PLAN OF DEVELOPMENT OR SALE:** ~~A contiguous area where separate and distinct construction activities may be taking place at different times on difference schedules.~~

**CONTROL MEASURE:** ~~Any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.~~

**DEPARTMENT:** ~~The Virginia Department of Environmental Quality.~~

**DESIGN STORM:** All possible combinations of particular storm intensity-duration events occurring on the design storm curve.

**DEVELOPMENT:** All and any 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-silviculture purposes. See definition in §9.3.1 regarding applicability other than for storm drainage facilities.

**EROSION IMPACT AREA:** 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.

**FACILITY:** A stormwater BMP, on-site detention facility, or an on-site drainage facility.

**GENERAL PERMIT:** ~~A state permit authorizing a category of discharges under the CWA and the Act within a geographical area.~~

**ILLICIT DISCHARGE:** ~~Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), and discharges identified by and in compliance with 9VAC25-870-400 and in §4.16~~

**LAND DISTURBANCE OR LAND-DISTURBING ACTIVITY:** ~~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 those exemptions specified in §4.16.6.A.~~ Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include:



(1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work; (2) Installation, maintenance or repair of any 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) Installation, maintenance or repair of any septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system; (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title § 45.2 of the Code of Virginia; (7) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (8) 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 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 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 the Code of Virginia; (9) Disturbed land areas of less than 2,500 square feet in size; (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 the projects are approved by local wetlands boards, the state 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 the VESMA and the regulations adopted pursuant thereto; and (12) 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 City shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of this article are required within thirty (30) days of commencing the land-disturbing activity.

LAYOUT: A conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

MAXIMUM PEAK RUNOFF: The largest peak runoff permitted to occur from any of the particular storms on the design storm curve.

METERING: The controlled release of water into the primary drainage system.

MINOR MODIFICATION: An amendment to an existing general 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 general permit modification or amendment does not substantially alter general 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.

MUNICIPAL DETENTION FACILITIES: City-owned facilities located along primary drainage facilities. Creeks or channels that serve the purpose of reducing peak flow by metered release and by storage of that input flow which exceeds the metered output.

MUNICIPAL SEPARATE STORM SEWER SYSTEM OR “MS4”: All separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems or designated under ~~9VAC25-870-380~~ 9VAC25-875-950.

ON-SITE DETENTION FACILITY: A facility located on a site which serves the purpose of collecting and detaining rainfall falling on the site for controlled release to the primary facilities as a result of land alteration.

OPERATOR: The owner or operator of any facility or activity subject to regulation under §4.16.

PEAK RUNOFF: The largest runoff intensity that will occur from a particular storm intensity-duration event on the design storm curve.

PERMIT OR ~~V~~SMP VESMP AUTHORITY PERMIT: An approval to conduct a land-disturbing activity issued by the ~~V~~SMP VESMP administrator for the initiation of a land-disturbing activity, in accordance with §4.16, and which may only be issued after evidence of general permit coverage has been provided by the Department.

PERMITTEE: The person to whom the ~~V~~SMP VESMP Authority Permit is issued.

~~PERSON: Any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.~~

~~POLLUTION: Such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety and welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are “pollution” for the terms and purposes of this chapter.~~

PRIMARY CREEKS AND CHANNELS: Natural creeks and open channels located on either private or public property which serve the purpose of collecting rainfall runoff from other sites and routing it from the city to the rivers. A creek or channel shall be considered a primary facility if it accommodates a runoff flow of at least 1.5 times that amount originating from the site on which it is located.

PRIMARY DRAINAGE FACILITIES: Culverts, gutters, enclosed channels, etc., which serve the purpose of collecting rainfall runoff from other sites and routing it to primary creeks and channels. Drainage Facilities shall be considered as primary if they accommodate a flow of at least 1.5 times that amount originating from the site on which they are located.

REGULATIONS: Virginia Erosion and Stormwater Management Program (~~V~~SMP VESMP) Permit Regulations, ~~9VAC25-870~~ 9VAC25-875-10 et. seq., as amended.

~~SITE: 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. Areas channel-ward of mean low water in tidal Virginia shall not be considered part of a site.~~

STATE: The Commonwealth of Virginia.

STATE BOARD: The State Water Control Board.

STATE PERMIT: An approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the State imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act, and the Regulations.

~~STATE WATER CONTROL LAW: Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.~~

~~STATE WATERS: All water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction, including wetlands.~~

~~STORMWATER: Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snowmelt runoff, and surface runoff and drainage.~~

~~STORMWATER MANAGEMENT PLAN: A document(s) containing material describing methods for complying with the requirements of §4.16.~~

~~STORMWATER POLLUTION PREVENTION PLAN OR SWPPP: A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this chapter. In addition, the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.~~

~~SUBDIVISION: Division or re-division of a lot, tract or parcel of land into two or more lots or other division of land. This includes any changes in street or lot lines.~~

~~TOTAL MAXIMUM DAILY LOAD OR TMDL: The sum of the individual waste load 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.~~

~~VSMP VARIANCE: As applied to the VESMP, a waiver or modification of the erosion and sediment control requirements found in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of the Virginia Erosion and Stormwater Management Regulations, as applied in §4.16~~

~~VESMP ADMINISTRATOR: The VESMP authority including the city of Fairfax staff person, department, or assigned designee responsible for administering the VESMP on behalf of the city.~~

~~VIRGINIA EROSION AND STORMWATER MANAGEMENT ACT OR ACT: Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.~~

~~VIRGINIA STORMWATER BMP CLEARINGHOUSE WEBSITE: The 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 EROSION AND STORMWATER MANAGEMENT PROGRAM OR VSMP/VESMP: A program approved by the State Board after September 13, 2011, that has been established by the city of Fairfax to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in §4.16, and evaluation consistent with the requirements of §4.16 and associated regulations.~~

~~VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM AUTHORITY OR VSMP/VESMP AUTHORITY: The authority approved by the State Board after September 13, 2011, to operate a Virginia Erosion and Stormwater Management Program.~~



~~VSMP Administrator: The VSMP authority including the city of Fairfax staff person, department, or assigned designee responsible for administering the VSMP on behalf of the city.~~

**BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 4, §4.17 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

**§4.17. EROSION AND SEDIMENT CONTROL ILLICIT DISCHARGES**

**§4.17.1. ~~Monitoring, reports and inspections~~ Illicit Discharges**

~~The plan approving authority shall periodically in accordance with section 9VAC 840-60.B of the Virginia Erosion and Sediment Control Regulations inspect land disturbing activities for compliance with the approved plan and permit. The owner, permittee, or person responsible for carrying out the plan shall be given notice of inspections.~~

- ~~A. Monitoring and reports may be required by the plan approving authority of the owner, permittee, or person responsible for carrying out the plan to ensure compliance with the plan and that the measures required in the plan are effective in controlling erosion and sediment.~~
- ~~B. Upon determination of a failure to comply with the plan, the plan approving authority shall serve notice by certified or registered mail to the address specified in the permit application or by hand delivery to the owner, permittee, or person responsible for carrying out the plan, specifying the measures needed for plan compliance and the time within which the measures must be completed. Failure to comply within the specified time may result in revocation of the permit at which time the notified individual shall be deemed to be in violation of §4.17.~~
- ~~C. Regardless of the requirement for notice in §4.17.1.B, above, if land disturbing activities begin without an approved plan, the plan approving authority may issue an order requiring all land disturbing activities be stopped until an approved plan and required permits are obtained. If the alleged violator has not obtained an approved plan and required permits within seven days from the service date of the order, the plan approving authority shall issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and required permits are obtained. The order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the city land records. The order shall be lifted immediately upon completion of corrective action and obtaining plan approval and required permits. The owner may appeal the issuance of an order to the circuit court of the county. In addition, if the alleged activity is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the state, the plan approving authority may issue an order requiring that all land disturbing activities be stopped regardless of the notice requirement of §4.17.1.A).~~
- ~~D. Unless the violation is causing or is in imminent danger of causing harmful land erosion or sediment deposition in waters within the watersheds of the state, or land disturbing activities occurred without an approved plan and required permit, an order to stop work shall only be issued after the alleged violator failed to comply with a notice to comply sent according to §4.17.1.A. The order may require that all or part of the land disturbing activities be stopped until the specified corrective measures have been taken. The order shall be served by certified mail or hand delivery and shall remain in effect for seven days from the date of service pending application by the city or alleged violator to the circuit court of the county for appropriate relief. The order shall be lifted immediately upon completion of corrective measures. Nothing in §4.17 shall prevent the plan approving authority from taking any other action specified in §4.17.~~

It shall be unlawful for any person to discharge to or allow the discharge to the city's municipal separate storm sewer system any substance not composed entirely of stormwater. Unlawful discharges shall include any unauthorized runoff or illicit storm sewer connections on any property in the city of Fairfax that causes or allows by storm or floodwater the pollution of any state waters. Enforcement of illicit discharges shall be in accordance with §9VAC25-875-150 C. and §4.16.9.

A. The following activities shall be exempt from §4.17:

1. The non-stormwater discharges or flows covered by a separate individual or general VPDES or state permit for non-stormwater discharges;
2. The individual non-stormwater discharges or flows have been identified by the department as de minimis discharges that are not significant sources of pollutants to surface waters and do not require a separate VPDES permit;
3. The non-stormwater discharges or flows are identified in this subdivision and have not been identified by the operator or by the department as significant contributors of pollutants to the MS4:
  - (a) Water line flushing, managed in a manner to avoid an instream impact;
  - (b) Landscape irrigation;
  - (c) Diverted stream flows;
  - (d) Rising groundwaters;
  - (e) Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);
  - (f) Uncontaminated pumped groundwater;
  - (g) Discharges from potable water sources managed in a manner to avoid instream impact;
  - (h) Foundation drains;
  - (i) Air conditioning condensation;
  - (j) Irrigation water;
  - (k) Springs;
  - (l) Water from crawl space pumps;
  - (m) Footing drains;
  - (n) Lawn watering;
  - (o) Individual residential car washing;
  - (p) Flows from riparian habitats and wetlands;
  - (q) Dechlorinated freshwater swimming pool discharges managed in a manner to avoid instream impact;
  - (r) Street and pavement wash waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;
  - (s) Routine external building washdown provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous substances, and the wash water is filtered, settled, or similarly treated prior to discharge;
  - (t) Discharges or flows from emergency firefighting activities;
  - (u) Discharges or flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact in accordance with § 9.1-207.1 of the Code of Virginia;
  - (v) Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners in accordance with § 15.2-2114.1 of the Code of Virginia; or
  - (w) Other activities generating discharges identified by the department as not requiring VPDES authorization.
4. The immediate discharge of materials is necessary to protect life or property as determined by fire department personnel or emergency management officials or any discharge in accordance with 9VAC25-31-40. The operator shall take or ensure that the responsible party takes all reasonable steps to minimize or prevent any adverse effect on human health or the environment.

B. Exempt activities listed in 4.17.1.A. that are found to be sources of pollution to state waters, shall be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters, as directed by city of Fairfax. Failure to comply with any such order shall be unlawful and in violation of §4.17.

C. The city of Fairfax shall have authority to carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance or noncompliance with the provisions of §4.17. The city shall notify any person in violation of §4.17 with a written warning notice specifying the particulars of the violation and requesting immediate investigation and resolution of the matter. Nothing in §4.17 shall limit the

city from taking emergency action or other enforcement action without issuing a warning notice.

- D. The city of Fairfax shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.
- E. A willful violation of the provisions of §4.17 shall constitute a Class 1 misdemeanor. Each day that a continuing violation of §4.17 is maintained or permitted to remain shall constitute a separate offense.
- F. Any person who commits any act prohibited by §4.17 shall be liable to the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.
- G. Any person who commits any act prohibited by §4.17 shall be subject to a civil penalty in an amount not to exceed \$1,000 for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.
- H. The remedies set forth in §4.17 shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, which one or more of the remedies set forth herein has been sought or granted.

#### §4.17.2. ~~Penalties, injunctions and other legal actions~~ Definitions

- A. ~~Violations of any requirement of §4.17 or any condition of a permit shall be subject to a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land disturbing activities without an approved plan shall be \$1,000.~~
- B. ~~In no event shall a series of violations arising from the same set of operative facts result in civil penalties, which exceed a total of \$3,000, except that a series of violations ensuing from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties, which exceed \$10,000.~~
- C. ~~The plan approving authority may apply to the circuit court of the county to enjoin a violation or a threatened violation.~~
- D. ~~Any person violating, failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to Code of Virginia, §62.1-44.15:56 shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalty so assessed shall be payable to the treasury of the city.~~
- E. ~~In accordance with §4.17.1, the plan approving authority may revoke a permit for failing to comply to with an approved plan.~~

For the purposes of §4.17, the following words and phrases shall have the meanings respectively ascribed to them by §4.17 unless the context clearly indicates otherwise.

ILLICIT DISCHARGE: Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), and discharges identified by and in compliance with §4.17.1.

POLLUTION: Such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety and welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes



to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are “pollution” for the terms and purposes of this chapter.

**BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 4, §4.18 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

§4.18. CHESAPEAKE BAY PRESERVATION

§4.18.1. Purpose and intent

§4.18 is enacted to implement the requirements of Code of Virginia, §62.1-44.15:75 ~~67~~ et seq., the Chesapeake Bay Preservation Act. These regulations establish the criteria that the city shall use to determine the extent of the Chesapeake Bay preservation areas. These regulations also establish criteria for use by the city in approving, disapproving or modifying requests to rezone, subdivide, use, develop and/or redevelop land in Chesapeake Bay preservation areas. The intent of the city council and the purpose of §4.18 is to:

- A. Protect sensitive environmental lands within the city;
- B. Safeguard the quality of state waters;
- C. Prevent further increase in pollution of state waters;
- D. Reduce existing pollution of state waters; and
- E. Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the city.

....

§4.18.4. Allowed uses

- A. Development, land disturbances and uses authorized by underlying zoning classifications are allowed provided that they are carried out in accordance with the applicable general performance standards set forth in §4.18.7 or otherwise modified by the requirements set forth herein.
- B. Development in resource protection areas (RPAs) shall be subject to review and approval by the city and may be permitted if it:
  - 1. Constitutes redevelopment; or
  - 2. Is a roadway or driveway not exempt under ~~§4.18.10~~ §4.18.11, provided that:
    - (a) There are no reasonable alternatives to aligning the road or driveway in or across the RPA;

- (b) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality; and
    - (c) The design and construction of the road or driveway satisfy all applicable criteria of §4.18, including the submission of a water quality impact assessment.
    - (d) The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals.
  - 3. Is a flood-control or stormwater-management facility that drains or treats water from multiple development projects or from a significant portion of a watershed, provided that:
    - (a) The location of the facility within the RPA is the optimum location;
    - (b) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
    - (c) The facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay local assistance board as a phase I modification to this program;
    - (d) All applicable permits for construction in state and federal waters are 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; and
    - (e) Approval from the city prior to construction.
  - 4. Is a new use established pursuant to §4.18.7.D.2.
- C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §4.18 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 an RPA.
- D. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7 as well as the development review procedures of §6.13.
- E. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within a resource protection area or a resource management area. The zoning administrator may waive the requirement for a water quality impact assessment in a resource management area upon determination that the proposed land disturbance, development or redevelopment would not significantly impact water quality. If a water quality impact assessment is required, the assessment shall include the entire lot, parcel or development project as the area of impact and shall be conducted in accordance with §4.18.8.

F. A climate change and sea-level rise assessment and adoption of adaption measures shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance §4.18.9.

....

#### §4.18.7. General performance standards

##### A. Purpose and intent

1. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.
2. The performance standards are intended to prevent a net increase in nonpoint source pollution from new development and to achieve a 10 percent reduction in nonpoint source pollution from redevelopment.

##### B. Development and redevelopment in Chesapeake Bay preservation areas

1. Land disturbance shall be minimized and limited to the area necessary to provide for the desired use or development.
  - (a) In accordance with an approved subdivision or site plan, the extent of land disturbing activity, including clearing or grading, shall be limited to the specified construction footprint. The limits of disturbance shall be clearly shown on submitted plans and physically marked on the development site.
  - (b) Ingress and egress during construction shall be limited to one access point unless otherwise approved by the zoning administrator.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development proposed and in accordance with ~~the~~ “Virginia Erosion and Sediment Control Handbook.” §4.5.9.D.3. and other information that the zoning administrator deems essential.
  - (a) Existing trees ~~shall be preserved~~ outside the limits of disturbance shall be preserved and protected from destruction through all phases of construction, however, diseased trees or trees weakened by age, storm, fire or other injury may be removed, subject to approval of the zoning administrator as required in §6.10.
  - (b) Clearing and grading shall be limited outside the defined limits of disturbance. Clearing shall be allowed only to provide public roads, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the zoning administrator.
  - (c) Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development, subject to approval of the zoning administrator as required in §6.10.



(ed) Prior to clearing or grading, suitable protective barriers, ~~such as safety fencing, shall be erected at the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be permitted within the area protected by the barrier~~ tree protections shall be installed and maintained as specified on the approved tree conservation plan at all phases of construction in accordance with §4.5.9.D.

3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
4. Notwithstanding any other provisions of §4.18, or any exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet shall comply with the requirements of §4.16, Erosion and Stormwater Management and Storm Drainage Facilities, and ~~§4.17, Erosion and sediment control.~~
5. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years. However, 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.
6. 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 that operates under a permit issued by the state water control board until the structure is served by public sewer.
7. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with §4.16, Storm Drainage Facilities and 9VAC25-870-63 of the Virginia Stormwater Management Regulations.
8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator in accordance with the development review procedures of §6.13.

#### C. Performance criteria for resource protection areas

The following criteria shall apply specifically within resource protection areas and supplement the general performance criteria contained in §4.18:

1. All redevelopment activities shall conform to the regulations contained in §4.15, Floodplains; and §4.16, Erosion and Stormwater Management and Storm Drainage Facilities; and ~~§4.17, Erosion and Sediment Control.~~ Redevelopment shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover within the RPA and no further encroachment within the RPA.
2. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance with §4.18.8 and §4.18.4.D.
3. A climate change sea level assessment and adoption of adaption measures shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance §4.18.9.

#### D. Buffer area requirements

To minimize the adverse effects of human activities on the core 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, preservation of mature trees, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. The buffer area shall be maintained to meet the following additional performance standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval of the zoning administrator as required in §6.10, 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:
2. 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 zoning administrator may permit encroachments into the required buffer area pursuant to §4.18.11, Administrative waivers and special exceptions, and in accordance with the following provisions:
  - (a) Encroachments into 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 shall be established elsewhere on the lot or parcel in a manner that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area; and
  - (c) In no case shall the encroachment extend into the seaward 50 feet of the buffer area.
3. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and November 25, 2003, the zoning administrator may permit encroachments into the required buffer area pursuant to ~~§4.18.11~~ §4.18.12, Administrative waivers and special exceptions, and in accordance with the following provisions:
  - (a) The lot or parcel was created as a result of a legal process conducted in conformity with the city's subdivision regulations;
  - (b) Conditions or mitigation measures imposed through a previously-approved exception shall be met;
  - (c) If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be re-established or repaired and maintained as required;
  - (d) The criteria listed in §4.18.7.D.2 shall be satisfied.

#### §4.18.8. Water quality impact assessment

##### A. Purpose and intent

The purpose of the water quality impact assessment is to:

1. Identify the impacts of proposed development on water quality and lands within resource protection areas;

2. Ensure that, where redevelopment does take place within resource protection areas, it is located on those portions of a site and in a manner that is least disruptive to the natural functions of resource protection areas; and
3. Specify mitigation to address water quality protection.

#### B. Water quality impact assessment

A water quality impact assessment shall be submitted for:

1. Any proposed land disturbance, development or redevelopment within a resource protection area including any buffer area modification or reduction as provided for in §4.18.7; or
2. Any proposed development or redevelopment in the resource management area that may significantly impact water quality due to the unique characteristics of the site or intensity of the proposed use or development, as determined by the zoning administrator in accordance with §4.18 and §4.18.4.D. There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

#### C. Minor water quality impact assessment

A minor water quality impact assessment pertains only to development resulting in no more than 5,000 square feet of land disturbance, or development that encroaches onto the landward 50 feet of the 100-foot buffer area. The calculations of a minor assessment will demonstrate that the remaining buffer area and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post development stormwater runoff. A minor assessment shall include a site drawing to scale that shows the following:

1. Location of the components of any RPA, including the 100-foot buffer area;
2. Location and nature of the proposed improvements, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
3. Type and location of proposed best management practices to meet the required general performance standards specified in §4.18.7;
4. ~~Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;~~ Location, size, and condition of all existing trees five inches or greater in diameter measured at standard height to be impacted to meet requirement of §6.10 and in accordance with §4.5.9.D.1. Existing trees to be preserved shall be indicated on the plan, including any necessary tree protection measures. Mature trees shall be protected during development and may only be removed where necessary, including to provide for the proposed use or development, subject to approval by the zoning administrator as required by §6.10; and
5. ~~A revegetation plan that supplements the Location, type, and number of replacement vegetation to restore the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control mitigation of removed mature trees and maximizes buffer function.~~

#### D. Major water quality impact assessment



1. A major water quality impact assessment shall be required for any development that exceeds 5,000 square feet land disturbance or that encroaches onto the seaward 50 feet of the 100-foot buffer area; or is located in the resource management area and is deemed necessary by the zoning administrator.
2. The information required in this subsection D shall be considered a minimum, unless the zoning administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
3. The following elements shall be included in the preparation and submission of a major water quality impact assessment:
  - (a) All of the information required in a minor water quality impact assessment, as specified in subsection C, above;
  - (b) A hydrogeological element that describes existing topography, estimates of soils characteristics and potential for erosion, hydrology of the area, impacts on wetlands and streams, proposed mitigation measures, and a listing of requisite permits with permit or application status.
  - (c) ~~A landscape element that fully describes existing trees required to be identified as part of a tree conservation plan~~ A tree conservation plan that identifies existing trees to be preserved or removed to meet the requirements of §6.10 and in accordance with §4.5.9.D.1; limits of clearing and grading; trees and indigenous vegetation that are to be preserved within the disturbed area; measures to be taken to protect vegetation, proposed plantings, and other vegetative measures used to enhance water quality; and a proposed construction schedule that includes all activities related to clearing, grading, and proposed plantings; and tree protection measures for existing trees to remain;
  - (d) A landscape plan that includes canopy trees, understory trees, shrubs, and groundcover plant types, using native species and in accordance with §4.5.9., to restore the existing buffer in a manner that provides for mitigation of removed mature trees and maximizes buffer function; and
  - (~~e~~) Such other measures as deemed necessary by the zoning administrator to ensure the impact to water quality can be accurately predicted.

#### E. Submission and review requirements

1. Copies of all site drawings and other applicable information as required by subsections C and D, above, shall be submitted to the zoning administrator for review and approval.
2. All information required in this subsection E shall be certified as complete and accurate by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the state.
3. RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.
4. Water quality impact assessments shall be prepared and submitted to the zoning administrator in conjunction with the development review procedures outlined in §6.13.

5. As part of any major water quality impact assessment submittal, the zoning administrator may require review and written comments by the ~~Chesapeake Bay local assistance department (CBLAD) department~~. The zoning administrator should incorporate comments made by ~~CBLAD the department~~ into the final review of the major water quality impact assessment.

F. Evaluation procedure

1. Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed modification or reduction to the buffer area is consistent with the provisions of §4.18 and make a finding based upon the following criteria:
  - (a) The proposed encroachment is necessary and there is no other location on site to place improvements without disturbing the buffer area;
  - (b) The impervious surface is minimized;
  - (c) The proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
  - (d) The development, as proposed, meets the purpose and intent of §4.18;
  - (e) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality; and
  - (f) Any other information deemed necessary by the zoning administrator.
2. Upon the completed review of a major water quality impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of §4.16 and make a finding based upon the following criteria:
  - (a) The disturbance of any wetlands is minimized;
  - (b) The development will not result in significant disruption of the hydrology of the site;
  - (c) The development will not result in significant degradation to aquatic life;
  - (d) The development ~~will not result in unnecessary destruction of plant materials on-site~~ minimizes removal of buffer vegetation and prioritizes the protection of mature trees;
  - (e) ~~Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off site sedimentation~~;
  - (f) ~~Proposed stormwater management measures are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control~~;
  - (g) ~~Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits~~;

- (he) The design and location of any proposed drainfield will be in accordance with the general performance standards outlined in §4.18.7;
  - (if) The development, as proposed, is consistent with the purpose and intent of §4.16;
  - (jg) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
3. The zoning administrator may require additional mitigation measures where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the zoning administrator based on the criteria listed above in subsections 1 and 2, above.
  4. The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of §4.16 when the impacts created by the proposal cannot be mitigated.

#### §4.18.9. Climate Change and Sea Level Rise Assessment

##### A. Assessment

Any proposed land development in the Resource Protection Area shall assess the impacts of climate change and sea-level rise during the plan of development or project review process. Such assessment shall be based on the Resource Protection Area as delineated at the time of proposed land development. Such assessment shall at a minimum:

1. Be based upon a potential impact range of 30 years or the lifespan of the project if less than 30 years;
2. Utilize a model or forecast developed by or on behalf of the Commonwealth;
3. Identify potential impacts:
  - (a) From projected sea-level rise using the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve, or any subsequently updated version thereof, on the project site;
  - (b) From storm surge based upon the most updated NOAA hydrodynamic Sea, Lake, and Overland Surges from Hurricanes model on the project site; and
  - (c) From flooding based upon the most updated Special Flood Hazard Area and the Limit of Moderate Wave Action on the project site. Such assessment of flooding should be in conjunction with the requirements and application of floodplain management requirements and programs.
4. Assess the potential impacts in light of the proposed land development on buffer function including loss of riparian buffer vegetation and vegetation migration; water migration; as well as the potential impacts resulting in additional future land disturbance or development in the Resource Protection Area connected to the proposed land development.



5. Identify conditions, alterations, or adaptation measures for the proposed land development to address these potential impacts as necessary and appropriate based upon site conditions; nature, type, and size of proposed land development including whether such proposed land development is in an Intensely Developed Area overlay; extent of potential impacts, and the necessity to minimize future land disturbance.

#### B. Adaption measures

Based upon the assessment, as necessary and appropriate, the zoning administrator planning director shall require conditions, alterations, or the installation of adaptation measures as part of the proposed land development consistent with the requirements of this Section and may allow adaptation measures within the Resource Protection Area subject to the following criteria and requirements. The adaptation measures shall:

1. Be a nature-based solution adaptation measure that uses environmental processes, natural systems, or natural features, is appropriate for site conditions, and is:
  - (a) A Best Management Practice approved by the Chesapeake Bay Program Partnership
  - (b) An approved Virginia Stormwater Best Management Practice listed in the Virginia Stormwater Best Management Practice Clearinghouse;
  - (c) An approved Shoreline Protection Strategy in accordance with the Tidal Wetlands Guidelines as determined by the Virginia Marine Resource Commission; or
  - (d) A project that is an eligible activity for funding by the Virginia Community Flood Preparedness Fund as determined by the Virginia Department of Conservation and Recreation.
2. Be designed, installed, and maintained in accordance with the applicable adaptation measure specifications in accordance with the type of adaptation measure identified.
3. Allow for the use of fill only under the following conditions:
  - (a) The grading and slope created by the use of fill shall be no greater than necessary based upon the project specifications and implemented in a manner that minimizes the impact of run-off;
  - (b) The fill must have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with the project specifications;
  - (c) The use of fill shall not enhance stormwater runoff from the Resource Protection Area, and any lateral flow onto adjacent properties shall be controlled;
  - (d) Any impacts on the management of stormwater upland of the Resource Protection Area created by the use of fill shall be mitigated as necessary;
  - (e) The use of fill shall not negatively impact septic systems and drainfields; and

(f) The use of fill shall be consistent with any applicable federal or state law, including floodplain management requirements in 44 C.F.R. Part 60.

4. Maximize preservation of existing natural vegetation including mature trees and minimize land disturbance consistent with the adaptation measure specifications.

5. Comply with all federal, state, and local requirements including any required permits and conditions.

6. Nothing in this article shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements, including the National Flood Insurance Program and established floodplain ordinances, or construed to require an adaptation measure in contravention of participation in the National Flood Insurance Program Community Rating System

C. Any activity in the Resource Protection Area impacting wetlands shall be consistent with Chapter 13 Title 28.2, Code of Virginia, and the accompanying Tidal Wetlands Guidelines which provide for “minimum standards for the protection and conservation of wetlands,” and “ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard.” Shoreline management and alteration projects should be coordinated to address the requirements of the most updated Tidal Wetlands Guidelines in conjunction with the requirements of this section.

D. The zoning administrator may exempt a living shoreline activity from additional performance criteria requirements, including a Water Quality Impact Assessment if the project minimizes land disturbance, maintains, or establishes a vegetative buffer inland of the living shoreline, complies with the fill conditions, and receives approval from the Virginia Marine Resources Commission or the local wetlands board.

E. No exception shall be granted if the assessment of climate change and sea-level rise has not occurred or the proposed adaptation measure allows for the use of fill in a Resource Protection Area in contravention of the requirements of B.3.(c) of this section.

#### ~~§4.18.9~~ §4.18.10. Nonconforming uses and structures

A. The lawful use of a building or structure that existed on September 17, 1990, or that exists at the time of any amendment to §4.18, and that is not in conformity with the provisions of §4.18 may be continued in accordance with Article 7, Nonconforming uses.

B. The zoning administrator may grant an administrative waiver for remodeling or alteration to an existing nonconforming principal or accessory structure provided that:

1. There will be no increase in nonpoint source pollution load; and

2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of ~~§4.17~~ §4.16.

C. The zoning administrator may grant an administrative waiver for expansion, restoration or replacement of an existing nonconforming principal structure provided that:

1. If a nonconforming structure is destroyed or damaged in any manner, it shall be restored only if such use complies with the requirements of §4.18. Any such repair or restoration shall be commenced within 12 months and completed within 18

months from the date of destruction. If the repairs are not completed within 18 months of the date of destruction, the applicant shall file a request for an extension with the zoning administrator. Approval of the request will be subject to demonstration by the applicant that reconstruction by the applicant was pursued in good faith.

2. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure determined to be nonconforming.
- D. The zoning administrator may grant an administrative waiver only after making the required written findings outlined in ~~§4.18.11.D~~ §4.18.12.D.
- E. Administrative waivers shall become null and void 12 months from the date issued if no substantial work has commenced.

~~§4.18.10~~ §4.18.11. Exemptions

The following uses shall be exempt from the criteria contained in §4.18:

- A. Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, public roads, ~~public trails, and their appurtenant structures~~; provided that said construction, installation, operation and maintenance is in accordance with the ~~Erosion and Sediment Control Law (Code of Virginia, §10.1-560 et seq.) and the Erosion and Stormwater Management Act (Code of Virginia, §10.1-603-1 62.1-44.105:44 et seq.)~~ and §4.5 and §6.10 of the zoning ordinance. An erosion and sediment control plan and a stormwater management plan approved by the state department of conservation and recreation or consistent with department approved standards and specifications in which, or local water quality protection criteria is at least as stringent as the ~~above~~-state requirements shall be deemed to constitute compliance with this provision. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize both encroachment into the RPA and adverse effects on water quality.
- B. Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines [owned, permitted, or both, by the city or regional service authority], provided that:
  1. Such utilities and facilities shall be located outside the RPA to the degree possible;
  2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
  3. All construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
  4. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements.
- C. The following land disturbances within the RPA shall be exempted from §4.18: (i) water wells; (ii) passive recreation facilities, such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the zoning administrator that:



1. Any required permits, except those to which this exemption specifically applies, shall have been issued;
2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
3. The intended use does not conflict with nearby planned or approved uses;~~and~~
4. §4.5 and §6.10 of the zoning ordinance have been met; and
45. Any land disturbance exceeding an area of 2,500 square feet shall comply with all city erosion and ~~sediment control~~ stormwater management requirements.

~~§4.18.11~~§4.18.12. Administrative waivers and special exceptions

A. Administrative waivers

The following administrative waivers may be granted by the zoning administrator:

1. Encroachments into the landward 50 feet of the buffer component of the RPA, provided that the requirements of §4.18.7.D.2 or §4.18.7.D.3 and §4.18.8.F are met;
2. Remodeling and alterations to existing nonconforming principal or accessory structures, provided that the requirements of ~~§4.18.9.B.1~~ §4.18.10.B.1 are met;
3. Restoration or replacement of existing nonconforming principal or accessory structures provided that the requirements of ~~§4.18.9.B.2~~ §4.18.10.B.2 are met; or
4. Modifications and additions to existing legal principal structures provided the findings of ~~§4.18.11.D~~ §4.18.12.D are made.

B. Special exceptions

Special exceptions to the general performance criteria for resource management and resource protection areas detailed in §4.18.7 may be granted by the city council provided the findings of ~~§4.18.11.D~~ §4.18.12.D are made.

C. Waivers and exceptions

Administrative waivers and special exceptions may not be granted for new accessory structures.

D. Required findings

In granting an administrative waiver or a special exception, the zoning administrator or the city council shall make a written finding that:

1. The request is the minimum necessary to afford relief;
2. Granting the request will not confer upon the applicant any special privileges that are denied by §4.18 to other property owners who are subject to its provisions and who are similarly situated;

3. The request is in harmony with the purpose and intent of this §4.18 and is not of substantial detriment to water quality;
4. The request is not based upon conditions or circumstances that are self-created or self-imposed; and
5. Reasonable and appropriate conditions shall be imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

E. Administrative waiver process

1. The applicant shall submit an administrative waiver request to the zoning administrator. The request shall identify the potential impacts of the waiver on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.
2. The zoning administrator shall review the administrative waiver request and the water quality impact assessment and may grant the waiver with such conditions and safeguards as deemed necessary to ensure and further the purpose and intent of §4.18.
3. If the zoning administrator cannot make the required findings or denies the administrative waiver request, the zoning administrator shall provide written findings and rationale for the decision to the applicant. Denial by the zoning administrator may be appealed to the board of zoning appeals pursuant to §6.22.

F. Special exception process

1. The applicant shall submit a special exception request to the zoning administrator. The request shall identify the potential impacts of the special exception request on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.
2. Each special exception request shall be reviewed by the zoning administrator and scheduled for public hearing before the city council following notification of the affected public of any such exception requests in accordance with Code of Virginia, §15.2-2204, except that only one hearing shall be required.
3. Special exceptions shall be granted with such conditions and safeguards as deemed necessary, pursuant to §6.17, to ensure and further the purpose and intent of §4.18, provided the findings of ~~§4.18.11.D~~ §4.18.12.D are met.

~~§4.18.12.~~ §4.18.13. Violations and penalties

- A. The decisions of all departments, officials and public employees of the city that are vested with the duty or authority to issue permits or licenses shall conform to the provisions of §4.18. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of §4.18. Any such permit, if issued in conflict with the provisions of §4.18, shall be null and void.
- B. The zoning administrator is granted all necessary authority on behalf of the city council to administer and enforce §4.18, including the authority in righting or remedying any condition found in violation of §4.18, and the bringing of legal action

to secure compliance with §4.18, including injunctive abatement, the imposition of civil penalties, or other appropriate action or proceeding.

~~§4.18.13.~~ §4.18.14. Appeals

Any order, determinations or decision made by the zoning administrator in administration and enforcement of the provisions of §4.18 may be appealed to the board of zoning appeals where it is alleged that an ER occurred. Such appeal shall be made within 30 days from the date of the order, determination or decision and shall further state with particularity the grounds of such appeal. Appeals shall further be made in accordance with §6.22 and Code of Virginia, §15.1-2311.

~~§4.18.14.~~ §4.18.15. Definitions

~~For the purposes of §4.18~~ In addition to the definitions set forth in 9VAC25-875-20 of the Virginia Erosion and Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and phrases shall have the meanings respectively ascribed to them by §4.18 unless the context clearly indicates otherwise:

~~-EROSION IMPACT AREA: 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.~~

~~LAND-DISTURBING ACTIVITY: Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include: (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 unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system; (5) Surface or deep mining; (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas; (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; 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 Code of Virginia, §10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, §10.1-1163(B); (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia, §10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; (10) Disturbed land areas of less than 10,000 square feet in size; however, the governing body may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply; (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (12) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission or the United States Army Corps of Engineers; and (13) 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.~~

ADAPTION MEASURE: A project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

CANOPY TREE: As defined in §4.5.9.B.1.

MATURE TREE: A canopy tree with a diameter at standard height (DSH) of 12 inches or greater or an understory tree with a DSH of four (4) inches or greater.

NATURE-BASED SOLUTION: An approach that reduces the impacts of sea-level rise, flooding, and storm events through the use of environmental processes and natural systems.

OWNER: 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.

PERMITTEE: The person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

~~PERSON: 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 State, any interstate body, or any other legal entity.~~

~~PLAN-APPROVING AUTHORITY: The person responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of lands and for approving plans.~~

RESPONSIBLE LAND DISTURBER: A person from the project team or development team who will be in charge of and responsible for carrying out the land-disturbing activity for the project, and who holds a responsible land disturber certificate as governed by the Virginia Department of Conservation and Recreation.

~~STATE WATERS: All waters on the surface and under the ground wholly or partially within or bordering the state or within its jurisdiction~~

~~THE ACT: The Chesapeake Bay Preservation Act (Code of Virginia, §10.1-210062.1-44.15:67 et seq.)~~

UNDERSTORY TREE: As defined in §4.5.9.B.2.

**BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 5 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

....

§5.6. ZONING ADMINISTRATOR

§5.6.1. Designation

The zoning administrator, as appointed by the director of community development and planning with the consent of the city manager, shall administer and enforce these zoning regulations, except as otherwise specified. In the performance of his or her duties, the zoning administrator may request the assistance of any appropriate officer or agency of the city.

§5.6.2. Powers and duties

A. General

The zoning administrator shall have powers and duties as may be described elsewhere in this chapter, including interpretation of all standards, procedures and regulations contained herein.

B. Recommendations

The zoning administrator shall be responsible for making recommendations regarding the following:

1. Special exceptions (§6.17); and
2. Variances (§6.18).

C. Final decisions

The zoning administrator shall be responsible for making final decisions regarding the following:

1. Site plan reviews (§6.8);
2. Sign permits (§6.9);
3. Tree removal permits (§6.10);
- ~~4. Erosion and sediment control permits (§6.12);~~
54. Chesapeake Bay preservation reviews (§6.13);
- ~~65. Temporary use permits (§6.15);~~
- ~~76. Administrative adjustments (§6.16);~~
- ~~87. Zoning permits (§6.21); and~~
- ~~98. Written interpretations (§6.20).~~

§5.7. DIRECTOR OF PUBLIC WORKS

§5.7.1. Designation

The director of public works, as appointed by the city manager, shall administer and enforce provisions of these zoning regulations as specified herein. In the performance of his or her duties, the director of public works may request the assistance of any appropriate officer or agency of the city.

§5.7.2. Powers and duties

A. General

The director of public works shall have powers and duties as may be described elsewhere in this chapter.

B. Recommendations

The director of public works shall be responsible for making technical recommendations regarding the following:

1. Site plan reviews (§6.8);
2. Floodplain permits (§6.11);
3. Erosion and ~~sediment control~~ stormwater management permits (§6.12);
4. Chesapeake Bay preservation reviews (§6.13).

§5.8. ~~V~~S~~M~~P VESMP AUTHORITY

§5.8.1. Designation

The ~~V~~S~~M~~P VESMP Authority, properly trained by the state and working under the director of public works, shall administer and enforce provisions of these zoning regulations as specified herein. In the performance of his or her duties, the ~~V~~S~~M~~P VESMP may request the assistance of any appropriate officer or agency of the city.

§5.8.2. Powers and duties

A. General

The ~~VSM~~ VESMP authority shall have powers and duties as may be described elsewhere in this chapter.

B. Final decisions

The ~~VSM~~ VESMP authority shall be responsible for making final decisions regarding the following:

1. ~~Erosion and Stormwater~~ stormwater management permit reviews (§6.14§6.12).

§5.9. FLOODPLAIN ADMINISTRATOR

§5.9.1. Designation

The zoning administrator shall serve as the floodplain administrator and is hereby appointed to administer and implement the regulations of this section and is referred to herein as the floodplain administrator.

§5.9.2. Powers and duties

A. General

The floodplain administrator shall have powers and duties as may be described elsewhere in this chapter to:

1. Administer and implement floodplain regulations. In the absence of the designated floodplain administrator, the duties are conducted by the city's chief executive officer.
2. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees or do the work themselves.
3. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations shall not relieve the city of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program (NFIP) as set forth in the Code of Federal Regulations at 44 CFR 59.22.
4. Maintain records required in §6.18.7.C and provide reports that notifications and acknowledgment requirements have been met as required by Federal Emergency Management Agency.

B. Recommendations

The floodplain administrator shall be responsible for making technical recommendations regarding the following:

1. ~~Erosion and Stormwater~~ stormwater management permit reviews (§6.14§6.12).

C. Final decisions

The floodplain administrator shall be responsible for making final decisions regarding the following:

1. Floodplain permits (§6.11).

**BE IT FURTHER ORDAINED**, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 6, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

§6.1. SUMMARY OF REVIEW AUTHORITY



The following table summarizes review and approval authority under this chapter.

PROCEDURE	DIRECTOR OF COMMUNITY DEVELOPMENT AND PLANNING	DIRECTOR OF PUBLIC WORKS	ZONING ADM.	PLANNING COMMISSION	FLOOD-PLAIN ADMINISTRATOR	CITY COUNCIL	BOARD OF ARCHITECTURAL REVIEW	BOARD OF ZONING APPEALS	REF.
Text Amendments	Review			<Review>		<Decision>			\$6.3
Map Amendments (Rezoning)	Review			<Review>		<Decision>			\$6.4
Certificates of Appropriateness	Minor	Decision							\$6.5
	Major	Review				Decision*	Decision		
Planned Development Reviews	Review			<Review>		<Decision>			\$6.6
Special Use Reviews	Review					<Decision>			\$6.7
Site Plan Reviews		Review	Decision						\$6.8
Sign Permits			Decision						\$6.9
Tree Removal Permits			Decision						\$6.10
Floodplain Permits		Review			Decision				\$6.11
Erosion/Sediment Control VESMP Permits		Review (VESMP Authority) Decision	Decision		Review				\$6.12
Chesapeake Bay Preservation Reviews		Review	Decision						\$6.13
Stormwater Permit		(VSMP Authority) Decision			Review				\$6.14
Temporary Use Permits			Decision						\$6.15
Administrative Adjustments			Decision						\$6.16
Special Exceptions			Review			<Decision> *		<Decision>	\$6.17
Variances			Review			<Decision> *		<Decision>	\$6.18
Affordable Dwelling Unit Modifications	Review					<Decision>			\$6.19
Written Interpretations			Decision						\$6.20
Zoning Permits			Decision						\$6.21
Administrative Appeals								<Decision>	\$6.22
Appeals to City Council						<Decision>			\$6.23
Appeals to Court									\$6.24

<Public Hearing Required>

\* Alternative City Council approval procedure available. The board of zoning appeal approves all special exceptions in the RL, RM and RH districts.

....

§6.10. TREE REMOVAL PERMITS

§6.10.1. Applicability

- A. Tree removal permits shall be reviewed in accordance with the provisions of §6.10.
- B. Tree removal permits shall be required to remove or destroy any tree which is five inches or greater measured at standard height (DSH) in a designated resource protection area, on any lot larger than one-half acre in the RL, RM and RH zoning districts, and in all other districts. Tree removal permits shall not be required to be obtained prior to removing a tree if the tree has been determined a public health and safety menace in accordance with the applicable provisions of City Code, Chapter 38, Article III.
- C. A site plan review application submitted in accordance with §6.8 §4.18 or in conjunction with a site plan review application (see 6.8) may satisfy the application requirements of §6.10.

§6.10.2. Application requirements

Applications for a tree removal permit shall include a tree conservation plan (§4.5.9.D.1) and be submitted in accordance with §6.2.3.

#### §6.10.3. Action by zoning administrator

- A. The zoning administrator shall review each proposed tree removal permit application for compliance with the approval criteria of §6.10.4.
- B. Based on the approval criteria and the above considerations, the zoning administrator shall approve the tree removal permit, identify those modifications that would allow approval of the tree removal permit, approve the tree removal permit with conditions, or disapprove the tree removal permit.

#### §6.10.4. Approval criteria

Applications for tree removal permits shall be reviewed for compliance with the requirements of §4.5.9.D.3.

#### §6.10.5. Transfer of tree removal permits

Approved tree removal permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

#### §6.10.6. Administrative appeals

Any final decision of the zoning administrator on a tree removal permit may be appealed to the board of zoning appeals in accordance with §6.22.

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### §6.12. ~~EROSION AND SEDIMENT CONTROL~~ VESMP PERMITS

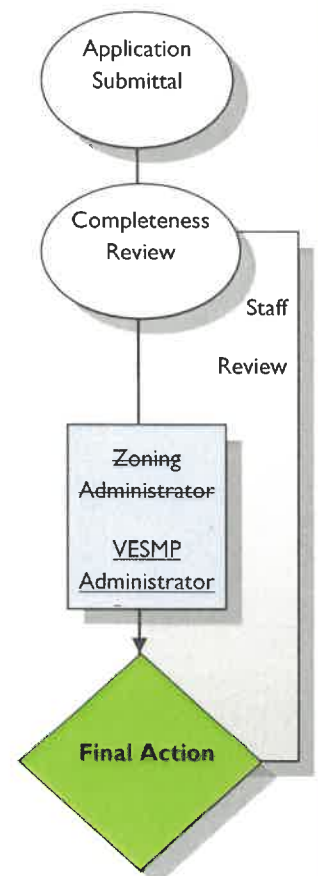
#### §6.12.1. Applicability

- A. ~~Erosion and sediment control~~ VESMP permits shall be reviewed in accordance with the provisions of §6.12.
- B. Except as specified in §6.12.2, below, it shall be unlawful for any person to engage in land disturbing activities as defined in ~~§4.18.14~~ §4.16 of 2,500 square feet or more for any purpose prior to approval of ~~an erosion and sediment control~~ a VESMP permit. Approval of ~~an erosion and sediment control~~ a VESMP permit shall be based on a soil erosion and sediment control plan for the land disturbing activity and a stormwater management plan prepared and certified by an engineer or land surveyor. ~~The These plan plans~~ may be contained on a separate sheet or included with the drainage or grading plan.

#### §6.12.2. Exemptions

The following uses and activities shall be exempt from the requirement for ~~an erosion and sediment control~~ a VESMP permit, provided the use or activity is otherwise allowed in the zoning district in which it is located (§3.3.1):

- A. ~~Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;~~
- B. ~~Individual service connections;~~
- C. ~~Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard surfaced street or sidewalk, provided such land disturbing activity is confined to the area of the street or sidewalk which is hard surfaced;~~



- ~~D. Surface or deep mining;~~
- ~~E. Exploration or drilling for oil and gas including the well site, feeder lines, streets and off site disposal areas;~~
- ~~F. Tilling, planting or harvesting of agricultural, horticultural or forest crops or products, livestock feed lot operations, or engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater-retarding structures, channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick growing, soil holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded;~~
- ~~G. Installation or maintenance of fence and signposts or telephone and electric poles and other kinds of posts or poles;~~
- ~~H. Emergency work to protect life, limb or property, and emergency repairs. If the land disturbing activity would have required an approved erosion and sediment control plan in the absence of an emergency, then the disturbed land area shall be shaped and stabilized as required by the plan approving authority; and~~
- ~~I. Any project undertaken by a state agency involving a land-disturbing activity that has been approved by the state soil and water conservation board.~~
- A. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
- B. Installation, maintenance, or repair of any individual service connection;
- C. Installation, maintenance, or repair of any underground utility line 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 that is hard surfaced;
- D. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- E. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
- F. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including 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; or as additionally set forth by the board in regulations. 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 the Code of Virginia;
- G. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- H. Shoreline 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 Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto;
- I. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
- J. 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 VESMP or VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of 9VAC25-875-530 is required within 30 days of commencing the land-disturbing activity; and
- K. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.



§6.12.3. Application requirements

Applications for ~~erosion and sediment control~~ VESMP permits shall be submitted in accordance with

§6.2.3.

~~§6.12.4. Action by director of public works~~

~~The director of public works will review erosion and sediment control permit applications in accordance with the approval criteria of §6.12.6.~~

~~§6.12.5.~~ §6.12.4. Action by ~~zoning administrator~~ VESMP administrator

The VESMP administrator will review VESMP permit applications in accordance with the approval criteria of §6.12.5. Based on the results of the review ~~by the director of public works~~, the zoning administrator VESMP administrator will take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.

~~§6.12.6.~~ §6.12.5. Approval criteria

Approved ~~erosion and sediment control~~ VESMP permits shall be in compliance with the requirements of §4.17~~§4.17~~.

~~§6.12.7.~~ §6.12.6. Revocation of permits

~~An erosion and sediment control~~ A VESMP permit shall be revoked if the ~~zoning administrator~~ VESMP administrator finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

~~§6.12.8.~~ §6.12.7. Transfer of ~~erosion and sediment control~~ VESMP permits

Approved ~~erosion and sediment control~~ VESMP permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

~~§6.12.9.~~ §6.12.8. Administrative appeals

Final decisions on ~~erosion and sediment control~~ VESMP permits shall be made within 30 days of the final decision to the board of zoning appeals in accordance with §6.22.

§6.13. CHESAPEAKE BAY REVIEWS

§6.13.1. Applicability

- A. Chesapeake Bay preservation reviews (Chesapeake Bay review) shall be conducted in accordance with the provisions of §6.13.
- B. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7.
- C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §6.13 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.

§6.13.2. Application requirements

Applications for Chesapeake Bay review shall be submitted in accordance with §6.2.3, and shall include the following:

A. General

1. If applicable, a subdivision or site plan submitted in accordance with the provisions of chapter 86, Subdivisions, and this chapter;
2. A RPA site-specific study as provided for in §6.13.2.B.2;
3. If applicable, a water quality impact assessment as required in §4.18.8;
4. A tree conservation plan consistent with the provisions of §4.5.9.D.1;

5. A stormwater management plan consistent with the design and performance standards of §4.16, Erosion and stormwater management and storm drainage facilities;
6. An erosion and sediment control plan consistent with the provisions of §4.17§4.16, Erosion and sediment control stormwater management and storm drainage facilities; and
7. Copies of all wetlands permits required by law. The required plans and studies shall include the delineation of the RPA boundary, the delineation of required buffer areas, and a maintenance agreement as deemed necessary by the zoning administrator to ensure proper maintenance of best management practices in order to continue their functions. Plans and studies may be coordinated or combined as deemed appropriate by the zoning administrator. However, the zoning administrator may also determine that any of the information required in §6.13 may be unnecessary due to the scope and nature of the proposed development.

B. RPA site-specific study

1. RPA Area

- (a) The resource protection area shall include the following:
  - (1) Tidal wetlands;
  - (2) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
  - (3) Tidal shores;
  - (4) Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development as depicted on the Chesapeake Bay preservation area map;
  - (5) Water bodies with perennial flow; and
  - (6) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subparagraphs (1) through (5), above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, 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 notwithstanding the presence of permitted uses, encroachments or permitted vegetation clearing in compliance with the performance criteria of §4.18.7.
- (b) Designation of the six components, above, shall not be subject to modification unless based on reliable, site-specific information in accordance with §6.13.2.B.2, below.

2. Study requirements

An RPA site-specific study shall be submitted as part of the development review procedures required by §6.13 and in conjunction with site plan or subdivision approval.

- (a) The RPA site-specific study shall be drawn to scale and clearly delineate the resource protection area components outlined in §4.18.2.A.1.
- (b) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987.
- (c) The RPA site-specific study shall delineate the site-specific geographic extent of the resource protection area.
- (d) The RPA site-specific study shall be drawn at the same scale as the site plan or subdivision plan and shall be certified by a certified engineer, land surveyor, landscape architect, soil scientist, or wetland delineator.
- (e) RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.

C. Tree conservation plan

A tree conservation plan shall be submitted as part of the development review procedures required by §6.13. No clearing, grading, or construction on any lot or parcel shall be permitted without an approved tree conservation plan. In addition, the following supplemental information shall be provided for land disturbance, development, or redevelopment activity proposed within the resource protection area:

1. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by §4.18.7.D, shall be shown on the tree conservation plan.
2. Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in §4.18, shall be shown on the plan. Vegetation to replace any existing trees within the buffer area shall also be shown on the tree conservation plan.
3. Trees to be removed for stream bank stabilization projects and any replacement vegetation required by §4.18 shall be shown on the landscaping plan.

D. Stormwater management plan

A stormwater management plan shall be submitted as part of the development review procedures required by §6.13 and in conjunction with site plan or subdivision approval.

E. Contents

1. The stormwater management plan shall be developed in accordance with §4.16, Erosion and stormwater management and Storm storm drainage facilities. For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certification shall be provided.
2. All engineering calculations shall be performed in accordance with procedures outlined in the current edition of the “Virginia State Stormwater Management Handbook.”
3. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance in accordance with §4.16, Erosion and stormwater management and Storm storm drainage facilities.

F. Erosion and sediment control plan

An erosion and sediment control plan shall be submitted as part of the development review procedures required by §6.13 in conjunction with site plan or subdivision approval that satisfies the requirements of ~~§4.17~~§4.16.

§6.13.3. Action by director of public works

The director of public works will review Chesapeake Bay review applications in accordance with the approval criteria of §6.13.5.

§6.13.4. Action by zoning administrator

Based on the results of the review by the director or public works, the zoning administrator shall take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.

§6.13.5. Approval criteria

- A. Chesapeake Bay review approvals shall be in compliance with the requirements of §4.18.
- B. The ~~VSPM administrator~~ VESMP administrator may require physical improvements required by §4.18 to be bonded in accordance with §6.8.11 and 110-107 of City Code.

§6.13.6. Revocation of approval

A Chesapeake Bay review approval shall be revoked if the zoning administrator finds that the terms of the approval have been violated or that there is a hazard to the public health, safety and welfare.

§6.13.7. Transfer of Chesapeake Bay review approvals

Chesapeake Bay review approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.13.8. Administrative appeals

Final decisions on Chesapeake Bay reviews shall be made within 30 days of the final decision to the board of zoning appeals in accordance with §6.22.



## ~~§6.14. STORMWATER PERMITS~~

### ~~§6.14.1. Applicability~~

- ~~A. Stormwater permit review shall be conducted in accordance with the provisions of §6.14.~~
- ~~B. All development or redevelopment exceeding 2,500 square feet of disturbed land area shall be subject to the requirements §4.16.~~

### ~~§6.14.2. Application requirements~~

~~Applications for stormwater permits shall be submitted in accordance with §6.2.3.~~

### ~~§6.14.3. Action by VSMP Authority~~

~~Based on the results of the reviews, the VSMP Authority will take one of the following actions: approve the permit, identify those modifications that would allow approval of the permit; approve the permit with conditions; or disapprove the permit.~~

### ~~§6.14.4. Approval criteria~~

~~Stormwater permit approvals shall be in compliance with the requirements of §4.16.~~

### ~~§6.14.5. Revocation of approval~~

~~A stormwater permit approval shall be revoked if the VSMP Authority finds that the terms of the approval have been violated or that there is a hazard to the public health, safety and welfare.~~

### ~~§6.14.6. Transfer of stormwater permit approvals~~

~~Stormwater permit approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.~~

### ~~§6.14.7. Administrative appeals~~

~~Final decisions of the VSMO Authority on stormwater permit reviews shall be made within 30 days of the final decision to city council in accordance with §4.16.7.F.~~

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[the existing 6.15 through 6.24 and their associated references will move up one section number]

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**BE IT ORDAINED**, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 9, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

## DEFINITIONS

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## §9.2. ABBREVIATIONS

ADA: Americans with Disabilities Act.

ANSI: American National Standards Institute

CC: City council of the city of Fairfax, Virginia

BAR: Board of architectural review of the city of Fairfax, Virginia.

BMP: Best management practices.

BZA: Board of zoning appeals of the city of Fairfax, Virginia.

dBA: Decibel

DCR: Virginia Department of Conservation and Recreation.

DSH: Diameter at standard height (generally 4.5 feet above ground)

FCC: Federal communications commission.

PC: Planning commission of the city of Fairfax, Virginia.

PD: Director of community development and planning of the city of Fairfax, Virginia.

PW: Director of public works of the city of Fairfax, Virginia.

VSFPC: Virginia Statewide Fire Prevention Code.

USACE: United States Army Corps of Engineers.

USBC: Virginia Uniform Statewide Building Code.

VADEQ: Virginia Department of Environmental Quality.

~~VSMP~~VESMP: Virginia stormwater management program.

ZA: Zoning administrator of the city of Fairfax, Virginia.

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This ordinance shall be effective upon adoption.

PLANNING COMMISSION PUBLIC HEARING: July 8, 2024

CITY COUNCIL PUBLIC HEARING: July 9, 2024

ENACTED: July 9, 2024



Mayor

7/12/24

Date

ATTEST:

  
City Clerk

**VOTE:**

Mayor Read	Aye
Councilmember Bates	Aye
Councilmember Doyle Feingold	Absent
Councilmember Greenfield	Aye
Councilmember Lim	Aye
Councilmember Ross	Aye
Councilmember Stehle	Aye