

Chapter 35 - STORMWATER⁽¹⁾

Footnotes:

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Charter reference— Power to make regulations for the preservation of the safety, health, peace, good order, comfort, convenience, morals, and welfare of the city and its inhabitants, § 2.04.**State Law reference**— Chesapeake Bay Preservation Act, Code of Virginia, § 62.1-44.15:67 et seq.; Virginia Stormwater Management Act, Code of Virginia, § 62.1-44.15:24 et seq.; Erosion and Sediment Control Act, Code of Virginia, § 62.1-44.15:51 et seq.; Flood Damage Reduction Act, § 10.1-600 et seq.

ARTICLE I. - STORMWATER MANAGEMENT

Sec. 35-1. - Purpose and authority.

- (a) The purpose of this article is to ensure that land is used, developed, and redeveloped in a manner that protects water quality and to prevent the degradation of properties, stream channels, waters, and other natural resources by prohibiting illicit discharges and providing that adequate stormwater management and erosion and sediment control measures are taken before, during, and after the period of land disturbance, development, and construction.
- (b) This article is adopted pursuant to the authority of the Chesapeake Bay Preservation Act (Code of Virginia, § 62.1-44.15:67 et seq.), the Virginia Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.), the Erosion and Sediment Control Act (Code of Virginia, § 62.1-44.15:51 et seq.), and their attendant regulations.
- (c) In any case where the requirements of this article conflict with any other provision of this Code or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-2. - Definitions.

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

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

Administrator means the VSMP authority including the city staff person or department responsible for administering the VSMP on behalf of the city.

Agreement in lieu of a plan means a contract between the city and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this article for the construction of a single-family residence; such contract may be executed by the city in lieu of an erosion and sediment control plan or a stormwater management plan, or both.

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

Best management practice or BMP means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Board or SWCB refers to the state water control board.

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

Chesapeake Bay Preservation Act land disturbing activity means a land disturbing activity, including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of the city designated as a Chesapeake Bay Preservation Area in accordance with [section 35-10](#).

Chesapeake Bay Preservation Area or CBPA means any land designated by the city pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-70 et seq., and the Chesapeake Bay Preservation Act, Code of Virginia, § 62.1-44.15:74. A Chesapeake Bay Preservation Area shall consist of a resource protection area and a resource management area.

Clean Water Act or CWA means the Federal Clean Water Act (33 USC § 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 means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

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

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

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

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

Department refers to the Virginia Department of Environmental Quality.

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

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

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

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

Discharge, when used without qualification, means the discharge of a pollutant.

Discharge of a pollutant means: (1) any addition of any pollutant or combination of pollutants to state waters from any point source; or (2) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition to pollutants by any indirect discharger.

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

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

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

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

General permit means a state permit authorizing a category of discharges under the Clean Water Act and the Virginia Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.) within a geographical area.

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

Illicit discharge means any discharge to the stormwater management system that is not composed entirely of stormwater, except discharges pursuant to a VPDES or state permit (other than the state permit for discharges from municipal separate storm sewer), discharges resulting from firefighting activities, or discharges identified by and in compliance with 9VAC25-870-400.D.2.c(3). Examples of prohibited substances, whether liquid or solid, include, but are not limited to: waste, trash and garbage; food and kitchen waste; leakage from dumpsters or trash containers; gasoline, waste oil, lubricants, grease, antifreeze, or any other automotive, motor, or equipment fluids; fertilizers, grass clippings, mulch, and any yard waste; any chemical or solvent; soluble and non-soluble metals; wash water, detergents, and cleaning agents; paints; plastics; soot, ash and sludge; animal waste; eroded soils and sediment; carcasses; chlorinated swimming pool water; and, any material that impedes or interferes with the free flow of stormwater.

Land disturbing activity means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation except that the term shall not include those exemptions specified in [section 35-4](#).

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

Linear development project means a land disturbing activity that is linear in nature such as, but not limited to: the construction of electric and telephone utility lines, and natural gas pipelines; construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; highway construction projects; construction of stormwater channels and stream restoration activities; and, water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

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

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

Natural stream means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross section with a meandering course. Constructed channels such as drainage ditches or swales shall not to be considered as natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

Nonpoint source pollution means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose source cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

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

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

Owner means the commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of Code of Virginia, § 62.1-44.5, the Virginia Stormwater Management Act, or this article.

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

Permittee means the person to whom the stormwater management permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

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

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

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

Public road means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to the Chesapeake Bay Preservation Act (Code of Virginia, § 62.1-44.15:67 et seq.), the Virginia Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.), the Virginia Erosion and Sediment Control Act (Code of Virginia, § 62.1-44.15:51 et seq.), and their attendant regulations. This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

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

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

Resource protection area or *RPA* means that component of the Chesapeake Bay Preservation Area as defined in subsection [35-10\(b\)](#). Resource protection areas consist of sensitive lands that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

Responsible land disturber means an individual from the project or development team, who will be in charge of and responsible for carrying out a land disturbing activity covered by an approved plan or agreement in lieu of a plan who: (a) holds a responsible land disturber certificate of competence; (b) holds a current certificate of competence from the board in the areas of combined administration, inspection, or plan review; (c) holds a current contractor certificate of competence for erosion and sediment control; or (d) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Code of Virginia, § 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

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

Runoff volume means the volume of water that runs off the site from a prescribed storm event.

Sediment basin means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

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

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

Stabilized means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

State means the Commonwealth of Virginia.

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

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

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

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

Stormwater detention means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

Stormwater management permit means an approval to conduct a land disturbing activity issued by the city for the initiation of a land disturbing activity after evidence of general permit coverage has been provided where applicable and after the city has found that all requirements in this article have been successfully met.

Stormwater management plan means a document(s) containing materials describing methods for complying with the requirements of [section 35-5](#). An agreement in lieu of a stormwater management plan as defined in this section shall be deemed to meet the requirements of a stormwater management plan.

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

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

Stormwater Pollution Prevention Plan or *SWPPP* means 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. A SWPPP required for construction activities under this article 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.

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

Subdivision means the same as defined in [section 38-1](#).

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

Total maximum daily load, or TMDL, means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loadings 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.

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

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

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

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

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

Virginia Stormwater Management Act means Article 2.3 (Code of Virginia, § 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Virginia Stormwater Management Program or VSMP means a program approved by the state water control board that has been established by a locality 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 by this article, and evaluation consistent with the requirements of this article.

VSMP authority means an authority approved by the state water control board to operate a VSMP. For the purpose of this article, the city is the VSMP authority.

Water-dependent facility means a development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to the following: (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resource facilities.

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

Woody vegetation means and includes all trees and shrubs.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-3. - Administration; context of zoning and subdivision ordinances.

- (a) The director is charged with responsibility for the administration of this article unless the context clearly indicates otherwise. The director, at his or her discretion, may delegate authority to implement all, or specific parts, of this article.
- (b) The stormwater management review team shall make a recommendation to approve, approve subject to conditions, or disapprove any land disturbing activity that is subject to this article and shall provide their findings to the director. Meetings of the SMRT will be advertised in compliance with applicable provisions of the Virginia Freedom of Information Act (Code of Virginia, § 2.2-3700 et seq.). Public comment will be received at such meetings and outside of these meetings in writing. Property owners within 150 feet of land disturbing activities that are the subject to review under this article will be mailed notification of applicable SMRT meetings at least ten days prior to the meeting date.
- (c) Administration of the site plan process shall be in accordance with this chapter, pertaining to site plans, or [chapter 38](#), pertaining to subdivision.
- (d) Permitted uses, conditional uses, special use permits, accessory uses, and special requirements shall be as established by the underlying zoning district, unless specifically modified or superseded by the requirements set forth in this article.
- (e) Lot size shall be subject to the requirements of the underlying zoning district, provided that any lot shall have sufficient area outside the resource protection area established under this article to accommodate an intended development, in accordance with the criteria in [section 35-10](#), when such development is not otherwise prohibited in the RPA.

(Ord. No. 1915, 3-24-2014)

Sec. 35-4. - Stormwater management permit required; exemptions.

- (a) *Stormwater management permit required.* Except as provided herein, no person may engage in any land disturbing activity, nor may any grading, building, or other permits for activities involving land disturbing activities be issued, until a stormwater management permit has been issued by the director in accordance with the requirements set forth in this article.
- (b) *Conditions of permit issuance.* No stormwater management permit shall be issued by the director until the following have been submitted to and approved by the director as prescribed herein:
 - (1) A site plan in accordance with the provisions of this article and [chapter 48](#) and, if applicable a subdivision plan in accordance with the provision of this article and [chapter 38](#).
 - (2) A general permit registration statement and evidence of general permit coverage, if such general permit registration statement or general permit coverage are required.
 - (3) A stormwater management plan in accordance with [section 35-5](#) and an approved maintenance agreement in accordance with subsection [35-18\(d\)](#).
 - (4) An erosion and sediment control plan in accordance with [section 35-14](#).
 - (5) A landscape conservation plan in accordance with [section 35-17](#).
 - (6) For all development, redevelopment, or other land disturbing activity within an RPA, or within an environmentally sensitive area as determined by the director, or for an exception under [section 35-11](#), a water quality impact assessment in accordance with [section 35-12](#).
- (c) *Relationship to floodplains.* Approval of a stormwater management permit shall not be construed to authorize the construction of any structure within the floodplain or to authorize any filling, grading or other change of the contour of such floodplain area without such permit, authorization or approval as may be required by [section 48-612](#) et seq.
- (d) *Stormwater pollution prevention plan.* The permittee must develop prior to the land disturbing activity, implement, and keep at the site for inspection a stormwater pollution prevention plan that meets the requirements set forth in [section 35-8](#) and a pollution prevention plan that meets the requirements set forth in [section 35-9](#).
- (e) *Bonds, maintenance agreement and fees.* No stormwater management permit shall be issued by the director until the bond and maintenance agreement requirements pursuant to [section 35-18](#) have been met and the fees required to be paid pursuant to [section 35-23](#) are received.
- (f) *Exemptions for land disturbance of less than 2,500 square feet.* A land disturbing activity that results in a land disturbance of less than 2,500 square feet, and is not part of a larger common plan of development or sale that results in a land disturbance of 2,500 square feet or greater, shall be exempt from this article except that the following shall apply:
 - (1) A land disturbing activity located within a resource protection area shall comply with the provisions of [section 35-10](#).

- (2) A land disturbing activity involving a direct connection to the city's stormwater conveyance system or the installation of a potable water or geothermal well shall obtain a stormwater management permit and may be subject to, at the discretion of the director, the provisions of section 35-5 (stormwater management plan) and section 35-14 (erosion and sediment control plan) or elements thereof.
 - (3) If separate land disturbing activities take place on a single property that cumulatively result in 2,500 square feet or more of land disturbance within a three-year period then the total land disturbance within the three-year period is not exempt under this subsection.
 - (g) *Exemptions for land disturbance of less than one acre but 2,500 square feet or greater within the resource management area.* A land disturbing activity that results in a land disturbance of less than one acre but greater 2,500 square feet or greater within the resource management area, and is not part of a larger common plan of development or sale that results in a land disturbance of one acre or greater, shall be exempt from section 35-8 (stormwater pollution prevention plan), section 35-9 (pollution prevention plan), and the requirement to obtain a general permit in accordance with subsection 35-4(b)(2) unless otherwise required by the City Code or state or federal law.
 - (h) *Additional exemptions.* The following shall be exempt from the requirements of this article unless otherwise required by the Falls Church Code or state or federal law:
 - (1) Discharges to a sanitary sewer or combined sewer.
 - (2) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of a project. The paving of 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 subsection.
 - (3) 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 director shall be advised of the disturbance within seven days of commencing the land disturbing activity and compliance with this article shall be required within 30 days of commencing the land disturbing activity.
 - (4) Land disturbances associated with permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia.
 - (5) Land clearing for agricultural or silvicultural purposes, and related activities, in accordance with Code of Virginia, § 62.1-44.15:34.C.2.
 - (6) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use.
- (Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-5. - Stormwater management plan.

- (a) *Submittal requirement.* A stormwater management plan shall be developed and submitted to the city for all land disturbing activities regulated pursuant to this article, except that the director may execute an agreement in lieu of a stormwater management plan to comply with the requirements of this section for the construction of a single-family residence. Any such agreement in lieu of a stormwater management plan shall be considered a stormwater management plan for the purpose of implementing and enforcing this article. The stormwater management plan shall be implemented as approved or modified by the city.
 - (b) *Plan contents.* The stormwater management plan must apply the stormwater management technical standards set forth in section 35-6 to the entire land disturbing activity. Individual lots or parcels in new residential, commercial or industrial developments, including those developed under subsequent owners, shall not be considered to be a single land disturbing activity. Instead, the common plan, as a whole, shall be considered to be a single land disturbing activity. The plan must also consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff. The plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, calculations, and citations to supporting references as appropriate to communicate the information required by this article. At a minimum, the stormwater management plan must contain the following information:
 - (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters, and the pre-development and post-development drainage areas;
 - (2) 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;
 - (3) A narrative that includes a description of current site conditions and final site conditions;
 - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
 - (5) Information on the proposed stormwater management facilities including:
 - a. The type of facilities;
 - b. Location, including geographic coordinates;
 - c. Acres treated; and
 - d. The surface waters into which the facility will discharge.
 - (6) Hydrologic and hydraulic computations, including runoff characteristics;
 - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of section 35-6;
 - (8) A map or maps of the site that depicts the topography of the site and includes:
 - a. All contributing drainage areas;
 - b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies and floodplains;
 - c. Soil types, forest cover, and other vegetative areas;
 - d. Current land use including existing structures, roads, and locations of known utilities and easements;
 - e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - f. The limits of clearing and grading, and the proposed drainage patterns on the site;
 - g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - h. 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.
 - (c) *Off-site compliance options.* If an operator intends to meet the water quality requirements set forth in subsection 35-6(b) through the use of off-site compliance options in accordance with subsection 35-6(c), 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 land disturbing activity except as otherwise allowed by Code of Virginia, § 62.1-44.15:35.
 - (d) *Requirements for those preparing plans.* Elements of the stormwater management plans that include activities regulated under Chapter 4 (Code of Virginia, § 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (Code of Virginia, § 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
 - (e) *Construction record drawing.* A construction record drawing for permanent stormwater management facilities shall be submitted to the director. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.
- (Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-6. - Stormwater management technical standards.

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

technical standards:

- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. In accordance with an approved grading plan, the limits of land disturbance, including clearing or grading, shall be strictly defined. These limits shall be clearly shown on submitted plans and physically marked on the development site.
 - (2) Existing indigenous vegetation and trees shall be preserved to the maximum extent practicable, consistent with the proposed use or development, in accordance with chapters 14 and 44, pertaining respectively to environment and vegetation, and as follows:
 - a. Existing trees over two inches in DBH and shrubs greater than five feet in height shall be preserved outside the approved construction footprint consistent with subsection (a)(1) of this section. Diseased or weakened trees, by age, storm, fire or other injury, may be required to be removed, by the director.
 - b. The regulation of any historic, specimen, street, park, memorial and other public trees shall be regulated in accordance with chapter 44, pertaining to vegetation. This may include the bonding of these types of trees in situations where the critical root zone (CRZ) or canopies extend onto the site.
 - c. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs and the installation of utilities.
 - d. Tree preservation shall be in accordance with the City of Falls Church Tree Preservation Standards and Specifications. A copy of the approved plan and the specifications shall be kept on-site at all times.
 - e. Prior to clearing and grading, tree preservation fencing, consistent with the City of Falls Church Tree Preservation Standards and Specifications, signs, or other such material may be required by the director. These preservation measures shall be installed to protect the CRZ of any woody vegetation to be preserved on the site, as well as to protect the CRZ of any woody vegetation trees on adjacent properties including rights-of-way that extend onto the site.
 - f. Tree preservation fencing shall remain in place throughout all phases of construction. Fencing shall not be removed until all construction equipment has left the site and written approval is granted by the director.
 - g. Exceptions may be granted to allow access to the site and work area, with specific conditions established by the director.
 - h. The storage of equipment, materials, debris, or fill shall not be allowed within the enclosure of the tree preservation fencing.
 - i. The applicant shall submit, in writing to the director, a verification that all required tree preservation fencing and required preservation measures have been completed. The director shall inspect and approve this verification, within three business days, prior to the issuance of any permits.
 - (3) Natural groundcover, especially woody vegetation, shall be used to the extent that is practicable, as it is most effective in holding soil in place and preventing site erosion. Adaptability to local conditions without the use of harmful fertilizers or pesticides, and the ability to filter runoff, make the use of indigenous vegetation preferable to non-indigenous plantings.
 - (4) Land development shall minimize impervious cover associated with the proposed use or development. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces stormwater runoff potential.
- (b) *Water quality technical standards.* All land disturbing activities regulated pursuant to this article within the city shall comply with the following technical standards for water quality:
- (1) *New development.* The total phosphorus load of a new development project shall not exceed 0.41 pounds per acre per year as calculated in accordance with this section.
 - (2) *Development on prior developed lands.*
 - a. Notwithstanding subsections (b)(2)b. through (b)(2)f. below, a regulated land disturbing activity involving a single-family detached residential dwelling shall meet the applicable standard for new development.
 - b. For regulated land disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the pre-development condition, the total phosphorus load shall be reduced at least 20 percent below the pre-development total phosphorus load.
 - c. For regulated land disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the pre-development condition, the total phosphorus load shall be reduced at least ten percent below the pre-development total phosphorus load.
 - d. For land disturbing activities that result in a net increase in impervious cover over the pre-development condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subsections (b)(2)b. or (b)(2)c. above, shall be applied to the remainder of the site.
 - e. In lieu of subsection (b)(2)d., the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20 percent below the pre-development total phosphorus load.
 - f. The total phosphorus load shall not be required to be reduced below the applicable standard for new development.
 - (3) Compliance with subsections (b)(1) and (b)(2) above shall be determined using the Virginia Runoff Reduction Method and through the use of stormwater BMPs established in 9VAC25-870-65 or found at the Virginia BMP Clearinghouse website, except as may be limited by the director in accordance the provisions of 9VAC25-870-65.D.
- (c) *Off-site water quality compliance options.*
- (1) The director shall allow operators to utilize off-site compliance options to meet the requirements of subsection (b) above in accordance with 9VAC-870-69 under the following conditions:
 - a. Less than five acres of land will be disturbed;
 - b. The post-construction phosphorus control requirement is less than ten pounds per year; or
 - c. At least 75 percent of the required phosphorus nutrient reductions are achieved on-site. If at least 75 percent of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the director that: (i) alternative site designs have been considered that may accommodate on-site best management practices; (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable; (iii) appropriate on-site best management practices will be implemented; and (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.
 - (2) The director may establish criteria in addition to those established in subsection (c)(1) of this section to allow an operator to use nutrient credits in accordance with Code of Virginia, § 62.1-44.15:35, to meet required phosphorus reductions.
 - (3) Notwithstanding subsections (c)(1) and (c)(2) this section, off-site options shall not be allowed:
 - a. Unless the selected off-site option achieves the necessary nutrient reductions prior to the commencement of the land disturbing activity. In the case of a phased project, the operator may acquire or achieve off-site nutrient reductions prior to the commencement of each phase of land disturbing activity in an amount sufficient for each phase.
 - b. In contravention of local water quality-based limitations at the point of discharge that are consistent with the determinations made pursuant to Code of Virginia, § 62.1-44.19:7.B, contained in the city's MS4 program plan accepted by the Virginia Department of Environmental Quality, or as otherwise may be established or approved by the SWCB.
- (d) *Water quantity technical standards.* All land disturbing activities regulated pursuant to this article within the city shall comply with the following technical standards for water quantity:
- (1) *Channel protection.* Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in this section, where applicable, from the point of discharge to a point to the limits of analysis in subsection (d)(1)d. of this section.

- a. *Manmade stormwater conveyance systems.* When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land disturbing activity, either:
1. The manmade stormwater conveyance system shall convey the post-development peak flow rate from the two-year, 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land disturbing activity to meet these criteria, at the discretion of the director.
 2. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subsection (d)(1)c. shall be met.
- b. *Restored stormwater conveyance systems.* When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land disturbing activity, either:
1. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or
 2. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subsection (d)(1)c. shall be met.
- c. *Natural stormwater conveyance systems.* When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year, 24-hour storm following the land disturbing activity shall be calculated as follows:
- $$Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-developed}}) / RV_{\text{Developed}}$$
- Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-developed}}$ nor shall $Q_{\text{Developed}}$ be required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$, where:
- I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.
- $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.
- $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.
- $Q_{\text{Pre-developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.
- Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.
- RV_{Forest} = The volume of runoff from the site in a forested condition.
- d. *Limits of analysis.* Unless subdivision c of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:
1. Based on land area, the site's contributing drainage area is less than or equal to 1.0 percent of the total watershed area; or
 2. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0 percent of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.
- (2) *Flood protection.* Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:
- a. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the ten-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land disturbing activity, confines the post-development peak flow rate from the ten-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land disturbing activity to meet this criterion at the discretion of the director.
 - b. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the ten-year 24-hour storm event: The point of discharge either:
 1. Confines the post-development peak flow rate from the ten-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land disturbing activity to meet this criterion at the discretion of the director.
 2. Releases a post-development peak flow rate for the ten-year 24-hour storm event that is less than the pre-development peak flow rate from the ten-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.
 - c. *Limits of analysis.* Unless subsection (d)(2)b.2 of this section is used to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:
 1. The site's contributing drainage area is less than or equal to 1.0 percent of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
 2. Based on peak flow rate, the site's peak flow rate from the ten-year, 24-hour storm event is less than or equal to 1.0 percent of the existing peak flow rate from the ten-year, 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
 3. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted in accordance with [section 48-612](#) et seq.
- (3) Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down gradient erosion, sedimentation or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.
- (4) For the purposes of computing pre-development runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Pre-development runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the director that actual site conditions warrant such considerations.
- (5) Pre-development and post-development runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse shall be considered appropriate practices.
- (e) *Additional water quantity technical standards in the Four Mile Run watershed.* Notwithstanding the requirements of subsection (d), within the Four Mile Run watershed post-development peak runoff during a 100-year frequency storm shall not increase the peak runoff of the Four Mile Run Flood Control Channel as required by the city's contract with the United States Army Corps of Engineers.
- (f) *Design storms and hydrologic methods.*
- (1) The prescribed design storms are the one-year, two-year, and ten-year, 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.
 - (2) All hydrologic analysis shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.

- (3) The NRCS synthetic 24-hour rain distribution and models, including, but not limited to, TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or, other standard hydrologic and hydraulic methods, shall be used to conduct the analysis described in this section.
- (4) For drainage areas of 200 acres or less, the rational method may be used for evaluating peak discharges. For drainage areas of 200 acres or less, the modified rational method may be used for evaluating volumetric flows to stormwater conveyances.
- (g) *Impounding structures.* Stormwater management wet ponds and extended detention dry ponds that are not covered by the Virginia Impounding Structure Regulations (4VAC50-20 et seq.) shall, at a minimum, be engineered for structural integrity for the 100-year storm event.
- (h) *Additional technical criteria.* The following additional technical criteria shall apply as applicable:
 - (1) Stormwater harvesting is encouraged in accordance with 9VAC25-870-74.
 - (2) Linear development projects shall control post-development stormwater runoff in accordance with 9VAC25-870-76.
 - (3) The city may develop comprehensive stormwater management plans in accordance with 9VAC25-870-92.
- (i) *Grandfathering.* The following grandfathering provisions established in 9VAC25-870-48 shall apply to subsections (b) through (d) above as applicable:
 - (1) Any land disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the director as being equivalent thereto, was approved by the director prior to July 1, 2012, and for which no coverage under the general permit for discharges of stormwater from construction activities has been issued prior to July 1, 2014, and no land disturbance has commenced prior to July 1, 2014, shall be considered grandfathered and shall not be subject to the technical criteria of [section 35-6](#), but shall be subject to the technical criteria in place at the time of approval for those areas of development that were included in the approval, provided that the director finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the director as being equivalent thereto: (i) provides for a layout as defined in [section 35-2](#); and (ii) the resulting land disturbing activity will be compliant with the requirements of the technical criteria in place at the time of approval. In the event that the director-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.
 - (2) For locality, state and federal projects for which there has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or for which the department has approved a stormwater management plan prior to July 1, 2012, and for which no coverage under the general permit for discharges of stormwater from construction activities has been issued prior to July 1, 2014, and no land disturbance has commenced prior to July 1, 2014, such projects shall be considered grandfathered and shall not be subject to the technical criteria of [section 35-6](#), but shall be subject to the technical criteria in place at the time of approval for those areas of development that were included in the approval.
 - (3) For land disturbing activities grandfathered under subsections (i)(1) and (i)(2) of this section, construction must be completed by within one state permit cycle, or portions of the project not under construction shall become subject to the technical criteria of [section 35-6](#).
 - (4) 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 in place at the time of approval.
 - (5) Nothing in this section shall preclude the operator from constructing to a more stringent standard at his discretion.
- (j) *Exceptions.* The director may grant exceptions to the technical requirements of this section, provided that the exception is the minimum necessary to afford relief, reasonable and appropriate conditions are imposed so that the intent of this article are preserved, granting the exception will not confer any special privileges that are denied in other similar circumstances, and 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 this article.
 - (1) Exceptions to the requirement that the land disturbing activity obtain required general permit shall not be given by the director, nor shall the director approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse website, or any other control measure duly approved by the Director of the Virginia Department of Environmental Quality.
 - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless off-site options otherwise permitted pursuant to subsection (c) and 9VAC25-870-69 have been considered and found not available.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-7. - Stormwater management plan review.

- (a) *Plan review.* The director shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
 - (1) The director shall determine the completeness of a plan in accordance with [section 35-5](#) and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
 - (2) The director 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 (1) above, then the plan shall be deemed complete and the director shall have 60 calendar days from the date of submission to review the plan.
 - (3) The director shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
 - (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article.
 - (5) If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subsection (a)(2) for review, the plan shall be deemed approved.
- (b) *Plan modifications.* Approved stormwater plans may be modified as follows:
 - (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the director. The director shall have 60 calendar days to respond in writing either approving or disapproving such request.
 - (2) The director may require that an approved stormwater management plan be amended, within a time prescribed by the director, to address any deficiencies noted during inspection.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-8. - Stormwater pollution prevention plan.

- (a) *Plan contents.* The SWPPP shall include the content specified by 9VAC25-870-54 and must also comply with the requirements and general information set forth in 9VAC880-70, Section II of the general permit.
- (b) *Plan amendments.* 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.
- (c) *Location and availability of plan for review.* 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.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-9. - Pollution prevention plan.

- (a) *Plan contents, implementation and amendments.* The pollution prevention plan, if required, shall include the content specified by 9VAC25-870-56, 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:
- (1) 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;
 - (2) 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
 - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) *Prohibited discharges.* The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
 - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) *Prohibitions on dewatering activities.* Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.
- (Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-10. - Chesapeake Bay Preservation Areas established.

- (a) *Chesapeake Bay Preservation Areas.* All land within the city is designated as a Chesapeake Bay Preservation Area, which is divided into resource protection areas and resource management areas.
- (b) *Resource protection areas.* Resource protection areas shall consist of the following lands described herein that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters:
- (1) Nontidal wetlands connected by surface flow and contiguous to waterbodies with perennial flow;
 - (2) Such other lands considered by the city to meet some or all of the criteria described in subsection (b) of this section, and considered to be necessary to protect the quality of state waters. Other lands to be included within the RPA are waterbodies with perennial flow, all natural stream channels, and manmade open stream channels, as generally identified on the city's Chesapeake Bay Preservation Area (CBPA) Map; and
 - (3) A vegetated buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subsections (b)(1) and (2) of this section, and along both sides of any waterbody with perennial flow. This distance shall be measured from the top of the stream bank or the edge of stream or wetland if there is no bank. Notwithstanding permitted uses, encroachments, vegetation clearing, waivers, nonconformities, exemptions, and exceptions as set forth in this section and [section 35-11](#), the 100-foot-wide buffer area is never reduced in width.
The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.
- (c) *Resource management areas.* Resource management areas shall consist of all land within the city's corporate boundary that is not designated as resource protection areas.
- (d) *Interpretation of resource protection area boundaries and delineation by the applicant.* The city's adopted CBPA Map shows only the general location of the RPA and should be consulted by persons contemplating activities, modifications, or encroachments in the RPA. The specific boundaries of the RPA for each site or parcel shall be determined by the applicant as part of a stormwater management permit, water quality impact assessment, grading plan, demolition permit, building permit, site plan, subdivision plat, or any other application for land disturbance, and delineated on all submitted plans, subject to approval of the director and in accordance with this article. The identification of resource protection area boundaries shall be established by a land surveyor authorized to practice in the commonwealth, and be based on reliable, scientifically valid, and specific information, as approved by the director, from actual field evaluations of the site. The city CBPA Map shall be used only as a guide to the general location of resource protection areas. The accuracy of the RPA boundary delineation submitted by the applicant, when in question, shall be verified by the director.
- (e) *Permitted land disturbing activities within RPAs.* A land disturbing activity may be allowed in the resource protection area, subject to completion of a water quality impact assessment as required in [section 35-12](#), and the approval of the director, only if it falls into one of the following use categories and meets all criteria and requirements of this article and those of the underlying zoning district and all other applicable city, state and federal regulations:
- (1) A new or expanded water-dependent facility may be allowed within a resource protection area provided that:
 - a. It does not conflict with the comprehensive plan;
 - b. Any nonwater-dependent component is located outside of resource protection areas; and
 - c. Access will be provided with the minimum disturbance necessary, and where possible, a single point of access will be provided.
 - (2) Redevelopment shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover and no further encroachment within the resource protection area.
 - (3) Roads and driveways not exempt in [section 35-11](#) are not permitted unless each of the following conditions is met:
 - a. The director makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the resource protection area; and
 - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the resource protection area and adverse effects on water quality.
 - (4) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas, provided that:
 - a. The director has conclusively established that the location of the facility within the resource protection area is the optimum location;
 - b. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;
 - c. The facility must be consistent with a stormwater management program that has been approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program permit regulations;
 - d. All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies;
 - e. Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed; and
 - f. It is not the intent of this section 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.
- (f) *Removal of vegetation in the resource protection area buffer area.* Indigenous vegetation may be removed from the RPA buffer area only as permitted by the director 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. All requests for vegetation removal shall be submitted in writing to the director for evaluation:
- (1) Trees may be pruned or removed as necessary subject to the written approval of the director to provide for sight lines and vistas; provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
 - (2) Any path shall be constructed and surfaced so as to effectively control erosion.

- (3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed subject to the written approval of the director, pursuant to sound horticultural practice incorporated into locally adopted standards.
 - (4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
 - (g) *Permitted encroachments into the buffer area.* Encroachments into the buffer area may be allowed only in accordance with this section.
 - (1) When the application of the buffer area would result in the loss of a buildable area or a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed by the director, through an administrative process, and in accordance with the following criteria:
 - a. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
 - c. The encroachment shall not extend into the seaward 50 feet of the buffer area.
 - (2) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed by the director in accordance with the following criteria:
 - 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 best management practice shall be evaluated to determine if it continues to function effectively, and if necessary, the best management practice shall be reestablished or repaired and maintained as required; and
 - d. The criteria in subsection (g)(1) of this section shall be met.
 - (h) *Re-establishment of buffer areas.* The buffer area required in subsection (b)(2) of this section shall consist of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Where such vegetation is not sufficient to meet this purpose, it shall be established in accordance with this section.
 - (1) Where buffer areas are to be established, they shall consist of a mixture of shade trees, understory trees, shrubs and groundcovers. Density of the buffer shall be as described in the Riparian Buffers Modification and Mitigation Guidance Manual Restoration and/or Establishment Tables.
 - (2) Vegetation shall be chosen from the city recommended lists of trees and/or native floodplain species. Wetland plantings, including herbaceous plantings, and/or wetland seed mix shall be used where site conditions warrant. Plant materials and planting techniques shall be in accordance with the City of Falls Church Specifications for Planting.
 - (3) Where invasive plant species are present, the director may require their removal as part of the re-establishment of the buffer area.
- (Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-11. - Chesapeake Bay Preservation Areas; administrative waivers, nonconformities, exemptions, and exceptions.

- (a) *Limitations of this section.* The administrative waivers, nonconformities, exemptions, and exceptions in this section shall only apply to the requirements of [section 35-10](#). All other requirements of this article shall apply unless otherwise exempted or granted an exception by the director.
- (b) *Nonconforming structures.* Any structure or nonagricultural use that was legally established in accordance with the provisions of this Code and was in existence on the date of the adoption of the ordinance from which this article is derived, and made nonconforming by operation of this article, may continue and be maintained, but shall not be enlarged or expanded, with the exception that the director may grant a waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures. A nonconforming use development waiver shall become null and void if substantial work on the project has not commenced within 12 months of the date of permit issuance.
- (c) *Reconstruction of pre-existing structures.* It is not the intent of this section to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss, unless otherwise restricted by city ordinance. Such reconstruction shall occur within two years after the destruction or damage and there shall be no increase in the amount of impervious area and no further encroachment into the RPA, to the extent possible by sound engineering practices.
- (d) *Administrative waivers for the expansion of pre-existing structures.* An application for the expansion or modification of an existing legal principle structure on legal nonconforming lots or parcels may be approved by the director through an administrative process for additions to the existing legal principal structures, and additions of attached decks, garages, and other customary and incidental structures attached to the principal structure; provided the following findings are made:
 - (1) The request for the waiver is the minimum necessary to afford relief;
 - (2) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this article to other property owners in similar situations;
 - (3) The waiver is in harmony with the purpose and intent of this article and does not result in a net increase in nonpoint source pollution load;
 - (4) The waiver is not based on conditions or circumstances that are self-created or self-imposed;
 - (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
 - (6) Other findings, as appropriate and required by the city are met; and
 - (7) In no case shall this provision apply to accessory structures. Such requests shall be heard by the planning commission through the exceptions process described in subsection (g) of this section.
- (e) *Exemptions for public utilities, railroads, public roads, and facilities.* The following shall be exempt provided that all state and federal requirements have been met:
 - (1) Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures.
 - (2) The exemption of public roads and drives is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize:
 - a. Encroachment in the resource protection area; and
 - b. Adverse effects on water quality.
 - (3) Construction, installation and maintenance of water, sewer, natural gas, and underground fiber-optic telecommunications and cable television lines owned, permitted, or both, by the city or regional service authority shall be exempt; provided that:
 - a. To the degree possible, the location of such utilities and facilities should be outside resource protection areas;
 - b. No more land shall be disturbed than is necessary to provide for the proposed utility installation; and
 - c. All such 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.
 - (4) Passive recreation facilities such as boardwalks, trails and pathways; and historic preservation and archaeological activities may be exempt, as determined by the director; provided that any land disturbing activity exceeding an area of 2,500 square feet shall comply with the requirements of [section 35-14](#).
- (f) *Exceptions in Chesapeake Bay Preservation Areas.*
 - (1) *Requests for planning commission review.* Requests for exceptions to the requirements of [section 35-10](#), permitted development or uses, modifications and encroachments within resource protection areas, and requests for exceptions to modify nonconforming, or construct new, nonattached accessory structures and uses in the RPA buffer, as noted in subsection (d) of this section, shall be made, in writing, to the director within 30 calendar days of the director's official decision.

This request shall identify the impacts of the proposed exception on water quality and on lands within the resource protection area through the performance of a water quality impact assessment, which complies with the provisions of [section 35-12](#). The director will forward the request and the water quality impact assessment to the planning commission for its consideration. The city shall notify the affected public of any such exception requests and the planning commission shall consider these requests in a public hearing in accordance with Code of Virginia, § 15.2-2204, except only one hearing shall be required.

- (2) *Request for administrative review.* Requests for exceptions to provisions other than [section 35-10](#), permitted development or uses, modifications and encroachments within resource protection areas, and subsection (d) of this section. Exceptions to modify nonconforming, or construct new nonattached accessory structures and uses in the RPA buffer, may be made in writing to the director for administrative review.
- (3) Evaluation criteria for administrative or planning commission review of exceptions as applied to subsections (f)(1) and (2) of this section. The director or the planning commission shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this section, and if the director or the planning commission finds that:
 - a. Granting the exception will not confer upon the applicant any special privileges denied by this article to other property owners in the overlay district;
 - b. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
 - c. The exception request is the minimum necessary to afford relief;
 - d. The exception request will be in harmony with the purpose and intent of this article, not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
 - e. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

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

(Ord. No. 1915, 3-24-2014)

Sec. 35-12. - Water quality impact assessment.

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

- (1) Proposed land disturbance, development or redevelopment activity within the resource protection area;
 - (2) Buffer encroachment, as provided for in [section 35-10](#); and
 - (3) Other development in resource management areas if regarded as appropriate by the director due to unique site characteristics or the intensity of the proposed use or development and its potential impact on water quality.
- (b) *Agreement in lieu of an assessment.* Where a land disturbing activity subject to this section results in less than 2,500 square feet of disturbance, an agreement in lieu of an assessment may be substituted for a water quality impact assessment if executed by the director.

(c) *Contents.* The requirements for the water quality impact assessment will vary depending on the magnitude of the proposed development project.

- (1) The purpose of the water quality impact assessment is to identify the impacts of proposed development, redevelopment, or land disturbance on water quality, lands within the resource protection area, and other environmentally sensitive lands, and to determine specific measures for mitigation of these impacts. The water quality impact assessment must be of sufficient specificity to demonstrate compliance with the criteria of this article.
- (2) A water quality assessment shall include a site drawing to scale which shows the following:
 - a. Location of the components of the RPA and the 100-foot buffer area measured from the top of the stream bank or edge of stream when there is no bank. The location of the RPA line shall be prepared and certified by a land surveyor authorized to practice in the commonwealth;
 - b. Location and nature of the proposed encroachment into the RPA buffer area, including:
 1. Type of paving material;
 2. Areas of clearing or grading;
 3. Location of any structures, drives, or other impervious cover; and
 4. Sewage disposal systems or other utilities.
 - c. Estimation of pre-development and post-development impervious surfaces on the site and stormwater calculations;
 - d. Type and location of proposed best management practices to mitigate the proposed encroachment and the location of existing and proposed runoff outfalls or drainage pathways from the property, including the location of erosion and sediment control devices such as silt fencing, stormwater inlet protection, and temporary soil storage; and
 - e. Pollutant load calculations to display that the vegetative buffer and/or best management practice will reduce the sediment load by 75 percent and nutrient load by 40 percent.
- (3) Certain water quality impact requirements modifications are as follows:
 - a. Additional hydrogeological and other information may be required by the director if the size and scope of the proposed project is large enough to require additional analysis to ensure the protection of the CBPA.
 - b. Applicants for development and redevelopment of land or land disturbance within the RPA may apply, in writing, to the city engineer for a modification to the application requirements for a water quality impact assessment, described in this section.

(Ord. No. 1915, 3-24-2014)

Sec. 35-13. - Water quality impact assessment review.

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

- (1) Five copies of all site drawings and other applicable information as required by this article shall be submitted to the director for review by the SMRT.
- (2) All information required in this section shall be certified as complete and accurate by a professional engineer, architect, certified landscape architect or land surveyor licensed in Virginia pursuant to Article 1 (Code of Virginia, § 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (3) As part of any water quality impact assessment submittal, the SMRT may require review by the Northern Virginia Regional Commission or the Virginia Department of Environmental Quality. Any comments will be incorporated into the final review by the SMRT, provided that such comments are provided within 30 days of the request.

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

- (1) Upon the completed review of a water quality impact assessment and the landscape conservation plan, the SMRT will determine if any proposed encroachment into the buffer area is consistent with the provisions of this article and make a recommendation to the director based on the following criteria:
 - a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - b. Impervious surfaces are minimized;
 - c. Proposed mitigation measures, including the landscape conservation plan and site design, result in minimal disturbance to all components of the RPA, including the 100-foot buffer area;
 - d. Proposed mitigation measures will work to retain all buffer area functions, pollutant removal, erosion and runoff control;
 - e. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

- f. The development as proposed, meets the purpose and intent of this section;
 - g. 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;
 - h. Within any RPA, the proposed development is water-dependent or redevelopment; and
 - i. The development will not result in significant disruption of the hydrology of the site.
- (2) The director shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made based on the criteria listed in this section.
- (3) The director shall find the proposal to be inconsistent with the purpose and intent of this article when the impacts created by the proposal cannot be mitigated.

(Ord. No. 1915, 3-24-2014)

Sec. 35-14. - Erosion and sediment control plan.

- (a) *Plan contents.* The erosion and sediment control plan shall be of sufficient detail to demonstrate, to the satisfaction of the director, compliance with the provisions of [section 35-15](#) and with the Virginia Erosion and Sediment Control Handbook, whichever is more restrictive. The plan may be contained on a separate sheet or included with the drainage or grading plan submitted as a part of the development plans required in chapter 6, pertaining to buildings, [chapter 28](#), pertaining to subdivisions, or [chapter 48](#), pertaining to zoning.
- (b) *Requirements for those preparing plans.* The plan must be prepared and certified by a professional engineer, architect, certified landscape architect or land surveyor licensed in Virginia pursuant to Article 1 (Code of Virginia, § 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (c) *Agreement in lieu of a plan.* Where a land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the director.
- (d) *Applicability to state agencies.* Any state agency that undertakes a project involving a land disturbing activity shall have the erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board or Virginia Department of Environmental Quality, as appropriate.
- (e) *Applicability to multi-jurisdictional activities.* Any person whose land disturbing activities involve lands which extend into the jurisdiction of another local erosion and sediment control program shall have either an erosion and sediment plan approved by the Virginia Soil and Water Conservation Board, or Fairfax County or Arlington County or the city. Such persons shall comply with the requirements of [section 35-18](#) concerning an installation and maintenance agreement and bond.
- (f) *Responsibility of owner of the land when activity is conducted by contractor.* Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.
- (g) *Wetland mitigation banks.* In accordance with the procedure set forth in Code of Virginia, § 62.1-44.15:55.E, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks pursuant to a permit issued by the state department of environmental quality, the marine resources commission or the U.S. Army Corps of Engineers, may at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Virginia Soil and Water Conservation Board for review and approval consistent with guidelines established by the Virginia Department of Environmental Quality.
- (h) *Responsible land disturber.* The responsible land disturber shall be designated prior to land disturbing activity. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program authority, as provided by Code of Virginia, § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land disturbing activity. However, the director may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by Code of Virginia, § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties as provided in this article.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-15. - Erosion and sediment control technical standards.

- (a) *Applicability of Virginia Erosion and Sediment Control Regulations.* The more stringent of the erosion and sediment control performance standards contained in this section, or those contained in the Virginia Erosion and Sediment Control Regulations, 9VAC25-840-40, shall apply to all applications for development, redevelopment, or land disturbance that will disturb 2,500 square feet of land or more. Such standards shall also apply to all applications for development, redevelopment, or land disturbance within RPAs, regardless of the amount of land disturbance.
- (b) *Stabilization of denuded areas and soil stockpiles.*
- (1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall also be applied within seven days to denuded areas which may not be at final grade but will remain dormant (undisturbed) for longer than 30 days. Permanent soil stabilization shall be applied to areas that are to be left dormant for more than one year. Soil stabilization refers to measures which protect soil from the erosive forces of raindrop impact and flowing water. Applicable practices include vegetative establishment, mulching and the early application of gravel base on areas to be paved. Soil stabilization measures should be selected to be appropriate for the time of year, site conditions, and estimated duration of use.
 - (2) During construction of the project soil stockpiles shall be sterilized or protected with sediment-trapping measures to prevent soil loss. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on-site as well as soil transported from the project site.
- (c) *Establishment of permanent vegetation.* A permanent and appropriate vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a groundcover is achieved that, in the opinion of the director, is uniform enough to control soil erosion satisfactorily and to survive severe weather conditions.
- (d) *Protection of adjacent properties.* Properties adjacent to the site of a land disturbance shall be protected from sediment deposition. This may be accomplished by preserving a well-vegetated buffer strip around the lower perimeter of the land disturbance, by installing perimeter controls such as sediment barriers, filters, dikes, sediment basins or by a combination of such measures. Vegetated buffer strips may be used alone only where runoff in sheet flow is expected. Buffer strips should be at least 20 feet in width. If at any time it is found that a vegetated buffer strip alone is ineffective in stopping sediment movement onto adjacent property, additional perimeter controls must be provided.
- (e) *Timing and stabilization of sediment-trapping measures.* Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment on-site must be constructed as a first step in grading and be made functional before upslope land disturbance takes place. Earthen structures such as dams, dikes and diversions must be seeded and mulched immediately after installation.
- (f) *Sediment basins.* Stormwater runoff from drainage areas with three acres or greater disturbed area must pass through a sediment basin. The sediment basin shall be designed and constructed to accommodate the anticipated sediment loading from the land disturbing activity. The outfall device or system design shall take into account the total drainage area flowing through the disturbed area to be served by the basin. The director may require sediment basins or traps for smaller disturbed areas where deemed necessary.
- (g)

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

- (1) Roughened soil surfaces are generally preferred to smooth surfaces on slopes.
 - (2) Diversions should be constructed at the top of long, steep slopes which have significant drainage areas above the slope. Diversion or terraces may also be used to reduce slope length.
 - (3) Concentrated stormwater should not be allowed to flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.
 - (4) Wherever a slope face crosses a water seepage plain which endangers the stability of the slope, adequate drainage or other protection should be provided.
- (h) *Storm sewer inlet protection.* All storm sewer inlets which are made operable during construction shall be protected so that sediment-laden water will not enter the conveyance system without first being filtered or otherwise treated to remove sediment.
- (i) *Working in or crossing watercourses.*
- (1) Construction vehicles should be kept out of watercourses to the extent possible. Where in-channel work is necessary, precautions must be taken to stabilize the work area during construction to minimize erosion. The channel (including bed and banks) must always be restabilized immediately after in-channel work is completed.
 - (2) Where a live (wet) watercourse must be crossed by construction vehicles more than twice in any six-month period during construction, a temporary stream crossing constructed of nonerodible materials must be provided.
 - (3) When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.
 - (4) All applicable federal, state and local regulations pertaining to working in or crossing live watercourses shall be met.
 - (5) The temporary crossing shall be removed as soon as possible and the stream shall be restored to its pre-development state, or to a condition of appropriate vegetation, as established by the director.
- (j) *Underground utility construction.*
- (1) The construction of nonexempt underground utility lines shall be subject to the following criteria:
 - a. No more than 100 feet of trench are to be opened at one time.
 - b. Where consistent with safety and space considerations, excavated material is to be placed on the uphill side of trenches.
 - c. Effluent from dewatering operations shall be filtered or passed through an approved sediment-trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.
 - d. Restabilization shall be accomplished in accordance with these regulations.
 - e. Applicable safety regulations shall be complied with.
 - (2) Nonexempt utility construction includes the installation, maintenance or repair of all utilities which disturb more than 10,000 square feet except:
 - a. Individual service connections.
 - b. Underground public utility lines under existing hard-surfaced roads, streets or sidewalks, provided such land disturbing activity is confined to the area which is hard-surfaced.
- (k) *Construction access routes.* Wherever construction vehicle access routes intersect paved public roads, provisions must be made to eliminate the transport of sediment (mud) by runoff or vehicle tracking onto the paved surface. Where sediment is transported onto a public road surface, the roads shall be cleaned immediately and cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling or sweeping and be transported to a sediment controlled disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual subdivision lots as well as to larger land disturbing activities.
- (l) *Disposition of temporary measures.* All temporary erosion and sediment control measures shall be disposed of within 30 days after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the director. Trapped sediment and other disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.
- (m) *Maintenance.* All temporary and permanent erosion and sediment control practices must be maintained, inspected and repaired as needed to assure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.
- (1) The Virginia Erosion and Sediment Control Handbook, Second Edition, 1980, or current edition, shall be used by any applicant making a submittal under this article and by the director in review and consideration of the adequacy of any erosion and sediment control plan submitted.
 - (2) This article and the Virginia Erosion and Sediment Control Handbook, Second Edition, 1980, or current edition, shall be an integral part of the city's erosion and sediment control program and shall comprise the city's Erosion and Sediment Control Handbook.
- (n) *Dormant land use activities.* Should a land disturbing activity cease for more than 180 days, the director shall evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the director finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land disturbing activity.
- (o) *Exemptions for certain agricultural, horticultural, or forest management activities.* Any person who owns, occupies, or operates private agricultural, horticultural, or forest lands shall not be deemed to be in violation of this article for land disturbing activities, which result from the tilling, planting, or harvesting of agricultural, horticultural or forest crops or products 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; land drainage; land irrigation, seeding and planting of waste, sloping, abandoned, or eroded lands 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.
- (p) *Exceptions and modifications.* The director may provide an exception or modification of the requirements of this section that are deemed inappropriate or too restrictive for site conditions. Exceptions may be granted under these conditions:
- (1) At the time of plan submission, an applicant may request a modification to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting modifications in writing. Specific modifications which are allowed by the director shall be documented in the plan.
 - (2) During construction, the person responsible for implementing the approved plan may request a modification in writing from the director. The director shall respond in writing either approving or disapproving such a request. If the director does not approve a modification within ten days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a modification request with additional documentation.
 - (3) The director shall consider modification requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

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

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-16. - Erosion and sediment control plan review.

- (a) *Plan review.* The director shall approve, within 60 days, the erosion and sediment control plan if such plan satisfies the following standards:
- (1) The development plan shall be fitted to the topography and soils so as to create the least erosion potential.
 - (2) Wherever feasible, allowing for development permitted in the zoning district in which the land is situated, natural vegetation shall be retained and protected. If necessary to accomplish the purposes of this section, the director may increase the coverage restrictions contained in other sections of this chapter to the extent necessary to accomplish the purposes of this section.
 - (3) Provisions shall be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during and after development.
 - (4) Sediment basins and similar structural measures shall be installed below high sediment-producing areas to remove sediment from runoff waters from land undergoing development. The owner or his agent shall make provision for regular inspection of these devices after every period of heavy rainfall; if more than 30 percent of the collecting volume is used up, the owner or agent shall cause accumulated silt to be removed therefrom.
 - (5) The plan shall establish the construction schedule and the sequence for installing protective measures and facilities and shall include provisions for the following:
 - a. The smallest practicable area of land shall be exposed at any one time through appropriate planning and sequential phasing at development.
 - b. All erosion and siltation control structures shall be placed prior to or as the first step in grading.
 - c. Special measures shall be provided to protect any disturbed area not paved, sodded or built upon by the November 1 in each year by seeding, mulching or other appropriate means.
 - (6) Conservation practices for erosion and sediment control shall equal or exceed the specifications of those contained in the Virginia Erosion and Sediment Control Handbook and any amendments thereto.
- (b) The director shall act on all plans submitted to it within 45 days from receipt thereof by either approving such plan in writing or by disapproving such plan in writing and giving the specific reasons for disapproval. When a plan submitted for approval, pursuant to this article, is found upon review by the director to be inadequate, the director shall specify such modifications, terms, and conditions as will permit approval of the plan and shall communicate these requirements to the applicant. If no action is taken by the director within the time specified in this section, the plan shall be deemed approved and the permit issued; provided, that the bond required in [section 35-18](#) has been deposited.
- (c) *Plan modifications.* An approved plan may be changed by the director in the following cases:
- (1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are specified by the director; or
 - (2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the director and the person responsible for carrying out the plan.

(Ord. No. 1915, 3-24-2014)

Sec. 35-17. - Landscape conservation plan.

- (a) All development, redevelopment, or land disturbance subject to this article shall include a landscape conservation plan. No stormwater management permit shall be approved without an approved landscape conservation plan. The landscape conservation plan shall include a scaled drawing, shall meet all of the requirements of this section, and shall be prepared and/or certified by a landscape architect, arborist, and/or horticulturalist.
- (b) *Preliminary vegetative survey.* The plan shall include a preliminary vegetative survey of all existing trees on the site, measuring at least two inches in DBH and shrubs that are greater than five feet in height. A chart shall be provided showing common and botanical name, size, condition, life expectancy, and required preservation measures of all woody vegetation. All trees shall be identified by an International Society of Arboriculture (ISA) certified arborist.
- (c) *Existing vegetation preservation plan.* The plan shall include an existing vegetation preservation component that shall illustrate any grade changes or other work adjacent to trees that would affect them adversely. Specifications shall be provided showing how grade, drainage and aeration will be maintained around vegetation to be preserved to ensure the protection of existing trees and other woody vegetation during clearing, grading and all phases of construction.
- (1) Locations of tree preservation fencing, root pruning and other required tree preservation measures shall be shown on the plan.
 - (2) Proposed vegetation to be removed to create the desired construction footprint shall be clearly illustrated on the plan and labeled as "to be removed." Vegetation to be preserved outside the building envelope shall be shown on the plan and labeled as "to be preserved."
 - (3) The location of the critical root zone (CRZ) of any vegetation shown on the plan or located on adjacent properties, including city rights-of-way, where the critical root zone (CRZ) extends onto the site, shall be shown on the plan.
 - (4) Tree canopy coverage calculations provided by woody vegetation pre-development and post-development and/or redevelopment on the site shall be shown on the plan along with the driplines.
 - (5) The City of Falls Church Tree Standards and Specifications for Planting shall be included on the plan.
 - (6) Within the RPA buffer, trees and other woody vegetation to be removed for sight lines, vistas, access paths, best management practices, and shoreline stabilization projects shall be shown on the plan.
- (d) *Landscape revegetation plan.* The plan shall include a landscape revegetation component that illustrates the proposed locations of vegetation that is required by this article and [section 48-1180](#), tree canopy coverage required on residential lots zoned R1-A, low density and R1-B medium density.
- (1) A chart shall be provided listing canopy coverage calculations and any required replacement canopy coverage vegetation pursuant to [section 48-1180](#), tree canopy coverage required on residential lots zoned R1-A, low density and/or R1-B medium density.
 - (2) A landscape schedule shall be provided that lists species, size, quantity, root condition and any credited tree canopy coverage pursuant to [section 48-1180](#), shall be shown on the plan.
 - (3) The planting of woody vegetation shall be in accordance with locally approved specifications and these specifications and details shall be included on the plan.
 - (4) Any required RPA buffer shall be clearly delineated and any woody vegetation to be added to establish, supplement or replace existing vegetation within the RPA buffer, as required under this Code, shall be shown on this plan.

(Ord. No. 1915, 3-24-2014)

Sec. 35-18. - Bonding requirements; installation and maintenance agreement.

- (a) *When bonds and inspections required pertaining to site plans.* All development, land disturbance, and redevelopment in an RPA or RMA shall be subject to the bond and inspection provisions, pursuant to sections [48-1143](#) and [48-1144](#), pertaining to site plans.
- (b) *When bonds required pertaining to stormwater management permit.* Prior to approval of a stormwater management permit, there shall be executed by the owner or his agent and submitted with the permit an agreement in form and substance as approved by the city to establish the measures provided for on the stormwater management plan and erosion and sediment control plan together with a cash bond to be deposited and held in escrow by the city, and no interest shall be paid by the city for any funds held in escrow. The agreement and bond shall be provided to ensure the installation, maintenance and performance of such measures. The bond

shall be in the amount of the estimated cost of such measures as determined by certified cost estimates submitted by the applicant's engineer or land surveyor and approved by the director. The minimum amount of bond to be posted is to be \$750.00. In any case where the director rejects any such agreement or bond, the owner or agent of the owner may appeal from such decision first to the city manager and, if not resolved at that level, should then appeal to the city council; provided the owner or agent of the owner has paid to the city the required filing fee.

- (c) *When bond released.* After achieving the components required by the erosion and sediment control plan and stormwater management plan for which the city has issued a permit and received a bond as required by this section, the owner or agent of the owner may apply to the director in writing for a certificate of completion and discharge of the unexpended or unobligated portion of such bond. If the work is found by the director to conform to the approved plan provided for in [section 35-5](#) and section 35-101 and other applicable regulations and city ordinances, such director shall issue the certificate and release of bond within 60 days of receipt of the application.
- (d) *Stormwater management system maintenance.* The owner of any component of the stormwater management system shall provide adequate maintenance to ensure that the system functions as designed.
- (1) The owner shall enter into a maintenance agreement with the city that outlines facility-specific maintenance requirements. The maintenance agreement shall run with the land, be set forth in an instrument recorded in the land records, provide for all necessary access to the property for the purposes of maintenance and regulatory inspections, and be enforceable by the city and all other appropriate governmental parties. Maintenance agreement forms shall be prepared in a format acceptable to the director and the city attorney.
 - (2) The maintenance agreement shall be submitted to the director for review and approval prior to the approval of the stormwater management plan in [section 35-5](#) and shall be set forth in an instrument recorded in the land records prior to general permit termination or earlier if required by the director.
 - (3) The maintenance agreement shall require that the owner prepare and submit an annual certification of maintenance to the city.
 - a. Certification shall be made by a registered engineer or licensed surveyor (qualified to perform such routine inspections) using a certification of maintenance form provided by the director. However, the director may specify that other individuals other than a registered engineer or licensed surveyor may provide certification at his discretion.
 - b. Such certification shall state the general condition of the facility and also state whether the infrastructure is functioning properly as originally designed.
 - c. If the facility is not functioning as designed, a plan for proposed remedial actions and a timeline for completion shall be noted in the certification report. The plan and timeline for completion are subject to the approval of the director. If the director determines that the proposed plan and timeline for completion is insufficient to protect the public health, safety and welfare, the owner of the facility must either submit a new plan and timeline, or alternatively, the director may take action in accordance with [section 35-22](#). Once remedial actions have been completed, the owner shall submit a new certification in accordance with this subsection.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-19. - Appeals and hearings.

(a) *Appeals.*

- (1) Final decisions of the director under this article shall be in writing and be subject to review by the city manager. Any appeal shall be filed with the city manager within 30 days from the date of any written decision by the director that adversely affects the rights, duties, or privileges of the persons engaging in or proposing to engage in land disturbing activities.
- (2) All appeals must be written and must contain sufficient information to acquaint the city manager with the facts involved.
- (3) The city manager, as part of his review, will notify and seek advice and recommendations from appropriate boards and commissions. The city manager shall hear the appeal, and render a written decision within 30 working days of receipt of the notice of appeal. An appeal stays all compliance with the action being appealed, unless the director certifies to the city manager that by reason of stated facts a stay would, in the opinion of the director, cause imminent endangerment to life or property. In such cases, compliance shall not be stayed other than by a restraining order which may be granted by the city manager, or by a court of record, on application and on due cause shown.
- (4) A final decision of the city manager may be appealed to the city council, provided that a written appeal is filed with the city manager within 30 days after the date of his decision.
- (5) An appeal by any person aggrieved by any decision of the city council relative to the administration of this article shall be made to a court of record. An appeal shall be made within 30 working days from the date of the issuance of the city council's written decision, by filing with a court of record.

(b) *Hearings.*

- (1) Any applicant, or person subject to this article aggrieved by any action of the city taken without a formal hearing, or by inaction of the city, may demand in writing a formal hearing by the city council, provided a petition requesting such hearing is filed with the director within 30 days after notice of such action is given by the director.
- (2) The hearings held under this section shall be conducted by the city council at a regular or special meeting of the city council or by at least one member of the city council designated by the city council to conduct such hearings on behalf of the city council at any other time and place authorized by the city council.
- (3) A verbatim record of the proceedings of such hearing shall be taken and filed with the city council. Depositions may be taken and read as in actions at law.
- (4) The city council 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 testify or to produce documents shall be acted upon by the town 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 reimbursements for mileage as in civil actions.

(Ord. No. 1915, 3-24-2014)

Sec. 35-20. - Monitoring and inspections.

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

- (1) Compliance with the approved stormwater management plan;
- (2) Compliance with the approved erosion and sediment control plan;
- (3) Development, updating, and implementation of a stormwater pollution prevention plan and pollution prevention plan; and
- (4) Development and implementation of any additional control measures necessary to address a TMDL.

- (b) *Entry upon property; enforcement generally.* The director may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of this article.
- (c) *Entry upon property; failure to take action after proper notice.* In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the director 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 frame specified.
- (d) *Furnishing materials, plans, specifications, etc.* Pursuant to Code of Virginia, § 62.1-44.15:40, the Director may require every stormwater management permit applicant or permittee, or any such person subject to the requirements of this article, 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 this article.

- (e) *Additional requirements for erosion and sediment control.* The director may require at his sole discretion monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the director determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided by [section 35-22](#). The owner/occupant as operator shall be given an opportunity to accompany the inspector. The city shall be permitted to inspect the site at any time during the course of the project. Inspections are, at a minimum, to be made at the following times:
- (1) Immediately following initial installation of erosion and sediment controls;
 - (2) At least once in every two-week period;
 - (3) Within 48 hours following a runoff producing storm event; and
 - (4) At the completion of the project prior to the release of any performance bonds.
- (f) *Post-construction inspection of stormwater management facilities.* The director shall, at reasonable times and under reasonable circumstances, inspect post-construction stormwater management facilities required under the provisions of this article on a schedule determined sufficient by the director except that such an inspection shall occur at least once every five years.

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-21. - Prohibition against illicit discharges.

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

- (1) Cause or allow illicit discharges to the stormwater management system or state waters;
 - (2) Cause a connection to the stormwater management system that will or has the potential to allow for an illicit discharge to enter the system; or
 - (3) Violate any permit granted for stormwater discharges.
- (b) *Discharges permitted by a VPDES or VSMP permit or waiver.* The prohibition in subsection (a) shall not apply to a discharge permitted under a VPDES or VSMP permit or waiver, provided that, the discharge is in full compliance with all requirements of the VPDES or VSMP permit or waiver as well as any other applicable laws or regulations pertaining to the discharge.
- (c) *Unpermitted or unapproved connections.* Causing any new connection to the stormwater management system that is not approved in accordance with a stormwater management permit, or is not otherwise approved by the director if it is not part of a regulated land disturbing activity, shall be considered an illicit discharge for the purpose of this article.
- (d) *Erosion impact areas.* Any land identified by the director as an erosion impact area shall be considered to be contributing an illicit discharge and be required to submit for approval and implement an erosion and sediment control plan. This shall be required whether or not there is any construction activity on the site. The plan shall be prepared as specified in [section 35-14](#).
- (e) *Inspections and monitoring.* The director shall have the authority to inspect and monitor discharges and sources of potential discharges to the storm drainage system to ensure compliance with this article, including the authority to enter upon private property to inspect or monitor such discharges or sources of potential discharge. The director shall also have the authority to initiate enforcement action in accordance with [section 35-22](#).

(Ord. No. 1915, 3-24-2014)

Sec. 35-22. - Failure to comply; penalties and other legal actions.

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

- (1) In addition to all other remedies in this section, if the director determines that the stormwater management permit holder has failed to comply with any plan required under [section 35-7](#), the director shall immediately serve upon the permit holder, by registered or certified mail to the address specified by the permit holder in his permit application, a notice to comply. Such notice shall set forth specifically the measures needed to come into compliance with such plan or plans and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit and/or the cash bond may be used by the city at the direction of the director to correct the noted deficiencies. Any person may file a complaint under this section. Upon receipt of a sworn complaint of a substantial violation of this section, the director may, in conjunction with or subsequent to a notice to comply as specified above, issue a stop work order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land disturbing activities have commenced without an approved plan, as provided in [section 35-4](#), requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the director or the alleged violator for appropriate relief to the circuit court. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the director may 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 any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court. Any person violating or failing, neglecting or refusing to obey an order issued by the director may be compelled in a proceeding instituted in the circuit court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
 - (2) If the city takes action upon failure to do so by the permittee, the city may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the surety held. Furthermore, he could be deemed to be in violation of this article and upon conviction could be subject to the penalties provided by this article.
 - (3) In the event that the violation of the approved landscape conservation plan was an encroachment or evidence of an encroachment into a tree preservation area, the applicant shall submit a mitigation plan subject to the approval of the director. This plan shall list remedial measures and the time within which such measures shall be completed by the applicant to ensure the continued preservation of the existing trees. This may include, but is not limited to, pruning, vertical mulching, and aerating. Bonding of the existing vegetation, in accordance with [chapter 44](#), article II, division 5, may be required by the director.
 - (4) The director may require the replacement of any vegetation damaged in violation of the approved landscape conservation plan as part of the mitigation plan. The size, species and quantity of the replacement trees shall be calculated by the director based on the value of the trees removed as calculated by the latest formula published by the International Society of Arboriculture. The required replacement trees shall be included in the "mitigation plan" submitted by the applicant. Bonding of the replacement vegetation, in accordance with subsection [48-1143\(b\)](#), may be required by the director.
- (b) *Failure to comply with stormwater management permit.*
- (1)

If the director determines that there is a failure to comply with the conditions of the stormwater management permit 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.

- a. 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 subsection b. or the permit may be revoked by the director. The director may also pursue enforcement in accordance with this section.
- b. If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the director 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 become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the director. However, if the director 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 commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the director may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with subsection (3).

- (2) In addition to any other remedy provided by this article, if the director or his or her designee determines that there is a failure to comply with the provisions of this article, the director may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with general standards of due process, involving notice, hearing, chance to remedy or to explain and justify, ability to examine and cross examine witnesses, and ability to present witnesses and evidence.
- (3) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the director or any provisions of this article may be compelled in a proceeding instituted in any appropriate court by the city to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (4) Violations in this section shall be subject to a civil penalty not to exceed \$32,500.00 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 - a. Violations for which a penalty may be imposed under this subsection shall include, but not be limited to: (i) no state permit registration; (ii) no SWPPP; (iii) an incomplete SWPPP; (iv) no SWPPP available for review; (v) no approved erosion and sediment control plan; (vi) failure to install stormwater BMPs or erosion and sediment controls; (vii) stormwater BMPs or erosion and sediment controls improperly installed or maintained; (viii) operational deficiencies; (ix) failure to conduct required inspections; (x) incomplete, improper, or missed inspections; and (xi) discharges not in compliance with the requirements of 9VAC25-880-70 of the general permit.
 - b. The director may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 - c. In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
 - d. 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.
- (5) Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates provisions subject to this section or who willfully or negligently violates any order of the director, any condition of the stormwater management 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 \$2,500.00 nor more than \$32,500.00, or both.
- (c) *Failure to comply with Chesapeake Bay Preservation Area requirements.* In addition to any other penalties that may apply in this section, any person, whether as an owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of [section 35-10](#) or [section 35-11](#), or permits any such violation, or fails to comply with any of the requirements shall be subject to a civil penalty not to exceed \$2,500.00 for each violation. Each day upon which such violation continues shall constitute a separate violation. Furthermore, the director, through the city attorney, may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this division.
- (d) *Failure to comply with erosion and sediment control requirements.* In addition to any other penalties that may apply in this section, the following additional penalties may be applied to a person who violates the provisions of [section 35-14](#):
 - (1) Violators under this section shall be guilty of a class 1 misdemeanor.
 - (2) Any person who violates any regulation or order of the board, any condition of a permit, any provision of its program, or any provision of this article shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with the schedule listed under subsection (d)(9) of this section. A civil action for such violation may be brought by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
 - (3) The city may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation, under [section 35-14](#), without the necessity of showing that an adequate remedy at law does not exist.
 - (4) In addition to any criminal or civil penalties provided under this section, any person who violates any provision of this article may be liable to the program authority, or the board, as appropriate, in a civil action for damages.
 - (5) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
 - (6) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board, or any condition of a permit or any provision of this article, the board, the director or plan approving or permit issuing authority may provide, in an order issued by the board or plan approving or permit issuing authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (d)(5) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsections (d)(2) or (5) of this section.
 - (7) Upon request of the city, the attorney for the commonwealth shall take legal action to enforce the provisions of this article. Upon request of the board, the attorney general shall take appropriate legal action on behalf of the board to enforce the provisions of this article.
 - (8) Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.
 - (9)

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

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

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Sec. 35-23. - Fees.

- (a) *Erosion and sediment control review and inspection fee.* An erosion and sediment control review and inspection fee of \$100.00, plus \$20.00 per acre, or any fraction thereof, shall be paid to the city at the time of submission of plans to the director.
- (b) *Stormwater management permit fee.* A stormwater management permit fee shall be paid to the city at the time of submission for a stormwater management permit. No stormwater management permit shall be issued or effective until the fee is paid.
 - (1) Fees associated with an initial stormwater management permit issuance shall be in accordance with the table titled "Stormwater Management Fees - Initial Permit Issuance." 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 in the aforementioned table.
 - (2) Fees for the modification or transfer of general permit registration statements issued by the state board shall be imposed in accordance with the table titled "Stormwater Management Fees - Modifications or Transfers." If the general permit modifications result in changes to stormwater management plans that require additional review by the city, such reviews shall be subject to the fees set out in the aforementioned table. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the 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 been applied for the total disturbed acreage in accordance with subsection (b)(1).
 - (3) General permit coverage maintenance fees shall be paid to the city on or before April 1 of each year in accordance with the table titled "Stormwater Management Fees - Permit Maintenance." No permit will be re-issued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until the permit coverage is terminated. Permit maintenance fees shall apply to expired permits that have been administratively continued.
 - (4) Persons whose coverage under the general permit has been revoked shall apply to the Virginia Department of Environmental Quality for an individual permit for discharges of stormwater from construction activities.
 - (5) Fees shall not be assessed to the following:
 - a. Permittees who request minor modifications to general permits as defined in [section 35-2](#). Permit modifications at the request of the permittee resulting in changes to the stormwater management plan that require additional review by the director shall not be exempt pursuant to this subsection.
 - b. Permittees whose general permits are modified or amended at the initiative of the Virginia Department of Environmental Quality, excluding errors in the registration statement identified by the director or errors related to the acreage of the site.
 - (6) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest shall be charged for late payments at the underpayment rate set forth in Code of Virginia, § 58.1-15, and is calculated on a monthly basis at the applicable periodic rate. A ten percent late payment fee shall be charged to any delinquent account, defined as over 90 days past due. The city is entitled to all remedies under the Code of Virginia in collecting any past due amount.

STORMWATER MANAGEMENT FEES - INITIAL PERMIT ISSUANCE:	Total Fee	Portion Paid to DEQ¹
Chesapeake Bay Preservation Act Land Disturbing Activity (sites equal to or greater than 2,500 SF and less than 1 acre within Chesapeake Bay Preservation Areas but not subject to General Permit coverage)	\$290.00	\$0
General/Stormwater Management - Small Activity (areas within common plans of development or sale with land disturbance acreage less than 1 acre; except for single-family detached residential structures)	\$290.00	\$81.00
General/Stormwater Management - Small Single-Family Detached Residential Activity (single-family detached residential structures within or outside a common plan of development or sale with land disturbance acreage less than 5 acres)	\$209.00	\$0
General/Stormwater Management - Small Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 1 acre and less than 5 acres)	\$2,700.00	\$756.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 5 acres and less than 10 acres)	\$3,400.00	\$952.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 10 acres and less than 50 acres)	\$4,500.00	\$1,260.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 50 acres and less than 100 acres)	\$6,100.00	\$1,708.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 100 acres)	\$9,600.00	\$2,688.00

STORMWATER MANAGEMENT FEES - MODIFICATIONS OR TRANSFERS:	Total Fee
General/Stormwater Management - Small Activity (areas within common plans of development or sale with land disturbance acreage less than 1 acre, except for single-family detached residential structures)	\$20.00
General/Stormwater Management - Small Single-Family Detached Residential Activity (single-family detached residential structures within or outside a common plan of development or sale with land disturbance acreage less than 5 acres)	\$20.00
General/Stormwater Management - Small Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 1 acre and less than 5 acres)	\$200.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 5 acres and less than 10 acres)	\$250.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 10 acres and less than 50 acres)	\$300.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 50 acres and less than 100 acres)	\$450.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 100 acres)	\$700.00
STORMWATER MANAGEMENT FEES - PERMIT MAINTENANCE:	Total Fee
Chesapeake Bay Preservation Act Land Disturbing Activity (sites equal to or greater than 2,500 SF and less than 1 acre within Chesapeake Bay Preservation Areas but not subject to General Permit coverage)	\$50.00
General/Stormwater Management - Small Activity (areas within common plans of development or sale with land disturbance acreage less than 1 acre, except for single-family detached residential structures)	\$50.00
General/Stormwater Management - Small Single-Family Detached Residential Activity (single-family detached residential structures within or outside a common plan of development or sale with land disturbance acreage less than 5 acres)	\$50.00
General/Stormwater Management - Small Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 1 acre and less than 5 acres)	\$400.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 5 acres and less than 10 acres)	\$500.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 10 acres and less than 50 acres)	\$650.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 50 acres and less than 100 acres)	\$900.00
General/Stormwater Management - Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 100 acres)	\$1,400.00

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

(Ord. No. 1915, 3-24-2014; Ord. No. 1928, 9-8-2014)

Secs. 35-24—35-50. - Reserved.