

## Chapter 10 - ENVIRONMENT

\***Cross reference**— Unsafe buildings, § 6-25 et seq.; spot blight abatement, § 6-104 et seq.; pollution of waters in parks, § 14-39.

### Article I. FLOODPLAIN MANAGEMENT

#### Division 1: Purpose and Applicability

##### Sec. 10-1. Purpose and Applicability

The purpose of this article is to promote and protect the health, safety, and general welfare of county residents and to minimize losses due to flood hazards through provisions designed to:

- (a) prevent development and land disturbing activities from increasing flood or drainage hazards;
- (b) protect new buildings and major improvements to buildings from flood damage;
- (c) protect human life and health from the hazards of flooding;
- (d) lessen the burden on taxpayers for future flood and drainage control projects, repairs to flood-damaged public facilities and utilities and flood rescue and relief operations; and
- (e) make federally subsidized flood insurance available for property within the county.

This article applies to privately and publicly owned lands within areas designated as a Special Flood Hazard Area (SFHA) and areas adjacent to SFHAs, as outlined in this article. No development shall occur within the SFHA and areas adjacent to SFHAs except in accordance with the provisions of this article.

**State law reference:** Code of Virginia § 15.2-984.

##### Sec. 10-2. Compliance and Liability

- (a) No land shall hereafter be developed, and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered, except in full compliance with the provisions of this article and any other applicable laws and regulations.
- (b) The degree of flood protection sought by this article is deemed reasonable for regulatory purposes and is based on acceptable engineering study methods. However, compliance with this article will not guarantee total protection from flooding or flood damages due to heavy rainfalls, increases in flood heights due to man-made or natural causes such as debris blockage of bridge openings, or other causes.
- (c) The county and its officers and employees shall not be responsible for flood damages that result from reliance on this article or any administrative decision related to its enforcement.

#### Division 2. Definitions

##### Sec. 10-3. Definitions

The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*500-year Floodplain:* The land at risk for flooding from a 0.2 percent (500-year) flood in any given year. This area may be identified as a Shaded X Zone or Shaded X5 Zone on the Floodplain Maps.

*Accessory or Appurtenant Structure:* A structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. An accessory structure is considered

nonresidential for the purposes of this article and may include detached garages, sheds, barns, or greenhouses.

*Addition:* An extension or increase in the floor area or height of an existing building or structure.

*Agricultural Structure:* A structure that is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic animals or plants associated with aquaculture activities. An agricultural structure does not include any structure used for human habitation.

*Alteration of a Watercourse:* A dam, impoundment, channel relocation, change in channel alignment, channelization, change in cross-sectional area of the channel or the channel capacity, or any other change associated with development which may increase the base flood elevation.

*ASCE 24:* Published by the American Society of Civil Engineers (ASCE), ASCE 24, *Flood Resistant Design and Construction* is a referenced standard in the Uniform Statewide Building Code that provides minimum requirements and expected performance for the siting, design, and construction of buildings and structures in flood hazard areas that are subject to building code requirements.

*Base Flood:* The flood having a one percent chance of being equaled or exceeded in any given year. This may also be referred to as the 100-year flood.

*Base Flood Elevation (BFE):* The water surface elevation of the base flood as shown either on (1) the most recent Federal Emergency Management Agency Flood Insurance Rate Map or Flood Insurance Study or (2) the county's most recent Comprehensive Drainage Map, whichever is higher. For areas without mapped base flood elevations, the developer shall use the 100-year flood elevations and floodway information from federal and state sources when available or, if such information is not available, flood elevations derived from sufficiently detailed hydrologic and hydraulic computations by a professional engineer who certifies the correct use of currently accepted technical concepts.

*Basement:* Any area of the building having its floor subgrade (below ground level) on all sides.

*Community Special Flood Hazard Area:* Also referred to as the Community SFHA, the land subject to a one percent or greater chance of flooding in any given year, based on 100-acre drainage areas or less, as identified on the county's current Comprehensive Drainage Maps. These areas do not include and are in addition to FEMA Special Flood Hazard Areas.

*Conditional Letter of Map Revision (CLOMR):* Either (1) a formal review and comment from FEMA stating that a proposed project complies with the minimum NFIP requirements for the project with respect to delineation of FEMA SFHAs or (2) a letter from the county engineer that provides conditional approval of a study, based on as-built conditions, that changes the location of the Community SFHA. A CLOMR does not revise the Floodplain Maps.

*County Comprehensive Drainage Map.* The most recent map approved by and maintained by the county engineer on the county's GIS designating the 100-year floodplain in the county. The county engineer may amend the County Comprehensive Drainage Map at any time upon review of additional engineering studies of floodplain areas.

*Critical Facility:* A structure or other improvement that, because of its function, size, service area, or uniqueness, has the potential to result in serious bodily harm, extensive property damage, or disruption of vital socioeconomic activities if it is destroyed or damaged or if its functionality is impaired. Critical facilities include health and safety facilities, utilities, government facilities, and hazardous materials facilities.

*Dam Break Inundation Zone:* The area downstream of a dam that would be inundated or otherwise directly affected by the failure of the dam. A dam's dam break inundation zone shall be as shown on the dam break inundation zone map for that dam filed with the Virginia Department of Conservation and Recreation.

*Dam:* A manmade structure across a watercourse used to restrain water.

*Development:* Any man-made change to improved or unimproved real estate, including buildings or other structures, as well as mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.

*Dry Floodproofing:* A combination of measures that results in a structure and its attendant utilities and equipment being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads.

*Elevated Building:* A non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns, such as posts and piers.

*Encroachment:* The advance or infringement of uses, fill, excavation, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain. Building renovations within the existing building footprint area are not considered an Encroachment.

*Erosion:* The process of the gradual wearing away of land masses.

*FEMA:* Federal Emergency Management Agency.

*FEMA Special Flood Hazard Area:* Also referred to as the FEMA SFHA, the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year as designated by FEMA. The area may be designated on a Flood Insurance Rate Map as Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V.

*Flood Insurance Rate Map (FIRM):* An official map of a community, on which the Federal Insurance Administrator has delineated both the FEMA SFHAs and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

*Flood Insurance Study (FIS):* An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (*i.e.*, mudflow) and/or flood-related erosion hazards.

*Flood or Flooding:* Defined as either:

(a) a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters, (2) the unusual and rapid accumulation or runoff of surface waters from any source, or (3) mudslides (*i.e.*, mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in a partial or complete inundation of normally dry land.

*Flood Damage-Resistant Materials:* Any construction materials capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair.

*Floodplain Administrator:* The person appointed to administer, implement, and enforce the provisions of this article. This person is also known as the Floodplain and Dam Safety Manager.

*Floodplain Management:* The operation of an overall program of corrective and preventive measures for reducing flood damage, including emergency preparedness plans, flood control works, and floodplain management regulations.

*Floodplain Maps:* The current Flood Insurance Rate Maps and Flood Insurance Study for Henrico County prepared by the Federal Emergency Management Agency, Federal Insurance Administration, effective April 25, 2024, and the current County Comprehensive Drainage Map, effective December 18, 2007, and subsequent revisions or amendments thereto.

*Floodplain or Flood-Prone Area:* Any land area susceptible to being inundated by water from any source other than a dam break.

*Floodproofing:* Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or prevent flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

- Floodway*: The channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation. The Floodway is part of the SFHA. This may also be referred to as the Regulatory Floodway.
- Freeboard*: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.
- Functionally Dependent Use*: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term only includes docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.
- GIS*: Geographic Information System.
- Habitable Building*: A structure designed primarily for or used for human habitation. This includes houses, condominiums, townhomes, restaurants, retail establishments, manufacturing buildings, commercial buildings, office buildings, manufactured homes, and similar uses. It does not include Accessory Structures.
- Highest Adjacent Grade*: The highest natural elevation of the ground surface next to the walls of a proposed structure prior to construction.
- Historic Structure*: Any structure that is: (a) listed individually in the National Register of Historic Places maintained by the U. S. Department of Interior or preliminarily determined by the U. S. Secretary of the Interior as meeting the requirements for individual listing on the National Register, or (b) certified or preliminarily determined by the U. S. Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district, or (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the U. S. Secretary of the Interior, or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) by an approved state program as determined by the U. S. Secretary of the Interior or (2) directly by the U. S. Secretary of the Interior in states without approved programs.
- Hydrologic and Hydraulic Engineering Analysis*: Analyses performed by a licensed professional engineer in accordance with standard engineering practices to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.
- Impounding Structure*: A dam across a watercourse or a manmade structure outside a watercourse used or to be used to retain or store waters or other materials as defined by Code of Virginia § 10.1-604. The term includes (i) all dams that are 25 feet or greater in height and that create an impoundment capacity of 15 acre-feet or greater and (ii) all dams that are six feet or greater in height and that create an impoundment capacity of 50 acre-feet or greater. The term "impounding structure" does not include: (a) dams licensed by the State Corporation Commission that are subject to a safety inspection program, (b) dams owned or licensed by the United States government, (c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet, (d) water or silt retaining dams approved pursuant to Code of Virginia § 45.1-222 or § 45.1-225.1, or (e) obstructions in a canal used to raise or lower water.
- Increased Cost of Compliance (ICC) Coverage*: Covers expenses that a property owner must incur above the cost to repair physical damage a building actually sustains from a flooding event to comply with mitigation requirements of state or local floodplain management ordinances or laws. Acceptable mitigation measures are higher elevation, greater floodproofing, relocation, demolition, or any combination thereof.
- Land Disturbing Activity*: Any clearing, grading, excavating, transporting, or filling of land.
- Letter of Map Amendment (LOMA)*: An amendment to the Flood Insurance Rate Map approved by FEMA based on technical data that establishes that a specific property is not located in a FEMA SFHA. However, a LOMA is site specific and is not shown on the Floodplain Maps.

- Letter of Map Change (LOMC):* A Letter of Map Change is (1) an official FEMA letter that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study or (2) an official county letter that amends or revises the most recent County Comprehensive Drainage Map.
- Letter of Map Revision (LOMR):* A revision to the Floodplain Maps based on technical data that shows a change or changes to flood zones or flood elevations or floodplain and floodway delineations or planimetric features. This includes (1) a revision approved by FEMA to revise a FEMA SFHA on a Flood Insurance Rate Map or Flood Insurance Study or (2) a revision approved by the county engineer to revise a Community SFHA on the most recent County Comprehensive Drainage Map.
- Levee System:* A flood protection system which consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.
- Levee:* A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.
- Lowest Adjacent Grade:* The lowest natural elevation of the ground surface next to the walls of a structure.
- Lowest Floor:* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor if such enclosure does not violate the applicable enclosure requirements in Sec. 10-10(b) of this article.
- Manufactured Home:* A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term Manufactured Home does not include a recreational vehicle. A Manufactured Home may be considered a Residential or Non-Residential Building depending on its use.
- Market Value:* The value of a building, excluding land value, that is determined by an appraiser certified in Virginia. The tax value of the building may be used for this value.
- Mean Sea Level:* For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's Floodplain Maps are referenced.
- Mechanical Equipment:* Includes electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities.
- Mixed-Use Building:* A building that has both residential and non-residential uses.
- Mudslide:* A condition where there is a river, flow, or inundation of liquid mud down a hillside usually as a result of a loss of brush cover and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A Mudslide (*i.e.*, mudflow) may occur as a distinct phenomenon while a landslide is in progress and will be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.
- New Construction:* Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- NFIP:* National Flood Insurance Program.
- Non-Residential Building:* A building or accessory structure where the primary use is commercial or not for human habitation.
- No-Rise Certification:* A certification statement signed by a professional engineer licensed to practice in the Commonwealth of Virginia certifying that a proposed project will not increase the base flood elevations in the community.
- Post-FIRM:* Construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map.
- Pre-FIRM:* Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map.

- Principally Above Ground:* At least fifty-one percent of the actual cash value of the structure, less land value, is above ground.
- Prolonged Contact with Floodwaters:* Partial or total inundation by floodwaters for 72 hours or more.
- Recreational Vehicle:* A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use rather than as a permanent dwelling.
- Repetitive Loss Structure:* A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a 10-year period for which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each flood event and at the time of the second flood event had increased costs of compliance coverage in the contract for flood insurance.
- Residential Building:* A non-commercial building designed for habitation by one or more families or a mixed-use building, including any building or portion of a building occupied or designed to be occupied exclusively for residential purposes. The term includes guesthouses, cabins, and sleeping units but does not include a tent, recreational vehicle, hotel or motel, boardinghouse, hospital, or other accommodation used for transient occupancy.
- Riverine:* Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- Severe Repetitive Loss Structure:* A structure that is covered under a contract for flood insurance made available under the NFIP and has incurred flood related damage for which four or more separate claims payments have been made under flood insurance coverage with each such claim exceeded \$5,000 and the cumulative amount of such claims payments exceeded \$20,000. The term also includes a structure covered by flood insurance made available under the NFIP for which at least two separate claims payments have been made under such coverage and the cumulative amount of such claims payments exceeds the market value of the insured structure.
- Special Flood Hazard Area (SFHA):* Land subject to a one percent or greater chance of flooding in any given year. This area includes both FEMA Special Flood Hazard Areas and Community Special Flood Hazard Areas and may also be referred to as the 100-year floodplain.
- Start of Construction:* The date the building permit is issued for construction, repair, reconstruction, rehabilitation, addition placement, or other improvements, provided the actual start of such activity was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, or the installation of streets and/or walkways. It also does not include excavation for a basement, footings, piers, or foundations, the erection of temporary forms, or the installation on the property of accessory buildings, such as garages or sheds that are not occupied as dwelling units or as parts of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. This definition does not apply to new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348).
- Structure:* A walled and roofed building that is principally above ground. Walled is considered "two or more outside rigid walls" and roofed is "a fully secured roof." This may also be referred to as a building.
- Substantial Damage:* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- Substantial Improvement:* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement. This term includes improvements to structures which have incurred Substantial Damage, regardless of the amount of the actual repair work performed. For the purposes of this article, the relocation of

a residential structure within the SFHA is deemed a substantial improvement. This term does not, however, include any improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum improvements necessary to assure safe living conditions.

*Substantially Impermeable:* Use of flood damage-resistant materials and techniques for dry floodproofing portions of a structure, which result in a space free of cracks, openings, or other channels that permit unobstructed passage of water and seepage during flooding and which results in a maximum accumulation of 4 in. of water depth in such space during a period of 24 hours.

*Uniform Statewide Building Code (USBC):* The current edition of the Virginia Uniform Statewide Building Code as authorized by the Code of Virginia, § 36-98.

*Variance:* A grant of relief from any requirement of this article. Variances may only be granted in compliance with the provisions of Division 5 of this article.

*Violation:* The failure of a structure or other development to be fully compliant with this article.

*Water Surface Elevation (WSE):* The height of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. These heights are shown on maps by reference to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified),

*Watercourse:* A lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

*Wet Floodproofing:* Floodproofing method that relies on the use of flood damage-resistant materials and construction techniques in areas of a structure that are below the elevation required by this article and are intentionally allowed to flood.

### Division 3: Administration and Interpretation

#### **Sec. 10-4.** Designation of the Floodplain Administrator

The Floodplain Administrator is responsible for administering and implementing this article. However, the Floodplain Administrator may implement this article by:

- (a) delegating his or her duties and responsibilities in this article to qualified technical personnel, plan examiners, inspectors, and other employees.
- (b) entering into a written agreement or written contract with a community or private sector entity to carry out specific provisions of these requirements. Administration of any part of this article by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. 59.22.

#### **Sec. 10-5.** Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include:

- (a) reviewing applications for permits to determine whether proposed activities will be located in the SFHA.
- (b) interpreting floodplain boundaries and providing available BFE and flood hazard information.
- (c) reviewing applications to determine whether proposed activities will be reasonably safe from flooding and requiring new construction and substantial improvements to meet the requirements of these requirements.
- (d) reviewing applications to determine whether all necessary permits have been obtained from the federal, state, or local agencies from which prior or concurrent approval is required. These permits shall

include permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross-section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the Commonwealth.

- (e) verifying that applicants proposing an alteration of a watercourse have notified impacted adjacent communities, the Virginia Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies, such as the Virginia Department of Environmental Quality and the U.S. Army Corps of Engineers, and have submitted copies of such notifications to FEMA.
- (f) approving applications and issuing permits to develop in the SFHA if the requirements of this article have been met.
- (g) inspecting, or causing to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these requirements.
- (h) reviewing Elevation Certificates and Floodproofing Certificates and requiring incomplete or deficient certificates to be corrected.
- (i) submitting to FEMA, or requiring applicants to do so, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the county, within six months after such data and information becomes available if the analyses indicate changes in BFEs or boundary changes.
- (j) maintaining and permanently keeping records that are necessary for the administration of these requirements, including:
  - (1) FISs, FIRMs, and LOMCs; and
  - (2) Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation to which structures have been floodproofed, inspection records, required design certifications, variances, and records of enforcement actions taken to correct violations of these requirements.
- (k) enforcing the provisions of these requirements, investigating violations, issuing notices of violations or stop work orders, and requiring permit holders to take corrective action as needed to comply with this article.
- (l) creating, and amending as necessary, a Technical Guidance Manual to help explain the application of this article using charts and other written materials.
- (m) advising the county engineer, county manager, board of supervisors, and others regarding the intent of these requirements.
- (n) administering the requirements related to proposed work on existing buildings that may be substantially damaged:
  - (1) making determinations as to whether damaged structures in the SFHA are substantially damaged.
  - (2) coordinating with federal, state, and local agencies to assist with substantial damage determinations.
  - (3) making reasonable efforts to notify owners of substantially damaged structures of their need to obtain permits to repair, rehabilitate, or reconstruct.
  - (4) prohibiting the non-compliant repair of substantially damaged buildings except for emergency measures to secure a property or temporarily stabilize a building or structure to prevent additional damage.



- (o) issuing public service announcements and other information related to permit requests and repair of damaged structures.
- (p) providing owners of damaged structures information about the proper repair of damaged structures in SFHAs.
- (q) assisting property owners with documentation required to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.
- (r) notifying FEMA when the corporate boundaries of the county have been modified.
- (s) completing and submitting a report concerning participation in the NFIP at the request of FEMA.
- (t) considering known flood, mudslide, and flood-related erosion hazards in official actions regarding land management and use throughout the county, even if those hazards have not been specifically delineated via mapping or surveying.
- (u) maintaining records of all variance actions, including notifications and justifications for the granting of variances. All issued variances shall be recorded in the annual or biennial report as requested by FEMA.

**Sec. 10-6.** Use and Interpretation of Floodplain Maps

The county's Floodplain Maps shall include the current effective FEMA FIRMs and the current effective County Comprehensive Drainage Maps in the county's online GIS. The Floodplain Administrator shall make interpretations, where needed, as to the exact location of SFHAs, floodplain boundaries, floodway boundaries, and BFEs.

The following shall apply to the use and interpretation of floodplain maps and data:

- (a) Where available topography information, such as GIS maps, LiDAR, and field surveys, indicates that adjacent ground elevations:
  - (1) are below the BFE, even in areas not delineated as SFHA, the area shall be considered as SFHA and subject to the requirements of this article;
  - (2) are above the BFE and the area is labelled as SFHA on the floodplain maps, the area shall be regulated as SFHA unless the applicant obtains an approved LOMC.The Floodplain Administrator may require field survey information to verify adjacent ground elevations from a licensed land surveyor or professional engineer.
- (b) Where BFE and floodway data have not been identified, including in areas where SFHAs have not been identified, any other reasonable flood hazard data available from a federal, state, or other source shall be reviewed and used. The Floodplain Administrator is authorized to require the applicant to determine the BFE and/or floodway in accordance with accepted hydrologic and hydraulic engineering practices, and the determination must be made by a licensed professional engineer.
- (c) BFEs and designated floodplain or floodway boundaries for effective SFHAs that are more restrictive shall take precedence over BFEs and floodplain or floodway boundaries created by any other source unless a CLOMR has been approved. Other sources of data shall be reasonably used if such sources show increased BFEs and/or wider floodplain or floodway boundaries than have been adopted for the effective SFHA.
- (d) If a Preliminary FIRM and/or a Preliminary Flood Insurance Study has been provided by FEMA:
  - (1) Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the effective SFHA for the purposes of administering these regulations.

- (2) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Sec. 10-6(b) and used where no BFEs and/or floodplain or floodway areas are provided on the effective Floodplain Maps.
- (3) Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary BFEs, floodplain or floodway areas exceed the BFEs and/or designated floodplains or floodway widths on the effective Floodplain Maps. Such preliminary data may be subject to change and/or appeal to FEMA.

**Sec. 10-7.** SFHA Boundary Changes

The county may revise the delineation of any SFHA when (1) natural or man-made changes have occurred, (2) detailed studies have been conducted by the U. S. Army Corps of Engineers or another qualified entity, or (3) an owner or developer documents the need for a boundary change. The revision must be documented in an approved LOMR.

Division 4: Permit and Development Standards

**Sec. 10-8.** Floodplain Development Permit Requirements

A Floodplain Development Permit is necessary for any use, activity, or development within a SFHA. All development must strictly comply with this article and other applicable requirements. The application must show compliance with all legal requirements before issuance of such permit, and the Floodplain Administrator shall review all sites to verify they are reasonably safe from flooding. Under no circumstances may any use, activity, or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

The following specific requirements must be met before any development in the floodplain occurs:

- (a) The applicant shall submit the application fee, application form, and required information for a Floodplain Development Permit to the Floodplain Administrator. All applications must state the elevation of the lowest floor for all structures to be elevated or the elevation to which the structures will be floodproofed in an Elevation Certificate (FEMA Form 086-0-33).
- (b) On receiving the application, the Floodplain Administrator shall determine whether the application is complete. If the Floodplain Administrator determines the application is incomplete, the Floodplain Administrator shall provide written notice of the submission deficiencies and shall not process the application further. When the Floodplain Administrator determines that the application is complete, the Floodplain Administrator shall review the application for compliance with this article.
- (c) The Floodplain Administrator must issue a Floodplain Development Permit and include any conditions necessary to ensure compliance with this article.

**Sec. 10-9.** Development Standards – General

The following provisions apply to all permitted development:

- (a) Development shall not cause an increase in the BFE, reduce the flood-carrying capacity of any watercourse, drainage ditch, or other drainage facility or system, or similar adverse impacts. The applicant shall submit a No-Rise Certificate, signed and sealed by a licensed professional engineer, with sufficient supporting technical data such as a hydrologic and hydraulic analysis, as determined

by the Floodplain Administrator. Compensatory storage may be utilized to satisfy the no rise requirement for any type of development if engineering data shows the site is hydraulically equivalent and the Floodplain Administrator approves the plans for each compensatory storage area.

- (b) Fill may not be placed in the SFHA, including the placement of fill to remove a lot from the SFHA in order to construct a building or structure.
- (c) Mechanical equipment shall be designed and/or located to prevent water from entering or accumulating within its components during conditions of flooding.
- (d) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (e) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- (f) On-site waste disposal systems shall be located and constructed to avoid their impairment or contamination during flooding.
- (g) Any repair, replacement, or reconstruction of a damaged or destroyed building or structure must comply with the requirements of Sec. 10-13.
- (h) An owner or developer must obtain a permit from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (as applicable) prior to any proposed alteration or relocation of any channel or watercourse within the county. Furthermore, the applicant shall notify all affected adjacent jurisdictions, the Virginia Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and FEMA when altering or relocating any channel or watercourse mapped in a FEMA SFHA.
- (i) Any alteration or relocation of any channel or watercourse must maintain the flood carrying capacity of the channel or watercourse.
- (j) There shall be no encroachment, including fill, new construction, substantial improvements, or other development within the floodway unless hydrologic and hydraulic analysis performed in accordance with standard engineering practices show the encroachment will not result in any increase to the BFE. The Floodplain Administrator may require a CLOMR and/or a LOMR.
- (k) New or substantially improved Critical Facilities and new or substantially improved residential structures may not be located inside the SFHA.
- (l) A new Critical Facility may be located in the 500-year floodplain if the building or structure is outside the SFHA and its lowest floor is elevated to either the BFE plus two feet or the 500-year flood elevation plus one foot, whichever is greater.
- (m) New or substantially improved residential structures may not be located closer to a SFHA than 15 feet.
- (n) New buildings or structures other than Critical Facilities or residential structures may be constructed in the SFHA if the elevation of the lowest floor, including mechanical equipment, is a minimum of two feet above the BFE.
- (o) New construction or substantial improvements located in the 500-year floodplain or that are closer to the SFHA than 40 feet shall have the lowest floor, including mechanical equipment, elevated a minimum of one foot above the BFE.

Sec. 10-10. Elevation and Construction Standards

- (a) New construction and substantial improvements, including manufactured homes, shall be:
  - (1) built in accordance with this article and the USBC, and anchored to prevent flotation, collapse, or lateral movement of the structure,
  - (2) constructed with materials and utility equipment resistant to flood damage, and

- (3) constructed with methods and practices that minimize flood damage.
- (b) *Enclosures Below the Lowest Floor*: Fully enclosed areas of new construction or substantially improved structures which are below the lowest floor shall:
- (1) not be designed or used for human habitation,
  - (2) be used solely for parking of vehicles, building access, or limited storage of maintenance equipment for the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
  - (3) be constructed entirely of flood resistant materials;
  - (4) include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, flood openings must meet the following minimum design criteria:
    - a. there must be a minimum of two openings on different sides of each enclosed area subject to flooding.
    - b. the total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.
    - c. there must be openings to allow floodwaters to automatically enter and exit each enclosed area if a building has more than one enclosed area.
    - d. the bottom of all required openings shall be no higher than one foot above the adjacent grade.
    - e. openings may be equipped with screens, louvers, or other opening coverings or devices that permit the automatic flow of floodwaters in both directions without manual operation or human intervention.
- (c) *Accessory Structures*: Detached accessory structures used only for parking of vehicles and/or storage may be permitted with the lowest floor below the BFE if the following conditions are met:
- (1) the structure is not larger than 600 square feet - approximately the size of a one-story two-car garage and walls.
  - (2) the structure has flood openings in compliance with the requirements of Sec. 10-10(b)(4) to protect the structure from hydrostatic pressure.
  - (3) the structure is anchored to resist flotation, collapse, and lateral movement.
  - (4) flood damage-resistant materials are used below the BFE.
  - (5) mechanical, electrical, and utility equipment is elevated or dry-floodproofed to or above the BFE.
- Dry-floodproofing must be certified by a licensed professional engineer or architect.
- (d) *Elevation Certificates*: An Elevation Certificate (FEMA Form 086-0-33) must be submitted and approved by the Floodplain Administrator after the lowest floor of a new building or structure has been completed and before further construction has begun. In addition, an Elevation Certificate must be submitted and approved by the Floodplain Administrator after construction is completed to ensure compliance with this article prior to the issuance of a certificate of occupancy or temporary certificate of occupancy. Another certification may be required to certify corrected as-built construction. Failure to submit the Elevation Certificate or failure to make required corrections shall be cause to withhold the issuance of a certificate of occupancy or temporary certificate of occupancy.
- (e) *Recreational Vehicles*: Recreational vehicles may not be parked within the SFHA for more than 180 consecutive days and must be fully licensed and ready for highway use. For purposes of this subsection, a recreational vehicle is ready for highway use if it is on wheels or a jacking system, is

attached to the site only by quick disconnect-type utilities and security devices, and has no permanently attached additions.

- (f) *Storage of Materials and Equipment*: Storage of hazardous materials is prohibited in the SFHA. Storage of other materials and equipment may be permitted in the SFHA if the materials and equipment will not become debris during a flood by being elevated at or above the BFE or anchored to resist flotation or located in an enclosure or being removable from the site prior to a flood. To treat the materials or equipment as being removable from the site, the owner must provide (1) a copy of the contract with a trucking company to ensure the availability of removal equipment when needed, or (2) evidence of removal equipment on the property if a trucking company will not be used. In either case, the owner must provide a written designation of a location outside the SFHA to which the materials or equipment will be removed.
- (g) *Dryland Access*: New roads, driveways, and parking areas located in the SFHA must be designed and constructed so that they will not be overtopped by more than six inches of water during the 100-year flood.
- (h) *Swimming Pools*: Accessory swimming pools may be permitted in the SFHA if they are constructed in accordance with this article, the USBC, and ASCE 24.
- (i) *Tanks*: The placement of gas and liquid storage tanks must be in compliance with the USBC and ASCE 24.
- (j) *Stormwater Management Facilities*: New stormwater management facilities may not be constructed within the SFHA. Stormwater management facilities located adjacent to the SFHA that discharge into it must meet the requirements in Sec. 10-9(a).
- (k) *Temporary Structures*: Before issuance of a Floodplain Development Permit by the Floodplain Administrator for a temporary structure, all applicants must submit a plan for removal of the structure in the event of a flood-related severe weather notification (hurricane, tropical storm, flood, flash flood, etc.) which includes the following information:
  - (1) certification that the requirements of Sec. 10-9(a) and Sec. 10-9(b) have been met;
  - (2) a specified time period for the temporary use. The time period may not exceed three months and is renewable for up to one additional year;
  - (3) the name, address, and phone number of the individual responsible for the removal of the structure;
  - (4) the amount of time prior to the event when the structure will be removed;
  - (5) a copy of a contract with a trucking company to ensure the availability of removal equipment when needed or evidence of removal equipment on the property if a trucking company will not be used. In either case, the owner must provide a written designation of a location outside the SFHA to which the structure will be removed.
- (l) *Temporary Encroachments*: Temporary encroachments into the SFHA may be exempt from the requirements of Sec. 10-9(a) and Sec. 10-9(b) if a Floodplain Development permit is issued. Temporary encroachments include sediment control devices, temporary stream crossings, haul roads and construction entrances, storage of equipment, and soil stockpiling. The following conditions must be met to qualify for the exemption:
  - (1) The proposed temporary encroachment shall not be in place more than three months and is renewable for up to one additional year with written approval from the Floodplain Administrator. Temporary sediment control devices may be kept in place longer than one year if required by the appropriate regulatory agency; and,
  - (2) Supporting documentation, including a hydrologic and hydraulic analysis (if required by the Floodplain Administrator) must be submitted by a licensed professional engineer indicating

that the proposed project will not impact any existing buildings or overtop any roadway surfaces.

Sec. 10-11. Dams and Other Water-Impounding Structures

Construction of a dam or other water-impounding structure to impound water shall comply with the following requirements:

- (a) The construction's effect upon the BFE above the dam or water-impounding structure shall not endanger human life or property.
- (b) The dam or water-impounding structure shall be designed and constructed in accordance with the requirements of the Virginia Dam Safety Act, § 10.1-604 et seq. of the Code of Virginia, as amended, its implementing regulations, and any requirements of the county engineer to minimize hazards below the dam resulting from failure of the dam or water-impounding structure.

Sec. 10-12. Subdivision Proposals

- (a) Any subdivision proposal or other proposed development that exceed 50 lots or five acres, whichever is less, in an area where BFE data is not available or the SFHA has not been delineated shall include data using detailed methodologies, including a hydraulic and hydrologic analysis, comparable to those contained in a FIS. Once identified, those areas shall be subject to the requirements of this article.
- (b) Any proposed subdivision in a SFHA shall include measures to reduce flood damage.
- (c) Any proposed subdivision in a SFHA shall ensure that public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize flood damage.
- (d) Any proposed subdivision in a SFHA shall provide adequate drainage to reduce exposure to flood hazards.

Sec. 10-13. Existing Structures and Uses

- (a) A structure or use that lawfully existed before the adoption of this article but does not satisfy the current requirements of this article may continue.
- (b) An existing structure in the floodway may not be expanded or enlarged if the proposed expansion or enlargement would result in an increase in the BFE.
- (c) If a modification, alteration, repair, reconstruction, or improvement to a structure in a floodplain would cost less than 50 percent of the market value of the structure, the modification, alteration, repair, reconstruction, or improvement must be designed to minimize flood damage. If such structure does not comply with the current requirements of this article, the modification, alteration, repair, reconstruction, or improvement must not increase the amount of nonconformity.
- (d) A substantial improvement must meet the requirements of this article for new construction, and the entire structure must conform with the current USBC after the substantial improvement is completed. If a substantial improvement will be located in the 500-year floodplain or will be between 15 and 40 feet from the SFHA, the lowest floor of the substantial improvement, including mechanical equipment, must be elevated a minimum of one foot above the BFE.
- (e) An existing residential structure may not be enlarged if any part of the enlarged structure will be in, or within 15 feet of, the SFHA.
- (f) A residential structure may be relocated only if the new location of the structure is entirely outside the SFHA and the new location does not violate the provisions of this article.

**Sec. 10-14. Variance Application Process**

Applicants may seek a variance from the county engineer under Sec. 10-16 or an administrative variance from the Floodplain Administrator under Sec. 10-17.

Applications for variances shall be submitted to the county engineer and filed with the Floodplain Administrator. The Floodplain Administrator shall not accept any application without the required fee. If a variance application is filed because of a natural disaster that is the subject of a federal emergency declaration, the Floodplain Administrator may waive application and advertising fees and give the application expedited processing.

**Sec. 10-15. Variance Requirements**

No variance shall be granted unless the following minimum requirements are met:

- (a) a showing of good and sufficient cause;
- (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant;
- (c) a determination that such variance will not create or result in:
  - (1) unacceptable or prohibited increases in flood heights;
  - (2) additional threats to public safety;
  - (3) extraordinary public expense;
  - (4) nuisances;
  - (5) fraud or victimization of the public; or
  - (6) conflicts with other existing laws or ordinances;
- (d) the granting of the variance will not be detrimental to other property in the vicinity;
- (e) the circumstances giving rise to the variance application are not of a general or recurring nature;
- (f) the need for the variance arises from the physical character of the property or from the use or development of adjacent property and not from the personal or financial situation of the applicant: and,
- (g) the variance shall be the minimum necessary to provide relief.

**Sec. 10-16. County Engineer Variance**

The county engineer may grant a variance from the requirements of this article when strict application of this article would effectively prohibit or unreasonably restrict the use of the subject property. The variance may include reasonable conditions to obtain compliance with this article to the maximum extent practicable. Variances may be granted for a functionally dependent use if the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

However, the county engineer may not grant a variance for a proposed use, development, or activity within a floodway that will cause an increase of the BFE unless FEMA or the county engineer has issued a CLOMR.

Before granting a variance, the county engineer must determine that the variance application satisfies the requirements of Sec. 10-15 and consider the following additional factors:

- (a) the danger to life and property due to increased flood heights or velocities caused by encroachments.
- (b) the risk of injury to others if materials are swept onto other lands or transported in floods.
- (c) the water supply and sanitation system proposed for the development and their ability to prevent disease, contamination, and unsanitary conditions.

- (d) the susceptibility of the proposed facility to flood damage and the effect of such damage on individual owners.
- (e) the importance to the community of the services that will be provided by the proposed facility.
- (f) the availability of alternative locations for the proposed use that are not subject to flooding.
- (g) the compatibility of the proposed use with existing reasonably anticipated development.
- (h) the compatibility of the proposed use with the comprehensive plan and county floodplain management program.
- (i) vehicular access to the property during floods.
- (j) the expected heights, velocity, duration, rate of rise, and sediment transport of foreseeable flood waters on the property.
- (k) any other factors particularly relevant to the purposes of this article.

Sec. 10-17. Administrative Variance

The Floodplain Administrator may grant administrative variances for the following uses, development, or redevelopment:

- (a) minor filling in the SFHA necessary to protect or restore natural floodplain functions or to stabilize stream banks to protect public roads or utilities. The requirements of Sec. 10-9 must be met.
- (b) dry-floodproofing of nonresidential structures in lieu of requiring higher elevation of the structure if the following conditions apply:
  - (1) elevating the structure is not reasonably feasible because of the nature of the lot and/or the use of the structure, and
  - (2) all areas of the building components below the elevation corresponding to the BFE plus three feet must be watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy; this must be designed and constructed in accordance with the VA USBC and ASCE 24 and be certified by a professional engineer or architect. The following is required regarding the certification:
    - a. a Floodproofing Certificate (*FEMA Form 086-0-34*) with supporting data and an inspection and operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures must be provided, and
    - b. said certification, operational plan, and inspection and maintenance plan shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, operational plan, and inspection and maintenance plan submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.
- (c) rebuilding of a residential structure within the SFHA or setback area that has been substantially damaged by some cause other than flooding if there is no site outside of the SFHA or setback area for relocation of the structure and the lowest floor, including mechanical equipment, is elevated to the BFE plus two feet. If the structure has an enclosure below the lowest floor, the requirements in Sec. 10-10(c) must be met.



- (d) locating stormwater management facilities in the SFHA if a location outside of the SFHA is not feasible, and the following conditions have been met:
- (1) the requirements in Sec. 10-9(a) and Sec. 10-9(b) have been met.
  - (2) engineering data shows that the proposed stormwater management facility will operate effectively for its intended purpose during a 10-year flood event or the required design storm for the project, whichever is greater, and will have structure stability during a 100-year flood event.

Sec. 10-18. Notification

If a variance is granted to construct a structure below the BFE, the Floodplain Administrator shall notify the applicant in writing that construction below the BFE will result in increased premium rates for flood insurance and increase risks to life and property.

Sec. 10-19. Appeal of Variance Decisions

An applicant aggrieved by a decision of the Floodplain Administrator may appeal the decision to the county engineer within 30 days of the decision. The county engineer may modify, reverse, or affirm the Floodplain Administrator's decision.

An aggrieved applicant may appeal a variance decision of the county engineer within 30 days of the county engineer's decision to the Henrico County Circuit Court.

Division 6. Enforcement

Sec. 10-20. Inspections

The Floodplain Administrator, or designee, is authorized to conduct inspections and conduct other investigations to determine whether the property and the use thereof conforms to the requirements of this article. Such inspections shall comply with constitutional search and seizure requirements.

Sec. 10-21. Violations

Violations of this article are unlawful, and any person convicted of a violation of this article shall be subject to the provisions of Sec. 1-13 of this Code. In addition, the county may declare any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this article to be a nuisance subject to abatement.

## **ARTICLE II. STORMWATER MANAGEMENT**

### **Division 1. Purpose, Definitions, and Applicability**

**Sec. 10-27. Purpose and authority.**

(a) The purposes of this article are to promote and protect the health, safety, and general welfare of the citizens of Henrico County; to protect state waters, stream channels, and other natural resources from the potential impacts of development; and to establish procedures whereby state and federal requirements related to stormwater quality and quantity shall be administered and enforced.

(b) This article sets forth the county's provisions for complying with state requirements for erosion and sediment control, stormwater management, and protection of Chesapeake Bay Preservation Areas as well as for complying with federal requirements in the Clean Water Act. Authority and additional definitions for this article are provided by § 62.1-44.15:24 et seq. (Stormwater Management Act), § 62.1-44.15:51 et seq. (Erosion and Sediment Control Law), and § 62.1-44.15:67 et seq. (Chesapeake Bay Preservation Act) of the Code of Virginia, and the state regulations implementing these acts.

**Sec. 10-28. Definitions.**

The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Act or Virginia Stormwater Management Act* means § 62.1-44.15:24 et seq. of the Code of Virginia.

*Administrator* means the director of public works or his designee.

*Agreement in lieu of an erosion and sediment control plan* means a contract executed by the administrator and the owner in lieu of an erosion and sediment control plan for construction of a (1) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, which specifies conservation measures to be used during construction.

*Agreement in lieu of a stormwater management plan* means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the VSMP for the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

*Applicant* means any person executing an agreement in lieu of a plan, submitting an ECP for approval, submitting an application for a permit, or requesting issuance of a permit authorizing land-disturbing activities to commence.

*Best management practices or BMPs* means the schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems.

*Board* means the State Water Control Board.

*Buffer* means a natural or landscaped area or screening device intended to provide a horizontal distance and open space, to preserve vegetation, and to lessen the impact and adverse relationships between dissimilar, unrelated or incompatible land uses, or to provide an area of natural or planted vegetation to protect Chesapeake Bay Preservation Areas and county and state waters from degradation due to land disturbances or uses.

*Certificate of competence* means a valid certificate of competence from the Board as specified in 9VAC25-850-40 and 9VAC25-850-50.

*Chesapeake Bay Preservation Area or CBPA* means any land as defined in § 24-5802.B of the Code. Chesapeake Bay Preservation Areas consist of a resource protection area and a resource management area.

*Chesapeake Bay Preservation Act land-disturbing activity or CBPA land-disturbing activity* means a land-disturbing activity, including clearing, grading, or excavation, that results in land disturbance in a CBPA equal to or greater than 2,500 square feet and less than one acre. The term does not include the following activities as provided in § 62.1-44.15:34 of the Code of Virginia:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of title 45.1 of the Code of Virginia;
2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of § 10.1-1100 et seq. of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in § 10.1-1163(B) of the Code of Virginia;
3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
4. Land-disturbing activities less than 2,500 square feet in CBPAs or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
5. Discharges to a sanitary sewer or a combined sewer system;
6. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed to maintain the original line and grade, hydraulic capacity, or original construction of the project; and
8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of subsection A of § 62.1-44.15:34 of the Code of Virginia is required within 30 days of commencing the land-disturbing activity.

*Clearing* means any activity which removes vegetation, including cutting and/or removal of trees, root mat, or topsoil.

*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 minimize the discharge of pollutants to state waters.

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

*Department* means the Virginia Department of Environmental Quality.

*Development* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreational, transportation or utility facilities or structures or the clearing of

land for non-agricultural or non-silvicultural purposes. For purposes of this article, the regulation of discharges from development does not include exemptions found in 9VAC25-870-300.

*District or soil and water conservation district* means a political subdivision of the state organized in accordance with the provisions of § 10.1-506 et seq. of the Code of Virginia.

*Environmental compliance plan or ECP* means a document containing the information set forth in § 10-32 of the Code that is required to comply with this article.

*Erosion and sediment control plan or ESC plan* means a document containing material, including all major conservation decisions, for the conservation of soil and water resources of a unit or group of units of land. Each plan shall contain the information specified in § 10-34 of the Code.

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

*Exception* means an approved deviation from the requirements applicable to VESCP land-disturbing activities.

*Farm building or structure* means the same as that term is defined in Code of Virginia, § 36-97 and also includes any building or structure used for agritourism activity, as defined in Code of Virginia, § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

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

*Final stabilization* means that one of the following:

1. All soil-disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (*e.g.*, evenly distributed), is mature enough to survive, and will inhibit erosion;
2. For individual lots in residential construction, final stabilization is achieved by either:
  - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
  - b. The homebuilder establishing temporary stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization;
3. For construction projects on land used for agricultural purposes (*e.g.*, pipelines across crop or range land), final stabilization is achieved by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subsection 1 or 2 of this definition.

*Flood-prone area* means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

*General Construction Permit or GCP* means the state permit titled GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES set forth at 9VAC25-880-70 that authorizes a category of discharges under the Act and the CWA within a geographical area.

*Grading* means any excavating or filling of earth materials or any combination thereof which changes the slope or contour of land.

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

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

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

*Land development approval process* means an administrative procedure for approvals required by the Code, including approvals of construction plans, plans of development, conditional and special use permits, provisional use permits, landscape plans, agreements in lieu of a plan, erosion and sediment control plans, building permits, conditional or final subdivision plats, and construction plans.

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

*Manual* means Henrico County Environmental Compliance Manual.

*Minor modification* means an amendment to an existing General Construction Permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor General Construction 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.

*100-year floodplain* means the special flood hazard area as defined in § 10-43 of the Code.

*Operator* means the owner or operator of any facility or activity subject to the Act and this article. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permits or VSMP authority permit conditions (*i.e.*, they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or to comply with other permit conditions). In the context of stormwater discharges from municipal separate storm sewer systems, operator means the operator of the regulated system.

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

*Permittee* means the person to whom the permit authorizing land-disturbing activities is issued, including any owner or operator whose construction site is covered under a GCP, or the person who certifies that the approved erosion and sediment control plan, ECP, or agreement in lieu of a plan will be followed.

*Person* means any individual, corporation, partnership, association, state, municipality, commission, political subdivision, governmental body, any interstate body, or any other legal entity.

*Postdevelopment* means conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

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

*Prior developed lands* means land that has been previously utilized for residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

*Resource management area* or *RMA* means that component of Chesapeake Bay Preservation Areas defined in § 24-5802.B and article 8, division 5, General Definitions, of chapter 24 of the Code.

*Resource protection area* or *RPA* means that component of Chesapeake Bay Preservation Areas defined in § 24-5802.B and article 8, division 5, General Definitions, of chapter 24 of the Code.

*Regulations* means the Virginia Stormwater Management Program regulations set out in 9VAC25-870-10 et seq., as amended.

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

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

*Site* means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

*State* means the Commonwealth of Virginia.

*State permit* means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state General Construction Permit or an approval issued by the Board for stormwater discharges from a municipal separate storm sewer system. Under these state permits, the state imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act and the Regulations.

*State Water Control Law* means § 62.1-44.2 et seq. of the Code of Virginia. On July 1, 2013, it incorporated the Chesapeake Bay Preservation Act, the Erosion and Sediment Control Law, and the Stormwater Management Control Act under the jurisdiction of the Board.

*State waters* means all water, on the surface and under the ground, wholly or partially within or bordering the state or within its jurisdiction, including wetlands.

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

*Stormwater management plan* or *SWM plan* means a document containing material describing methods for complying with the requirements of this article. An agreement in lieu of a stormwater management plan as defined in this section shall be considered to meet the requirements of a stormwater management plan.

*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 for construction activities shall identify and require the implementation of control measures and shall include by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

*Stream protection area* or *SPA* means an area 50 feet in width adjacent to both sides of a stream that extends upstream from the RPA boundary to a point where the drainage area is 100 acres or more. The SPA is measured from the streambank or the limits of the two-year storm flow if the streambank is not defined.

*Subdivision* means a division of land as defined in § 19-7301 of the Code.

*Tidal shore* means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

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

*Transporting* means any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destruction of the vegetative ground cover, either by tracking or the buildup of earth materials, and erosion and sedimentation.

*Variance* means an approved deviation from the requirements applicable to VSMP land-disturbing activities.

*Virginia Erosion and Sediment Control Program authority* or *VESCP authority* means the county department of public works, which is responsible for determining the adequacy of erosion and sediment control plans and their approval.

*Virginia Erosion and Sediment Control Program land-disturbing activity* or *VESCP land-disturbing activity* means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state. It includes, but is not limited to, clearing, grading, excavating, transporting, and filling of land. The term does not include the following activities as provided in § 62.1-44.15:51 of the Code of Virginia:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Individual service connections;
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the land-disturbing activity is confined to the area of the road, street or sidewalk that is hard-surfaced;
4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to title 45.1 of the Code of Virginia;
6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of § 10.1-1100 et seq. of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in § 10.1-1163(B) of the Code of Virginia;
7. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq. of the Code of Virginia), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
9. Disturbed land areas of less than 2,500 square feet in size;
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
12. Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

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

*Virginia Stormwater Management Program* or *VSMP* means a program approved by the Board after June 30, 2013 that has been established 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 as authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.



*Virginia Stormwater Management Program authority* or *VSMP authority* means the county department of public works, which is responsible for determining the adequacy of stormwater management plans and their approval.

*Virginia Stormwater Management Program land-disturbing activity* or *VSMP land-disturbing activity* means a man-made change to the land surface that potentially changes its runoff characteristics, including clearing, grading, or excavation. The term does not include the following activities as provided in § 62.1-44.15:34 of the Code of Virginia:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of title 45.1 of the Code of Virginia;
2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of § 10.1-1100 et seq. of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in § 10.1-1163(B) of the Code of Virginia;
3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing activity exceeding an area of 2,500 square feet in CBPA's or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
5. Discharges to a sanitary sewer or a combined sewer system;
6. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of subsection A of § 62.1-44.15:34 of the Code of Virginia is required within 30 days of commencing the land-disturbing activity.

*Water quality impact assessment* means an evaluation of the environmental impacts associated with proposed development in Chesapeake Bay Preservation Areas. The evaluation components may be submitted as part of the plan of development process or in a separate document.

*Wetlands, nontidal* 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 current federal regulatory programs under § 404 of the Clean Water Act.

*Wetlands, tidal* means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

### **Sec. 10-29. Applicability.**

- (a) This article regulates three types of land disturbances and land-disturbing activities as defined in § 10-28 of the Code:
- (1) VESCP land-disturbing activity;
  - (2) VSMP land-disturbing activity; and
  - (3) CBPA land-disturbing activity.
- (b) A land-disturbing activity may be a VESCP land-disturbing activity and/or either a VSMP land-disturbing activity or a CBPA land-disturbing activity.

## **Division 2. Plan Requirements for Land-Disturbing Activities**

### **Sec. 10-30. General requirements for all land-disturbing activities.**

- (a) No person shall conduct a land disturbance or a land-disturbing activity until:
- (1) An environmental compliance plan meeting the requirements of § 10-32 of the Code has been submitted to and approved by the administrator;
  - (2) A maintenance agreement or other enforceable mechanism ensuring long term maintenance for permanent stormwater facilities meeting the requirements of § 10-54 of the Code has been submitted to and approved by the administrator;
  - (3) A financial guarantee in accordance with § 10-46 of the Code has been submitted to and approved by the administrator; and
  - (4) A preconstruction meeting in accordance with § 10-48 of the Code has been conducted.
- (b) No county department which issues grading, building, or other permits for work resulting in a regulated land-disturbing activity may issue such permits until the applicant demonstrates compliance with the applicable requirements of subsection (a) and has certified that the ECP will be followed. The owner is responsible for obtaining approval even if the land-disturbing activity will be performed by contractors or others.

### **Sec. 10-31. Applicable design standards, specifications and methods.**

The applicant shall use the applicable standards in the Virginia Erosion and Sediment Control Regulations at 9VAC25-840 et seq., the Virginia Erosion and Sediment Control Handbook, the Regulations, the Virginia BMP Clearinghouse, and the Manual in the preparation and submission of an ECP. The plan-approving authority shall be guided by the same standards, regulations and guidelines in considering the adequacy of a plan submittal. When the standards vary between the publications, the state regulations shall take precedence.

### **Sec. 10-32. Components of environmental compliance plan.**

The ECP must contain the following components:

- (a) General information
- (1) A statement that it was prepared by a professional registered in the state pursuant to § 54.1-400 et seq. of the Code of Virginia;

- (2) A site plan or map which conforms to a subdivision plat or plan of development which complies with chapters 19 or 24 of the Code;
  - (3) A tree protection plan which complies with § 24-5313.C of the Code;
  - (4) The location of RPAs, RMAs, SPAs, and all buffers required by conditions of zoning, development, or use;
  - (5) A certification by the permittee that:
    - a) All wetlands, RPAs, RMAs, SPAs, and buffers will be conspicuously flagged or otherwise identified and not disturbed unless authorized; and
    - b) The permittee will notify the administrator upon completion of the flagging;
  - (6) A comprehensive drainage plan;
  - (7) Evidence on the site plan that no more land than is necessary to provide for the proposed use or development shall be disturbed;
  - (8) A statement by the permittee acknowledging that the U.S. Army Corps of Engineers and the Department may have additional jurisdiction over wetlands not regulated by the county; and
  - (9) Evidence that all applicable U.S. Army Corps of Engineers and state permits necessary for activities in state waters and wetlands, or appropriate waivers of jurisdiction, have been obtained.
- (b) An environmental site assessment in accordance with § 10-33 of the Code;
- (c) Information addressing the Chesapeake Bay Preservation Act requirements of § 10-39 of the Code;
- (d) Information addressing the municipal separate storm sewer system program requirements in chapter 15 of the Manual; and
- (e) Other components as applicable to the type of land-disturbing activity:
  - (1) An erosion and sediment control plan in accordance with § 10-34 of the Code;
  - (2) A stormwater management plan in accordance with § 10-35 of the Code;
  - (3) A pollution prevention plan in accordance with § 10-36 of the Code;
  - (4) Measures to address applicable TMDLs in accordance with § 10-37 of the Code; and
  - (5) A stormwater pollution prevention plan in accordance with § 10-38 of the Code.
- (f) *Exception for single-family residential structures.* Unless otherwise required by §§ 10-34 through 10-38 of the Code or by the administrator, the requirements of subsections (a)(1), (a)(3), and (b) are not applicable to the construction of single-family residential structures, including additions or modifications to existing single-family residential structures.

**Sec. 10-33. Environmental site assessment component of environmental compliance plans.**

- (a) The environmental site assessment component of the ECP must indicate whether the following features are present on the site:
- (1) Surface waters (including wetlands) under the jurisdiction of the state or federal government;
  - (2) Stream protection area features as described in chapter 6 of the Manual;
  - (3) Resource protection area features, including:
    - a. Tidal wetlands;
    - b. Tidal shores;
    - c. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
    - d. Such other lands as the board of supervisors may designate by ordinance which are necessary to protect the quality of state waters; and
    - e. A vegetated buffer area no less than 100 feet in width located adjacent to and landward of the components listed in subsections a. through d. above, and along both sides of any water body with perennial flow.
  - (4) Resource management area features, including:

- a. Special flood hazard areas as defined in § 10-4 of the Code that are contiguous to resource protection areas;
- b. Highly erodible soils, including steep slopes, that are contiguous to resource protection areas;
- c. Highly permeable soils that are contiguous to resource protection areas;
- d. Nontidal wetlands not included in resource protection areas that are contiguous to resource protection areas;
- e. Other areas within 100 feet of resource protection areas; and
- f. All areas specifically designated as RMAs by ordinance of the board of supervisors because of their potential effect on water quality.

(b) The applicant shall accurately map the location of all the above features on a site in the ECP.

**Sec. 10-34. Erosion and sediment control plan requirements for VESCP land-disturbing activities.**

(a) An erosion and sediment control plan must be prepared for VESCP land-disturbing activities.

(b) An ESC plan must include the following:

- (1) Measures to control erosion and sediment;
- (2) A statement by the permittee that all erosion and sediment control measures shall be maintained;
- (3) Information assuring and demonstrating compliance with the minimum standards of the Board's erosion and sediment control regulations. Compliance with the water quantity requirements of § 10-39 of the Code shall be deemed to satisfy the requirements of subsection 19 of 9VAC25-840-40;
- (4) Calculations for sediment traps, basins, outlet protection, etc. as applicable;
- (5) Clear delineation of the preliminary limits of disturbance necessary for installation of the initial erosion and sediment control measures. The preliminary areas of land disturbance shall be the minimum necessary for installation of the initial erosion and sediment control measures, and the delineation shall include all areas necessary for such installation, including stockpiles, borrow areas, and staging areas;
- (6) Clear delineation of the ultimate limits of disturbance; and
- (7) A sequence of construction that details construction schedules and the installation, inspection, and maintenance of ESC measures.

(c) An agreement in lieu of an erosion and sediment control plan may be substituted for an ESC plan when the VESCP land-disturbing activity results from the construction of a (i) single-family residential structure, including additions or modifications to an existing single-family detached residential structure, or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent.

(d) A certificate of competence shall not be required for persons carrying out an agreement in lieu of a plan. However, 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. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this article.

**Sec. 10-35. Stormwater management plan requirements for VSMP and CBPA land-disturbing activities.**

- (a) A SWM plan must be prepared for VSMP land-disturbing activities and CBPA land-disturbing activities. However, an agreement in lieu of a stormwater management plan may be substituted for a SWM plan when the VSMP land-disturbing activity results from the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent.
- (b) The SWM plan shall contain information demonstrating compliance with the following requirements of chapter 9 of the Manual:
- (1) The general SWM plan requirements;
  - (2) The stormwater quality requirements;
  - (3) The channel protection requirements; and
  - (4) The flood protection requirements.
- (c) For purposes of computing predevelopment 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. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized, provided that actual site conditions warrant such consideration and their use is approved by the administrator.
- (d) Predevelopment and postdevelopment 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) Proposed residential, commercial, or industrial developments shall apply these stormwater management criteria to the development as a whole. Individual lots in new developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities; rather, the entire development shall be considered a single land-disturbing activity. Hydrologic parameters shall reflect the ultimate development and shall be used in all engineering calculations.
- (f) Elements of the stormwater management plans requiring services regulated under article 1 of chapter 4 of title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the state pursuant to § 54.1-400 et seq. of the Code of Virginia.
- (g) In lieu of providing the information required by subsection (b), activities grandfathered under § 10-50 of the Code must comply with the technical criteria in chapter 14 of the Manual. In those cases, stormwater management plans must:
- (1) Specify the applicable watershed management area designation and all watershed management practices that will be implemented, including construction of best management practices or a contribution to the county's environmental fund at a rate of \$8,000.00 per pound of pollutant removal required for the project in accordance with chapter 14 of the Manual;
  - (2) Include calculations and other evidence necessary to show that nonpoint source pollution loads of phosphorous and sediments to receiving surface waters during and after development will be controlled in accordance with chapter 14 of the Manual; and
  - (3) Demonstrate compliance with the 50/10 detention requirements in chapter 14 of the Manual.

**Sec. 10-36. Pollution prevention plan requirements for VSMP land-disturbing activities.**

- (a) A pollution prevention plan must be prepared for VSMP land-disturbing activities.
- (b) The pollution prevention plan shall include the following information:
  - (1) The standard plan sheet provided by the county;
  - (2) Identification of measures that will be used to minimize the following:
    - a. The discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters;
    - b. The exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
    - c. The discharge of pollutants from spills and leaks, including chemical spill and leak prevention and response procedures;
  - (3) Identification of practices that will be used to prohibit the following discharges:
    - a. Wastewater from washout of concrete, unless managed by an appropriate control;
    - b. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
    - c. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
    - d. Soaps or solvents used in vehicle and equipment washing.
- (c) The pollution prevention plan shall prohibit discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate controls.
- (d) The pollution prevention plan shall be implemented and updated by the operator in accordance with § 10-49 of the Code as necessary throughout all phases of the VSMP land-disturbing activity to implement appropriate pollution prevention measures applicable to construction activities.

**Sec. 10-37. Total maximum daily load (TMDL) requirements.**

- (a) To satisfy the TMDL requirements of the General Construction Permit, the following control measures must be used for all VSMP land-disturbing activities:
  - (1) Nutrients must be applied in accordance with manufacturer's recommendations and shall not be applied during rainfall events;
  - (2) Permanent or temporary soil stabilization measures shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;
  - (3) The operator shall conduct inspections to ensure compliance with the SWPPP and GCP conditions in accordance with the following frequency:
    - a. At least once every four business days; or
    - b. At least once every five business days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day.
- (b) These control measures are not required for CBPA land-disturbing activities.

**Sec. 10-38. Stormwater pollution prevention plan requirements for VSMP land-disturbing activities.**

- (a) A SWPPP must be prepared for all VSMP land-disturbing activities.
- (b) A SWPPP must include the following information:
- (1) Information complying with the SWPPP requirements in chapter 13 of the Manual;
  - (2) An ESC plan in accordance with § 10-34 of the Code;
  - (3) A SWM plan in accordance with § 10-35 of the Code;
  - (4) A PPP in accordance with § 10-36 of the Code; and
  - (5) Measures to address applicable TMDLs in accordance with § 10-37 of the Code.
- (c) A SWPPP must accomplish the following:
- (1) Control the volume and velocity of runoff within the site to minimize soil erosion;
  - (2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
  - (3) Minimize the amount of soil exposed during construction activity;
  - (4) Minimize the disturbance of steep slopes;
  - (5) Minimize sediment discharges from the site;
  - (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible;
  - (7) Minimize soil compaction and, unless infeasible, preserve topsoil;
  - (8) Ensure that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other earth-disturbing activities have permanently ceased on any portion of the site or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days; and
  - (9) Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
- Compliance with an ESC plan developed in accordance with § 10-34 of the Code is deemed to satisfy the requirements of this subsection.
- (d) The operator must maintain and update the SWPPP in accordance with § 10-49 of the Code.

**Sec. 10-39. Information regarding Chesapeake Bay Preservation Areas in the ECP.**

The ECP must include the following features:

- (a) The location of all CBPAs, including all land-disturbing activities contemplated therein.
- (b) A water quality impact assessment for any proposed development within a RPA, including any buffer area modification, and for any development in RMA which, due to the unique characteristics of the site or intensity of the proposed development, is considered by the administrator to be environmentally sensitive land. Two types of water quality impact assessments are appropriate:
  - (1) A minor water quality impact assessment for development which causes no more than 5,000 square feet of land disturbance within CBPAs. A minor water quality impact assessment must demonstrate that the remaining buffer area and additional vegetated area equal to the area of encroachment into the buffer will maximize water quality protection and mitigate the effects of the buffer encroachment;

- (2) A major water quality impact assessment for any development which exceeds 5,000 square feet of land disturbance within CBPAs. A major water quality impact assessment must demonstrate that the remaining buffer area and additional vegetated area equal to the area of encroachment into the buffer will maximize water quality protection and will mitigate the effects of the buffer encroachment. In addition, the major water quality impact assessment shall address all the following requirements except those waived by the administrator:
- a. Describe the existing topography, soils, hydrology and geology of the site and adjacent lands.
  - b. Describe the impacts of the proposed development on topography, soils, hydrology, and geology on the site and adjacent lands.
  - c. Indicate the following:
    - i. Disturbances or destruction of wetlands and justification for such action;
    - ii. Disruptions or reduction in the supply of water to wetlands, streams, lakes, rivers, or other water bodies;
    - iii. Disruptions to existing hydrology, including wetlands and stream circulation patterns;
    - iv. Source location and description of proposed fill material;
    - v. Location of dredge material and location of dumping area for such material;
    - vi. Location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;
    - vii. Estimation of predevelopment and postdevelopment pollutant loads in runoff;
    - viii. Estimation of the percentage increase in impervious surface on the site and types of surfacing materials used;
    - ix. Percentage of site to be cleared for the project;
    - x. Anticipated duration and phasing schedule of the construction project; and
    - xi. Listing of all required permits from all applicable agencies necessary to develop the project.
  - d. Describe the proposed mitigation measures for the potential hydrological impacts. Potential mitigation measures include:
    - i. Proposed erosion and sediment control steps. Steps may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, and the schedule and personnel for site inspection;
    - ii. Proposed stormwater management system;
    - iii. Creation of wetlands to replace those lost; and
    - iv. Minimizing cut and fill.
- (c) An acknowledgement that the owner is subject to the CBPA requirements of article 5, division 8, Chesapeake Bay Preservation, of chapter 24 of the Code.

**Sec. 10-40. Review and approval of ECPs and supporting documentation.**

- (a) The applicant shall submit an ECP and supporting documentation addressing the applicable requirements of § 10-32 of the Code to the administrator for review.
- (b) The administrator shall approve or disapprove the submittal as follows:



- (1) The administrator shall review the submittal within 45 calendar days of the date of submission;
  - (2) The administrator shall review any submittal that has been previously disapproved within 45 calendar days of the date of resubmission;
  - (3) During the review period, the administrator shall approve or disapprove the submittal and communicate the decision in writing to the person responsible for the land-disturbing activity or his designated agent. If the submittal is not approved or if the plan is returned for insufficient information, the administrator shall provide the reasons for not approving the submittal in writing and indicate the modifications, additions, terms, and conditions that will permit approval of the submittal. Approval or denial shall be based on the submittal's compliance with the requirements of § 10-32 of the Code. Where available to the applicant, electronic communication may be considered communication in writing; and
  - (4) If a submittal meets all requirements of this article and no action is taken within the time specified above, the submittal shall be deemed approved.
- (c) The administrator shall not approve an ECP unless it contains all information and control measures required by this article.

**Sec. 10-41. Amendments to approved plans.**

- (a) The administrator shall review field work under the ECP. The administrator may require amendments to an approved ECP to address any deficiencies. In the alternative, the administrator may amend components of the ECP if on-site inspection indicates that the ECP is inadequate to satisfy state or county requirements or if, because of changed circumstances, the ECP cannot be carried out. The persons responsible for carrying out the ECP must agree to the administrator's amendments, and the amendments must be consistent with state law.
- (b) Modifications to an approved ECP shall be allowed only after review and written approval by the administrator. The administrator shall have 60 calendar days to either approve or disapprove a request in writing.
- (c) If the land disturbance or land-disturbing activity ceases for more than 180 days, the administrator may reevaluate the ECP to determine whether the ECP still satisfies the requirements of this article and to verify that all requirements are still appropriate. If the administrator finds the ECP to be inadequate, the operator must submit amendments to the ECP which the administrator must approve prior to the resumption of the land-disturbing activity.

**Division 3. General Construction Permits for Discharges of Stormwater from Construction Activities**

**Sec. 10-42. General Construction Permit requirements.**

- (a) General Construction Permit coverage is required for all VSMP land-disturbing activities. A GCP is not required for CBPA land-disturbing activities.
- (b) All VSMP land-disturbing activities must satisfy the following requirements:
  - (1) The owner must submit a GCP application/registration statement to the administrator; however, in accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is

required for a small construction activity, as defined in Code of Virginia, § 62.1-44.15:24, involving a single-family detached residential structure, within or outside a common plan of development or sale;

- (2) The owner must pay the applicable GCP fee set forth in chapter 12 of the Manual to the administrator; and
- (3) The administrator must obtain evidence of GCP coverage from the Department's online reporting system, except for VSMP land-disturbing activities resulting from the construction of a single-family detached residential structure within or outside a common plan of development.

- (c) No county department may issue grading, building, or other permits for a VSMP land-disturbing activity until the requirements of subsection (b) are satisfied. The owner is responsible for compliance with sections (b)(1) and (b)(2) even if the land-disturbing activity will be performed by others.

**Sec. 10-43. Issuance, modification, maintenance, transfer, or termination of General Construction Permits.**

(a) Issuance of GCP.

- (1) The administrator will process the GCP application using the procedures in chapters 12 and 18 of the Manual. GCPs are issued by the Department.
- (2) Prior to issuance of the GCP, the administrator must:
  - a. Verify the information on the registration statement is accurate and complete;
  - b. Verify that the ECP has been approved by the VSMP authority; and
  - c. Verify that all applicable permit fees have been submitted.

(b) Modification of GCP.

- (1) The operator must use the procedures in chapters 12 and 18 of the Manual to seek modifications to the GCP.
- (2) Modifications requiring changes to the GCP that require review by the administrator require payment of the fees in chapter 12 of the Manual.
- (3) Modifications resulting in additional land-disturbing activity are subject to additional permit issuance fees equal to the difference between the initial permit issuance fee paid and the permit issuance fee that applies to the total disturbed acreage.

(c) Maintenance of GCP.

- (1) The operator must use the procedures in chapters 12 and 18 of the Manual regarding maintenance of the GCP. Annual maintenance fees in accordance with chapter 12 of the Manual apply to the GCP until the permit is terminated in accordance with subsection (e).

(d) Transfer of GCP.

- (1) The operator must use the procedures in chapters 12 and 18 of the Manual to transfer a GCP.
- (2) GCP transfers require payment of the transfer fees in chapter 12 of the Manual.

(e) Termination of GCP.

- (1) The operator shall submit a notice of termination to the administrator within 30 days of one or more of the following events:
  - a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively, and final stabilization has been achieved on all portions of the site for which the operator is responsible. When applicable, long term responsibility and

- maintenance obligations shall be recorded in the Clerk's Office of the Henrico County Circuit Court prior to submission of a notice of termination;
- b. Another operator has assumed control over all areas of the site that have not been finally stabilized and has obtained coverage for the ongoing discharge;
  - c. The operator has obtained coverage under an alternative VPDES or state permit; or
  - d. For residential construction only, temporary soil stabilization has been completed and title to the residence has been transferred to the homeowner.
- (2) Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in provisions b through d of subsection (e)(1). Authorization to discharge for the condition set forth in provision a of subsection (e)(1) shall be effective upon notification from the Department that the necessary conditions have been met or 60 days after submittal of the notice of termination, whichever occurs first.
- (3) The notice of termination shall be signed as set forth in chapter 18 of the Manual.

**Sec. 10-44. General Construction Permit time limits on applicability of approved design criteria.**

- (a) VSMP land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014 shall be conducted in accordance with the technical criteria of chapter 14 of the Manual. Such projects shall remain subject to such technical criteria for two additional state permit cycles. At the conclusion of two additional state permit cycles, portions of the project not under construction shall become subject to the current technical criteria adopted by the Board.
- (b) VSMP land-disturbing activities that obtain an initial state permit on or after July 1, 2014 shall be conducted in accordance with the technical criteria in chapter 9 of the Manual, except as provided for in § 10-50 of the Code. Land-disturbing activities conducted in accordance with the technical criteria of chapter 9 of the Manual shall remain subject to such criteria for two additional state permit cycles. At the conclusion of two additional state permit cycles, portions of the project not under construction shall become subject to the current technical criteria adopted by the Board.
- (c) Nothing in this section shall preclude an operator from satisfying more stringent technical criteria for land-disturbing activities at its discretion.

**Division 4. Maintenance and Financial Guarantees**

**Sec. 10-45. Long term maintenance provisions for permanent stormwater facilities.**

- (a) The VSMP authority shall require the owner's written acceptance of long term responsibility for maintenance of stormwater management facilities to control the quality and quantity of runoff. The owner's acceptance shall be set forth in an instrument in a form provided by the VSMP authority. The instrument will, at a minimum:
  - (1) Identify the owner of the property, or its successors in interest, as the responsible party;
  - (2) State that it runs with the land;
  - (3) Permit the VSMP authority to have access to the property for regulatory inspections and maintenance, if necessary;
  - (4) Provide for owner inspections and maintenance as well as the owner's submission of inspection and maintenance reports to the VSMP authority;
  - (5) Be enforceable by all appropriate governmental parties;
  - (6) Be submitted to the VSMP authority for review and approval prior to the approval of the ECP; and

- (7) Be recorded in the Clerks' Office of the Henrico County Circuit Court prior to (i) recordation of a subdivision plat, if applicable and (ii) prior to the administrator's release of the owner's financial guarantee for all other plans.
- (b) Recorded instruments are not required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. The administrator shall send the owners of those facilities an educational mailing once every five years describing the maintenance responsibilities for those facilities.

**Sec. 10-46. Financial guarantee.**

- (a) The owner shall be responsible for the cost of all control measures required by this article.
- (b) An applicant other than a state or federal entity must submit a cash escrow, irrevocable letter of credit, or other financial guarantee acceptable to the VSMP authority that will ensure that the VSMP authority can implement control measures at the applicant's expense should the applicant fail, after proper notice, to initiate or maintain control measures required as a result of its land-disturbing activity. Unless deemed necessary by the administrator, a financial guarantee is not required for construction on a single-family residential lot.
- (c) In accordance with § 10-30 of the Code, no person shall conduct land disturbance or a land-disturbing activity until the owner has submitted a financial guarantee in an amount determined by the administrator. This financial guarantee shall be equal to the approximate total cost of providing environmental compliance control measures and water quality improvements and in a form approved by the county attorney, guaranteeing that the required control measures will be properly and satisfactorily undertaken.
- (d) Upon completion of the land disturbance or land-disturbing activity and achievement of full stabilization of the land, the owner or permittee must provide written notification to the administrator. Upon verification of final stabilization of the land disturbance or land-disturbing activity in the project or any section thereof, submission of required stormwater management facility construction record drawings in accordance with § 10-47 of the Code, and a GCP termination statement if applicable, the administrator shall reduce or return the financial guarantee to the owner or permittee within 60 calendar days based upon the percentage of stabilization accomplished in the project or section thereof.
- (e) If the measures required by the ECP are not completely constructed, or, if constructed, fail through overload or inadequate maintenance, then the county may, if the owner or permittee does not, install control measures equal to those which would have been furnished by the approved plans or agreement in lieu of a plan. The cost of any such measures taken by the county shall be borne by the owner or permittee and shall be a charge against the financial guarantee. The county shall be entitled to collect from the owner any amount it expended which exceeds the financial guarantee. Within 60 calendar days of the achievement of final stabilization of the land-disturbing activity, the financial guarantee, or the unexpended portion thereof, shall be refunded to the applicant.

**Sec. 10-47. Stormwater management facility construction record drawing.**

- (a) A stormwater management facility construction record drawing shall be developed for each permanent stormwater management facility and submitted to the administrator for approval prior to release of the bond required in § 10-46 of the Code.

- (b) The stormwater management facility construction record drawing shall be appropriately sealed and signed by a professional registered in the state.
- (c) The stormwater management facility construction record drawing shall include a statement certifying that the stormwater management facility has been constructed in accordance with the approved ECP.
- (d) Stormwater management facility record drawings are not required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located.

### **Division 5. Implementation of plans**

#### **Sec. 10-48. Preconstruction meeting required.**

- (a) In accordance with § 10-30 of the Code, no person shall conduct land disturbance or a land-disturbing activity until a preconstruction meeting has been conducted.
- (b) Prior to the preconstruction meeting, the limits of all wetlands, RPAs, SPAs, and other areas to be protected shall be conspicuously flagged, marked with signage, or otherwise identified as shown on the ECP. The limits of these features will be verified during the preconstruction meeting.
- (c) During the preconstruction meeting, the requirements of the ECP will be reviewed.
- (d) During the preconstruction meeting for a VSMP land-disturbing activity, the SWPPP must be available for review and shall include:
  - (1) A copy of the registration for coverage;
  - (2) A copy of the notice of coverage letter;
  - (3) A copy of the GCP;
  - (4) A narrative description of the nature of the construction activity;
  - (5) Identification of the operator's inspection frequency in accordance with § 10-49 of the Code; and
  - (6) The location of the on-site rain gauge or a description of the methodology for identifying measurable storm events if the operator inspections are to be performed every seven calendar days and no later than 48 hours following a measurable storm event.
- (e) Prior to the conclusion of the preconstruction meeting for a VESCP land-disturbing activity, the individual holding a certificate of competence who will be in charge and responsible for carrying out the VESCP land-disturbing activity shall be identified and noted on the ESC plan.
- (f) Prior to conclusion of the preconstruction meeting for a VSMP land-disturbing activity, the following items must be addressed:
  - (1) The name, phone number, and qualifications of the qualified personnel conducting inspections for compliance with a SWPPP shall be identified and noted on the SWPPP;
  - (2) The individuals or positions with delegated authority to sign inspection reports or modify the SWPPP in accordance with the signatory requirements of chapter 18 of the Manual must be identified and noted on the SWPPP;
  - (3) The SWPPP shall be signed and dated in accordance with the signatory requirements of chapter 18 of the Manual;
  - (4) Evidence of GCP coverage must be posted conspicuously near the main entrance of the construction site;

- (5) A copy of the SWPPP must be made available at a central location onsite for use by those having responsibilities under the SWPPP whenever they are on the construction site; and
  - (6) The SWPPP must be available upon request by the Department, the administrator, or the EPA. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.
- (g) The administrator or his designee will sign the ECP, distribute signed copies of the ECP to appropriate parties, and authorize commencement of the land disturbance or land-disturbing activity only after the requirements of the preconstruction meeting are satisfied.
- (h) Preconstruction meetings are not required for the construction of single-family residential structures, including additions or modifications to existing single-family detached residential structures, unless deemed necessary by the administrator.

**Sec. 10-49. Operator responsibilities.**

- (a) An operator of a land-disturbing activity is responsible for ensuring compliance with the following:
  - (1) The plans and documents required by § 10-32 of the Code are submitted for review and approved by the administrator prior to initiating a land disturbance;
  - (2) A preconstruction meeting in accordance with § 10-48 of the Code is conducted prior to initiating land disturbance;
  - (3) The approved ECP is implemented;
  - (4) Maintenance of the environmental control measures in the ECP is continued.
- (b) An operator of a VSMP land-disturbing activity is also responsible for ensuring compliance with the following:
  - (1) The required registration statement is submitted to the Department in a format specified by the Department prior to initiating land disturbance;
  - (2) Applicable GCP issuance fees as set forth in chapter 12 of the Manual are paid;
  - (3) Evidence of GCP coverage is submitted to the administrator prior to initiating land disturbance;
  - (4) A copy of the notice of coverage letter must be posted conspicuously near the main entrance of the construction site and maintained until the GCP is terminated;
  - (5) The operator conducts site inspections at the following intervals:
    - a. At least once every four business days; or
    - b. At least once every five business days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between normal business days, the inspection shall be conducted on the next business day;
  - (6) Records of required inspections are maintained and included in the SWPPP in accordance with chapter 18 of the Manual;
  - (7) Identification, including name, phone number and qualifications, of the qualified personnel conducting the required inspections is provided;
  - (8) The SWPPP is implemented, maintained, and amended in accordance with chapter 18 of the Manual;
  - (9) Applicable GCP modification, transfer and maintenance fees in accordance with chapter 12 of the Manual are paid;
  - (10) GCP coverage is terminated in accordance with § 10-43 of the Code;
  - (11) A copy of the SWPPP is made available at a central location on-site for use by those having responsibilities under the SWPPP whenever they are on the construction site;

- (12) The SWPPP and all updates are made available upon request to the Department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location is posted near the main entrance of the construction site;
- (13) A stormwater management facility construction record drawing in accordance with § 10-47 of the Code is submitted prior to release of the financial guarantee required by § 10-46 of the Code; and
- (14) SWPPPs and pollution prevention plans for construction activities covered by a previous GCP are reviewed and updated as necessary no later than 30 calendar days following permit coverage to address all applicable requirements of the latest GCP.

### **Division 6. Grandfathering, variances and exceptions**

#### **Sec. 10-50. Grandfathered activities.**

- (a) Any VSMP or CBPA land-disturbing activity shall be grandfathered and subject to the technical criteria of chapter 14 of the Manual if:
  - (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the administrator to be equivalent thereto (i) was approved by the county prior to July 1, 2012, (ii) provided a layout as defined in § 10-28 of the Code, (iii) will comply with the technical criteria of chapter 14 of the Manual, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
  - (2) A state permit has not been issued prior to July 1, 2014; and
  - (3) Land disturbance did not commence prior to July 1, 2014.
- (b) County, state, and federal projects shall be grandfathered and subject to the technical criteria of chapter 14 of the Manual provided:
  - (1) There has been an obligation of county, state, or federal funding, in whole or in part, prior to July 1, 2012, or the Department has approved a stormwater management plan prior to July 1, 2012;
  - (2) A state permit has not been issued prior to July 1, 2014; and
  - (3) Land disturbance did not commence prior to July 1, 2014.
- (c) VSMP and CBPA land-disturbing activities grandfathered under subsections (a) and (b) shall remain subject to the technical criteria of chapter 14 of the Manual for one additional state permit cycle. After one additional state permit cycle, the portions of the project not under construction shall become subject to the current technical criteria adopted by the Board.
- (d) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of chapter 14 of the Manual.
- (e) Nothing in this section shall preclude an operator from satisfying more stringent technical criteria for land-disturbing activities at its discretion.

#### **Sec. 10-51. Variances from requirements for VESCP land-disturbing activities.**

- (a) This section applies to VESCP land-disturbing activities.

- (b) The administrator may waive or modify any of the requirements of the ESC plan that are deemed inappropriate or too restrictive under the following conditions:
- (1) An applicant may request a variance by explaining the reasons in writing. Specific variances which are allowed shall be documented in the plan;
  - (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the administrator; and
  - (3) The administrator shall respond in writing either approving or disapproving the request. If the administrator does not approve a variance within ten calendar days of receipt of the request, the request is denied. Following disapproval, the applicant may resubmit a variance request with additional documentation.
- (c) The administrator shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage. Variances shall be the minimum necessary to afford relief, and the administrator shall impose reasonable conditions necessary to protect water quality.

**Sec. 10-52. Exceptions to requirements for VSMP land-disturbing activities.**

- (a) This section applies to VSMP land-disturbing activities as defined in § 10-28 of the Code.
- (b) The administrator may only grant exceptions to the requirements of § 10-35 of the Code.
- (c) Exception requests must be made in writing and must include the reasons for making the request.
- (d) Exception requests may be submitted to the administrator at any time during the plan review and approval process or after the VSMP land-disturbing activity has commenced.
- (e) Economic hardship alone is not a sufficient reason for an exception from the requirements of this chapter.
- (f) An exception to the requirement that the VSMP land-disturbing activity obtain GCP coverage shall not be granted under any circumstances.
- (g) An exception to fully satisfying required phosphorus reductions shall not be granted unless offsite options in accordance with chapter 9 of the Manual have been considered and are not available.
- (h) An exception cannot be allowed for use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website except where allowed in accordance with chapter 14 of the Manual.

**Division 7. Inspections and Monitoring**

**Sec. 10-53. Right of entry.**

- (a) The Department, the VSMP authority, where authorized to enforce this article, any duly-authorized agent of the Department or VSMP authority, or the county may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations necessary to enforce this article. For the county, this authority shall apply only to those properties from which a discharge enters its municipal separate storm sewer system.



- (b) In accordance with a financial guarantee, a VSMP authority may also enter any establishment or upon any property, public or private, to initiate or maintain appropriate actions that are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

**Sec. 10-54. Monitoring and inspection of land-disturbing activities.**

- (a) The administrator shall inspect land-disturbing activities to ensure compliance with the provisions of the ECP required in § 10-30 of the Code.
- (b) The administrator shall provide notice of the inspection to the owner, operator, permittee or person responsible for carrying out the ECP.
- (c) The administrator will conduct inspections in accordance with the following frequencies:
  - (1) Inspections to monitor compliance with the requirements of an ESC plan shall be conducted in accordance with the county's alternate inspection program approved by the Soil and Water Conservation Board or the Board;
  - (2) Inspections to monitor compliance with the requirements of a SWM plan shall occur at least once every three months;
  - (3) Inspections to monitor compliance with the requirements of a pollution prevention plan shall occur at least once every three months; and
  - (4) Inspections to monitor compliance with the measures required to address applicable TMDLs in accordance with § 10-37 of the Code shall occur at least once every three months.
- (d) The operator of a VSMP land-disturbing activity shall conduct inspections to ensure compliance with the SWPPP and other GCP conditions in accordance with the following frequency:
  - (1) At least once every four business days; or
  - (2) At least once every five business days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day.
- (e) The operator of a VSMP land-disturbing activity shall maintain and include records of the required inspections in the SWPPP in accordance with chapter 18 of the Manual.
- (f) The administrator may require every permit applicant, every permittee, or any person subject to GCP requirements under § 62.1-44.15:24 et seq. of the Code of Virginia to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act. Any personal information shall not be disclosed except to an appropriate official of the Board, the Department, the U.S. Environmental Protection Agency, or as required by the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

**Sec. 10-55. Monitoring and inspection of permanent stormwater facilities.**

- (a) The VSMP authority shall establish an inspection program that ensures stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. The inspection program shall:
  - (1) Be approved by the Board;

- (2) Ensure that each stormwater management facility is inspected by the administrator or its designee, not to include the owner, at least once every five years unless it is inspected as provided in subsection (c); and
  - (3) Be documented by records.
- (b) The owner of a stormwater management facility must provide inspection and maintenance reports to the VSMP authority in accordance with the provisions of the recorded maintenance agreement required by § 10-45 of the Code.
- (c) The VSMP authority may utilize the inspection reports submitted by the owner of a stormwater management facility as required by § 10-54 of the Code as part of an inspection program established in subsection (a) of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to § 54.1-400 et seq. of the Code of Virginia, a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor, or who holds an appropriate certificate of competence from the Board.
- (d) Stormwater management facilities for which a recorded instrument is not required under § 10-54 of the Code shall not be subject to the requirement for inspections conducted by the VSMP authority. The administrator shall send the owners of those facilities an educational mailing once every five years describing the maintenance responsibilities associated with the facilities.

### **Division 8. Enforcement and Appeals**

#### **Sec. 10-56. Enforcement.**

- (a) If the administrator determines there is a failure to comply with the provisions of this article, he may pursue the following enforcement measures to ensure compliance:
- (1) Verbal warnings and inspection reports;
  - (2) Notices of corrective action;
  - (3) Notices to comply and stop work orders in accordance with § 62.1-44.15:37 of the Code of Virginia;
  - (4) Criminal penalties in accordance with §62.1-44.15:49(B) and (C) of the Code of Virginia; and
  - (5) Injunctions in accordance with §§ 62.1-44.15:42 and 62.1-44.15:48 of the Code of Virginia.
- (b) The enforcement measures listed in subsection (a) will be undertaken in accordance with chapter 21 of the Manual.
- (c) Nothing in this article removes from the Board its authority to enforce the provisions of the Act and its implementing regulations.
- (d) The Department may terminate state permit coverage during its term and require an application for an individual state permit or it may deny a state permit renewal application for a permittee's failure to comply with state permit conditions or on its own initiative in accordance with the Act and this article.
- (e) Any person who violates any provision of this article or of any regulation, ordinance, or standard and specification adopted or approved hereunder, including those adopted pursuant to the conditions of a municipal separate storm sewer system permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued as

herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

- (f) Violation of this article shall be a misdemeanor.

**Sec. 10-57. Appeals.**

- (a) A permit applicant, permittee, or person subject to the permit requirements of this article who is aggrieved by a decision of the administrator may file a notice of appeal stating the grounds therefor with the county manager within 15 working days of the decision being appealed. The county manager shall render a written decision on the appeal. The county manager's decision shall be the final decision of the county.
- (b) The county manager's decision may be appealed by the filing of a notice of appeal stating the grounds therefor with the Henrico County Circuit Court within 30 days of the county manager's decision.

**Secs. 10-58 - 10-66. Reserved.**

**ARTICLE III. - NOISE**

\***Cross reference**— Amusements, ch. 4; buildings, ch. 6; offenses, ch. 13; traffic and vehicles, ch. 22; unnecessary noise in operation of vehicle, § 22-36; zoning, ch. 24.

\***State law reference**— Applicability of local noise ordinances to certain sport shooting ranges, Code of Virginia, § 15.2-917; locality may regulate motorcycle noise, Code of Virginia, § 15.2-919.

**Sec. 10-67. - Penalty and enforcement.**

- (a) No person may be charged with a violation of the provisions of section 10-68 unless:
- (1) A complainant appears before a magistrate and requests a summons to be issued; or
  - (2) A violation is committed in the presence of a police officer.
- (b) Notwithstanding the provisions of subsection (a), no person may be charged with a violation of subparagraph (2) of section 10-68 occurring between 7:00 a.m. and 11:00 p.m. unless the violation is committed in the presence of a police officer.
- (c) Any person convicted of violating any of the provisions of section 10-68 will be punished by a fine not to exceed \$500.00. Any person convicted of a second offense within less than five years after a first offense under this article will be punished by a fine not to exceed \$1,000.00. Any person convicted of a third offense within less than ten years after a first offense under this article will be punished by a fine not to exceed \$2,500.00.
- (d) Each day a violation continues unabated constitutes a separate offense.
- (e) Criminal enforcement against a person violating this article is not a bar against, or a prerequisite for, taking any other action permitted by this Code or the Code of Virginia to abate the violation.  
(Code 1980, § 15-10; Code 1995, § 10-71; Ord. No. 1141, § 1, 2-23-2010)

**Sec. 10-68. - Prohibited noises enumerated.**

It is unlawful for any person to cause or permit to be caused any of the following prohibited sounds or noises:

- (1) *Social gatherings and parties.* Allowing any noise between 11:00 p.m. and 7:00 a.m. generated from a gathering of ten or more people that is plainly audible:
  - a. Inside the confines of the dwelling unit, house or apartment of another person; or
  - b. In a residential area, at 100 or more feet from the gathering.
- (2) *Sound-producing and sound-reproducing devices.* The use, operation, or playing of any radio, phonograph, television, projector, record, compact disc, tape, digital music, MP3 or DVD player, musical instrument, microphone, loudspeaker, sound amplifier, or similar device designed or used for producing or reproducing sound, regardless of whether such sound-producing or sound-reproducing device is located inside of a structure or outside of or on a structure, in such a manner or with such volume or duration that it is plainly audible:
  - a. Inside the confines of the dwelling unit, house, or apartment of another person; or
  - b. In residential areas, at 50 or more feet from the device between 11:00 p.m. and 7:00 a.m.

The prohibition in this subparagraph (2) does not apply (i) when the source of the sound is in a commercial establishment located in areas zoned for urban mixed use or (ii) between the hours of 7:00 a.m. and 11:00 p.m. when the source of the sound is a recreational or athletic facility or commercial, industrial, or other non-residential property.

- (3) *Noisy animals.* Allowing any animal to cause any sound or noise such that it is plainly audible
  - a. Inside the confines of the dwelling unit, house or apartment of another person at least once a minute for ten consecutive minutes; or
  - b. At 100 or more feet from the animal at least once a minute for ten consecutive minutes.However, this prohibition shall not apply to animal sounds or noises arising between the hours of 7:00 a.m. and 11:00 p.m. on the premises of any commercial kennel, animal boarding place, small animal hospital, veterinarian hospital, or veterinarian clinic, as those terms are defined in chapter 24, or any county animal shelter.
- (4) *Trash and recycling collection.* The creation of any sound or noise between 12:00 midnight and 6:00 a.m. that is plainly audible in a residential area, except those areas zoned for urban mixed use, when the sound or noise is produced in connection with the loading or unloading of refuse, waste or recycling collection vehicles.
- (5) *Street cleaning and construction.* The creation of any sound or noise between 11:00 p.m. and 6:00 a.m. that is plainly audible in a residential area, except those areas zoned for urban mixed use, when the sound or noise is produced in connection with:
  - a. The cleaning of streets or parking lots; or
  - b. Construction or demolition activities.
- (6) *Peddlers and hawkers.* Yelling, shouting, whistling, screaming or crying for the purpose of attracting attention to a performance, show, sale or display of merchandise between the hours of 11:00 p.m. and 7:00 a.m. on any public street, sidewalk or parking lot or any privately owned street, sidewalk or parking lot open to the public, except to summon aid in an emergency.
- (7) *Amplified sound from vehicles.* Playing, using or operating, or permitting the playing, use or operation of, any radio, stereo, tape player, compact disc player, loudspeaker or other electronic device or mechanical equipment used for the amplification of sound, which is located on or within a motor vehicle and which is plainly audible from outside the motor vehicle at a distance of 50 feet or more. The provisions of this subsection shall not apply to the playing of music or jingles by an ice cream truck or similar mobile food service vehicle, provided such vehicle may emit sounds otherwise prohibited by this subsection only between the hours of 7:00 a.m. and 9:00 p.m.
- (8) *Lawn care activities.* Creating any sound or noise plainly audible in residential areas between 11:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or

removal or other landscaping, lawn or timbering activities. The provisions of this subsection shall not apply to sound or noise generated by the maintenance of recreational facilities such as golf courses and ball or playing fields.

*(Code 1980, § 15-9; Code 1995, § 10-73; Ord. No. 908, 10-11-1995; Ord. No. 1141, § 3, 2-23-2010)*

#### **Sec. 10-69. - Exemptions.**

The prohibitions of section 10-68 shall not apply to any sound or noise generated by any of the following:

- (1) Sound or noise which is necessary for the protection or preservation of property or the health, safety, life or limb of any person, including sound or noise caused by restoration of utility service after an interruption.
- (2) Sound or noise which is necessary for the maintenance or construction of roads and highways.
- (3) Radios, sirens, horns and bells on police, fire or other emergency response vehicles.
- (4) Parades, fireworks displays, school-related activities and other such public special events or public activities.
- (5) Band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools, colleges or universities.
- (6) Athletic contests and other officially sanctioned activities in county parks.
- (7) Fire alarms, burglar alarms and car alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises or vehicle served by any such alarm to turn off the alarm.
- (8) Religious services, religious events or religious activities or expressions, including, but not limited to, music, singing, bells, chimes and organs which are part of such service, event, activity or expression.
- (9) Locomotives and other railroad equipment, and aircraft.
- (10) Military activities of the state or of the United States of America.
- (11) Agricultural operations, as defined in Code of Virginia, § 3.2-300, provided such operations comply with all applicable laws, regulations and ordinances.
- (12) Amateur and professional motorsports competitions and competition-related events such as time trials and practices, provided the competition is sanctioned by a nationally recognized motorsports racing organization and complies with all applicable laws, regulations and ordinances, including permit terms and conditions, if any.
- (13) Political gatherings and other activities protected by the First Amendment to the United States Constitution.
- (14) Activities for which the regulation of noise has been preempted by federal law.

*(Ord. No. 1141, § 4, 2-23-2010)*

#### **Secs. 10-70—10-96. - Reserved.**

### **ARTICLE IV. - TRASH, GARBAGE, REFUSE AND LITTER**

\***Cross reference**—Dumping wastes on premises other than sanitary landfills, § 17-25; putting glass or other hazardous material on streets, § 22-38; depositing refuse on highway, right-of-way or private property, § 22-39

\***State law reference**—Litter control and recycling, Code of Virginia, § 10.1-1414 et seq.

**Sec. 10-97. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Litter* means all waste material, disposable packages or containers, but does not include the properly disposed waste of the primary processes of mining, logging, sawmilling, farming or manufacturing.

*Litter receptacle* means a container with a capacity of not less than ten gallons, constructed and placed for use as a depository for litter.

*(Code 1980, § 12.1-2; Code 1995, § 10-101)*

**State law reference** – Definition of litter, Code of Virginia, § 10.1-1414.

**Sec. 10-98. - Securing or covering loads.**

(a) *Required.* No person shall transport gravel, sand, coal or other nonagricultural and nonforestry products in a truck, trailer or semitrailer along streets, roads or highways of the county, unless the load is secured to the vehicle or is covered by a tarpaulin or other suitable cover, securely fastened to the body of the vehicle, and of such size and shape as necessary to cover the entire load.

(b) *Exceptions.* This section shall not apply to pickup trucks, public service company vehicles, or emergency snow removal equipment while engaged in snow removal operations.

(c) *Penalty.* Violation of this section shall constitute a traffic infraction punishable by a fine not to exceed \$200.00.

*(Code 1980, § 11-5; Code 1995, § 10-102; Ord. No. 976, § 1, 5-27-1998)*

**Cross reference** – Definitions and rules of construction, § 1-2.

**State law reference** – Similar provisions, Code of Virginia, § 46.2-1156(B).

**Sec. 10-99. - Allowing escape of load material.**

(a) *Prohibited.* No vehicle shall be operated or moved on any highway unless it is constructed, maintained and loaded to prevent its contents from dropping, sifting, leaking or otherwise escaping.

(b) *Exceptions.* This section shall not apply to any:

(1) Motor vehicle which is used exclusively for agricultural purposes as provided in Code of Virginia, § 46.2-698, and is not licensed in any other state;

(2) Agricultural vehicle, tractor or other vehicle exempted from registration and licensing requirements under state law; or

(3) Motor vehicle transporting forest products, poultry or livestock.

(c) *Penalty.* Violation of this section shall constitute a traffic infraction punishable by a fine not to exceed \$200.00.

*(Code 1980, § 12.1-4; Code 1995, § 10-103; Ord. No. 976, § 2, 5-27-1998)*

**State law reference** – Similar provisions, Code of Virginia, § 46.2-1156(A).

**Sec. 10-100. - Unlawful storage or accumulation of refuse.**

(a) *Prohibited storage or accumulation.* It shall be unlawful for any owner of property to allow the storage or

accumulation of trash, garbage, refuse, litter, clutter, except on land zoned for or in active farming operation, and other substances that might endanger the health or safety of other residents of the county. For purposes of this section, "clutter" includes mechanical equipment, household furniture, containers, and similar items that may be detrimental to the well-being of a community when they are left in public view for an extended period or are allowed to accumulate.

**(b) Use of containers required.** All garbage, trash, refuse, litter, clutter, except on land zoned for or in active farming operation, and other debris shall be placed in watertight containers and be kept covered until transported to the county landfill or until taken from the premises by trash or garbage collectors or otherwise disposed of as permitted by law.

**(c) Penalty.** Violation of this section shall be a class 4 misdemeanor.

*(Code 1980, §§ 11-8, 12.1-5; Code 1995, § 10-104)*

**State law reference** – Authority to remove trash, weeds, etc., Code of Virginia, § 15.2-901.

**Sec. 10-101. - Notice of violation; summons or warrant.**

County inspectors shall commence enforcement of section 10-100 by issuing a written notice to the owner in person or by mail at his last known address, informing him of the date and nature of the violation. All other violations of this article shall be enforced by summons or warrant.

*(Code 1980, § 12.1-10; Code 1995, § 10-105)*

**Sec. 10-102. - Cleanup of premises by county; lien for unpaid charges.**

If the owner refuses or fails to clean up the property after receiving the notice required by section 10-101, the county inspector may issue a summons and the county's agents or employees may remove trash, garbage, refuse, litter, clutter, except on land zoned for or in active farming operation, and other substances that might endanger the health of other residents of the county, and the cost and expenses of removal shall be charged to the owner. Such costs and expenses may be collected by the county as taxes and levies are collected. Every charge to the owner and lienholder under this section which remains unpaid shall constitute a lien against such property on a parity with liens for unpaid local real estate taxes.

*(Code 1980, § 12.1-8; Code 1995, § 10-106)*

**State law reference** – Similar provisions, Code of Virginia, § 15.2-901(B).

**Sec. 10-103. - Violations of article; penalty.**

The imposition of punishment for violation of any provision of this article shall not excuse the violation or permit it to continue, and appropriate proceedings may be instituted to prevent continuation of the violation.

*(Code 1980, § 11-13; Code 1995, § 10-107)*

**Secs. 10-104 – 10-134. - Reserved.**

**ARTICLE V. - WEEDS AND GRASS**

**\*Cross reference** – Buildings, ch. 6; zoning, ch. 24.

**\*State law reference** – Locality may provide for cutting of grass and weeds, Code of Virginia, §§ 15.2-901, 15.2-1215; local authority to control certain noxious weeds, Code of Virginia, § 15.2-902.

**Sec. 10-135. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Owner* means the principal occupants and persons holding title to any land in the county.

*Weeds* means grass, weeds, bushes, poison ivy, poison oak or any other foreign growth other than trees, ornamental shrubbery, flowers and garden vegetables.

*(Code 1980, § 11-15; Code 1995, § 10-151)*

**Sec. 10-136. - Cutting of weeds required.**

(a) It shall be a nuisance for the owner of any developed property to permit weeds more than 12 inches in height within 150 feet of adjacent property and public streets.

(b) It shall be a nuisance for the owner of any undeveloped property to permit weeds more than 12 inches in height within 150 feet of adjacent developed property.

(c) This section shall not apply to land more than 50 feet from the boundary line of property developed for residential use if such land is enrolled in a state or federal conservation program and is more than two acres in size.

(d) This section shall not apply to land in a public utility transmission easement that is more than 50 feet from the boundary line of property developed for residential use or from public streets.

*(Code 1980, § 11-16; Code 1995, § 10-153)*

**State law reference** – Authority to prohibit weeds, Code of Virginia, § 15.2-901, authority for subsection (b), Code of Virginia, § 15.2-1215.

**Sec. 10-137. - Inspection of nuisance; notice to cut.**

When the director of community revitalization has determined from inspections that a nuisance as defined in Section 10-136 exists, he shall notify the owner of the land upon which the nuisance exists to cut or cause to be cut the weeds within such reasonable time as is specified in the notice. Such notice shall be in writing, shall be delivered by hand or mailed to the last known address of the owner and of the principal occupant if different from the owner, and shall be complied with by such owner or principal occupant. One written notice per growing season shall be reasonable notice.

*(Code 1980, § 11-18; Code 1995, § 10-155; Ord. No. 942, § 1, 4-10-1997)*

**Sec. 10-138. - Performance of work by county; collection of costs.**

If such weeds are not cut within the required time as provided for in the notice under section 10-137, the director of community revitalization shall cause such weeds to be cut and shall charge and collect the cost thereof from the owner or principal occupant of the property in any manner provided by law for the collection of state or local taxes. Every such charge in excess of \$200 which has been assessed against the owner of such property and which remains unpaid shall constitute a lien against such property on a parity with liens for unpaid local real estate taxes.

*(Code 1980, § 11-19; Code 1995, § 10-156; Ord. No. 915, § 1, 4-24-1996; Ord. No. 942, § 1, 4-10-1997)*

**State law reference** – Assessment and collection of charges, Code of Virginia, §§ 15.2-901(B), 15.2-1115, 15.2-



1215.

**Secs. 10-139 – 10-163. - Reserved.**

**ARTICLE VI. - RATS**

\*Cross reference – Animals, ch. 5; buildings, ch. 6.

**Sec. 10-164. - Purpose.**

It is the purpose of this article to control rats in the county by declaring unlawful certain acts which cause the proliferation of rats and by providing penalties for violations. This article is intended to add to and not supersede existing laws governing or prohibiting litter, weed and garbage control and the disposal of waste.

*(Code 1980, § 12.2-1; Code 1995, § 10-181)*

**Sec. 10-165. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Building* means that which is built or constructed, including, without limitation, buildings for any occupancy or use whatsoever, or anything erected and framed of component parts which is fastened, anchored or rests on a permanent foundation or on the ground.

*Owner* means the principal occupants or persons holding title to any land or building in the county.

*Premises* means a lot, plot or parcel of land, including the buildings or structures thereon.

*Rat.* The term "rat" or any term including the term "rat" shall include mice.

*Rat eradication* means the elimination or extermination of rats within and without buildings and from rat harborages of any kind by any or all of the accepted measures, such as baiting, fumigation, trapping, clubbing, etc., so that such buildings and rat harborages are completely freed of rats and there is no evidence of rat infestation remaining.

*Rat harborage* means any condition which provides shelter, nutrition or protection for rats, thus favoring their multiplication and continued existence in, under or outside of a building of any kind.

*Ratproofing* means a form of construction preventing the ingress of rats into buildings from the exterior or from one building to another. It consists essentially of treating or closing all actual or potential openings in the exterior walls, ground or first floors, basements, roofs and foundations that may be reached by rats from the ground, by climbing or by burrowing, with material or equipment which is impervious to rat gnawing.

*(Code 1980, § 12.2-2; Code 1995, § 10-182)*

**Cross reference** – Definitions and rules of construction, § 1-2.

**Sec. 10-166. - Penalty for refusal to implement rat eradication or eliminate rat harborages.**

If, after receipt of the written notice or an order from the director of community revitalization under

this article, the owner, occupant or other person responsible refuses to implement rat eradication or eliminate rat harborages, such owner or individual shall, upon conviction, be guilty of a class 4 misdemeanor. Each day that the violation continues shall constitute a separate offense.

*(Code 1980, § 12.2-8; Code 1995, § 10-183; Ord. No. 942, § 2, 4-10-1997)*

**Sec. 10-167. - Control of rats required.**

It shall be the duty of each owner or occupant to keep his building and premises ratproofed, freed of rats, and maintained in a ratproof and rat-free condition and to eradicate any rat harborage.

*(Code 1980, § 12.2-3; Code 1995, § 10-184)*

**Sec. 10-168. - Maintenance of ratproofing devices.**

It shall be unlawful for the owner, occupant, contractor, public utility company, plumber, any repairman or any other person to remove and fail to restore in like condition the ratproofing from any building for any purpose, or to make any new openings that are not closed or sealed against the entrance of rats.

*(Code 1980, § 12.2-4; Code 1995, § 10-185)*

**Sec. 10-169. - Report of violation.**

Any person aggrieved by the presence of rats in violation of this article may report such presence to the director of community revitalization.

*(Code 1980, § 12.2-5; Code 1995, § 10-186; Ord. No. 942, § 2, 4-10-1997)*

**Sec. 10-170. - Inspection of site of violation; notice to control rats.**

Upon receipt of a report under section 10-169, the director of community revitalization shall cause the site of the reported violation to be inspected pursuant to applicable constitutional and statutory provisions. When the director of community revitalization has determined from such reports and inspections or otherwise that a violation in fact exists, he shall notify the owner or the occupant of the building or premises to take immediate steps to ratproof the building and eliminate rat harborages on the premises within such reasonable time as specified in the notice. Such notice shall be given in writing, shall be delivered by hand or mailed to the last known address of the owner and of the principal occupant, if different from the owner, and shall be complied with by such owner.

*(Code 1980, § 12.2-6; Code 1995, § 10-187; Ord. No. 942, § 2, 4-10-1997)*

**Sec. 10-171. - Performance of work by county; payment of costs.**

If the owner or occupant fails to implement rat eradication and ratproofing or eliminate rat harborages within the time required in the notice provided for in section 10-170, the director of community revitalization shall cause reasonable steps to be taken to implement rat eradication and ratproofing or eliminate rat harborages from the building or premises. If the owner, occupant or other person responsible denies free access for such purposes, the director of community revitalization may proceed after obtaining a warrant. Costs and expenses incurred by the county in implementing rat eradication or eliminating rat harborages on private property shall be assessed against the owner or occupant of the building or premises or any other person responsible for the condition on the property. The assessment shall be collected as taxes

and levies are collected.

(Code 1980, § 12.2-7; Code 1995, § 10-188; Ord. No. 942, § 2, 4-10-1997)

**State law reference** – Authority to collect costs of nuisance abatement, Code of Virginia, § 15.2-900.

**Secs. 10-172 – 10-195. - Reserved.**

## **ARTICLE VII. - ILLICIT DISCHARGE DETECTION AND MONITORING**

**\*Cross reference** – Buildings, ch. 6; culverts, § 18-4.

**\*State law reference** – Locality may adopt stormwater control ordinance consistent with state law, Code of Virginia, § 15.2-2114; local stormwater ordinances, Code of Virginia, § 10.1-603.14:1.

### **Sec. 10-196. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Director* means the director of public works or his designee.

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

*Illicit discharge* means any discharge to a storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES permit or discharges resulting from firefighting activities. This definition shall not include the discharges listed in section 10-199(b) unless such discharges are identified by the county as sources of pollutants to waters of the United States.

*Industrial discharge* means discharges from any conveyance which are used for collecting and conveying stormwater and which are directly related to manufacturing, processing or raw materials storage areas at an industrial plant, as defined by federal stormwater management regulations.

*Person* means any individual, firm, corporation, partnership, association, organization or other entity, including governmental entities, or any combination thereof.

*Storm sewer system* means the system of roads, streets, catchbasins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the county which are designed or used for collecting, storing or conveying stormwater or through which stormwater is collected, stored or being conveyed.

*Stormwater* means runoff from rain, snow or other forms of precipitation and surface runoff and drainage.

(Code 1980, § 21.1-1; Code 1995, § 10-215)

**Cross reference** – Definitions and rules of construction, § 1-2.

**Sec. 10-197. - Enforcement of article; penalty for violation.**

- (a) *Violations deemed misdemeanor; continuing violations; fine.* Any person who willfully or negligently violates any provision of this article shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500.00 nor more than \$32,500.00, either or both. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000.00. Each day of violation of each requirement shall constitute a separate offense.
- (b) *Liability for costs for testing, containment, etc.* Any person who, intentionally or otherwise, commits any of the acts prohibited by section 10-199 shall be liable to the county for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.
- (c) *Civil penalty.* Any person who violates any provision of this article 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. The court assessing such penalties may, at its discretion, order such penalties to be paid into the treasury of the county for the purpose of abating, preventing or mitigating environmental pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- (d) *Enjoinment.* The director may bring legal action to enjoin the continuing violation of this article and the existence of any other remedy shall be no defense to any such action.
- (e) *Remedies cumulative.* The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action that one or more of the remedies set forth in this section has been sought or granted.

(Code 1980, § 21.1-4; Code 1995, § 10-216)

**State law reference** – Penalties, Code of Virginia, §§ 10.1-603.14, 10.1-602.14:1.

**Sec. 10-198. - Inspections and monitoring.**

- (a) The director shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the conditions of the county's VPDES permit, including the prohibition of illicit discharges to the storm sewer system. The director may monitor stormwater outfalls or other components of the storm sewer system as may be appropriate in the administration and enforcement of this article.
- (b) The director shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of the county's VPDES permit.

(Code 1980, § 21.1-3; Code 1995, § 10-217)

**Sec. 10-199. - Discharges to storm sewer system.**

- (a) It shall be unlawful to:
- (1) Cause or allow illicit discharges to the county's storm sewer system;
  - (2) Discharge materials other than stormwater to the storm sewer system by spills, dumping or disposal without a VPDES permit;
  - (3) Cause or allow industrial discharges into the storm sewer system without a VPDES permit; or
  - (4) Violate any condition or provision of this article or any permit granted for stormwater discharges.
- (b) The following activities shall not be unlawful as illicit discharges under this article unless the State Water Control Board or the director determines the activity to be a significant source of pollutants to surface waters:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated groundwater infiltration (as defined at 40 CFR Part 35.2005(20));
- (6) Uncontaminated pumped groundwater;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Charity and fund-raising car washing;
- (17) Flows from riparian habitats and wetlands;
- (18) Dechlorinated swimming pool discharges;
- (19) Street wash water;
- (20) Discharges or flows from firefighting activities; and
- (21) Other activities generating discharges identified by the Department of Environmental Quality as not requiring VPDES authorization.

(c) If the State Water Control Board or the director determines that an activity listed in subsection (b) is a significant source of pollutants to surface waters, the director shall notify the person performing such activity and shall order that such activity be stopped or conducted in such manner as to avoid the discharge of pollutants into surface waters. The failure to comply with any such order shall constitute a violation of the provisions of this article.

*(Code 1980, § 21.1-2; Code 1995, § 10-218)*

**Sec. 10-200. - Compliance with county design standards.**

All stormwater management facilities, including best management practices (BMPs) for water quality and quantity management, shall comply with the current edition of the Stormwater Guidelines Manual maintained by the county engineer.

*(Code 1995, § 10-219; Ord. No. 972, § 1, 3-24-1998)*