

obtained. If the alleged violator has not obtained an approved plan and required permits within seven days from the service date of the order, the plan-approving authority shall issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and required permits are obtained. The order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the city land records. The order shall be lifted immediately upon completion of corrective action and obtaining plan approval and required permits. The owner may appeal the issuance of an order to the circuit court of the county. In addition, if the alleged activity is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the state, the plan-approving authority may issue an order requiring that all land disturbing activities be stopped regardless of the notice requirement of §4.17.1.A).

- D. Unless the violation is causing or is in imminent danger of causing harmful land erosion or sediment deposition in waters within the watersheds of the state, or land disturbing activities occurred without an approved plan and required permit, an order to stop work shall only be issued after the alleged violator failed to comply with a notice to comply sent according to §4.17.1.A. The order may require that all or part of the land disturbing activities be stopped until the specified corrective measures have been taken. The order shall be served by certified mail or hand delivery and shall remain in effect for seven days from the date of service pending application by the city or alleged violator to the circuit court of the county for appropriate relief. The order shall be lifted immediately upon completion of corrective measures. Nothing in §4.17 shall prevent the plan-approving authority from taking any other action specified in §4.17.

§4.17.2. Penalties, injunctions and other legal actions

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

§4.18. CHESAPEAKE BAY PRESERVATION

§4.18.1. Purpose and intent

§4.18 is enacted to implement the requirements of Code of Virginia, § 62.1-44.15:75 et seq., the Chesapeake Bay Preservation Act. These regulations establish the criteria that the city shall use to

§4.18.2 Applicability

determine the extent of the Chesapeake Bay preservation areas. These regulations also establish criteria for use by the city in approving, disapproving or modifying requests to rezone, subdivide, use, develop and/or redevelop land in Chesapeake Bay preservation areas. The intent of the city council and the purpose of §4.18 is to:

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

§4.18.2. Applicability

- A. §4.18 shall apply to all lands identified as Chesapeake Bay preservation areas as designated by the city council and as shown on the city Chesapeake Bay preservation area map. The Chesapeake Bay preservation area map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of §4.18. The map, entitled city of Fairfax Chesapeake Bay preservation area map, shall be identified by the signature of the zoning administrator, attested to by the city clerk, together with the date of adoption by the city council. The map shall show the general location of Chesapeake Bay preservation areas within the city and should be consulted by persons contemplating activities within the city prior to engaging in a regulated activity. The specific delineation of the Chesapeake Bay preservation area boundaries is the responsibility of the applicant in accordance with §4.18.6.
 - 1. The resource protection area includes:
 - (a) Tidal wetlands;
 - (b) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
 - (c) Tidal shores;
 - (d) Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development;
 - (e) Water bodies with perennial flow; and
 - (f) A 100-foot vegetated buffer area located adjacent to and landward of the components listed above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the resource protection area notwithstanding the presence of permitted uses, encroachments or permitted vegetation clearing in compliance with the performance criteria of §4.18.6.
 - 2. Designation of the components listed in §4.18.2.A.1 on the city's Chesapeake Bay preservation area map shall not be subject to modification unless based upon reliable site-specific information, in accordance with §4.18.6 and, if applicable, a water quality impact assessment required pursuant to §4.18.8.

3. The resource management area includes all lands in the city that are not designated as resource protection areas.
- B. If the boundaries of a Chesapeake Bay preservation area include a portion of a lot, parcel, or development project, only that portion of the lot, parcel, or development project shall be subject to the requirements of this §4.18 except as provided for in §4.18.4.D. The division of property shall not constitute an exemption from this requirement.

§4.18.3. Development review procedures

Any land disturbance, development, or redevelopment with land disturbing activity exceeding 2,500 square feet shall comply with the development review procedures outlined in §6.13, where applicable, prior to any clearing, grading or construction on the site.

§4.18.4. Allowed uses

- A. Development, land disturbances and uses authorized by underlying zoning classifications are allowed provided that they are carried out in accordance with the applicable general performance standards set forth in §4.18.7 or otherwise modified by the requirements set forth herein.
- B. Development in resource protection areas (RPAs) shall be subject to review and approval by the city and may be permitted if it:
 1. Constitutes redevelopment; or
 2. Is a roadway or driveway not exempt under §4.18.10, provided that:
 - (a) There are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - (b) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality; and
 - (c) The design and construction of the road or driveway satisfy all applicable criteria of §4.18, including the submission of a water quality impact assessment.
 - (d) The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals.
 3. Is a flood-control or stormwater-management facility that drains or treats water from multiple development projects or from a significant portion of a watershed, provided that:
 - (a) The location of the facility within the RPA is the optimum location;
 - (b) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
 - (c) The facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay local assistance board as a phase I modification to this program;
 - (d) All applicable permits for construction in state and federal waters are obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of

§4.18.5 Lot size

Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; and

(e) Approval from the city prior to construction.

4. Is a new use established pursuant to §4.18.7.D.2.
- C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §4.18 to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within an RPA.
- D. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7 as well as the development review procedures of §6.13.
- E. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within a resource protection area or a resource management area. The zoning administrator may waive the requirement for a water quality impact assessment in a resource management area upon determination that the proposed land disturbance, development or redevelopment would not significantly impact water quality. If a water quality impact assessment is required, the assessment shall include the entire lot, parcel or development project as the area of impact and shall be conducted in accordance with §4.18.8.

§4.18.5. Lot size

The creation of new lots shall be subject to the requirements of the subdivision and zoning ordinances provided that any lot shall have sufficient area outside the resource protection area to accommodate an intended development in accordance with the general performance standards in §4.18.7

§4.18.6. Interpretation of RPA and CBPA boundaries**A. Delineation by applicant**

For any property that is depicted on the city's Chesapeake Bay preservation area map as a resource protection area, the applicant shall determine the site-specific boundaries of the RPA components through the performance of a RPA site-specific study. The Chesapeake Bay preservation area map shall be used only as a guide to the general location of resource protection areas within the city.

B. Where conflict arises over delineation

Where the applicant has provided a site-specific delineation of the resource protection area, the zoning administrator shall review and verify the accuracy of the boundary delineation. In determining the site-specific resource protection area boundary, the zoning administrator may render adjustments to the applicant's boundary delineation based on the RPA site-specific study features required in §6.13.2.B.

§4.18.7. General performance standards

A. Purpose and intent

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

B. Development and redevelopment in Chesapeake Bay preservation areas

1. Land disturbance shall be minimized and limited to the area necessary to provide for the desired use or development.
 - (a) In accordance with an approved subdivision or site plan, the extent of land disturbing activity, including clearing or grading, shall be limited to the specified construction footprint. The limits of disturbance shall be clearly shown on submitted plans and physically marked on the development site.
 - (b) Ingress and egress during construction shall be limited to one access point unless otherwise approved by the zoning administrator.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development proposed and in accordance with the "Virginia Erosion and Sediment Control Handbook."
 - (a) Existing trees shall be preserved outside the limits of disturbance, however, diseased trees or trees weakened by age, storm, fire or other injury may be removed.
 - (b) Clearing and grading shall be limited outside the defined limits of disturbance. Clearing shall be allowed only to provide public roads, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the zoning administrator.
 - (c) Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected at the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be permitted within the area protected by the barrier.
3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
4. Notwithstanding any other provisions of §4.18, or any exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet shall comply with the requirements of §4.16, Storm Drainage Facilities, and §4.17, Erosion and sediment control.

§4.18.7 General performance standards

5. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years. However, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out.
6. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the state water control board until the structure is served by public sewer.
7. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with §4.16, Storm Drainage Facilities and 9VAC25-870-63 of the Virginia Stormwater Management Regulations.
8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator in accordance with the development review procedures of §6.13.

C. Performance criteria for resource protection areas

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

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

D. Buffer area requirements

To minimize the adverse effects of human activities on the core components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. The buffer area shall be maintained to meet the following additional performance standards:

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

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

§4.18.8. Water quality impact assessment

A. Purpose and intent

The purpose of the water quality impact assessment is to:

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

B. Water quality impact assessment

A water quality impact assessment shall be submitted for:

1. Any proposed land disturbance, development or redevelopment within a resource protection area including any buffer area modification or reduction as provided for in §4.18.7; or

§4.18.8 Water quality impact assessment

2. Any proposed development or redevelopment in the resource management area that may significantly impact water quality due to the unique characteristics of the site or intensity of the proposed use or development, as determined by the zoning administrator in accordance with §4.18 and §4.18.4.D. There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

C. Minor water quality impact assessment

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

1. Location of the components of any RPA, including the 100-foot buffer area;
2. Location and nature of the proposed improvements, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
3. Type and location of proposed best management practices to meet the required general performance standards specified in §4.18.7;
4. Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification; and
5. A revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

D. Major water quality impact assessment

1. A major water quality impact assessment shall be required for any development that exceeds 5,000 square feet land disturbance or that encroaches onto the seaward 50 feet of the 100-foot buffer area; or is located in the resource management area and is deemed necessary by the zoning administrator.
2. The information required in this subsection D shall be considered a minimum, unless the zoning administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
3. The following elements shall be included in the preparation and submission of a major water quality impact assessment:
 - (a) All of the information required in a minor water quality impact assessment, as specified in subsection C, above;
 - (b) A hydrogeological element that describes existing topography, estimates of soils characteristics and potential for erosion, hydrology of the area, impacts on wetlands and streams, proposed mitigation measures, and a listing of requisite permits with permit or application status.
 - (c) A landscape element that fully describes existing trees required to be identified as part of a tree management plan in accordance with §4.5.9.D.1; limits of clearing

and grading; trees and indigenous vegetation that are to be preserved within the disturbed area; measures to be taken to protect vegetation, proposed plantings, and other vegetative measures used to enhance water quality; and a proposed construction schedule that includes all activities related to clearing, grading, and proposed plantings; and

- (d) Such other measures as deemed necessary by the zoning administrator to ensure the impact to water quality can be accurately predicted.

E. Submission and review requirements

1. Copies of all site drawings and other applicable information as required by subsections C and D, above, shall be submitted to the zoning administrator for review and approval.
2. All information required in this subsection E shall be certified as complete and accurate by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the state.
3. RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.
4. Water quality impact assessments shall be prepared and submitted to the zoning administrator in conjunction with the development review procedures outlined in §6.13.
5. As part of any major water quality impact assessment submittal, the zoning administrator may require review and written comments by the Chesapeake Bay local assistance department (CBLAD). The zoning administrator should incorporate comments made by CBLAD into the final review of the major water quality impact assessment.

F. Evaluation procedure

1. Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed modification or reduction to the buffer area is consistent with the provisions of §4.18 and make a finding based upon the following criteria:
 - (a) The proposed encroachment is necessary and there is no other location on site to place improvements without disturbing the buffer area;
 - (b) The impervious surface is minimized;
 - (c) The proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - (d) The development, as proposed, meets the purpose and intent of §4.18;
 - (e) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality; and
 - (f) Any other information deemed necessary by the zoning administrator.
2. Upon the completed review of a major water quality impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of §4.16 and make a finding based upon the following criteria:

§4.18.9 Nonconforming uses and structures

- (a) The disturbance of any wetlands is minimized;
 - (b) The development will not result in significant disruption of the hydrology of the site;
 - (c) The development will not result in significant degradation to aquatic life;
 - (d) The development will not result in unnecessary destruction of plant materials on site;
 - (e) Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off site sedimentation;
 - (f) Proposed stormwater-management measures are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
 - (g) Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
 - (h) The design and location of any proposed drainfield will be in accordance with the general performance standards outlined in §4.18.7;
 - (i) The development, as proposed, is consistent with the purpose and intent of §4.16;
 - (j) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
3. The zoning administrator may require additional mitigation measures where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the zoning administrator based on the criteria listed above in subsections 1 and 2, above.
 4. The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of §4.16 when the impacts created by the proposal cannot be mitigated.

§4.18.9. Nonconforming uses and structures

- A. The lawful use of a building or structure that existed on September 17, 1990, or that exists at the time of any amendment to §4.18, and that is not in conformity with the provisions of §4.18 may be continued in accordance with Article 7, Nonconforming uses.
- B. The zoning administrator may grant an administrative waiver for remodeling or alteration to an existing nonconforming principal or accessory structure provided that:
 1. There will be no increase in nonpoint source pollution load; and
 2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of §4.17.
- C. The zoning administrator may grant an administrative waiver for expansion, restoration or replacement of an existing nonconforming principal structure provided that:
 1. If a nonconforming structure is destroyed or damaged in any manner, it shall be restored only if such use complies with the requirements of §4.18. Any such repair or restoration shall be commenced within 12 months and completed within 18 months

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

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

§4.18.10. Exemptions

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

- A. Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, public roads, public trails, and their appurtenant structures; provided that said construction, installation, operation and maintenance is in accordance with the Erosion and Sediment Control Law (Code of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of Virginia, § 10.1-603.1 et seq.). An erosion and sediment control plan and a stormwater management plan approved by the state department of conservation and recreation, or local water quality protection criteria at least as stringent as the above state requirements shall be deemed to constitute compliance with this provision. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize both encroachment into the RPA and adverse effects on water quality.
- B. Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines [owned, permitted, or both, by the city or regional service authority], provided that:
1. Such utilities and facilities shall be located outside the RPA to the degree possible;
 2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
 3. All construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
 4. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements.
- C. The following land disturbances within the RPA shall be exempted from §4.18: (i) water wells; (ii) passive recreation facilities, such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the zoning administrator that:
1. Any required permits, except those to which this exemption specifically applies, shall have been issued;

§4.18.11 Administrative waivers and special exceptions

2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
3. The intended use does not conflict with nearby planned or approved uses; and
4. Any land disturbance exceeding an area of 2,500 square feet shall comply with all city erosion and sediment control requirements.

§4.18.11. Administrative waivers and special exceptions**A. Administrative waivers**

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

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

B. Special exceptions

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

C. Waivers and exceptions

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

D. Required findings

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

1. The request is the minimum necessary to afford relief;
2. Granting the request will not confer upon the applicant any special privileges that are denied by §4.18 to other property owners who are subject to its provisions and who are similarly situated;
3. The request is in harmony with the purpose and intent of this §4.18 and is not of substantial detriment to water quality;
4. The request is not based upon conditions or circumstances that are self-created or self-imposed; and
5. Reasonable and appropriate conditions shall be imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

E. Administrative waiver process

1. The applicant shall submit an administrative waiver request to the zoning administrator. The request shall identify the potential impacts of the waiver on water

quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.

2. The zoning administrator shall review the administrative waiver request and the water quality impact assessment and may grant the waiver with such conditions and safeguards as deemed necessary to ensure and further the purpose and intent of §4.18.
3. If the zoning administrator cannot make the required findings or denies the administrative waiver request, the zoning administrator shall provide written findings and rationale for the decision to the applicant. Denial by the zoning administrator may be appealed to the board of zoning appeals pursuant to §6.21.

F. Special exception process

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

§4.18.12. Violations and penalties

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

§4.18.13. Appeals

Any order, determinations or decision made by the zoning administrator in administration and enforcement of the provisions of §4.18 may be appealed to the board of zoning appeals where it is alleged that an ER occurred. Such appeal shall be made within 30 days from the date of the order, determination or decision and shall further state with particularity the grounds of such appeal. Appeals shall further be made in accordance with §6.21 and Code of Virginia, § 15.1-2311.

§4.18.14. Definitions

For the purposes of §4.18, the following words and phrases shall have the meanings respectively ascribed to them by §4.18 unless the context clearly indicates otherwise:

§4.18.14 Definitions

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

LAND DISTURBING ACTIVITY: Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include: (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work; (2) Individual service connections; (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced; (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system; (5) Surface or deep mining; (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas; (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B); (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check darns, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; (10) Disturbed land areas of less than 10,000 square feet in size; however, the governing body may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply; (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (12) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission or the United States Army Corps of Engineers; and (13) Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

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

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

PERSON: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the State, any interstate body, or any other legal entity.

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

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

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

THE ACT: The Chesapeake Bay Preservation Act (Code of Virginia, § 10.1-2100 et seq.)