

ALBEMARLE COUNTY CODE

CHAPTER 17

WATER PROTECTION

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ARTICLE I. GENERAL

Sec. 17-100 Short title.

This chapter shall be known and may be cited as the “Water Protection Ordinance.”

(2-11-98; Code 1988, § 19.3-1; Ord. 98-A(1), 8-5-98)

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Sec. 17-101 Authority.

This chapter is adopted pursuant to the authority conferred by the Virginia Erosion and Sediment Control Law (Virginia Code §§ 10.1-560 et seq.), the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.1 et seq.) and the Chesapeake Bay Preservation Act (Virginia Code §§ 10.1-2100 et seq.).

(§ 7-1, 6-18-75, § 2, 2-11-87, 3-18-92; § 19.2-3, 6-19-91, § 3; § 19.3-2, 2-11-98; Code 1988, §§ 7-1, 19.2-3, 19.3-2; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code §§ 10.1-560 et seq., 10.1-603.1 et seq., 10.1-2100 et seq.

Sec. 17-102 Purposes.

The board of supervisors finds that this chapter is necessary to protect the health, safety and general welfare of the citizens of the county and the Commonwealth of Virginia and to prevent water from being rendered dangerous to the health of persons living in the county, and is supported by the findings of watershed studies that have been conducted. Therefore, the specific purposes of this chapter are to:

1. inhibit the deterioration of state waters and waterways resulting from land disturbing activities;
2. protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater discharges from new land development and redevelopment;
3. protect against and minimize the pollution and eutrophication of public drinking water supplies resulting from land development;
4. control nonpoint source pollution, erosion and sedimentation, and stream channel erosion;
5. maintain the integrity of existing stream channels and networks for their biological functions, drainage, and natural recharge of groundwater;
6. protect the condition of state waters for all reasonable public uses and ecological functions;
7. provide for the long-term responsibility for and maintenance of stormwater management facilities and best management practices;
8. regulate the discharge of pollutants into storm drainage systems and state waters by prohibiting illicit discharges and connections, and the dumping of refuse and pollutants; the board of supervisors hereby determines that applying such regulations to not only the county's municipal separate storm sewer system but also to privately owned and operated storm drainage systems and state waters is necessary to prevent any further degradation to water resources;
9. facilitate the integration of stormwater management and pollution control with other county ordinances, programs, policies, and the comprehensive plan; and
10. promote the long-term sustainability of groundwater resources.

(§ 7-1, 6-18-75, § 2, 2-11-87, 3-18-92; § 19.1-4, 9-29-77, art. I, § 1, 7-11-90; § 19.2-2, 6-19-91, § 2; § 19.3-3, 2-11-98; Code 1988, §§ 7-1, 19.1-4, 19.2-2, 19.3-3; Ord. 98-A(1), 8-5-98; Ord. 04-17(1), adopted 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-560 et seq., 10.1-603.1 et seq., §10.1-2108.

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Sec. 17-103 Rules of construction.

This chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. In addition to the rules of construction set forth in section 1-101 of the Code, the following rules of construction shall apply in the construction of this chapter, unless such application would be contrary to the purposes of this chapter or the context clearly indicates otherwise:

A. All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this chapter and includes any amendment thereafter or reissue in a subsequent edition.

B. Any reference to “this article,” “article II,” or “article III” shall include references to all applicable references of article I.

C. All references to “days” shall be to calendar days.

(2-11-98; Code 1988, § 19.3-4; Ord. 98-A(1), 8-5-98)

Sec. 17-104 Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter:

(1) *Agreement in lieu of a plan.* The term “agreement in lieu of a plan” means a written agreement between the program authority and an owner which specifies conservation measures which must be implemented in the construction of a single-family dwelling unit, and which may be executed by the program authority in lieu of a formal erosion and sediment control plan.

(2) *Agricultural land.* The term “agricultural land” means land used for horticulture, viticulture, silviculture or other gardening which may involve the tilling of soil for the raising of crops; the keeping of livestock and/or poultry; and/or agricultural industries or businesses, such as, but not limited to, orchards, fruit packing plants, dairies, nurseries or wayside stands.

(2.1) *Amendment to approved plan.* The term “amendment to approved plan” means a revision to a plan previously approved by the program authority that requires a plan review and approval before it is incorporated into the approved plan. The revision can originate as a desired change by the owner or to satisfy either a notice to comply or stop work order issued by the program authority.

(3) *Agricultural road.* The term “agricultural road” means a road or portion of a road that is constructed exclusively for access to agricultural land and is located on or serves a lot which is not the subject of a pending or approved preliminary or final plat, preliminary or final site plan, zoning map amendment to a non-agricultural zoning district, or a special use permit for a use or activity not directly related to agriculture.

(4) *Best management practice (BMP).* The term “best management practice (BMP)” means a practice or combination of practices, including treatment practices, operating procedures, general good housekeeping practices, pollution prevention, prohibitions of activities, education practices, and other management practices, determined by the program authority to be the most effective, practical means of preventing or reducing the amount of water pollution generated by nonpoint sources to a level compatible with water quality goals.

(5) *Certified inspector.* The term “certified inspector” means an employee or agent of the program authority who: (i) holds a certificate of competence from the soil and water conservation board in the area of project inspection for erosion and sediment control; or (ii) is enrolled in the soil and water conservation board’s training program for project inspection for erosion and sediment control and successfully completes the program within one year after enrollment.

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(6) *Certified plan reviewer.* The term “certified plan reviewer” means an employee or agent of the program authority who: (i) holds a certificate of competence from the soil and water conservation board in the area of plan review for erosion and sediment control; (ii) is enrolled in the soil and water conservation board’s training program for plan review for erosion and sediment control and successfully completes the program within one year after enrollment; or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Virginia Code §§ 54.1-400 et seq.

(7) *Certified program administrator.* The term “certified program administrator” means an employee or agent of the program authority who: (i) holds a certificate of competence from the soil and water conservation board in the area of program administration for erosion and sediment control; or (ii) is enrolled in the soil and water conservation board’s training program for program administration for erosion and sediment control and successfully completes the program within one year after enrollment. The certified program administrator is referred to herein as the *program administrator*.

(8) *Channel.* The term “channel” means a natural stream or human-made waterway.

(9) *Contiguous nontidal wetlands.* The term “contiguous nontidal wetlands” means nontidal wetlands that lie within or adjacent to a stream channel or within the flood plain of that stream channel so that there is a hydrologic connection between the stream and the wetland, and including impoundments of water along a natural stream channel.

(10) *County engineer.* The term “county engineer” means the county engineer within the department of community development or his designee.

(11) *Crop land.* The term “crop land” means land which is used for the cultivation of corn and other row crops, orchards, vineyards, and other fruits and vegetables, but excluding land used for silviculture and those crops which consist of a dense grass cover, such as hay land or pasture land.

(12) *Department of community development.* The term “department of community development” means the county department of community development.

(12.1) *Department of general services.* The term “department of general services” means the county department of general services.

(13) *Development.* The term “development” as used in sections 17-317 through 17-322 means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

(14) *Division of land.* The term “division of land” means a subdivision, rural division, or family division, as defined in the subdivision ordinance or, in the appropriate context, the land which is the subject of such subdivision, rural division, or family division.

(15) *Drainage basin.* The term “drainage basin” means a watershed.

(16) *Erosion and sediment control plan.* The term “erosion and sediment control plan” means a document which sets forth the major soil and water resources conservation measures that will be implemented to assure that the unit or units of land will be so treated to achieve the conservation objectives of this chapter, and which may also include appropriate illustrations in the form of maps or a site plan, and appropriate narratives, such as a soil and water plan inventory and management information with needed interpretations, a record of decisions contributing to conservation treatment, and any specifications submitted with the plan.

(17) *Erosion impact area.* The term “erosion impact area” means an area of land other than: (i) a lot of less than ten thousand (10,000) square feet which is used for residential purposes; or (ii) a shoreline where the erosion results from wave action, which is not subject to a current land disturbing activity but is subject to persistent soil erosion which results in the delivery of sediment onto neighboring property or into state waters.

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(18) *Flooding*. The term “flooding” means a volume of water that is too great to be confined within the banks or walls of the channel, waterbody, or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

(19) *Flood plain*. The term “flood plain” means land which would be inundated by flood waters in a storm event of a one-hundred (100) year return interval.

(20) *Handbook*. The term “handbook” means the Virginia Erosion and Sediment Control Handbook.

(20.1) *Hazardous substance*. The term “hazardous substance” means any substance designated as such under the Virginia Code and 40 CFR Part 116 (2000) pursuant to § 311 of the Clean Water Act, codified in 33 U.S.C. § 1251 *et seq.*

(20.2) *Illicit discharge*. The term “illicit discharge” means any discharge to the storm drainage system that is not composed entirely of stormwater, excepting discharges pursuant to a Virginia Pollutant Discharge Elimination System (“VPDES”) or Virginia Storm Management Program (“VSMP”) permit (other than a VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4 VAC 50-60-1220(C)(2), as delineated in section 17-501.

(20.3) *Illicit connection*. The term “illicit connection” means either:

(a) Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the storm drainage system, and includes but is not limited to: (i) any conveyances that allow sewage, process wastewater, wash water or pollutants to enter the system; and (ii) any connections to the system from indoor drains and sinks, regardless of whether such connections were previously allowed, permitted, or approved by the county or any other government agency; or

(b) Any drain or conveyance connected to the storm drainage system from a commercial or industrial use that has not been approved by the county in a site plan, subdivision plat, or other plan or permit.

(21) *Impervious cover*. The term “impervious cover” means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil, including but not limited to, roofs, buildings, streets, concrete, asphalt, and gravel placed over a compacted base.

(22) *Intermittent stream*. The term “intermittent stream” means a natural stream or portion of a natural stream that has a defined bed and defined banks within which water flows in response to precipitation, through near surface groundwater flow, or from springs, and which is not a perennial stream.

(22.1) *Inspection*. The term “inspection” means the examination of a premises by the program authority for the purpose of determining compliance with the requirements of this chapter or determining whether bonded improvements are constructed as required by the approved plans required by this chapter.

(23) *Land development*. The term “land development” means a human-made change to, or construction on, the land surface that changes its runoff characteristics. For purposes of this chapter, individual lots in a proposed division of land shall not be considered to be separate land developments; rather, the entire division of land shall be considered a single land development.

(24) *Land disturbing activity*. The term “land disturbing activity” means 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 Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, and as further defined herein:

(a) If no part of the property is located within the mountain overlay district, a land change is a land disturbing activity if it creates an area of disturbed land of ten thousand (10,000) square

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feet or more; or

(b) If the property is located within, in whole or in part, the mountain overlay district, a land change is a land disturbing activity only if it creates an area of disturbed land of two thousand five hundred (2,500) square feet or more.

(25) *Linear development.* The term “linear development” means a land development that is linear in nature such as, but not limited to: (i) the construction of electric and telephone utility lines and natural gas pipelines; (ii) the construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

(26) *Mitigation plan.* The term “mitigation plan” means a plan, a component of a stormwater management/BMP plan, an erosion and sediment control plan, or an agreement in lieu of a plan, that describes how encroachments into a stream buffer will be mitigated through runoff treatment, revegetation, the addition of extra buffer areas, or other appropriate best management practices.

(26.1) *Municipal separate storm sewer system (“MS4”).* The term “municipal separate storm sewer system” means all separate storm sewers comprising the system of conveyances, including roads with drainage systems, public streets, catch basins, sidewalks, curbs, gutters, ditches, manmade channels, or storm drains: (i) owned or operated by the county; (ii) designed or used for collecting or conveying stormwater; (iii) that are not a combined sewer; and (iv) that are not part of a publicly owned treatment works.

(27) *Natural stream.* The term “natural stream” means a nontidal waterway that is part of the natural topography, which typically will maintain a continuous, seasonal or intermittent flow during the year, and which is characterized as being irregular in cross-section with a meandering course. A constructed channel such as a drainage ditch or swale is not a natural stream.

(28) *Necessary infrastructure.* The term “necessary infrastructure” means components of a site development necessary for the protection of the public health, safety, or welfare, and environmental features. These components include, but are not limited to, the following: drainage channels, structures and facilities; best management practices; access roads for emergency vehicles; and access roads for the maintenance of stormwater management facilities and/or water-dependent facilities.

(29) *Nonpoint source pollution.* The term “nonpoint source pollution” means pollution from diffuse sources carried in stormwater runoff, including but not limited to the following pollutants: sediment, nutrients, organic and inorganic substances.

(29.1) *Non-stormwater discharge.* The term “non-stormwater discharge” means any discharge to the storm drainage system or state waters that is not comprised entirely of stormwater.

(30) *Nontidal wetlands.* The term “nontidal wetlands” means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the United States Environmental Protection Agency pursuant to section 404 of the federal Clean Water Act, in 33 Code of Federal Regulations § 328.3b, dated November 13, 1986.

(31) *Owner.* The term “owner” means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a piece of land. As used herein, *owner* also refers to, in the appropriate context: (i) any other person authorized to act as the agent for the owner; (ii) any person who submits an erosion and sediment control plan or stormwater management/BMP plan for approval or requests issuance of a permit, when required, authorizing land disturbing activities or land development to commence; and (iii) any person responsible for complying with an approved erosion and sediment control plan, agreement in lieu of a plan, or an approved stormwater management/BMP plan.

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(32) *Perennial stream.* The term “perennial stream” means any stream that is depicted as a continuous blue line on the most recent United States Geological Survey 7.5 minute topographic quadrangle maps (scale 1:24,000) or which is determined by the program authority to be perennial following a site-specific evaluation using the guidance entitled “Determinations of Water Bodies with Perennial Flow,” dated September 2003, issued by the Chesapeake Bay Local Assistance Department. This definition shall not apply to streams within a development area or area of infill and redevelopment that have been piped or converted legally and intentionally into stormwater conveyance channels such that the stream does not resemble or maintain the characteristics of a natural stream channel, as determined by the program authority.

(33) *Permit.* The term “permit” means any building permit, grading permit, or other permit, including the approval of any site plan or plat, which is required to be issued by any board, commission, officer, employee or other agency of the county as a prerequisite to any development.

(34) *Permit-issuing department.* The term “permit-issuing department” means a department of the county that issues a permit.

(35) *Plan of development.* The term “plan of development” means the process for site plan or plat review to ensure compliance with Virginia Code § 10.1-2109 and this chapter which is required as a precedent to clearing, grading, or other land disturbing activity on a site or the issuance of a building permit.

(35.1) *Person.* The term “person” means a natural person, corporation, partnership, sole proprietorship, trust, trustee, joint venture, or any other entity.

(35.2) *Plan review.* The term “plan review” means each review of a plan by the program authority for the purpose of determining compliance with the requirements of this chapter including, but not limited to, the review of a plan that has been revised and resubmitted after the program authority reviewed and disapproved a prior plan.

(36) *Plat.* The term “plat” means a preliminary or final plat, a plat for a rural division, or a plat for a family division, as provided in the subdivision ordinance.

(36.1) *Pollutant.* The term “pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

(a) The term “pollutant” includes, but is not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquids and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

(b) The term “pollutant” does not include: (i) sewage from vessels; or (ii) water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the Virginia Soil and Water Conservation board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(36.2) *Premises.* The term “premises” means any building or structure, or any lot or parcel, whether improved or unimproved, and including adjacent curbs, gutters, sidewalks and planting strips.

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(37) *Program authority.* The term “program authority” means the department of community development, and except where the context clearly indicates otherwise, includes any officer or employee of the department of community development or the department of general services authorized by the director of the department of community development to act pursuant to this chapter.

(38) *Redevelopment.* The term “redevelopment” means the process of developing land that is or has been previously developed.

(39) *Regional stormwater basin.* The term “regional stormwater basin” means a facility designed to capture, detain, and/or treat stormwater for a geographically defined upstream watershed for the purpose of providing water quality and/or quantity benefits for the region. Such a facility may be constructed by a public agency or by a private person or entity.

(39.1) *Reinspection.* The term “reinspection” means an inspection necessitated by either a notice of violation or stop work following issuance by the program authority.

(40) *Residential development.* The term “residential development” means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to contain three or more residential dwelling units.

(41) *Runoff.* The term “runoff” means the portion of precipitation which is discharged across the land surface or through conveyances to one or more waterways.

(42) *Sewage disposal system.* The term “sewage disposal system” means a sewerage system or treatment works composed of a facility or combination of facilities constructed for the transport and/or treatment of domestic, commercial or industrial sewage, but not including plumbing, fixtures, lateral pipes from a dwelling unit to a septic tank, lateral pipes from a dwelling unit to a publicly owned sewerage facility, or publicly owned facilities for the transport and/or treatment of sewage.

(43) *State waters.* The term “state waters” means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

(43.1) *Storm drainage system.* The term “storm drainage system” means the municipal separate storm sewer system and any privately owned and maintained improvements by which stormwater is collected and/or conveyed and which ultimately discharges to state waters, including but not limited to, street drainage systems, streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, human-made or altered drainage channels, ponds, and other drainage structures.

(43.2) *Stormwater.* The term “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.

(44) *Stormwater management/BMP facilities maintenance agreement.* The term “stormwater management/BMP facilities maintenance agreement” means an agreement that commits the owner or other designated parties to maintain and inspect stormwater/BMP facilities, including those required by approved mitigation plans required by section 17-322, constructed in accordance with this chapter based on specific terms and conditions of the agreement.

(45) *Stormwater management/BMP plan.* The term “stormwater management/BMP plan” means a document that describes the controls for the management of the rate of stormwater discharge and best management practices for water quality protection, including mitigation plans required by section 17-322, and which includes a narrative section, a map or site plan, pertinent calculations, and any specifications submitted with the plan.

(46) *Stream buffer.* The term “stream buffer” means an area of land at or near a tributary streambank and/or nontidal wetland that has an intrinsic water quality value due to the ecological and

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biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

(47) *Subdivision ordinance.* The term “subdivision ordinance” means the subdivision ordinance of the County of Albemarle, Virginia.

(47.1) *Virginia Pollutant Discharge Elimination System (VPDES) permit.* The term “Virginia Pollutant Discharge Elimination System (VPDES) permit” means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

(47.2) *Variance.* The term “variance” means an owner-requested waiver from or modification to either the minimum standards of the Virginia Erosion and Sediment Control Regulations or an accepted erosion and sediment control measure which requires the program authority’s evaluation and approval before it can be incorporated into a plan. Unless determined by the program authority that the variance can apply to other plans, a variance shall apply only to the plan for which it was requested and a separate variance shall be required for any other plan.

(48) *Water-dependent facility.* The term “water-dependent facility” means a development of land that cannot exist outside of the stream buffer and must be located on the shoreline because of the intrinsic nature of its operation. These facilities include, but are not limited to: (i) the intake and outfall structures of power plants, sewage treatment plants, water treatment plants, and storm sewers; (ii) public water-oriented recreation areas; and (iii) boat docks and ramps.

(49) *Water resources areas.* The term “water resources areas” means a group of specific areas within the region that share a unified stormwater philosophy based on existing and anticipated land uses and environmental sensitivities, which are each managed according to specific stormwater goals contained in this chapter. The four water resources areas, which are identified in section 17-301, are: (i) development areas; (ii) areas of infill and redevelopment; (iii) water supply protection areas; and (iv) other rural land.

(50) *Watershed.* The term “watershed” means a defined land area drained by a river, stream or drainage ways, or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.

(51) *Zoning ordinance.* The term “zoning ordinance” means the zoning ordinance of the County of Albemarle, Virginia.

(§ 7-2, 6-18-75, § 4, 7-9-80, 2-11-87, 3-18-92, § 19.1-5, 9-29-77, art. I, § 2, 9-13-78, 7-11-90, 8-3-94; § 19.2-4, 6-19-91; § 19.3-5, 2-11-98; Code 1988, §§ 7-2, 19.1-5, 19.2-4, 19.3-5; Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; Ord. 08-17(1), 2-6-08; Ord. 08-17(3), 8-6-08)

State law reference--Va. Code §§ 10.1-560, 10.1-603.2.

Sec. 17-105 Designation of program authority; powers and duties.

A. The board of supervisors hereby designates the department of community development as the program authority.

B. The program authority shall administer and enforce this chapter as authorized by law.

C. The program authority shall establish reasonable administrative procedures for the administration of this chapter, including developing and maintaining for article III a design manual containing information about the content of plans required by article III, calculation methods, maintenance and inspection procedures, and other information to assist with the implementation and enforcement of article III. The program authority shall update the design manual periodically. The manual shall be consistent with this chapter and all applicable statutes and regulations.

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D. The program authority shall assure that the erosion and sediment control program set forth in article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. Such positions may be filled by the same person.

E. The program authority shall take appropriate enforcement actions to achieve compliance with this chapter, and shall maintain a record of enforcement actions for all active land disturbing activities, land developments, illicit discharges, illicit connections, and prohibited dumping.

F. The program authority is authorized to cooperate with any federal or state agency in connection with plans for erosion and sediment control or stormwater management. The program authority may also recommend to the county executive any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the county executive on behalf of the county.

(§ 7-9, 4-21-76, 2-11-87, 3-18-92; § 19.3-6, 2-11-98; Code 1988, §§ 7-9, 19.3-6; Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-562, 10.1-603.3.

Sec. 17-106 Saving provision.

The adoption of this chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the county under any provision in effect prior to the date of adoption of this chapter, unless expressly provided for in this chapter. Any erosion and sediment control plan, runoff control permit and, to the extent they pertain to stormwater management, any final site plan or plat, approved prior to the date of adoption of this chapter shall remain in full force and effect, and all rights and remedies of the county in enforcing such plans, permits and plats are hereby preserved.

(2-11-98; Code 1988, § 19.3-7; Ord. 98-A(1), 8-5-98)

Sec. 17-107 Relation of chapter to other laws.

The requirements of this chapter are:

A. Separate from, but supplementary to, all other applicable requirements of the Code. Compliance with the requirements of this chapter shall not be deemed to be compliance with other applicable ordinances or regulations.

B. Separate from, but supplementary to, all other applicable requirements of state or federal law. If the requirements of this chapter are in direct conflict with mandatory state or federal requirements, then the state or federal requirements shall apply.

C. Separate from the requirements, terms or conditions of any private easement, covenant, agreement or restriction. Neither the county nor any of its officers, employees or agents shall have any duty to enforce a private easement, covenant, agreement or restriction.

(Ord. 07-17(1), 2-14-07)

ARTICLE II. EROSION AND SEDIMENT CONTROL

DIVISION 1. PLANS

Sec. 17-200 Applicability.

This article shall apply to any land disturbing activity as provided herein:

A. Except as provided in paragraph (B), each owner shall comply with the requirements of this article:

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1. prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on his property;
2. at all times during such land disturbing activity until it is completed, including all times when the land disturbing activity is performed by a contractor engaged in construction work;
3. when notified by the program authority that an erosion impact area exists on his land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation; and
4. for the prior construction of an agricultural road, when the owner submits a preliminary or final plat, preliminary or final site plan, an application for a zoning map amendment to a non-agricultural zoning district, or an application for a special use permit for a use or activity not directly related to agriculture for the lot on which the agricultural road is located or serves, if both: (i) the plat, plan or application was submitted within twenty-four (24) months after construction of the agricultural road began; and (ii) the program authority determines that the dimensions and alignment of the agricultural road substantially correspond to the dimensions and alignment of a road proposed on the plat, plan or any document submitted as part of an application.

B. This article shall not apply to the following activities:

1. individual home gardens, landscaping, repair 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 that 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, livestock feed operations or products, or related engineering operations including, but not limited to, 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. This exception shall not apply to: (i) the harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Virginia Code §§ 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture uses as described in Virginia Code § 10.1-1163(B), in which case such person shall comply with the provisions of this article when grading, excavating, or filling; (ii) a land disturbing activity related to the construction of farm structures, including but not limited to agricultural structures or roads not associated with tilling, planting and harvesting; and (iii) the construction of roads other than agricultural roads;
8. the construction of agricultural roads, except as provided in paragraph (A)(4);
9. repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
10. installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; and

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11. emergency work to protect life, limb or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan if the activity was not an emergency, the land area shall be shaped and stabilized in accordance with the requirements of the program authority.

C. Any activity that is otherwise exempt from this article under paragraph (B) shall become subject to this article if the program administrator determines that an erosion impact area exists on the subject property as provided in section 17-202.

(§ 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08)

State law reference--Va. Code §§ 10.1-560, 10.1-562, 10.1-563.

Sec. 17-201 Determination of land disturbing activity.

The determination of whether an activity is a land disturbing activity shall be made as provided herein:

A. The program administrator shall determine whether an activity is a land disturbing activity, including any claim by an owner that the activity is exempt from the requirements of this article.

B. If a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, the program administrator may either:

1. consider the off-site activity as being part of the proposed land disturbing activity; or

2. if the off-site activity is already covered by an erosion and sediment control plan, require the owner to provide proof of the approval and to certify that the plan will be implemented in accordance with this article.

C. If a property will be developed in phases, the determination of whether an activity constitutes a land disturbing activity shall be determined by considering the development of the property as a whole, regardless of the phasing of the development.

D. Land disturbing activity of less than ten thousand (10,000) square feet on individual lots in a residential development shall not be considered exempt from this article if the total land disturbing activity in the residential development is equal to or greater than ten thousand (10,000) square feet.

E. Upon the determination by the program administrator that an activity is a land disturbing activity, the owner shall immediately comply with the requirements of this article and this article shall be otherwise immediately enforced.

(2-11-98; Code 1988, § 19.3-9; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code §§ 10.1-560, 10.1-562, 10.1-563.

Sec. 17-202 Determination of erosion impact area.

The determination of whether an erosion impact area exists on property shall be determined as provided herein:

A. The program administrator shall determine whether an erosion impact area exists on the property and is, therefore, subject to the requirements of this article. The program administrator shall make this determination after an investigation brought either on his own initiative or upon the complaint of any citizen.

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B. Upon making a determination that an erosion impact area exists, the program administrator shall immediately notify the owner of the property of his determination. The notice may either be informal, by the program administrator speaking to the owner of the property by telephone or in person, or in writing. If the notice is in writing, it shall be served by registered or certified mail to the address of the owner based upon the most recent tax records of the county, or by personal delivery. The written notice shall: (i) instruct the owner to submit an erosion and sediment control plan for review and approval as provided in this article; and (ii) state the date by which the plan shall be submitted.

C. Upon receipt of the notice required by paragraph (B), the owner shall: (i) not permit any portion of that land to remain in a condition so that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes, or ponds; and (ii) immediately comply with the requirements of the notice and this article.

D. If informal notice as provided in paragraph (B) is first provided to the owner of the property and the owner fails to comply with such notice and paragraph (C), the program administrator shall then provide written notice to the owner as provided in paragraph (B).

E. If good cause is shown, the program authority may grant to an owner an extension of time to comply with the requirements of this section and this article.

(§ 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-10, 2-11-98; Code 1988, §§ 7-3, 19.3-10; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-562.

Sec. 17-203 Erosion and sediment control plan.

Except as provided in section 17-205, each owner subject to this article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

A. The owner shall submit a completed application on an application form provided by the program authority, the fee required by section 17-209, an erosion and sediment control plan that satisfies the requirements of paragraphs (B) and (C), and a certification stating that all requirements of the approved plan will be complied with.

B. The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this article. The plan shall be in accordance with the applicable provisions of the handbook, including the criteria, techniques and methods set forth in 4 VAC 50-30-40. The plan shall identify the person holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

C. The program authority may require additional information as may be necessary for a complete review of the plan.

D. In lieu of paragraphs (A), (B) and (C), if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan approved by the Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation Board. The owner shall notify the program authority of such plan approval by such board.

E. If land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of a plan shall be the responsibility of the owner.

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(§ 19.3-11, 2-11-98; § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-87, 12-11-91, 3-18-92; Code 1988, §§ 7-3, 7-4, 19.3-11; Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-11-01; Ord. 09-17(1), 8-5-09, effective 9-5-09)

State law reference--Va. Code § 10.1-563.

Sec. 17-204 Review and approval of erosion and sediment control plan.

Each erosion and sediment control plan submitted pursuant to this article shall be reviewed and approved as provided herein:

A. The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 17-203 and all other requirements of this article.

B. During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved. The program authority may also consider and act on a variance request under the following criteria: (i) the owner shall explain in writing the reasons for requesting the variance; and (ii) the variance may be approved if the program authority determines that the approved plan, with the variance and any associated conditions of approval, would protect off-site properties and resources from damage to the same extent or better than if the variance was not granted.

C. Except as provided in paragraph (E), the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date the complete application was received by the program authority. The decision of the program authority shall be based on the plan's compliance with the requirements of this article. The decision shall be in writing and shall be served by first class mail to the address provided by the owner in the application for approval of the plan or by personal delivery to the owner. The date of the decision shall be either the date that it is deposited for mailing or the date that it is personally delivered to the owner. If the plan is disapproved, the reasons for disapproval shall be stated in the writing.

D. If the program authority fails to act on the plan within forty-five (45) days from the date the application was received by the program authority, the plan shall be deemed approved.

E. If the owner is required to obtain approval of a site plan or plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this article, and the program authority determines that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:

1. to correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this chapter or by accident, act of God or other cause beyond the control of the owner; provided, that the activity proposed shall be strictly limited to the correction of such condition;

2. to clear and grub stumps and other activity directly related to the selective cutting of trees, as permitted by law;

3. to install underground public utility mains, interceptors, transmission lines and trunk lines for which plans have been previously approved by the operating utility and approved by the county as being substantially in accord with the comprehensive plan, if necessary;

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4. to fill earth with spoils obtained from grading, excavation or other lawful earth disturbing activity;

5. to clear, grade, fill or engage in similar related activity for the temporary storage of earth, equipment and materials, and to construct temporary access roads; provided, that in each case, the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours. The return to previous condition shall occur within thirty (30) days of the completion of the activity or temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to the activity, whichever period shall be shorter; or

6. to establish borrow, fill or waste areas in accordance with sections 5.1.28 and 10.2.1.18 of the zoning ordinance.

F. An application for an erosion and sediment control plan that requires modifications, terms, or conditions to be included in order for it to be approved shall be deemed to be withdrawn if the owner fails to submit a revised plan addressing the omitted modifications, terms or conditions within six (6) months after the owner is informed of the omitted information as provided under paragraph (B).

G. An approved erosion and sediment control plan shall be void if the owner fails to obtain a grading, building or other permit for activities involving land disturbing activities within one (1) year after the date of the approval.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-12, 2-11-98; Code 1988, §§ 7-5, 19.3-12; Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; Ord. 09-17(1), 8-5-09, effective 9-5-09)

State law reference--Va. Code § 10.1-563.

Sec. 17-205 Agreement in lieu of a plan.

A. If the land disturbing activity is for the purpose of establishing or modifying a single family dwelling unit, the program authority may allow an agreement in lieu of a plan for the construction of such a dwelling unit; provided:

1. The single family dwelling unit is located on an individual lot which is not part of a division of land; or

2. The single family dwelling unit is located within a residential development or division of land, and the individual lots are being developed by different property owners; or

3. The single family dwelling unit is located within a division of land which no longer has an active erosion and sediment control plan; and

4. The agreement in lieu of a plan identifies the person holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

B. In determining whether to allow an agreement in lieu of a plan pursuant to paragraph (A)(1), (2) or (3), the program authority shall include as part of its consideration the potential threat to water quality and to adjacent land resulting from the land disturbing activity, and whether the land disturbing activity is within the mountain overlay district.

C. Except as provided in sections 17-203 and 17-204, all other references in this article to an erosion and sediment control plan shall include an agreement in lieu of a plan, and the program authority and the owner shall have all of the rights, responsibilities and remedies set forth in this article as though such agreement in lieu of a plan was an erosion and sediment control plan.

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(§ 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-91, 3-18-92; § 19.3-13, 2-11-98; Code 1988, §§ 7-4, 19.3-13; Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-11-01)

State law reference--Va. Code § 10.1-563.

Sec. 17-206 Monitoring and reporting.

As a condition of approval of an erosion and sediment control plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

A. Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment.

B. The condition requiring monitoring and reporting shall state: (i) the method and frequency of such monitoring; and (ii) the format of the report and the frequency for submitting reports.

(2-11-98; Code 1988, § 19.3-14; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code §10.1-566.

Sec. 17-207 Issuance of permit; surety.

A grading, building or other permit for activities involving land disturbing activities may be issued by a permit-issuing department only as provided herein:

A. The owner shall submit with his application for such permit an erosion and sediment control plan, submitted for review and approval pursuant to this article, or an approved and valid erosion and sediment control plan and certification that the plan will be followed. The permit-issuing department shall not issue a permit until an approved and valid erosion and sediment control plan and certification are submitted.

B. Each permit shall also be subject to the following:

1. The permitted land disturbing activity shall be deemed to have commenced on the date the permit was issued, provided that the program authority may establish another date of commencement based on documentation submitted by the owner that clearly demonstrates that the land disturbing activity commenced on that date.

2. Permanent vegetation shall be installed on all denuded areas within nine (9) months after the date the land disturbing activity commenced, except for areas that the program authority finds are necessary parts of the construction that are subject to an active building permit and areas where erosion is prevented by a non-erosive surface. For the purposes of this section, a "non-erosive surface" includes, but is not limited to, roadways and sidewalks covered by gravel, asphalt pavement, or concrete; trails or paths covered by gravel, stone dust, or mulch; buildings and other permanent structures; and such other surfaces that the program authority determines would adequately provide a permanent barrier to erosion.

3. The time limit for installing permanent vegetation as required by paragraph (B)(2) may be extended by either the program authority or the board of supervisors, or both, as follows:

a. The program authority may extend the time limit for installing permanent vegetation up to an additional six (6) months, provided the owner submits a written request to the program authority no less than one (1) month prior to the deadline for installing the permanent vegetation. The program authority may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has effectively controlled erosion and sedimentation on the

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property during the land disturbing activity. In granting an extension, the program authority may impose reasonable conditions.

b. The board of supervisors may extend the time limit for installing permanent vegetation for duration it determines to be appropriate, provided the owner submits a written request to the clerk of the board of supervisors no less than two (2) months prior to the deadline for installing the permanent vegetation. The program authority shall provide its opinion to the board as to the condition of the property with respect to compliance with this chapter and an estimate of the minimum time needed to complete grading and install permanent vegetation for the land disturbance covered by this permit. The board may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the property during the land disturbing activity. In granting an extension, the board shall set a time limit and may impose other reasonable conditions.

4. An application to amend the erosion and sediment control plan shall not extend the time limit for installing permanent vegetation authorized by paragraph (B)(3).

5. The installation of permanent vegetation required by paragraph (B)(2) shall be required only for those land disturbing activities that are subject to an erosion and sediment control plan approved on or after September 5, 2009, or an erosion and sediment control plan that was approved prior to that date but was renewed on or after September 5, 2009.

C. Prior to the issuance of such permit, the permit-issuing department shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the county attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 17-213, to take timely corrective action specified in the notice.

D. A bond or other surety required by the permit-issuing department pursuant to paragraph (C) shall not exceed the total of the estimated cost to initiate, maintain and repair all erosion and sediment control structures and systems, and to comply with all other terms and conditions of the erosion and sediment control plan. The amount of the bond or other surety shall be based on unit price for new public or private sector construction, including architectural engineering, inspection and project management expenses, in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ten (10) percent of the estimated cost to initiate, maintain and repair all erosion and sediment control structures and systems, and to comply with all other terms and conditions, of the erosion and sediment control plan.

E. If the program authority is required to take corrective action pursuant to section 17-213, upon the failure of the owner to do so, the county may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.

F. Within sixty (60) days of achieving adequate stabilization of the land disturbing activity in any project or section thereof, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.

G. If a bond or other surety is provided under paragraph (D) and the erosion and sediment control plan expires before the permit is issued, the permit-issuing department shall return the bond or other surety to the owner.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09)

State law reference--Va. Code § 10.1-565.

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Sec. 17-208 Amendment of erosion and sediment control plan.

The program authority may change an approved erosion and sediment control plan and require an owner to submit an amended plan in the following circumstances:

1. An inspection conducted pursuant to section 17-212 reveals that the plan is inadequate to satisfy the requirements of this article;

2. The owner finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out and either proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the program authority and the owner or the owner submits and obtains approval of a variance and the program authority determines that an amendment to the plan is required. The program authority may consider and act on a variance request under the following criteria: (i) the owner shall explain in writing the reasons for requesting the variance; and (ii) the variance may be approved if the program authority determines that the amended plan, with the variance and any associated conditions of approval, would protect off-site properties and resources from damage to the same extent or better than if the variance was not granted. The program authority shall approve or disapprove the variance in writing within ten (10) days after receipt of the request. If the program authority does not approve a variance within ten (10) days of the receipt of the request, it shall be deemed to be disapproved; or

3. The land disturbing activity did not begin during the one hundred eighty (180) day period following plan approval, or ceased for more than one hundred eighty (180) days, and the existing plan has been evaluated to determine whether it still satisfies the requirements of this article and state erosion and sediment control criteria and to verify that all design factors are still valid, and it has been determined that the plan is inadequate. In such a case, the land disturbing activity shall not be resumed until a modified plan is submitted and approved as provided in this article.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-16, 2-11-98; Code 1988, §§ 7-5, 19.3-16; Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08)

State law reference--Va. Code § 10.1-563.

Sec. 17-209 Fees.

Each owner seeking approval of an erosion and sediment control plan or entering into an agreement in lieu of a plan shall pay a fee upon submittal of such plan, and shall pay a fee for each reinspection, in amounts according to the schedule set forth below. Each fee shall be in the form of cash or a check payable to the "County of Albemarle."

- A. Land disturbing activity pertaining to single family dwelling unit:
 - 1. Agreement in lieu of a plan if single family dwelling unit located in a residential development: \$150
 - 2. Agreement in lieu of a plan if single family dwelling unit not located in a residential development: \$150
 - 3. Plan review for a single family dwelling unit: \$150
 - 4. Permit and first year inspection fees for a single family dwelling unit: \$150
 - 5. Annual permit renewal and inspection fees for a single family dwelling unit, starting with second year: \$150
 - 6. Each reinspection: \$150
- B. Land disturbing activity pertaining to non-exempt agricultural land:
 - 1. Plan review: \$150 per review
 - 2. Permit and first year inspection fees: \$150

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3.	Each reinspection:	\$150
4.	Annual permit renewal and inspection fees, starting with second year:	\$150
C. All other land disturbing activity:		
1.	Plan review, disturbed area less than one acre:	\$150 per review
2.	Permit and first year inspection fees, disturbed area less than one acre:	\$200
3.	Annual permit renewal and inspection fee, disturbed area less than one acre:	\$200
4.	Plan review, disturbed area one acre or larger:	\$300 per review
5.	Permit and first year inspection fees, disturbed area one acre or larger:	\$100 per disturbed acre
6.	Annual permit renewal and inspection fee, disturbed area one acre or larger, starting with second year:	\$100 per disturbed acre
7.	Each reinspection:	\$250
8.	Amendment to approved plan:	\$180 per plan review
D.	Variances:	\$150 per request

(§ 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-91, 3-18-92; § 19.3-17, 2-11-98; Code 1988, §§ 7-4, 19.3-17; Ord. 98-A(1), 8-5-98; Ord. 98-17(1), 11-11-98; Ord. 02-17(1), 7-3-02; Ord. 08-17(3), 8-6-08; Ord. 11-17(1), 10-5-11)

State law reference--Va. Code § 10.1-562.

Sec. 17-210 Review of certain program authority actions.

Any person who is aggrieved by any action of the program authority because of its disapproval of an erosion and sediment control plan submitted pursuant to this article, or in the interpretation of the provisions of this article, shall have the right to apply for and receive a review of such action by the board of supervisors, as provided herein:

A. An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.

B. When reviewing the program authority's action, the board of supervisors shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the board to be necessary for a complete review of the matter. The board may affirm, reverse or modify the program authority's action. The decision of the board shall be final, subject only to review by the circuit court as provided in Virginia Code § 10.1-568.

C. For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down-stream property, and any interested governmental agency or officer thereof.

(§ 7-7, 6-18-75, § 9, 2-11-87, 3-18-92; § 19.3-18, 2-11-98; Code 1988, §§ 7-7, 19.3-18; Ord. 98-A(1), 8-5-98)

DIVISION 2. COMPLIANCE AND ENFORCEMENT

Sec. 17-211 Duty to comply, maintain and repair.

Upon approval by the program authority of an erosion and sediment control plan, each owner shall:

1. comply with all of the terms and conditions of the approved plan when performing, or allowing to be performed, any land disturbing activities or activities to correct an erosion impact area;

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2. maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
3. comply with all requirements of this article; and
4. have a person holding a certificate of competence, as described in Virginia Code § 10.1-561, in charge of and responsible for carrying out the land disturbing activity.

(2-11-98; Code 1988, § 19.3-19; Ord. 98-A(1), 8-5-98; Ord. 10-17(1), 7-11-01)

State law reference--Va. Code § 10.1-566.

Sec. 17-212 Inspections.

The program authority shall inspect any land disturbing activity or erosion impact area as provided herein:

A. The program authority shall conduct periodic inspections of land disturbing activities and erosion impact areas to determine compliance with the approved erosion and sediment control plan, and to determine whether such approved plan and permit as implemented are adequate to satisfy the requirements of this article.

B. Except as provided in paragraph (C), the periodic inspections shall be conducted: (i) during or immediately following initial installation of erosion and sediment controls; (ii) at least once during every two (2) week period thereafter; (iii) within forty-eight (48) hours following any runoff producing storm event; and (iv) at the completion of the project prior to the release of any surety. The inability of the program authority to conduct inspections within the time periods set forth in this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the county, the program authority, or any official or employee thereof shall arise therefrom.

C. Notwithstanding paragraph (B), the program authority is authorized to establish an alternative inspection program which ensures compliance with an approved erosion and sediment control plan. Such alternative inspection program shall be: (i) approved by the Virginia Soil and Water Conservation Board prior to implementation; (ii) established in writing; (iii) based on a system of priorities which, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; (iv) documented by inspection records; and (v) maintained and available for public review in the department of community development.

D. The program authority shall have the right to enter upon property subject to an erosion and sediment control plan for the purposes of conducting an inspection as provided in this section or an investigation pertaining to an erosion or sedimentation complaint. The owner shall be given notice of the inspection. Such notice may be either verbal or in writing.

E. The fees required for inspections conducted pursuant to paragraph (B)(i), (ii) and (iv) are a part of the application fee required by section 17-209. The fee required for inspections conducted pursuant to paragraph (B)(iii) shall be paid by the owner within thirty (30) days of the date shown on the invoice.

(§ 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-20, 2-11-98; Code 1988, §§ 7-6, 19.3-20; Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08)

State law reference--Va. Code § 10.1-566.

Sec. 17-213 Determination of noncompliance with plan; procedure.

Upon a determination by the program authority that an owner has failed to comply with an approved erosion and sediment control plan, the following procedures shall apply:

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A. The program authority shall immediately serve upon the owner a written notice to comply. The notice shall: (a) instruct the owner to take corrective measures immediately when immediate action is necessary to prevent erosion or sedimentation problems; (b) state specifically the measures needed to come into compliance with the approved plan; and (c) state a reasonable time for compliance. The notice shall be served by registered or certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities. The notice shall also be given to the permit-issuing department.

B. If the owner fails to take the corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any permit it has issued related to the land disturbing activity, and the owner shall be deemed to be in violation of this article.

C. If the owner fails, within the time specified in the notice, to take the corrective measures for compliance stated in the notice, the program authority, upon finding that such action is reasonably necessary to protect the public health, safety and welfare, may take all corrective measures it deems necessary in order to protect the public health, safety and welfare, and shall be entitled to recover the expenses of such action as provided in section 17-215.

(§ 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-21, 2-11-98; Code 1988, §§ 7-6, 19.3-21; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-566.

Sec. 17-214 Cessation of land disturbing activity; procedure.

Upon receipt of a sworn complaint of an alleged violation of an approved erosion and sediment control plan or this article from a representative of the program authority, the program authority may issue a stop work order as provided herein:

A. If land disturbing activities have commenced without an approved erosion and sediment control plan, the program authority may issue a stop work order requiring that all land disturbing activities on the property be stopped until an approved erosion and sediment control plan or any required permits are obtained.

B. Except as provided in paragraph (C), if the owner has failed to comply with the corrective measures stated in a notice issued pursuant to section 17-213, the program authority may issue a stop work order requiring that all or part of the land disturbing activities permitted on the property be stopped until the specified corrective measures are taken.

C. If any failure to comply with this article or the approved erosion and sediment control plan is causing or is in imminent danger of causing harmful erosion of lands, sediment deposition in waters, or water quality problems within the watersheds of the Commonwealth, the program authority may issue a stop work order requiring that all or part of the land disturbing activities permitted on the property, other than corrective measures, be stopped until the specified corrective measures are taken without first issuing and serving a notice to comply as provided in section 17-213. An order issued pursuant to this paragraph shall remain in effect for a period of seven (7) days from the date of service pending application by the program authority or owner for appropriate relief to a court of competent jurisdiction.

D. If the alleged violator does not obtain an approved erosion and sediment control plan within seven (7) days from the date of service of an order issued pursuant to paragraph (C), the program authority may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan and all required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the application for approval of the plan or the tax records of the county, or by personal delivery to the owner.

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E. A stop work order issued pursuant to paragraphs (A), (B) or (C) shall be served by registered or certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the activities who is supervising such activities.

F. Upon completion of all necessary corrective actions, an order issued pursuant to this section shall be immediately lifted.

G. Nothing in this section shall prevent the program authority from seeking any other remedy authorized by this article.

(§ 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-22, 2-11-98; Code 1988, §§ 7-6, 19.3-22; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-566.

Sec. 17-215 Penalties and remedies.

This article may be enforced as follows:

A. Any person who violates any provision of this article shall be guilty of a Class 1 misdemeanor.

B. In addition to any criminal penalty imposed under paragraph (A), any person who violates any provision of this article may be liable to the county in a civil action for damages.

C. The county may apply to the circuit court to enjoin a violation or a threatened violation of this article, including the violation, failure, neglect or refusal of any person to obey an order issued pursuant to sections 17-213 or 17-214, without the necessity of showing that an adequate remedy at law exists. Any person violating, failing, neglecting or refusing to obey any injunction, mandamus or other judicial remedy obtained pursuant to this article shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation.

D. Any owner of property which has sustained damage or which is in imminent danger of being damaged may apply to the circuit court to enjoin a violation or a threatened violation under this article without the necessity of showing that an adequate remedy at law does not exist. Such owner shall not apply for injunctive relief unless: (i) he or she has notified in writing the person who has violated a provision of this article, and the program authority, that a violation of a provision of this article has caused, or creates a probability of causing, damage to his or her property; and (ii) neither the person who has violated a provision of this article nor the program authority has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or create the probability of causing, damage to his or her property.

(§ 7-8, 6-18-75, § 10, 2-11-87, 3-18-92; § 19.3-23, 2-11-98; Code 1988, §§ 7-8, 19.3-23; Ord. 98-A(1), 7-15-8)

State law reference--Va. Code § 10.1-569.

ARTICLE III. STORMWATER MANAGEMENT AND WATER QUALITY

DIVISION 1. PLANS

Sec. 17-300 Applicability.

Each owner shall comply with the requirements of this article prior to commencing any land development, or allowing any land development to occur, on his property and at all times thereafter.

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(§ 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.2-5, 6-19-91, § 5; § 19.3-24, 2-11-98; Code 1988, §§ 19.1-6, 19.2-5, 19.3-24; Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.9, 10.1-2108.

Sec. 17-301 Designation of water resources areas.

In order to better effectuate the purposes of this article, all of the land within the county is hereby designated as being within one or more of the following water resources areas:

A. *Development areas:* Development areas are those areas of land within the county designated as development areas in the land use element of the comprehensive plan, and as shown on the official map of the land use element.

B. *Areas of infill and redevelopment:* Areas of infill and redevelopment are those areas of land within the county that are: (i) within a development area; and (ii) designated as areas of infill and redevelopment for purposes of this article by the board of supervisors, and as shown on the official map adopted showing such areas. The board of supervisors shall designate such areas based on a finding that existing development has altered severely the natural condition of the area, including the presence of vegetation, and that infill and redevelopment activities would serve other community and comprehensive plan goals.

C. *Water supply protection areas:* Water supply protection areas are those areas of land within the county that are within the watershed of a public water supply reservoir or water supply intake, and such areas shall consist of all land within the county that drains naturally to the South Fork Rivanna Reservoir, Beaver Creek Reservoir, Totier Creek Reservoir, Sugar Hollow Reservoir, Ragged Mountain Reservoir, Chris Greene Lake, the North Fork Rivanna River intake, and to any impoundment or water supply intake designated in the future by the board of supervisors as a public water supply reservoir.

D. *Other rural land:* Other rural land consists of those areas of land that are not within a development area, an area of infill and redevelopment, or a water supply protection area.

(§ 19.2-6, 6-19-91, § 6; § 19.3-25, 2-11-98; Code 1988, §§ 19.2-6, 19.3-25; Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07)

State law reference--Va. Code § 10.1-2108.

Sec. 17-302 Overlapping water resources areas.

If a land development is or will be on land within both a water supply protection area and another type of water resources area, the requirements of the water supply protection area shall apply.

(2-11-98; Code 1988, § 19.3-26; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-2108.

Sec. 17-303 Stormwater management/BMP plan; requirements.

Each owner subject to this article shall submit to the program authority for review and approval a stormwater management/BMP plan as provided herein:

A. The owner shall submit an application on an application form provided by the program authority, the fee required by section 17-310, a stormwater management/BMP plan that satisfies the requirements of paragraphs (B) and (C), and a certification stating that all requirements of the approved plan will be complied with.

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B. The stormwater management/BMP plan shall include specifications for stormwater management and best management practices in order to satisfy the requirements of division 2 of this article. The program authority may require the owner to submit maps, calculations, detail drawings, reports, a listing of all major permit decisions and any other information as may be necessary for a complete review of the plan.

C. For purposes of this section, *major permit decisions* include, but are not limited to, decisions pertaining to zoning map amendments, special use permits, site plans, plats, grading permits, building permits, erosion and sediment control plans and any permit related to the land development required under state or federal law.

(§ 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-27, 2-11-98; Code 1988, §§ 19.1-6, 19.2-7, 19.3-27; Ord. 98-A(1), 6-17-98)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.8.

Sec. 17-304 Review and approval of stormwater management/BMP plan.

Each stormwater management/BMP plan submitted pursuant to this article shall be reviewed and approved as provided herein:

A. The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 17-303 and all other requirements of this article.

B. During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved.

C. The program authority shall approve or disapprove a plan within sixty (60) days from the date the application was accepted for review; provided that the program authority shall act on any plan that was previously approved within forty-five (45) days after the plan was revised, resubmitted to the program authority, and accepted for review. The decision of the program authority shall be based on the plan's compliance with this article. The decision shall be in writing and shall be served by first class mail to the address provided by the owner in the application for approval of the plan or by personal delivery to the owner. The date of the decision shall be either the date that it is deposited for mailing or the date that it is personally delivered to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

D. Each stormwater management/BMP plan approved by the program authority shall be subject to the following:

1. The owner shall comply with all applicable requirements of the approved plan, this article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the state stormwater management regulations set forth in 4 VAC 50-60-10 et seq.;

2. The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;

3. Land development shall be conducted only within the area specified in the approved plan;

4. The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by paragraph (D)(2);

5. The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 17-323;

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6. The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 17-324; and

7. The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

E. Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.

F. An application for a stormwater management/BMP plan that requires modifications, terms or conditions to be included in order for it to be approved as provided in paragraph (B) shall be deemed to be withdrawn if the owner fails to submit a revised plan addressing the omitted modifications, terms or conditions within six (6) months after the owner is informed of the omitted information as provided in paragraph (B); provided that any application for which the program authority informed the owner of omitted modifications, terms or conditions prior to October 5, 2011 shall be deemed withdrawn if the owner fails to submit a revised plan addressing the omitted modifications, terms or conditions by April 5, 2012.

G. An approved stormwater management/BMP plan shall be void if the owner fails to obtain a grading, building or other permit for activities involving land disturbing activities to implement the plan (the "permit") within two (2) years after the date of its approval; provided that any stormwater management/BMP plan approved prior to October 5, 2011 shall be void if the owner fails to obtain a permit by October 5, 2013; and further provided that any stormwater management/BMP plan associated with a subdivision plat or site plan whose period of validity is extended by Virginia Code § 15.2-2209.1(A) shall likewise be extended for the same time period.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 11-17(1), 10-5-11)

State law reference--Va. Code § 10.1-603.8.

Sec. 17-305 Monitoring and reporting.

As a condition of approval of a stormwater management/BMP plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

A. Any monitoring conducted shall be for the purpose of ensuring compliance with the stormwater management/BMP plan and to determine whether the plan provides effective stormwater management.

B. The condition requiring monitoring and reporting shall state the method and frequency of such monitoring.

C. The condition requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.

(2-11-98; Code 1988, § 19.3-29; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-603.8.

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Sec. 17-306 Issuance of permit; surety.

A grading, building or other permit for activities involving land development may be issued by a permit-issuing department only as provided herein:

A. The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing, construction, land development and drainage will be done according to the approved plan. The permit-issuing department shall not issue a permit until an approved stormwater management/BMP plan and certification are submitted.

B. Prior to the issuance of any such permit, the permit-issuing department shall require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the county attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 17-325, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority. If approved by the program authority and the county attorney, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in conjunction with a site plan, plat, or the performance bond or surety required by section 17-207.

C. A performance bond or other surety required by the permit-issuing department pursuant to paragraph (B) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for new public or private sector construction, including architectural engineering, inspection and project management expenses, in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ten (10) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.

D. If the program authority is required to take corrective action pursuant to section 17-325 upon the failure of the owner to do so, the county may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.

E. Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the county attorney.

F. If a bond or other surety is provided under paragraph (B) and the stormwater management/BMP plan expires before the permit is issued, the permit-issuing department shall return the bond or other surety to the owner.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-30, 2-11-98; Code 1988, §§ 19.1-7, 19.3-30; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09)

State law reference--Va. Code § 10.1-603.8.

Sec. 17-307 Amendment of stormwater management/BMP plan.

The program authority may change an approved stormwater management/BMP plan as provided herein:

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A. The owner shall submit additional data identified in section 17-303(B) in order to allow the program authority to determine whether any such change to the plan will comply with the requirements of this article.

B. The program authority shall conduct its review of the proposed change to the plan as provided in section 17-304.

C. If the proposed change to the approved plan complies with the requirements of this article, the program authority shall approve such proposed change in writing.

D. An owner shall make no changes to an approved plan without first complying with this section.

(§ 19.3-31, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78; 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-31; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-603.3.

Sec. 17-308 Exceptions.

Except for requests to develop in the stream buffer made pursuant to section 17-321, a request for an exception to the requirements of this article shall be made and granted as provided herein:

A. A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the clerk of the board of supervisors. The request shall address the factors listed in paragraph (C).

B. After receiving and considering a recommendation from the program authority, the board of supervisors shall grant or deny a request for an exception within sixty (60) days of the date of the receipt of the request.

C. A request for exception may be granted provided that:

1. A stormwater management/BMP plan has been submitted to the program authority for review in accordance with this article; the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this article, the use of non-structural measures as provided in section 17-313, the use of a mitigation plan as provided in section 17-322, or by other means;

2. The exception requested is the minimum necessary to afford relief;

3. Reasonable and appropriate conditions are imposed as necessary to ensure that the purposes of this article are satisfied; and

4. The basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.

(2-11-98; Code 1988, § 19.3-32; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-603.3.

Sec. 17-309 Dedication of stormwater management facilities.

The owner of a stormwater management facility required by this article may offer for dedication any such stormwater management facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

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A. Upon receipt of such offer of dedication by the county, the program authority shall make a preliminary determination that the dedication of such facilities is appropriate to protect the public health, safety and general welfare, and shall forward its determination to the board of supervisors. Prior to making its determination, the program authority shall inspect the facility to determine whether it has been properly maintained and is in good repair.

B. The board of supervisors may accept the offer of dedication by adoption of a resolution.

C. The document dedicating the stormwater management facility shall be recorded in the office of the clerk of the circuit court for the county.

D. If the dedication of a stormwater management facility is required as a condition of approval of a plat, then the applicable provisions of the subdivision ordinance shall apply in lieu of this section.

E. The owner, at his sole expense, shall provide any document or information requested by the program authority or the board of supervisors.

(§ 19.3-33, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-33; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-603.3.

Sec. 17-310 Fees.

Each owner seeking approval of a stormwater management/BMP plan shall pay a fee upon submittal of such plan, and shall pay a fee for each inspection, in amounts according to the schedule set

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forth below. Each fee shall be in the form of cash or a check payable to the “County of Albemarle.”

1. Plan review: \$300 per plan review
2. Amendment to approved plan: \$180 per plan review
3. Request for exception (section 17-308): \$240.
4. Each inspection or reinspection: \$60.
5. Mitigation plan (section 17-322): \$150.

(§ 19.3-34, 2-11-98; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; Code 1988, §§ 19.1-8, 19.3-34; Ord. 98-A(1), 8-5-98; Ord. 02-17(1), 7-3-02; Ord. 08-17(3), 8-6-08; Ord. 11-17(1), 10-5-11)

State law reference--Va. Code § 10.1-603.10.

Sec. 17-311 Review of certain program authority actions.

Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this article, or in the interpretation of the provisions of this article, shall have the right to apply for and receive a review of such action by the board of supervisors, as provided herein:

A. An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception is given by the board of supervisors. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.

B. When reviewing the program authority's action, the board of supervisors shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the board to be necessary for a complete review of the matter. The board may affirm, reverse or modify the program authority's action. The decision of the board shall be final, subject only to review by the circuit court as provided in Virginia Code § 10.1-603.13.

C. For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down-stream property, and any interested governmental agency or officer thereof.

(2-11-98; Code 1988, § 19.3-35; Ord. 98-A(1), 8-5-98)

**DIVISION 2. PLAN REQUIREMENTS: WATER
QUALITY AND WATER QUALITY PROTECTION**

Sec. 17-312 Stormwater management facilities and channels.

Stormwater management facilities and modifications to channels required as part of a stormwater management/BMP plan shall be designed, installed and constructed as provided herein:

A. Stormwater management facilities or modifications to channels shall be constructed in compliance with all applicable local, state, and federal laws and regulations, including but not limited to the Federal Clean Water Act, and the State Erosion and Sediment Control Act.

B. Stormwater management facilities shall be designed and constructed in compliance with the National Flood Insurance Program and section 30.3 of the zoning ordinance.

C. Stormwater management facilities shall be sited to capture, to the maximum extent practical, the runoff from the entire land development project area.

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D. Hydrologic parameters shall reflect the ultimate buildout in the land development project area and shall be used in all engineering calculations.

E. The number, type, and siting of stormwater management facilities shall be designed so as to preserve natural channel characteristics and natural groundwater recharge on a site to the extent practical.

(§ 19.3-36, 2-11-98; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; Code 1988, §§ 19.1-8, 19.3-36; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-603.3.

Sec. 17-313 Non-structural measures.

Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this article, as provided herein:

A. The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.

B. *Non-structural measures* include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.

(§ 19.3-37, 2-11-98; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; Code 1988, §§ 19.1-8, 19.3-37; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-603.3.

Sec. 17-314 Control of peak rate and velocity of runoff.

Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein:

A. To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff.

B. To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not exceed the two (2) year pre-development peak rate and velocity of runoff.

C. If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs A and B so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.

D. In addition to the requirements of paragraphs (A) and (B), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.

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E. Pre-development and post-development runoff rates determined for purposes of paragraphs A or B shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.

F. Notwithstanding any other provisions of this article, the following activities are exempt from the requirements of this section:

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. tilling, planting or harvesting or agricultural, horticultural, or forest crops;
3. single-family dwelling units separately built and not part of a division of land, including additions or modifications to existing single-family detached dwelling units;
4. land development that disturbs less than one (1) acre of land area, not including cases where land development is to be done in phases and the total land disturbance for all phases is greater than one (1) acre;
5. land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;
6. land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and
7. any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this chapter.

G. The program authority may exempt a land development or part thereof from some or all of the requirements of this section if all of the following conditions are satisfied:

1. the land development or a part thereof is within a water supply protection area or other rural land;
2. the program authority determines that the application of the requirements of this article would cause damage to the environment to an extent which exceeds the benefits of the strict application of all of the requirements of this article;
3. all requirements which are determined by the program authority to not apply to the land development or part thereof shall be set forth in the stormwater management/BMP plan; and
4. the granting of an exemption of any requirement of this article will not create a threat to the public health, safety or welfare, or to the environment.

(§ 19.3-38, 2-11-98; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; Code 1988, §§ 19.1-8, 19.3-38; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code § 10.1-603.3.

Sec. 17-315 Best management practices.

Each stormwater management/BMP plan shall require that best management practices be provided in conjunction with or in addition to stormwater management facilities designed for water quantity

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treatment, as provided herein:

A. Best management practices shall be designed and sited to capture runoff from the entire land development project area and, in particular, areas of impervious cover within the land development, to the maximum extent practicable.

B. Best management practices shall be designed to remove the difference between post-development and pre-development total phosphorus loads in cases where post-development loads exceed pre-development loads.

C. Calculation methods and expected removal ranges for various best management practices shall be included in the design manual maintained by the program authority.

D. Notwithstanding any other provisions of this article, the following activities are exempt from the requirements of this section:

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. tilling, planting or harvesting or agricultural, horticultural, or forest crops; and
3. single-family dwelling units separately built and not part of a division of land, including additions or modifications to existing single-family detached dwelling units.

(§ 19.3-39, 2-11-98; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; Code 1988, §§ 19.1-8, 19.3-39; Ord. 98-A(1), 8-5-98)

*State law reference--*Va. Code § 10.1-603.3.

Sec. 17-316 Contribution to regional stormwater management program.

Each stormwater management/BMP plan shall require that the owner contribute to a regional stormwater management program, as provided herein:

A. If the land development is located within the watershed of a regional stormwater management program established by the county which requires pro rata share contributions, the owner shall pay a pro rata share of the cost of the facility in accordance with any ordinance of the county establishing the program.

B. An owner's payment pursuant to paragraph (A) shall relieve the owner of the requirements of section 17-314, if the regional program is designed to control the peak rate and velocity of runoff, and/or the requirements of section 17-315, if the regional program is designed to provide best management practices. An owner's payment pursuant to paragraph (A) shall not relieve an owner of his responsibility to comply with any other requirement of this chapter, except as provided in this section.

(§ 19.3-40, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-40; Ord. 98-A(1), 8-5-98)

*State law reference--*Va. Code § 10.1-603.3.

Sec. 17-317 Duty to retain or establish stream buffer.

Except as provided in section 17-319, any land subject to this article and each stormwater management/BMP plan shall provide for stream buffers for the purposes of retarding runoff, preventing erosion, filtering nonpoint source pollution from runoff, moderating stream temperature, and providing for the ecological integrity of stream corridors and networks, as provided herein:

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A. If the development is located within a development area or an area of infill and redevelopment, stream buffers shall be retained if present and established where they do not exist on any lands subject to this article containing perennial streams, and/or nontidal wetlands contiguous to these streams. The stream buffer shall be no less than one hundred (100) feet wide on each side of such perennial streams and contiguous nontidal wetlands, measured horizontally from the edge of the nontidal wetlands, or the top of the stream bank if no wetlands exist.

B. If the development is located within a water supply protection area or other rural land, stream buffers shall be retained if present and established where they do not exist on any lands subject to this article containing perennial or intermittent streams, nontidal wetlands contiguous to these streams, and flood plains. The stream buffer shall extend to whichever of the following is wider: (i) one hundred (100) feet on each side of perennial or intermittent streams and contiguous nontidal wetlands, measured horizontally from the edge of the nontidal wetlands, or the top of the stream bank if no wetlands exist; or (ii) the limits of the flood plain. The stream buffer shall be no less than two hundred (200) horizontal feet wide from the flood plain of any public water supply impoundment.

C. On agricultural lands used for crop land, whether located in a development area, an area of infill and redevelopment, a water supply protection area or other rural land, the stream buffer shall include all perennial streams, non-tidal wetlands contiguous with these streams, and a twenty-five (25) foot buffer, measured horizontally from the edge of contiguous non-tidal wetlands, or the top of the stream bank if no wetlands exist. On these lands, the stream buffer shall be managed to prevent concentrated flows of surface water from breaching the buffer area. Each owner of crop land with a stream buffer shall have developed by the Thomas Jefferson Soil and Water Conservation District a soil and water conservation plan, or a component thereof, which, shall be based on an assessment of existing conservation practices of the crop land.

D. Each stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.

E. Except for the activities pertaining to the management of a stream buffer identified in section 17-318, the types of development authorized in a stream buffer identified in section 17-320, and the additional types of development which may be allowed in a stream buffer identified in section 17-321, no indigenous vegetation within the stream buffer shall be disturbed or removed, regardless of the size of the area affected.

(§ 19.3-41, 2-11-98; § 19.2-8, 6-19-91; Code 1988, §§ 19.2-8, 19.3-41; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08)

State law reference--Va. Code § 10.1-2108.

Sec. 17-318 Management of stream buffer.

Each stream buffer required to be retained or established pursuant to section 17-317 shall be managed as provided herein:

A. In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the stream buffer, indigenous vegetation shall be preserved to the maximum extent possible. The target vegetative cover in the stream buffer shall be an indigenous riparian forest with ground cover, shrub, and tree canopy layers. Removal of vegetation in the stream buffer shall be allowed only as provided in paragraphs (B) and (C).

B. Within twenty-five (25) feet of the top of the stream bank and on land classified as nontidal wetland:

1. Indigenous riparian vegetation shall be preserved or allowed to evolve by natural succession where it does not exist;

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2. Dead, diseased, and dying trees may be removed;
3. Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;
4. Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
5. Pathways shall be constructed so as to effectively control erosion; stormwater channels shall be constructed to prevent erosion.

C. Beyond twenty-five (25) feet from the top of the stream bank and outside of nontidal wetlands:

1. Dead, diseased, and dying trees may be removed;
2. Silvicultural thinning may be conducted based upon the best available technical advice of a professional forester;
3. Trees may be pruned or removed as necessary to provide limited sight lines and vistas, provided that if trees are removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff;
4. Trees six (6) inches in diameter or greater at breast height shall be preserved;
5. Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
6. Pathways and stormwater channels shall be constructed to effectively control erosion.

(§ 19.3-42, 2-11-98, § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-42; Ord. 98-A(1), 8-5-98)

*State law reference--*Va. Code § 10.1-2108.

Sec. 17-319 Types of development exempt from duties to retain, establish or manage a stream buffer.

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

A. The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code §§ 10.1-560 et seq.) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board.

B. The construction, installation, and maintenance by public agencies of water and sewer lines, including water and sewer lines constructed by private interests for dedication to public agencies, provided that:

1. To the extent practical, the location of such water or sewer lines shall be outside of all stream buffer areas;
2. No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and

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3. All such construction, installation, and maintenance of such water or sewer lines shall comply with all applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

C. Silvicultural activities, provided that such activities are conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry in its "Best Management Practices Handbook for Forestry Operations."

D. The construction, installation and maintenance of runways, taxiways, and other similar or appurtenant improvements at public airports, including the expansion or extension of those improvements, provided that all applicable federal, state and local permits are obtained.

(§ 19.3-43, 2-11-98; § 19.2-12, 6-19-91, § 12; Code 1988, §§ 19.2-12, 19.3-43; Ord. 98-A(1), 8-5-98; Ord. 08-17(4), 9-3-08)

State law reference--Va. Code § 10.1-2108.

Sec. 17-320 Types of development authorized in stream buffer.

If otherwise authorized by the applicable regulations of the zoning ordinance, the following types of development shall be allowed in a stream buffer, provided that the requirements of this section are satisfied:

A. A building or structure which existed on the date of adoption of this chapter may continue at such location. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of such building or structure except as provided in sections 6.0 and 30.3 of the zoning ordinance.

B. On-site or regional stormwater management facilities and temporary erosion and sediment control measures, provided that:

1. To the extent practical, as determined by the program authority, the location of such facilities shall be outside of the stream buffer;

2. No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility, as determined by the program authority;

3. The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and

4. Facilities located within a flood plain adhere to flood plain regulations of the county and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value, according the standards of this article, during flood conditions.

C. Water-dependent facilities; water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archaeological activities; provided that all applicable federal, state and local permits are obtained.

D. Stream crossings of perennial and intermittent streams for roads, streets or driveways, provided the following requirements are addressed to the satisfaction of the program authority:

1. Bridges and culverts shall satisfy the following:

a. For crossings of perennial streams, bridges, arch culverts, or box culverts shall be used for the stream crossing and sized to pass the ten (10) year storm without backing water onto upstream properties. Bridges or culverts shall either leave the stream section, consisting of the stream bed and the stream bank, undisturbed or shall allow the stream to return to a natural stabilized cross-section upon completion of installation. The lowest interior elevation of the culvert (the culvert invert)

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shall be a minimum of six (6) inches below the stream bed. Culvert walls and bridge columns should be located outside the stream banks wherever possible;

b. For crossings of intermittent streams, bridges or culverts shall be used for the stream crossing and sized to pass the ten (10) year storm without backing water onto upstream properties;

2. Stream stabilization and energy dissipation measures below each bridge or culvert shall satisfy the standards for stream bank stabilization and outlet control provided in the county's design standards manual;

3. The stream buffer disturbance shall be the minimum necessary for the lot(s) to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the subdivision ordinance. Stream crossings shall not disturb more than thirty (30) linear feet of stream for driveways and sixty (60) linear feet for roads or streets, provided that the program authority may allow additional length of stream disturbance where fill slopes or special conditions necessitate additional length;

4. The stream bed and stream banks shall be stabilized within seven (7) days from the start of backfilling for the bridge or culvert;

5. For stream crossings where any portion of the pre-construction stream buffer is not fully vegetated as determined by the program authority, and for any portion of a vegetated stream buffer that is disturbed during the installation of the stream crossing, buffer vegetation shall be established and maintained within the stream buffer but outside of the stream crossing at a ratio of two (2) square feet of stream buffer restored for every one (1) square foot of stream buffer that was either not fully vegetated or is disturbed during the installation of the stream crossing. Buffer vegetation shall be established and maintained at the 2:1 ratio to the extent that the stream buffer is fully vegetated outside of the stream crossing, provided that the owner shall not be required to establish vegetation outside of the stream buffer in order to satisfy the 2:1 ratio. The program authority may require that the owner enter into an agreement providing for the ongoing maintenance of the plantings in the stream buffer, and may require a bond with surety or other acceptable instrument, which agreement and bond with surety or other acceptable instrument shall be of a substance and in a form approved by the program authority and the county attorney. Stream buffer plantings shall be consistent with guidance supplied by the program authority;

6. In order to assure that the encroachment into or across the stream buffer is minimized, on and after May 7, 2008, it shall be presumed that one stream crossing is adequate to serve the owner's lot(s) existing on that date and all lots created therefrom on and after that date. The program authority shall allow only one stream crossing to serve all lots, provided that it may allow additional crossings under section 17-321(4);

7. The owner shall provide the program authority with copies of approved federal and state permits associated with the stream crossing, if applicable.

(§ 19.3-44, 2-11-98; § 19.2-7, 6-19-91, § 7; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-7, 19.2-8, 19.3-44; Ord. 98-A(1), 8-5-98; Ord. 08-17(2), 5-7-08)

State law reference--Va. Code § 10.1-2108.

Sec. 17-321 Types of development which may be allowed in stream buffer by program authority.

Development in a stream buffer may be authorized by the program authority in the circumstances described below, provided that a mitigation plan is submitted to, and approved, by the program authority pursuant to section 17-322:

1. on a lot within the fifty (50) horizontal feet of stream buffer that is the most landward (furthest from the stream) for necessary infrastructure to allow reasonable use of the lot. In all cases under this paragraph, any new building site and sewage disposal system shall be located outside the stream buffer;

2. on a lot on which the development in the stream buffer will consist of a lake, pond, or ecological/wetland restoration project;

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3. on a lot on which the development in the stream buffer will consist of the construction and maintenance of a road, street or driveway that would not satisfy the requirements of section 17-320(D) and the program authority determines that the stream buffer would prohibit access to the lot necessary for the lot to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the subdivision ordinance, or to establish more than one stream crossing;

4. on a lot which was of record prior to the date of adoption of this chapter, on which the development in the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems. Any such sewage disposal system must comply with all applicable state laws; and

5. on a lot which was of record prior to the date of adoption of this chapter, if the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or to allow redevelopment as permitted in the underlying zoning district.

(§ 19.3-45, 2-11-98; § 19.2-8, 6-19-91, § 8; Code 1988, § § 19.2-8, 19.3-45; Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; Ord. 08-17(2), 5-7-08; Ord. 11-17(1), 10-5-11)

State law reference--Va. Code § 10.1-2108.

Sec. 17-322 Mitigation plan if development allowed in stream buffer.

Each owner who seeks to develop in a stream buffer pursuant to section 17-321 shall submit to the program authority for review and approval a mitigation plan as provided herein:

A. The owner shall submit a mitigation plan that satisfies the applicable requirements of this section, the fee required by section 17-310, and a certification stating that all requirements of the approved plan will be complied with.

B. The mitigation plan shall be reviewed by the program authority to determine whether it complies with the requirements of this section and all other requirements of this article. The program authority shall approve or disapprove a mitigation plan within forty-five (45) days that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

C. Each mitigation plan shall:

1. identify the impacts of proposed development on water quality and lands within the stream buffer;

2. ensure that, where development takes place within a stream buffer: (i) the proposed development shall be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer; (ii) no more land shall be disturbed than is necessary to allow a development that is permitted in the underlying zoning district under the applicable regulations of the subdivision ordinance; (iii) indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the proposed development; and (iv) the impervious cover shall be minimized consistent with the proposed development;

3. demonstrate and assure that development will be conducted using best management practices; where best management practices require regular or periodic maintenance in order to continue their functions, the program authority may require that the owner enter into an agreement providing for the ongoing maintenance of the plantings in the stream buffer, and may require a bond with surety or other acceptable instrument, which agreement and bond with surety or other acceptable instrument shall be of a substance and in a form approved by the program authority and the county attorney;

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4. specify mitigation which will address water quality and stream buffer impacts;
5. contain all other information requested by the program authority; and

6. where an owner seeks to establish more than one stream crossing as provided in section 17-320(D)(6), demonstrate that the environmental impacts from the entire road, street or driveway necessitated by a single stream crossing would be greater than the environmental impacts caused by an additional crossing and its associated road, street or driveway. For the purposes of this subsection, the environmental impacts considered by the program authority include, but are not limited to, impacts to soil, soil erosion, stormwater quantity, water quality, loss of vegetated stream buffer, impacts to stream beds and stream banks, the creation of impervious surfaces, and the disturbance of slopes of twenty-five (25) percent or greater.

D. Each mitigation plan shall be evaluated by the program authority based on the following criteria:

1. whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;
2. whether the development in the stream buffer is the minimum necessary and is conducted in a manner that will be least disruptive to the natural functions of the stream buffer;
3. whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions;
4. whether the design and construction of the development will satisfy the criteria in subsections 17-322(C)(2) and (C)(3); and
5. for driveways, roads and streets, whether their alignment and design are optimized, consistent with all other applicable requirements, to minimize encroachment in the stream buffer and adverse effects on water quality.

E. An application for a mitigation plan that requires modifications to be made in order for it to be approved shall be deemed to be withdrawn if the owner fails to submit a revised plan addressing the omitted modifications within six (6) months after the owner is informed of the omitted information; provided that any application for which the program authority informed the owner of omitted modifications prior to October 5, 2011 shall be deemed withdrawn if the owner fails to submit a revised plan addressing the omitted modifications by April 5, 2012.

F. An approved mitigation plan shall be void if the owner fails to obtain a grading, building or other permit for activities involving land disturbing activities to implement the plan (the "permit") within two (2) years after the date of its approval; provided that any mitigation plan approved prior to October 5, 2011 shall be void if the owner fails to obtain a permit by October 5, 2013; and further provided that any mitigation plan associated with a subdivision plat or site plan whose period of validity is extended by Virginia Code § 15.2-2209.1(A) shall likewise be extended for the same time period.

(§ 19.3-46, 2-11-98; § 19.2-8, 6-19-91, § 8; § 19.1-13, 6-19-91, § 13; Code 1988, §§ 19.1-13, 19.2-8, 19.3-46; Ord. 98-A(1), 8-5-98; Ord. 08-17(2), 5-7-08; Ord. 11-17(1), 10-5-11)

*State law reference--*Va. Code § 10.1-2108.

Sec. 17-323 Duty to comply, maintain and repair; maintenance agreement.

Upon approval by the program authority of a stormwater management/BMP plan, each owner shall:

1. comply with all of the terms and conditions of the approved plan;
2. maintain and repair all structural and nonstructural stormwater management measures required by the plan, as provided herein:

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(a) The owner shall be responsible for the operation and maintenance of such measures and shall pass such responsibility to any successor owner, unless such responsibility is transferred to the county or to another governmental entity as provided in section 17-309.

(b) If an approved stormwater management/BMP plan requires structural or non-structural measures, the owner shall execute a stormwater management/BMP facilities maintenance agreement prior to the program authority granting final approval for any plan of development or other development for which a permit is required. The agreement shall be recorded in the office of the clerk of the circuit court for the county and shall run with the land. If an owner cannot exercise a purchase agreement until a plan of development or other development receives final approval from the county, the program authority may grant its final approval without a signed agreement, provided that the agreement is signed and recorded as provided herein prior to issuance of any certificate of occupancy for the development project.

(c) The stormwater management/BMP facilities maintenance agreement shall be in a form approved by the county attorney and shall, at a minimum: (i) designate for the land development the owner, governmental agency, or other legally established entity which shall be permanently responsible for maintenance of the structural or non-structural measures required by the plan; (ii) pass the responsibility for such maintenance to successors in title; and (iii) ensure the continued performance of the maintenance obligations required by the plan and this article.

(§ 19.3-47, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-47; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code §§ 10.1-603.3, 10.1-2108.

Sec. 17-324 Inspections.

The program authority shall inspect any land subject to an approved stormwater management/BMP plan as provided herein:

A. During the installation of stormwater management/BMP measures or the conversion of erosion and sediment control measures into stormwater management/BMP measures, the program authority shall conduct periodic inspections to determine whether such measures are being installed as provided in the approved plan.

B. Upon completion of the installation of stormwater management/BMP measures, the program authority shall conduct periodic inspections to determine whether such measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan. The inspections shall be conducted at least annually, measured from the date the installation or implementation of the stormwater management/BMP measures is deemed by the program authority to be complete. The inability of the program authority to conduct inspections within the time periods set forth in this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the county, the program authority, or any official or employee thereof shall arise therefrom.

C. The program authority shall be allowed, after giving notice to the owner, occupier or operator of the land development, to conduct any inspection required by this section. The notice may be either verbal or in writing. Notice shall not be required if the program authority and the owner have entered into a right of entry agreement or if the owner has granted to the program authority an easement for purposes of inspection and maintenance, as provided in section 17-304(E)(7).

(§ 19.3-48, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-48; Ord. 98-A(1), 6-17-98)

State law reference--Va. Code §§ 10.1-603.11, 10.1-2108.

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Sec. 17-325 Determination of noncompliance with plan; procedure.

Upon a determination by the program authority that the owner has failed to comply with the approved stormwater management/BMP plan, the following procedures shall apply:

A. The program authority shall immediately serve upon the owner a written notice to comply. The notice shall be served by registered or certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities. The notice shall: (i) instruct the owner to take corrective measures immediately when immediate action is necessary to prevent or abate drainage or water pollution problems; (ii) specify the measures required to comply with the plan; and (iii) specify the time within which such measures shall be completed. The notice shall also be given to the permit-issuing department.

B. If the owner fails to take the corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any grading, building or other permit for activities involving the land development, and the owner shall be deemed to be in violation of this article.

C. If the program authority determines, upon completion of a maintenance inspection provided in section 17-324, that maintenance or repair of the measures is neglected, or that any stormwater management facility is a danger to public health or safety, it may perform the work necessary to assure that such measures or facilities are not a danger to public health or safety, and shall be entitled to recover the costs of such work from the owner.

(§ 19.3-49, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-49; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code §§ 10.1-603.11, 10.1-2108.

Sec. 17-326 Penalties and remedies.

This article may be enforced as follows:

A. Any person who violates any provision of this article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars (\$1000.00) or up to thirty (30) days imprisonment for each violation, or both.

B. The county may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article without the necessity of showing that an adequate remedy at law exists.

C. Without limiting the remedies that may be obtained pursuant to this section, the county may bring a civil action against any person for violation of any provision of this article or any term or condition of a permit or plan. The action may seek the imposition of a civil penalty of not more than two thousand dollars (\$2000.00) against the person for each violation.

D. With the consent of any person who has violated or failed, neglected or refused to obey any condition of a permit, obligation of a plan or agreement, or any provision of this article, the program authority may provide, in an order issued by the program authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in paragraph (C). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under paragraph (C).

(§ 19.3-50, 2-11-98; § 19.1-10, 9-29-77, art. III, 4-13-88, 7-11-90, § 19.2-15, 6-19-91, § 15; Code 1988, §§ 19.1-10, 19.2-15, 19.3-50; Ord. 98-A(1), 8-5-98)

State law reference--Va. Code §§ 10.1-603.14, 10.1-2108.

Article IV. Groundwater Assessments

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Sec. 17-400 Applicability.

This article shall apply to the establishment of land uses that will rely on privately owned wells serving as the primary source of potable water and having not more than two (2) connections (hereinafter, “individual wells”) or central water supplies, as defined in Albemarle County Code § 16-101. The applicable requirements of this article are determined by the development approval sought by the owner and the land uses within the development, as follows:

Development Approval and Timing of Submittal for Required Assessment	Assessment Required
Prior to the issuance of a building permit for a new structure on a lot of record less than twenty-one acres in size existing prior to the effective date of this article that will be served by one or more individual wells	Tier 1
Prior to the issuance of a building permit for a new structure: (1) on a lot of record created after the effective date of this article that is subject to a Tier 2 or Tier 3 assessment that will be served by one or more individual wells; or (2) associated with a use that is subject to a Tier 3 or Tier 4 assessment that will be served by one or more individual wells	Tier 1
Prior to approval of a preliminary subdivision plat creating lots of less than twenty-one acres that will be served by individual wells	Tier 2
Prior to approval of a preliminary subdivision plat creating four or more lots where at least three lots are five acres or less	Tier 3
Prior to approval of a preliminary site plan for a new nonresidential or nonagricultural use using less than 2,000 gallons/day (average)	Tier 3
Prior to approval of a preliminary site plan for a new nonresidential or nonagricultural use using more than 2,000 gallons/day (average)	Tier 4
Prior to approval of any central water supply under chapter 16 of the Albemarle County Code	Tier 4

The program authority may require that development approvals subject to Tier 2 or Tier 3 assessments be subject to Tier 3 or Tier 4 assessments, respectively, as provided in sections 14-402 and 17-403.

If an owner submits a final subdivision plat or site plan without first submitting and obtaining approval of a preliminary subdivision plat or site plan, the assessment required by section 17-402 shall begin upon submittal of the final subdivision plat or site plan, and the assessment required by sections 17-403 or 17-404 shall be submitted by the owner with the final subdivision plat or site plan.

(§ 400, Ord. 04-17(1), 12-8-04, effective 2-8-05)

Sec. 17-401 Tier 1 assessments.

A Tier 1 assessment shall consist of the owner drilling a well on the lot and submitting the following information to the program authority: (1) a Virginia well drilling completion report (form GW-2) for each well drilled; and (2) the latitude and longitude coordinates of each well’s location. The information submitted must be accepted as complete and accurate by the program authority prior to issuance of the building permit.

(§ 401, Ord. 04-17(1), 12-8-04, effective 2-8-05)

Sec. 17-402 Tier 2 assessments.

A Tier 2 assessment shall consist of the program authority reviewing and evaluating the county’s well database, available hydrogeologic studies, and information from the Virginia Department of Health and the Virginia Department of Environmental Quality, as provided in chapter 2 of the design standards manual. Based on this evaluation, the program authority may require that the owner provide additional groundwater assessment data prior to subdivision plat or site plan approval, or may require that a Tier 3

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assessment be submitted.

(§ 402, Ord. 04-17(1), 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07)

Sec. 17-403 Tier 3 assessments.

A Tier 3 assessment shall consist of the following:

A. The owner shall submit a draft groundwater management plan with the preliminary plat or site plan. The groundwater management plan shall comply with the requirements for such plans in chapter 2 of the design standards manual. If the groundwater management plan identifies special areas of concern, such as an off-site resource of high groundwater sensitivity or a previously unknown source of contamination, then the program authority may require additional groundwater assessment data prior to preliminary subdivision plat or site plan approval.

B. The owner shall submit a final groundwater management plan that must be approved by the program authority prior to approval of the final plat or site plan.

C. Any structural measures (*e.g.*, best management practices) shall be bonded as a subdivision plat or site plan improvement.

The program authority may require that a Tier 4 assessment be submitted instead of a Tier 3 assessment if the special areas of concern identified in subsection (A) have not been adequately addressed by the additional groundwater assessment data.

(§403, Ord. 04-17(1), 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07)

Sec. 17-404 Tier 4 assessments.

A Tier 4 assessment shall consist of the following:

A. The owner shall submit a draft groundwater management plan and an aquifer testing workplan complying with the requirements for such plans in chapter 2 of the design standards manual, with the preliminary plat, preliminary site plan, or the application for a central water supply. The groundwater management plan must demonstrate to the program authority's satisfaction that the site's groundwater conditions have been considered with the subdivision or site plan's layout and design. The aquifer testing workplan must be approved by the program authority before the owner may conduct aquifer testing as required by subsection (B).

B. After the program authority approves the aquifer testing workplan, the owner shall conduct aquifer testing as provided in the workplan.

C. The owner shall submit a final groundwater management plan and a groundwater assessment report complying with the requirements for such a report in chapter 2 of the design standards manual, based upon the results of the aquifer testing. The final groundwater management plan and the groundwater assessment report must be approved by the program authority prior to final subdivision plat or site plan approval.

D. Any structural measures (*e.g.*, best management practices) shall be bonded as a subdivision plat or site plan improvement.

(§404, Ord. 04-17(1), 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07)

Sec. 17-405 Fees.

Each owner seeking approval of a tier assessment required by this article shall pay a fee as provided by Albemarle County Code § 18-35.0 and Albemarle County Code § 14-203, as applicable.

(§405, Ord. 04-17(1), 12-8-04, effective 2-8-05)

State law reference--Va. Code §§ 15.2-2241(9), 36-98.

ARTICLE V. ILLICIT DISCHARGES AND CONNECTIONS

Sec. 17-500 Applicability.

This article shall apply to all activities that cause or allow to be caused direct or indirect illicit discharges, illicit connections, and the prohibited dumping of refuse and pollutants, or which negatively impede the flow capacity of the storm drainage system or state waters that (i) are not covered by other articles of this chapter and (ii) are not expressly exempt from this article.

(Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.7.

Sec. 17-501 Illicit discharges prohibited; exempt and authorized discharges.

No person shall throw, drain, or otherwise discharge, cause or allow others under their control to throw, drain, or otherwise discharge into the storm drainage system or state waters any pollutants or waters containing any pollutants, other than stormwater. The commencement, conduct, or continuance of any such illicit discharge to the storm drainage system or state waters is prohibited, subject to the following:

A. *Conditionally exempt discharges.* The following discharges are conditionally exempt from this article:

1. Discharges pursuant to a Virginia Pollutant Discharge Elimination System ("VPDES") or Virginia Storm Management Program ("VSMP") permit (other than a VSMP permit for discharges from the municipal separate storm sewer);
2. Discharges resulting from fire fighting and other public safety activities;
3. Discharges associated with the maintenance or repair of public water, sanitary, and storm sewer lines, and public drinking water reservoirs and drinking water treatment or distributions systems conducted in accordance with applicable federal and state regulations and standards;
4. Discharges associated with any activity by the county, its employees and agents, in the maintenance of any component of a county-maintained stormwater management facility conducted in accordance with applicable federal and state regulations and standards;
5. Discharges specified in writing by the program authority as being necessary to protect public health and safety;
6. Water line flushing;
7. Landscape irrigation and lawn watering;
8. Non-point discharges associated with agricultural and silvicultural operations;
9. Diverted stream flows;
10. Rising ground water, springs, uncontaminated ground water infiltration, and pumped ground water;
11. Flows from riparian habitats and wetlands;
12. Discharges from potable water sources, foundation drains, and air conditioning condensation;
13. Water from crawl space pumps and footing drains;

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14. House washing and individual car washing on residential lots;
15. De-chlorinated swimming pool discharges having less than 1 part per million chlorine and discharges from hot tubs;
16. Street wash water;
17. Water from washed parking lots or sidewalks to remove algae or oil buildup;
18. Application of salts or other de-icing substances to streets, sidewalks and parking lots;
19. Discharges associated with dye testing, provided that the program authority is notified in writing before the test.

If the program authority determines that any of these exempted activities are causing adverse impacts to state waters in a specific case, the program authority may revoke the exemption for that specific case and such revocation shall be effective from the date the person responsible for the discharge is informed in writing of the determination that the exemption is revoked.

B. *Discharges authorized by VPDES permit, waiver or waste discharge order.* The prohibition shall not apply to any non-stormwater discharge permitted under a VPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations and provided that written approval has been granted for any discharge to the storm drainage system.

(Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.7.

Sec. 17-502 Illicit connections prohibited.

The construction, use, maintenance, or continued existence of illicit connections to the storm drainage system is prohibited.

A. *Pre-existing illicit connections.* Any illicit connection previously authorized before the effective date of this chapter shall comply with the requirements of this chapter by December 31, 2007, or such later date as expressly authorized by the program authority upon good cause shown by the person requesting the extension.

B. *Disconnection and redirection.* Any illicit connection shall be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Albemarle County Service Authority.

C. *Locating undocumented connections.* Any drain or conveyance that has not been documented in plans, maps, or their equivalent and which appears to be connected to the storm drainage system shall be located by the owner, occupant, lessee, principal, agent, employee or otherwise, of that property within the time period specified in the written notice of violation from the program authority requiring that the connection be located. The notice shall require that: (i) the location of the drain or conveyance be determined; (ii) the drain or conveyance be identified as a storm sewer, sanitary sewer, or other; and (iii) the outfall location or point of connection to the storm drainage system, sanitary sewer system, or other discharge point be identified. The results of these investigations shall be documented and provided to the program authority.

(Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.7.

Sec. 17-503 Dumping prohibited.

No person, whether the owner, occupant, lessee, principal, agent, employee or otherwise, may dump or discharge, or allow any other person to dump or discharge, refuse, as that term is defined in section 13-100 of the Code, or any other material or pollutant, natural or synthetic, into the storm drainage system or a natural stream, unless the dumping or discharge is expressly authorized by the Code.

(Ord. 07-17(1), 2-14-07)

Sec. 17-504 Maintaining the functional performance of the storm drainage system and streams.

The storm drainage system and natural streams shall be maintained as follows:

A. *Keeping the storm drainage system and natural streams free of refuse and other obstacles.* Every person, whether the owner, occupant, lessee, principal, agent, employee or otherwise, owning, occupying or otherwise responsible for the condition of the property through which a privately-maintained storm drainage system or natural stream passes, shall maintain the part of such system or stream on the property free of refuse, as that term is defined in section 13-100 of the Code, and other obstacles that would pollute, contaminate, or adversely impact the system's or stream's functional performance.

B. *Maintaining structures within the flood hazard overlay district.* Every person, whether the owner, occupant, lessee, principal, agent, employee or otherwise, owning, occupying or otherwise responsible for the condition of the property through which a natural stream passes, shall maintain existing privately-owned structures within the flood hazard overlay district established under section 18-30.3 of the Code so that such structures do not become a hazard to the use, function, or physical or ecological integrity of the stream.

(Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.7.

Sec. 17-505 Inspections and monitoring.

The program authority is authorized to assure compliance with the requirements of this article as follows:

A. *Inspections and monitoring, generally.* The program authority is authorized to conduct inspections of private property and to conduct monitoring of storm drainage systems, natural streams, and facilities permitted by VPDES permits, in the manner authorized by law to assure compliance with the requirements of this article.

B. *Inspection of records of VPDES permittees.* Every VPDES permittee shall allow the program authority to examine VPDES application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of the permittee's discharge on the quality of state waters, such other information as may be necessary to accomplish the purposes of this article, including records required to be kept under the conditions of the permit, and enforcement records such as inspection reports, notices of violation, and documents detailing the nature of any land disturbing activity that may have occurred, or similar documents, that are not exempt from disclosure under Virginia Code § 10.1-603.12:2.

C. *Monitoring and sampling equipment on VPDES permitted facilities.* The program authority is authorized, either under a condition of the VPDES permit, with the permittee's consent or by court order: (i) to establish on any permitted facility such devices as are necessary in the opinion of the program authority to conduct monitoring and/or sampling of the facility's stormwater discharge; and (ii) to require the permittee to install monitoring equipment as the program authority deems necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the permittee at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

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D. *Obligation of VPDES permittee to assure clear access.* At the written or oral request of the program authority, every VPDES permittee shall promptly remove any temporary or permanent obstruction to safe and easy access to the permitted facility to be inspected and/or sampled, and such obstructions shall not be replaced. The costs of removing such obstructions shall be borne by the operator.

(Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.7, 10.1-603.12:1, 10.1-603.12:2.

Sec. 17-506 Discovery, containment, cleanup and notification of discharge.

If a discharge occurs or is suspected to have occurred, the following procedures shall apply:

A. *Discovery, containment and cleanup.* Notwithstanding any other requirement of law, as soon as any person responsible for a facility, operation, or activity, or responsible for the emergency response for a facility, operation, or activity, has information of any known or suspected discharge of substances which are resulting or may result in an illicit discharge into the storm drainage system or state waters, that person shall take all necessary steps to ensure the discovery, containment, and cleanup of the discharge.

B. *Notification.* The person identified in subsection (A) also shall provide the following notification of the discharge: (i) if the discharge contains, or may contain, a hazardous substance, the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services; and (ii) if the discharge contains, or may contain, only non-hazardous substances, the person shall notify the program authority in person, by phone, by email, or by facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the program authority within five (5) business days of the phone notice.

C. *Record of discharge from commercial or industrial establishment.* If an illicit discharge is from a commercial or industrial establishment, the owner or operator of the establishment shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least two (2) years and a copy thereof shall be provided to the program authority within fifteen (15) days of the date of the discharge.

(Ord. 07-17(1), 2-14-07)

State law reference--Va. Code §§ 10.1-603.3, 10.1-603.7, 10.1-603.11.

Sec. 17-507 Penalties and remedies.

The penalties and other remedies for a violation of this article shall be as provided in Virginia Code § 10.1-603.14.

(Ord. 07-17(1), 2-14-07)

State law reference--Va. Code § 10.1-603.14.