

[EXHIBIT A TO COUNCIL AGENDA ITEM 24-0402]

Chapter 13.1 – *RESERVED*.

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Chapter 33.2 – *RESERVED*.

Chapter 33.3 - STORMWATER MANAGEMENT AND EROSION CONTROL

ARTICLE I. IN GENERAL

Sec. 33.3-1. Title, authority, and effective date.

- (a) *Article II of chapter shall be known as the "Stormwater Management" portion of the ordinance.*
- (b) *Article III of chapter shall be known as the "Erosion Control" portion of the ordinance.*
- (c) *This ordinance is adopted pursuant to Code of Virginia § 62.1-44.15:24, et seq.*
- (d) *This ordinance shall become effective on September 11, 2024 and as amended thereafter.*

Sec. 33.3-2. Definitions.

In addition to the definitions set forth in 9VAC25-875-10 of the Virginia Stormwater Management Program ("VSMP") regulations, as amended, which expressly are adopted and incorporated herein by reference, the following words and terms used in this chapter have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence. Unless specifically defined below, words and phrases shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most effective application. For purposes of this chapter, except as otherwise defined herein, the definitions set forth in chapter 2 (zoning definitions) and chapter 9, article II (Chesapeake Bay Preservation District) of the city zoning ordinance and chapter 35 (subdivisions) and chapter 35.1 (site plans) of the city code shall control the meaning of any terms or phrases used herein.

Adequate channel. A channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

Administrator. The Public Works Director or designees.

Adverse impacts. Any modifications, alterations, or effects on a feature or characteristic of community waters or wetlands, including their quality, quantity, hydrodynamics, surface area, species composition, living resources, aesthetics, or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety, or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation. The term includes secondary, cumulative, and direct impacts.

Agent. The community development department of the city.

Agreement in lieu of an ESC plan. A contract between the city and the owner which specifies conservation measures that must be implemented in the construction and demolition of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. This agreement may be submitted in lieu of a formal site plan. Agreement in lieu of a stormwater management plan. A contract between the city and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence, which may be executed in lieu of a stormwater management plan.

Applicant. Any person submitting an application for a permit or requesting issuance of a permit under this chapter.

Best management practice or BMP. Schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

Board. The State Water Control Board.

Causeway. A temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

Certified inspector for ESC. An employee or agent of the VESCP authority who (i) holds a certificate of competence from the department in the area of project inspection or

(ii) is enrolled in the department's training program for project inspection and successfully completes such program within one year after enrollment.

Certified plan reviewer for ESC. An employee or agent of the VESCP authority who (i) holds a certificate of competence from the department in the area of plan review, (ii) is enrolled in the department's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in § 54.1-2200.

Certified program administrator for ESC. An employee or agent of the VESCP authority who holds a certification from the department in the classification of program administrator or (ii) is enrolled in the department's training program for program administration and successfully completes such program within one year after enrollment.

Channel. A natural stream or manmade waterway.

Chesapeake Bay Preservation Act. Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, as amended.

Chesapeake Bay Preservation Area. Any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia.

Chesapeake Bay Preservation Act land-disturbing activity. A land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than two thousand five hundred (2,500) square feet and less than one (1) acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

Chesapeake Bay Preservation District. Any land designated by the Hampton City Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-70, et seq., and § 62.1-44.15:74 of Code of Virginia, and pursuant to chapter 9, article II of the city zoning ordinance. A Chesapeake Bay Preservation District shall consist of a resource protection area or intensely developed area, and resource management area.

City. The City of Hampton, Virginia.

Clean Water Act or CWA. The federal Clean Water Act (33 U.S.C § 1251, et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-

217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

Clearing. The removal of vegetative ground cover, including but not limited to the removal of root mat or topsoil. Clearing does not include the ordinary mowing of grass.

Coastal Barrier Resources System. An area comprised of undeveloped barrier islands and associated wetlands as designated under the Coastal Barrier Resources Act, 16 U.S.C.A. § 3501, et seq.

Cofferdam. A watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

Comprehensive stormwater management plan. A plan, which may be integrated with other land use plans or regulations that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

Construction activity. Any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

Common plan of development or sale. A contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

Control measure. Any best management practice, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

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

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

Department. The department of public works of the city.

Department of Environmental Quality or "DEQ". The Virginia Department of Environmental Quality.

DEQ. The Virginia Department of Environmental Quality.

Detention. The collection and storage of surface water for subsequent gradual discharge.

Developable area. Area that is not constrained by wetlands or other site limitations. However, the lack of availability of water or other utilities shall not be considered a site limitation for purposes of assessing a stormwater utility charge.

Developed nonresidential property. Developed property which does not serve a primary purpose of providing permanent dwelling units. Such property shall include but not be limited to commercial, industrial, educational, civic, religious, cultural and recreational properties, parking lots, hotels, and offices. For purposes of this article, this definition also shall include developed property on which are located apartments or mobile home facilities containing more than four (4) residential or dwelling units.

Developed property. A parcel of real property that has been altered in whole or in part from its natural state by the addition of improvements, such as buildings, structures, paving, and/or other impervious surfaces, if the total square footage of such impervious surface exceeds 500 square feet.

Developed residential property. A developed lot or parcel containing at least one (1) but no more than four (4) residences or dwelling units, and accessory uses related to, but subordinate to, the purpose of providing permanent dwelling facilities. Such property shall include houses, duplexes, triplexes, quadriplexes, and mobile homes. For purposes of this article, each townhouse located on a separate lot shall be considered as a developed residential property; and each condominium, although it is not on a separate lot, also will be considered as a developed residential property.

Developer. Any person who engages in development either as the owner or as the representative of an owner of property.

Development. Land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, or the clearing of land for non-agricultural or non-silvicultural purposes. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

Development activity.

- a. The construction, installation, alteration, demolition, or removal of a structure, impervious surface, or drainage facility, best management practices facilities, buffer areas, and the like;*
- b. Clearing, scraping, grubbing, or otherwise removing or killing the vegetation on a site; or*

- c. *Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise significantly disturbing the soil, mud, or sand on a site.*

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

Director. The director of the department of public works or their designee.

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

Discharge of a pollutant.

- a. *Any addition of any pollutant or combination of pollutants to state waters from any point source; or*
- b. *Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.*

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

District. A political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

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

Dormant. Denuded land that is not actively being brought to a desired grade or condition.

Drainage area. A land area, water area, or both from which runoff flows to a common point.

Drainage facility. Any manmade or man-altered component of the drainage system.

Drainage system. The system through which water flows from the land, including all watercourses (both intermittent and perennial), water bodies, and wetlands.

Dwelling unit. A single housing unit, mobile home, townhouse, or condominium providing complete, independent living facilities for one (1) or more persons, including provisions for living, sleeping, eating, cooking, and sanitation.

Energy dissipator. A non-erodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

Erosion and sediment control plan or ESC plan. A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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

Equivalent residential unit or ERU. The equivalent impervious area of the developed residential property class per dwelling unit located within the city based on the statistical average horizontal impervious area of developed residential property in the city. One (1) ERU shall equal 2,429 square feet of impervious surface area.

EPA. The U.S. Environmental Protection Agency.

Erosion. The wearing or washing away of soil by the action of wind or water.

Erosion and sediment control plan. A document providing for the conservation of soil and water resources as required by Article III of this chapter.

ERU rate. The service charge fee charged for one (1) ERU, as established in this article.

ESC. Erosion and sediment control.

Excavating. Any digging, scooping, or other methods of removing earth materials.

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

Filling. Any depositing or stockpiling of earth materials.

Flood. A temporary rise in the level of any water body, watercourse, or wetlands which results in the inundation of areas not ordinarily covered by water.

Flood fringe. The portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

Flooding. A volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

Floodplain. The area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

Flood-prone area. The component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

Floodway. The channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

Flume. A constructed device lined with erosion-resistant materials intended to convey water on steep grades.

General permit. The state permit titled "General VPDES Permit for Discharges of Stormwater from Construction Activities" found in Part XIV (9VAC25-880-1, et seq.) of the regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

Grading. Any excavating, filling, leveling, or sloping of earth materials, or any combination thereof, including the land in its excavated, filled, leveled, or sloped condition.

Hazardous waste. A solid waste or combination of solid waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or*

- (2) *Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.*

Hydrologic Unit Code or "HUC". A watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

Impervious surface. A surface compacted or covered with a layer of material so that it is highly resistant to water infiltration. It includes semi-impervious surfaces, such as compacted clay, as well as most conventionally surfaced streets, roads, sidewalks, parking lots, and other similar surfaces. Other surfaces such as gravel, dirt, or a mixture thereof, that regularly are used for vehicular access, parking, or storage also shall be considered impervious if there is inadequate vegetative cover to affect the rate of stormwater infiltration.

Inspection. An on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of this ordinance.

Land disturbance or land-disturbing activity. A man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in sections 33.3-8 and 33.3-42 of this chapter.

Land-disturbance approval. An approval allowing a land-disturbing activity to commence issued by the VESMP authority after the requirements of § 62.1-44.15:34 of the Code of Virginia have been met.

Large construction activity. Construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

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

Linear development project. A land-disturbing activity 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) construction of tracks, rights-of-way, bridges, communication facilities

and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

Live watercourse. A definite channel with bed and banks within which concentrated water flows continuously.

Locality. The City of Hampton.

Localized flooding. Smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

Main channel. The portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

Manmade. Constructed by man.

Minimize. To reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

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

MS4. The municipal separate storm sewer system.

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

Natural stream. A tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams;

however, channels designed utilizing natural channel design concepts may be considered natural streams.

Non-point source pollution. Pollution whose sources cannot be pinpointed but rather is washed from the land surface in a diffused manner by stormwater runoff.

Nontidal wetlands. Those wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the EPA and the U.S. Army Corps of Engineers in 33 CFR § 328.3b pursuant to enforcement of Section 404 of the Federal Clean Water Act.

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

Owner. The person vested with fee ownership, dominion, or title of property, i.e., the proprietor. This term also may include a tenant if chargeable under his lease for the maintenance of the property and any representative of the owner or tenant including a developer.

Peak flow rate. The maximum instantaneous flow from a given design storm at a particular location.

Permit or land-disturbing permit. An approval to conduct a land-disturbing activity issued by the administrator for the initiation of a land-disturbing activity in accordance with this chapter and which may be issued only after evidence of general permit coverage has been provided by DEQ where required.

Permittee. The person to whom the land-disturbing permit is issued.

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

Point source. Any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant discharge. The average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

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

Post-development. Conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

Pre-development. Conditions that exist at the time that plans for the land development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads, utilities, and the like), the existing conditions at the time prior to the first item being approved or permitted shall establish predevelopment conditions.

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

Qualified personnel. A person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.

Receiving bodies of water. Any water bodies, watercourses, or wetlands into which surface waters flow either naturally, in man-made ditches, or in a closed conduit system.

Regulations. The Virginia Stormwater Management Program regulations, 9VAC25-875, as amended.

Representative. Any individual, partnership, firm, association, joint venture, or corporation authorized to act on behalf of the owner.

Resource management area or RMA. That component of the Chesapeake Bay Preservation District that is not classified as resource protection areas. The RMA is comprised of land that is contiguous to the variable width RPA buffer for a distance of 100 feet in the landward direction.

Resource protection area or RPA. That component of the Chesapeake Bay Preservation District comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or that are sensitive to impacts which may result in significant degradation to the quality of state waters. Resource protection areas include: (i) tidal wetlands; (ii) nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; (iii) tidal shores; and (iv) a variable width buffer area not less than one hundred (100) feet in width. The variable width buffer area shall be located adjacent to and landward of the components listed in (i) through (iii) herein, and along both sides of any water body with perennial flow. The variable width buffer also shall include lands designated as part of the Coastal Barrier Resources System not otherwise listed as a resource protection area feature where present. The buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with chapter 9, article II, of the Hampton City Zoning Ordinance.

Responsible land disturber. An individual holding a certificate of competence issued by the Department of Environmental Quality who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the approved plan. The responsible land disturber may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The responsible land disturber must be designated on the plan or permit as a prerequisite for plan approval by the city.

Retention. The collection and storage of runoff without subsequent discharge to surface waters.

Runoff or Stormwater Runoff. That portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

Runoff characteristics. Maximum velocity, peak flow rate, volume, and flow duration.

Runoff volume. The volume of water that runs off the land development project from a prescribed storm event.

Sediment. Fine particulate material, whether mineral or organic, that is in suspension or has settled in a water body.

Sedimentation facility. Any structure or area designed to hold runoff water until suspended sediments have settled.

Sensitive land or sensitive sub-watershed. An urban stream classification for a sub-watershed with less than 10% impervious cover, which still is capable of supporting stable channels and good-to-excellent biodiversity.

Service charge. The user fee based upon the ERU rate applied to the developed residential property, developed nonresidential property, and undeveloped property pursuant to section 33.3-34 herein.

Sheet flow or overland flow. Shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

Shoreline erosion control project. An erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the department, or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

Single-family detached residential structure. A noncommercial dwelling that is occupied exclusively by one family.

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

Site hydrology. The movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

Soil and water conservation district. See definition of District.

Soil erosion. The movement of soil by wind or water into state waters or onto lands in the Commonwealth.

State. The Commonwealth of Virginia.

State Board. The State Water Control Board.

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

State Water Control Law. The law as codified in Code of Virginia, § 62.1-44.2, et seq.

State waters. All water, on the surface and underground, wholly or partially within or bordering the state or within its jurisdiction, including wetlands.

Storm sewer inlet. A structure through which stormwater is introduced into an underground conveyance system.

Storm sewer system or Stormwater system. All facilities, structures, and natural watercourses used for collecting and conveying stormwater to, through, and from drainage areas to the point of final outlet, including but not limited to streets, curbs and gutters, inlets, conduits and appurtenant features, canals, creeks, channels, catch basins, ditches, drains, sewers, streams, gulches, gullies, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, levees, pumping stations, and wetlands.

Stormwater (for the purposes of the VESMA). Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

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

Stormwater management facility. A control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

Stormwater management plan. Any document(s) containing material describing methods for complying with the requirements of section 33.3-11 of this article or Code of Virginia, § 62.1-44.15:24, et seq. An agreement in lieu of a stormwater management plan as defined herein shall be considered to meet the requirements of a stormwater management plan.

Stormwater management revenues or revenues. All rates, service charges, fees, assessments, rentals, other charges, or other income received, including amounts

received from the investment or deposits of money in any fund or account, and any amounts distributed by the city council from general revenues of the city.

Stormwater management system or system. The stormwater management infrastructure and equipment of the city and all improvements thereto. Infrastructure and equipment shall include structural and natural stormwater control facilities of all types, including, without limitation, retention and detention basins, open ditches, canals, creeks, conduits, pumping stations, and other plants, structures, and real and personal property used to support the system.

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

Structure. An edifice or building of any kind or any piece of work artificially built or composed of parts joined together in some definite manner.

Ten-year storm. A storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

Subdivision. The division of any parcel of land into two (2) or more lots or parcels for immediate or future transfer of ownership or building development. The term shall be construed to include all changes in lot lines, the creation of new lots involving any division of an existing lot or lots, or if a new street is involved in such division, any division of a parcel of land, and when appropriate to context, the process of subdividing or the territory subdivided.

Tidal wetlands. Vegetated land which lies between and contiguous to mean low water and an elevation above mean low water equal to the factor of one and one-half (1½) times the mean tide range, or non-vegetated land which lies contiguous to mean low water and is between mean low water and mean high water.

Total maximum daily load or TMDL. The sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading, and a margin of safety. TMDLs may be expressed in terms of either mass per

time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

Transporting. Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Two-year storm. A storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

Undeveloped property. Any parcel that has not been altered from its natural state in such a manner that the topography or soils on the property have been disturbed or altered to the extent that the rate of surface infiltrating or stormwater has been affected.

VESCP plan-approving authority. The department.

Virginia Erosion and Sediment Control Program or VESCP. A program approved by the DEQ that is established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of the Erosion and Sediment Control Law (ESCL).

Virginia Erosion and Sediment Control Program authority or VESCP authority. The city as approved by the DEQ to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1, the State Water Control Law, of Title 62.1 of the Code of Virginia.

Virginia Erosion and Stormwater Management Act or VESMA. Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.

Virginia Erosion and Stormwater Management Program or VESMP. A program established by the VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as

local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

Virginia Erosion and Stormwater Management Program authority or VESMP Authority. The City of Hampton, as approved by the DEQ to operate the VESMP.

Virginia Pollutant Discharge Elimination System (VPDES) permit or VPDES permit. A document issued by the DEQ 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.

Virginia Stormwater BMP Clearinghouse. A collection that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the VESMA and associated regulations.

Virginia Stormwater Management Handbook. A collection of pertinent information that provides general guidance for compliance with the VESMA and associated regulations and is developed by the DEQ with advice from a stakeholder advisory committee.

Wasteload allocation or Wasteload. The portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality-based effluent limitation.

Water quality technical criteria. Standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

Water quantity technical criteria. Standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

Watershed. A drainage area or drainage basin contributing to the flow of water in a receiving body of water.

ARTICLE II. STORMWATER MANAGEMENT

DIVISION 1. STORMWATER MANAGEMENT GENERALLY

Sec. 33.3-3. Findings of fact.

The health of city, state, and federal waters are vital to the economy of the City of Hampton (the "city") and the Commonwealth of Virginia; degradation of these resources from both point and nonpoint source pollution must be curtailed. Uncontrolled drainage and development of land have significant adverse impacts upon the health, safety, and welfare of the community. The purpose of this chapter is (a) to implement the Chesapeake Bay Preservation Act (Code of Virginia, 1950, as amended, § 62.1-44.15:67, et seq.), the Virginia Erosion and Stormwater Management Act (Code of Virginia, § 62.1-44.15:24, et seq.), and the federal Clean Water Act at the local level, and (b) to protect the quality of state waters as authorized under Code of Virginia, § 62.1-44.15:67, et seq.; specifically:

- (1) Stormwater runoff may carry pollutants into receiving water bodies, degrading water quality;*
- (2) The increase in nutrients, such as phosphorous and nitrogen, adversely affects flora and fauna;*
- (3) Improperly channeling water increases the velocity of runoff, thereby increasing erosion and sedimentation;*
- (4) Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform;*
- (5) Construction requiring the alteration of natural topography and removal of vegetation tends to increase erosion;*
- (6) Siltation of water bodies resulting from increased erosion decreases their capacity to hold and transport water, interferes with navigation, and harms flora and fauna;*
- (7) Impervious surfaces increase the volume, rate, and pollutant load of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge and increasing erosion and surface water pollution;*
- (8) Improperly managed stormwater runoff may increase the incidence of flooding and the level of floods which occur, thus endangering property and human life;*
- (9) Improperly managed stormwater runoff may interfere with the maintenance of optimum salinity in estuarine areas, thereby disrupting biological productivity;*

- (10) *Substantial economic losses result from these adverse impacts on city and state waters; and*
- (11) *Future water degradation may be avoided if land is developed in accordance with sound stormwater management practices.*

Sec. 33.3-4. Purpose and objectives.

- (a) *The purpose of this article is to ensure the general health, safety, and welfare of the citizens of the city and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land-disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.*
- (b) *In order to protect, maintain, and enhance both the immediate and long-term health, safety, and general welfare of the citizens of the city, this article has the following objectives:*
 - (1) *To balance development interests and natural resources of the city;*
 - (2) *To protect, restore, or maintain the chemical, physical, and biological integrity of city and state waters in such conditions that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;*
 - (3) *To prevent activities which harm the city by adversely affecting water resources;*
 - (4) *To encourage the construction of drainage systems which maintain or functionally approximate existing natural systems;*
 - (5) *To encourage the protection of natural drainageways and the use of them in ways which do not impair their beneficial functioning;*
 - (6) *To prevent any increase in the transport of pollutants to city and state waters;*
 - (7) *To maintain or restore groundwater levels;*
 - (8) *To protect, maintain, or restore natural salinity levels in estuarine areas;*

- (9) *To minimize erosion and sedimentation;*
- (10) *To prevent damage to wetlands and resource protection areas as defined herein;*
- (11) *To prevent damage from flooding, while recognizing that natural fluctuations in water levels are beneficial;*
- (12) *To protect, restore, and maintain fish and wildlife habitat in the watersheds of the city; and*
- (13) *To ensure attainment of these objectives by requiring the approval and implementation of stormwater management plans for all activities which may have an adverse impact upon city and state waters.*

Sec. 33.3-5. Reserved.

DIVISION 2. STORMWATER MANAGEMENT PROGRAM

Sec. 33.3-6 Stormwater management program established.

Pursuant to Code of Virginia, § 62.1-44.15:27, the city hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VESMPs promulgated by the State Board for the purposes set out in section 33.3-3 of this article. The city hereby designates the Public Works Director or their designee as the administrator of the Virginia stormwater management program.

Sec. 33.3-7. Permit requirements.

- (a) *Except as provided herein, no person may engage in any land-disturbing activity until a land-disturbing permit has been issued by the administrator in accordance with the provisions of this article and article III of this chapter of the City Code.*
- (b) *A Chesapeake Bay Preservation Act land-disturbing activity shall be subject to an erosion and sediment control plan consistent with the requirements outlined in*

section 33.3-50, a stormwater management plan as outlined under section 33.3-11, the technical criteria and administrative requirements for land-disturbing activities outlined in section 33.3-13, and the requirements for long-term maintenance of control measures outlined under section 33.3-19 and are subject to the following technical criteria and program and administrative requirements:

- (1) An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the city or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.*
 - (2) A stormwater management plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act and regulations must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 9VAC25-875-510. Prior to land disturbance, this plan must be approved by the city.*
 - (3) Exceptions may be requested in accordance with 9VAC25-875-170.*
 - (4) Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-875-535.*
 - (5) Water quality design criteria in 9VAC25-875-580 shall be applied to the site.*
 - (6) Water quality compliance shall be achieved in accordance with 9VAC25-875-590.*
 - (7) Channel protection and flood protection shall be achieved in accordance with 9VAC25-875-600.*
 - (8) Offsite compliance options in accordance with 9VAC25-875-610 shall be available to Chesapeake Bay Preservation Act land-disturbing activities.*
 - (9) Such land-disturbing activities shall be subject to the design storms and hydrologic methods set out in 9VAC25-875-620, linear development controls in 9VAC25-875-640, and criteria associated with stormwater impoundment structures or facilities in 9VAC25-875-650.*
- (c) No land-disturbing permit shall be issued by the administrator until the following items have been submitted to and approved by the administrator as prescribed herein:*

- (1) *A permit application that includes a general permit registration statement if such statement is required; however, neither a registration statement nor payment of the state's portion of the statewide permit fee shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale, but such projects must adhere to the requirements of the general permit;*
 - (2) *An erosion and sediment control plan approved in accordance with article III of this chapter; and*
 - (3) *A stormwater management plan that meets the requirements of section 33.3-11 of this chapter or an executed agreement in lieu of a stormwater management plan.*
- (d) *No land-disturbing permit shall be issued until evidence of general permit coverage is obtained.*
 - (e) *No land-disturbing permit shall be issued until the fees required to be paid pursuant to section 33.3-45(b) of article III are received, and a reasonable performance bond required pursuant to section 33.3-18 of this article has been submitted.*
 - (f) *No land-disturbing permit shall be issued until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development, and drainage will be performed according to the approved permit.*
 - (g) *No grading, building, or other local permit shall be issued for a property unless a land-disturbing permit has been issued by the administrator.*

Sec. 33.3-8. Exemptions.

- (a) *Notwithstanding any other provisions of this chapter, the following activities are exempt unless otherwise required by federal law:*
 - (1) *Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Code of Virginia, Title 45.2;*
 - (2) *Clearing of lands specifically for bona fide agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the*

board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, §§ 10.1-1100, et seq.) or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);

- (3) Single-family residences separately built, including additions or modifications to existing single family detached residential structures: a) disturbing less than one acre; b) not part of a larger common plan of development or sale; and c) not within a Chesapeake Bay preservation district;*
- (4) Single-family residences separately built within the Chesapeake Bay preservation district as set forth in the city zoning ordinance, including additions or modifications to existing single family detached residential structures: a) disturbing less than two thousand five hundred (2,500) square feet; and b) not part of a larger common plan of development or sale;*
- (5) Land-disturbing activities that disturb less than one acre of land except for land-disturbing activity exceeding two thousand five hundred (2,500) square feet of land area within a Chesapeake Bay preservation district as set forth in the city zoning ordinance or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;*
- (6) Discharges to a sanitary sewer or a combined sewer system;*
- (7) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;*
- (8) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and*
- (9) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the*

VESMP authority shall be advised of the disturbance within seven (7) days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection (a) is required within thirty (30) days of commencing the land-disturbing activity.

- (b) All exempted activities must meet the RPA buffer requirements of chapter 9, article II of the city zoning ordinance, if applicable, and all erosion and sediment control provisions of this chapter.*

Sec. 33.3-9. Regulated land disturbing activities.

- (a) Land-disturbing activities that meet one of the criteria below are regulated as follows:*
- (1) Land-disturbing activity that disturbs 10,000 square feet or more, is less than one acre, is not in an area of city designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation.*
 - (2) Land-disturbing activity that disturbs 2,500 square feet or more, is less than one acre, and in an area of city designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.*
 - (3) Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.*
 - (4) Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.*

- (b) *Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by other local, state or federal law.*

Sec 33.3-10. Reserved.

Sec. 33.3-11. Stormwater management plan; contents of plan.

- (a) *The stormwater management plan required by this article must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities. The applicant must include in the stormwater management plan sufficient information for the administrator to evaluate the environmental characteristics of the land disturbance area, the potential and predicted impacts of the proposed activity on city and state waters, and the effectiveness and acceptability of the control measures proposed by the applicant for reducing adverse impacts.*
- (b) *The stormwater management plan shall be submitted as part of the preliminary site plan/subdivision plan and shall contain the following:*
 - (1) *Contact information including the name, address, and phone number of the owner and the tax reference number and parcel number of the property or properties affected;*
 - (2) *A narrative that includes a description of current site conditions and final site conditions;*
 - (3) *A water quality impact assessment pursuant to section 33.3-12 of this article;*
 - (4) *Compliance with the water quality standards per 9VAC25-875-590; and*
 - (5) *Compliance with the water quantity standards per 9VAC25-875-600.*
- (c) *If an operator intends to meet the water quality and/or quantity requirements set forth in section 33.3-13 of this article through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be*

included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by Code of Virginia, § 62.1-44.15:35.

- (d) Elements of the stormwater management plans that include activities regulated under Code of Virginia, § 54.1-400, et seq. shall be sealed and signed appropriately by a professional registered in the Commonwealth of Virginia pursuant to Virginia Code, § 54.1-400, et seq.*
- (e) A construction record drawing for permanent stormwater management facilities shall be submitted to the administrator. The construction record drawing shall be sealed and signed appropriately by a professional registered in the state, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.*
- (f) The Stormwater Pollution Prevention Plan (SWPPP) shall include but not be limited to the following as specified by section 9VAC25-875-500:*

 - (1) An approved erosion and sediment control plan pursuant to Article III of this chapter;*
 - (2) An approved stormwater management plan pursuant to section 33.3-11;*
 - (3) A pollution prevention plan for regulated land-disturbing activities pursuant to this section; and*
 - (4) A description of any additional control measures necessary to address a TMDL to be implemented by the operator so that discharges from construction activities are consistent with the assumptions and requirements of the wasteload allocation for a pollutant.*
- (g) The SWPPP also must comply with the requirements and general information set forth in section 9VAC25-880-70, section II of the general permit.*
- (h) The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.*
- (i) The operator must maintain the SWPPP at a central location onsite. If an onsite location is unavailable, notice of the location of the SWPPP must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with section II of the general permit, either electronically or in hard copy.*

- (j) *A Pollution Prevention Plan, required by 9VAC25-875-520, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:*
- (1) *Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;*
 - (2) *Minimize the exposure to precipitation and to stormwater of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site; and*
 - (3) *Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.*
- (k) *The pollution prevention plan shall include effective best management practices to prohibit the following discharges:*
- (1) *Wastewater from washout of concrete unless managed by an appropriate control;*
 - (2) *Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;*
 - (3) *Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and*
 - (4) *Soaps or solvents used in vehicle and equipment washing.*
- (l) *Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.*

Sec. 33.3-12. Water quality impact assessment.

- (a) *Purpose and intent. The purpose of the water quality impact assessment is to:*
- (1) *Identify the impacts of proposed development on water quality and other environmentally sensitive lands;*

- (2) *Ensure that, where development does take place within sensitive lands, it will be located on those portions of a site in a manner that will be least disruptive to the natural functions of sensitive lands;*
 - (3) *Protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and*
 - (4) *Specify mitigation which will address water quality protection.*
- (b) *Water quality impact assessment required. A water quality impact assessment is required, including a review fee of two hundred dollars (\$200.00), for any proposed development disturbing over one acre of land area, or any land disturbance exceeding two thousand five hundred (2,500) square feet within the Chesapeake Bay preservation district as set forth in the city zoning ordinance, except those uses exempt from the stormwater management requirements per section 33.3-8 of this article. An assessment must apply the stormwater management technical criteria set forth in section 33.3-13 of this article to the entire land-disturbing activity. A water quality impact assessment shall include the following elements, which shall be considered a minimum unless the administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed uses and development of land.*
- (1) *Information on the type and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;*
 - (2) *A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;*
 - (3) *Information on the proposed stormwater management facilities, including:*
 - a. *The type of facilities;*
 - b. *Location, including geographic coordinates;*
 - c. *Acres treated; and*
 - d. *The surface waters or karst features, if present, into which the facility will discharge.*
 - (4) *Hydrologic and hydraulic computations, including runoff characteristics;*

- (5) *Documentation and calculations verifying compliance with the water quality and quantity requirements of section 33.2-13 of this article.*
- (6) *A map or maps of the site that depicts the topography of the site and includes:*
 - a. *All contributing drainage areas;*
 - b. *Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;*
 - c. *Soil types, geologic formations if karst features are present in the area, forest cover and other vegetative areas, and groundwater levels, including seasonal fluctuations;*
 - d. *Current land use including existing structures, roads, and locations of known utilities and easements;*
 - e. *Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;*
 - f. *The limits of clearing and grading, and the proposed drainage patterns on the site;*
 - g. *Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and*
 - h. *Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.*
- (7) *Information related to the following:*
 - a. *Disturbances or destruction of wetlands and RPA features and justification for such action;*
 - b. *Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers, or other water bodies, which may include but is not limited to changes in the incidence or duration of flooding on the site and upstream and downstream from it;*
 - c. *Disruptions to existing hydrology including wetland and stream circulation patterns;*
 - d. *Source location and description of proposed fill material;*

- e. *Location of dredge material and location of dumping area for such material; and*
 - f. *Location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas.*
- (8) *Any other information which the developer or the administrator believes is reasonably necessary for an evaluation of the proposed development;*
- (9) *Listing of all requisite permits from all applicable agencies necessary to develop the project;*
- (10) *Proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:*
- a. *Proposed erosion and sediment control concepts, which may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, and measures to stabilize disturbed areas;*
 - b. *Proposed stormwater management system;*
 - c. *Creation of wetlands to replace those lost; and*
 - d. *Minimizing cut and fill.*

Sec. 33.3-13. Technical criteria for regulated land-disturbing activities.

- (a) *To protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city hereby adopts the technical criteria for regulated land-disturbing activities set forth in the regulations, as amended, expressly to include the following and which shall apply to all land-disturbing activities regulated pursuant to this chapter, except as expressly set forth in subsection (b):*
- (1) *Water quality design criteria requirements of 9VAC25-875-580;*
 - (2) *Water quality compliance in 9VAC25-875-590;*
 - (3) *Water quantity requirements of 9VAC25-875-600;*
 - (4) *Offsite compliance options in 9VAC25-875-610;*
 - (5) *Design storms and hydrologic methods in 9VAC25-875-620;*

- (6) *Stormwater harvesting in 9VAC25-875-630;*
 - (7) *Linear development project requirements in 9VAC25-875-640; and*
 - (8) *Stormwater management impoundment structures or facilities in 9VAC25-875-650.*
- (b) *In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of Part V of the regulations.*
 - (c) *Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.*

Sec. 33.3-14. Exceptions.

- (a) *The administrator may grant exceptions to the technical requirements of Article 3 (9VAC25-875-570 et seq.) of Part V of the regulations provided that:*
 - (1) *The exception is the minimum necessary to afford relief,*
 - (2) *Reasonable and appropriate conditions are imposed so that the intent of the Act, the regulations, and this chapter are preserved,*
 - (3) *Granting the exception will not confer any special privileges that are denied in other similar circumstances, and*
 - (4) *Exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.*
- (b) *The administrator shall not grant exceptions to the requirement to obtain a land-disturbing permit for the land-disturbing activity, nor shall the administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the director except where allowed under Article 4 (9VAC25-875-670 et seq.) of Part V of the regulations.*
- (c) *Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-875-610 have been considered and found not available. At least 75% of the required phosphorus nutrient reductions must be achieved on-site. If at least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the city that (i) alternative site designs have been*

considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.

- (d) A fee of two hundred dollars (\$200.00) will be collected at the time the plan and exemption application are submitted for review, which reflect the cost of administration and management of the process.*

Sec. 33.3-15. Reserved.

Sec. 33.3-16. Review of stormwater management plan.

- (a) A permit application for land-disturbing activities and the appropriate fee shall be submitted to the agent pursuant to section 33.3-45 of the land-disturbing operations ordinance. Four (4) copies of the stormwater management plan shall be submitted with the application.*
- (b) The administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following criteria:*
 - (1) The administrator shall determine the completeness of a plan in accordance with section 33.3-11 of this article, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the notification shall contain the reasons the plan is deemed incomplete.*
 - (2) The administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that, if a determination of completeness is not made within the time prescribed in subsection (1), then the plan shall be deemed complete; and the administrator shall have 60 calendar days from the date of submission to review the plan.*
 - (3) The administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.*

- (4) *During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or their designated representative. If the plan is not approved, reasons for not approving it shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article.*
 - (5) *If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subsection (2) herein for review, the plan shall be deemed approved.*
- (c) *Approved stormwater plans may be modified as follows:*
- (1) *Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the administrator. The administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.*
 - (2) *The administrator may require that an approved stormwater management plan be amended, within a time prescribed by the administrator, to address any deficiencies noted during inspection.*
 - (3) *The administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to section 33.3-19(b) of this article.*
- (d) *A stormwater management plan approved for residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.*

Sec. 33.3-17. Structure encroachment permit.

- (a) *No building permit, zoning certificate, or land-disturbing permit shall be issued for a structure or an impervious improvement within the resource protection area (RPA) buffer or intensely developed area (IDA) until a structure encroachment permit has been issued. All funds collected pursuant to this section shall be placed into a special revenue account to be used solely as approved by the city manager for the creation, enhancement, or restoration of wetlands and/or vegetative buffers on public property within the Chesapeake Bay Preservation District. Failure to obtain a permit shall constitute a class 3 misdemeanor.*

- (b) *In circumstances where structures or impervious cover have been determined by the zoning administrator to be allowed in the RPA buffer, any person desiring to build, construct, or place an accessory structure or impervious cover in single-family residential zoning districts, in the RPA buffer or IDA, first shall obtain a structure encroachment permit from the agent. The permit fee for an accessory structure or impervious cover with less than or equal to 150 square feet within the RPA buffer or IDA shall be \$100.00. The permit fee for an accessory structure or impervious cover with more than 150 square feet within the RPA buffer or IDA shall be \$1.00 per square foot of encroachment into the RPA buffer or IDA, not to exceed a \$400.00 maximum fee.*
- (c) *In circumstances where structures have been determined by the zoning administrator to be allowed in the RPA buffer, any person desiring to build, construct, or place any structure other than an accessory structure governed by paragraph (a) herein in the RPA buffer or IDA shall obtain a structure encroachment permit from the agent. The permit fee for a structure with less than or equal to 150 square feet within the RPA buffer or IDA shall be \$100.00. The permit fee for a structure with more than 150 square feet within the RPA buffer or IDA shall be \$1.00 per square foot of encroachment into the RPA buffer or IDA, not to exceed a \$1,000.00 maximum fee.*
- (d) *No permit shall be required for piers, pervious surfaces, or uses exempt pursuant to section 9-19 of the city's zoning ordinance.*

Sec. 33.3-18. Performance bond.

Prior to the approval of any stormwater management plan, the director shall require from the applicant a reasonable performance bond, cash, cash escrow, or letter of credit to ensure that measures may be taken by the city, at the applicant's expense, should he fail after proper notice and within the time specified, to initiate or maintain appropriate actions which may be required of them by the permit conditions as a result of their land-disturbing activity. If the city takes such remedial action based upon applicant's failure to comply, and the cost of remedial action exceeds the amount of the security held, if any, the city may collect the difference from the applicant. The bond amount shall cover 100 percent of the cost of the stormwater management facilities required for the project with said cost being added to and made a part of the bond required per section 33.3-55 of the city code. Within 60 days of final inspection and approval of the development activity, such bond, cash, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated as the case may be.

These requirements are in addition to all other provisions of law relating to the approval of such plans and are not intended to otherwise affect the requirements of such plans.

Sec. 33.3-19. Long-term maintenance of permanent stormwater management facilities.

- (a) *The administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to termination of the general permit or earlier as required by the administrator and at a minimum shall:*

 - (1) *Be submitted to the administrator for review and approval prior to the approval of the stormwater management plan;*
 - (2) *Be stated to run with the land;*
 - (3) *Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;*
 - (4) *Provide for inspections and maintenance and the submission of inspection and annual maintenance reports to the administrator without demand; and*
 - (5) *Be enforceable by all appropriate governmental parties.*
- (b) *At the discretion of the administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which it is located, provided it is demonstrated to the satisfaction of the administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the administrator.*
- (c) *If a recorded instrument is not required pursuant to subsection (b) herein, the administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which it is located. Such a strategy may include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the administrator.*

Sec. 33.3-20. Monitoring and inspections.

- (a) *The administrator shall inspect the land-disturbing activity during construction for:*
 - (1) *Compliance with the approved erosion and sediment control plan;*
 - (2) *Compliance with the approved stormwater management plan;*
 - (3) *Development, updating, and implementation of a pollution prevention plan; and/or*
 - (4) *Development and implementation of any additional control measures necessary to address a TMDL.*
- (b) *The administrator, at reasonable times and under reasonable circumstances, may enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.*
- (c) *In accordance with a performance bond with surety, cash, cash escrow, or letter of credit, the administrator also may enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.*
- (d) *Pursuant to Code of Virginia, § 62.1-44.15:40, the administrator may require every land-disturbing permit applicant or permittee, or any such person subject to land-disturbing permit requirements under this chapter, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.*
- (e) *Post-construction inspections of stormwater management facilities required by the provisions of this article shall be conducted by the administrator pursuant to the city's adopted and State Board approved inspection program, and shall occur at least once every 5 years except as otherwise provided in section 33.3-19.*

Sec. 33.3-21. Hearings.

- (a) *Any permit applicant or permittee, or person subject to the requirements of this article, aggrieved by any action of the city taken without a formal hearing, or by inaction of the city, may demand in writing a formal hearing by the city, provided a*

petition requesting such hearing is filed with the administrator within 30 days after the administrator gives notice of such action.

- (b) The hearings held under this section shall be conducted by the city manager or a designee.*
- (c) A verbatim record of the proceedings of such hearings shall be taken, at the requester's expense, and filed with the administrator by the permit applicant or permittee. Depositions may be taken and read as in actions at law.*
- (d) The city manager or a designee, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the city manager or a designee, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.*
- (e) Decisions under this section may be appealed to the Circuit Court of the City of Hampton. Decisions of the circuit court shall be subject to review by the Court of Appeals of Virginia.*

Sec. 33.3-22. Reserved.

Sec. 33.3-23. Enforcement.

- (a) If the administrator determines that there is a failure to comply with the land-disturbing permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following methods: verbal warnings and inspection reports, consent special orders, and notices of violation including corrective action. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the representative or employee supervising such activities.*
 - (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work*

order may be issued in accordance with subsection (b) herein, or the administrator may revoke the permit.

- (2) *If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has been satisfied, or an approved plan and required permits are obtained, and specified corrective measures have been completed.*

Such orders shall be issued in accordance with the city's stormwater program inspection and enforcement manual. Such orders shall become effective upon service on the person by registered or certified mail, return receipt requested, sent to his address specified in the land records of the city, or by personal delivery by the administrator. However, if the administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the state or otherwise substantially impacting water quality, without advance notice or hearing, it may issue an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with subsection (c) herein.

- (b) *In addition to any other remedy provided by this article, if the administrator determines that there is a failure to comply with the provisions of this article, he may initiate informal and/or formal administrative enforcement procedures in a manner that is consistent with the city's stormwater program inspection and enforcement manual.*
- (c) *Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the administrator may be compelled in a proceeding instituted by the city in the Hampton General District Court to obey the same and to comply therewith by injunction, mandamus, or other appropriate remedy.*

- (d) *Any person who violates any provision of this article or who fails, neglects, or refuses to comply with any order of the administrator shall be subject to a civil penalty not to exceed \$32,500.00 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.*
- (1) *Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:*
- a. *No state permit registration;*
 - b. *No SWPPP;*
 - c. *Incomplete SWPPP;*
 - d. *SWPPP not available for review;*
 - e. *No approved erosion and sediment control plan;*
 - f. *Failure to install stormwater BMPs or erosion and sediment controls;*
 - g. *Stormwater BMPs or erosion and sediment controls improperly installed or maintained;*
 - h. *Operational deficiencies;*
 - i. *Failure to conduct required inspections;*
 - j. *Incomplete, improper, or missed inspections; and*
 - k. *Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.*
- (2) *The administrator may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate court.*
- (3) *In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.*
- (4) *Any civil penalties assessed by a court as a result of a summons issued by the city shall be paid into the treasury of the city to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the city and abating environmental pollution therein in such manner as the court may direct.*

- (5) *Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of this article, any order of the administrator, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500.00, or both. Any such person furthermore shall be liable for all damage, loss, and expense suffered or incurred by the city as a result of such violation.*
- (6) *In addition to any penalty imposed for a violation of the provisions of this article, a judge hearing the case may direct the person responsible for the discharge or deposit to remediate or remove such discharge or deposit; and each day's default in such remediation or removal shall constitute a separate violation under this section.*

Secs. 33.3-24 and 33.3-25. Reserved.

DIVISION 3. STORMWATER POLLUTION CONTROL

Sec. 33.3-26. Pollution of the storm sewer system.

- (a) *It shall be unlawful for any person to put, throw, place, or deposit or allow to be put, thrown, placed, or deposited any filth, animal or vegetable matter, chips, compost, construction debris, shavings, or any other substance or pollutant, whether solid or liquid, in the stormwater system or place or dispose of such material or substance in any area which drains into the stormwater system, or in any manner pollute the storm sewer system.*
- (b) *It shall be unlawful for any person to pour or discharge, or to permit to be poured or discharged, or to deposit, so that the same may be discharged, any gasoline, oil waste, antifreeze, or other automotive, motor, or equipment fluids into any storm sewer system.*
- (c) *It shall be unlawful for any commercial, industrial, or manufacturing entity to discharge process water, wash water, or any other unpermitted discharge into any storm sewer system.*

- (d) *It shall be unlawful for any person to throw, place, or deposit, or cause to be thrown, placed, or deposited, in any gutter, ditch, storm drain, or other drainage area in the city anything that impedes or interferes with the free flow of stormwater therein.*
- (e) *It shall be unlawful for any person to discharge chlorinated swimming pool water into the stormwater system.*

Sec. 33.3-27. Illicit discharges to the storm sewer system.

- (a) *No person shall connect, or cause or permit to be connected, any sanitary sewer to the storm sewer system.*
- (b) *No person, either directly or indirectly, shall cause or permit any significant discharge to the city's storm sewer system that is not composed entirely of stormwater.*
- (c) *Subject to the provisions of subsection (d) herein, the following activities shall not be in violation of this ordinance:*
 - (1) *Water line flushing;*
 - (2) *Landscape irrigation;*
 - (3) *Diverted stream flows;*
 - (4) *Rising ground waters;*
 - (5) *Uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20));*
 - (6) *Uncontaminated pumped ground water;*
 - (7) *Discharges from potable water sources;*
 - (8) *Foundation drains;*
 - (9) *Air conditioning condensation;*
 - (10) *Irrigation water;*
 - (11) *Springs;*
 - (12) *Water from crawl space pumps;*
 - (13) *Footing drains;*

- (14) *Lawn watering;*
 - (15) *Individual residential car washing;*
 - (16) *Flows from riparian habitats and wetlands;*
 - (17) *De-chlorinated swimming pool discharges;*
 - (18) *Street wash water;*
 - (19) *Discharges or flows from firefighting; and*
 - (20) *Any activity authorized by a valid Virginia Pollutant Discharge Elimination System ("VPDES") permit or Virginia Pollution Abatement ("VPA") permit.*
- (d) *In the event any of the activities listed in subsection (c) herein are found to be causing sewage, industrial wastes, or other wastes to be discharged into the storm sewer system, the director shall notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of sewage, industrial wastes, or other wastes into the storm sewer system. Failure to comply with any such order shall constitute a violation of the provisions of this ordinance.*

Secs. 33.3-28, 33.3-29. Reserved.

DIVISION 4. SERVICE CHARGES AND REVENUES

Sec. 33.3-30. Purpose; scope.

The city has developed and continues to maintain an infrastructure of manmade and natural components of a stormwater management system to both limit and manage the volume of stormwater runoff to control flood events and, through stormwater pollution control measures, to prevent degradation of the city's waterways. Adequate revenues shall be generated to provide for balanced operating and capital improvement budgets for the stormwater management system by setting sufficient levels of the service charge.

Sec. 33.3-31. Program administration.

The city stormwater management program shall be administered by the department.

Sec. 33.3-32. Findings and determinations.

- (a) Stormwater runoff is associated with all real estate in the city, whether residential or nonresidential, and the quantity and quality of runoff is correlated to the amount of impervious surface on each parcel.*
- (b) Elements of the stormwater management system provide benefit and service to all land within the city through direct protection of property, control of flooding of critical components of the infrastructure, and enhancement of water quality and the city's natural environment.*
- (c) Costs of monitoring, operating, maintaining, and constructing the system required in the city, both to meet stormwater pollution control regulations and to address and resolve erosion and flooding needs, should be allocated to the extent practicable to all property owners based on their contribution to stormwater runoff and their impact on the stormwater management system.*

Sec. 33.3-33. Service charge—Establishment; expenditures of revenue.

- (a) There hereby is established a service charge pursuant to the statutory authority granted to localities in Code of Virginia, §§ 15.2-1102 and 15.2-2114 to provide for the general health, welfare, and safety of the city and its residents.*
- (b) Revenues collected pursuant to this article shall be deposited in a separate ledger account. The funds deposited shall be used exclusively to provide services and facilities related to the system. Services and facilities related to the system shall include but not be limited to:
 - (1) Acquisition, as permitted by Code of Virginia, § 15.2-1800, of real or personal property and interests therein necessary to construct, operate, and maintain the system;*
 - (2) The cost of administering such programs, to include the establishment of reasonable operating and capital reserves to meet unanticipated or emergency requirements of the system and all associated legal and collection costs;**

- (3) *Engineering and design, debt retirement, construction costs for new facilities, and enlargement or improvement of existing facilities;*
- (4) *Facility maintenance;*
- (5) *Monitoring of stormwater control devices;*
- (6) *Pollution control and abatement, consistent with city, state, and federal regulations for water pollution control and abatement, including public education; and*
- (7) *Planning, design, land acquisition, construction, operation, and maintenance activities.*

Sec. 33.3-34. Same—Imposition.

- (a) *There shall be and hereby is levied an annual stormwater management service charge on real property in the city.*
- (b) *For the purposes of determining the service charge, all properties in the city are classified into one (1) of the following classes:*
 - (1) *Developed residential property;*
 - (2) *Developed nonresidential property; or*
 - (3) *Undeveloped property.*
- (c) *The service charge for each developed residential property shall equal the rate for one (1) ERU.*
- (d) *The service charge for developed nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious surface area square footage of the property by the square footage contained in one (1) ERU. The number factor then will be rounded up to the nearest whole number if \$0.50 or greater, or rounded down to the nearest whole number if less than \$0.50; however, in no case shall the service charge for any developed nonresidential property be less than the ERU rate.*
- (e) *The service charge for vacant developed property shall be calculated in the same manner as for occupied property of the same class.*
- (f) *Undeveloped property with less than 12,000 square feet of developable area shall not be subject to the service charge. Undeveloped property containing 12,000*

square feet or greater of developable area, if it is not incorporated as part of one (1) land use with an adjacent developed property, shall be subject to a service charge equal to one-half ($\frac{1}{2}$) of one (1) ERU.

- (g) Stormwater management service charges levied annually under the provisions of this article shall be effective on the first day of July in the year for which the same is made.

Sec. 33.3-35. Same—Billing, payment, interest, fee and lien.

- (a) The levied service charge shall be billed, due, and payable in two (2) equal installments. The first installment shall be due on or before the 5th day of December, and the second installment shall be due on or before the 5th day of June. Any parcel or dwelling unit owner who has remitted payment of the service charges and believes that it is incorrect may submit an adjustment request as provided for in this article.
- (b) The service charge is to be paid by the owner of each parcel or dwelling unit that is subject to the charge. The owner of each parcel or dwelling unit in the city, except undeveloped property less than twelve thousand (12,000) square feet of developable area, shall be mailed a statement for the stormwater service charges. The statements shall include a date by which payment shall be due. All statements shall be mailed at least thirty (30) days prior to the payment due date stated thereon. Payments received after the due date of the bill shall be subject to interest as established in this article.
- (c) The service charge due the city from property owners for stormwater management shall be based on the rate of \$141.96 per ERU per year. When applicable, the service charge shall be prorated at \$11.83 per ERU per month or any part thereof.
- (d) Any bill which has not been paid by the due date shall be deemed delinquent. Unpaid service charges and accrued interest shall constitute a lien against the property, ranking on parity with liens for unpaid taxes. All charges and interest due may be recovered by action at law or suit in equity. For delinquent charges, interest thereon shall commence on the 1st day of July following the due date and shall accrue at the rate of up to ten percent (10) per annum until such time as the delinquent charges and accrued interest are paid.
- (e) When previously undeveloped properties are brought into the system or in the event of alterations or additions to developed nonresidential property that alter the amount of impervious surface, a service charge will accrue, as determined by the

director, upon substantial completion of the improvements or, in the event completion of the improvements is not pursued diligently, upon establishment of the impervious area or dwelling units that affect stormwater runoff. A statement then will be issued, and such charges will be prorated for the number of months for which the parcel is subject to the service charge.

Sec. 33.3-36. Same—Waivers and adjustments.

(a) Waivers:

- (1) Full waivers of the service charge shall be provided to properties owned by federal, state, and local government agencies when those agencies own and provide for maintenance of storm drainage and stormwater control facilities or are units of the city.*
- (2) Full waivers of the service charge shall be provided for roads and public street rights-of-way that are owned and maintained by state and local agencies.*

(b) Adjustments:

- (1) Any owner who has paid their service charge and who believes their service charge to be incorrect may submit an adjustment request to the director. All such requests must be submitted prior to the end of the fiscal year for which the request applies.*
- (2) Adjustment requests shall be made in writing, setting forth sufficient details to substantiate the claim to the satisfaction of the director, including plans, engineering calculations, and related documents prepared by a licensed professional engineer or land surveyor. The director may waive the licensed professional requirement if, in their opinion, the specific adjustment request does not warrant such a requirement.*
- (3) Response to the adjustment request, whether providing an adjustment or denying an adjustment, shall be made by the director in writing within 60 days of receipt of the request.*
- (4) Any owner may appeal the director's decision to the city manager, but must do so in writing within 15 calendar days of the date of the director's response. The city manager shall respond to the appeal within 15 calendar days, and such response shall be final.*

- (5) *The director may extend such city response times as appropriate to ensure full and complete evaluation of the application. In those cases, the director shall notify the applicant of the action by certified mail.*

(c) *Credit:*

The city recognizes that on-site stormwater control facilities, increased green area, frequent sweeping of parking lots, and the like, reduce stormwater runoff rates and/or the transport of pollutants. Property owners who provide these private stormwater facilities incur expenses to operate and maintain these facilities in addition to their payment of stormwater fees. To encourage the proper maintenance of private stormwater facilities and other measures which would reduce the polluting effects of stormwater, the following stormwater utility fee credit system hereby is offered:

- (1) *The applicant is required to apply for and to demonstrate to the satisfaction of the director that a stormwater utility fee credit is warranted.*
- (2) *The service charge after credits shall be greater than one (1) ERU.*
- (3) *The water quality improvement must be privately constructed, owned, operated, and maintained.*
- (4) *The stormwater facility shall be covered under an ongoing maintenance program approved by the director.*
- (5) *The facility or stormwater quality improvement practice shall be designed to meet or exceed the minimum criteria established by the director.*
- (6) *The following approved facilities and/or practices shall qualify for a specific percentage reduction in stormwater fee for a particular property:*

	<i>Facility or Practice Credit</i>	<i>Percentage</i>
1(a)	<i>Infiltration/bioretention</i>	<i>30%</i>
1(b)	<i>Dry swale</i>	<i>20%</i>
1(c)	<i>Wet retention pond</i>	<i>25%</i>
1(d)	<i>Dry retention pond</i>	<i>15%</i>
2(a)	<i>Green area in excess of 20%</i>	<i>10%</i>
2(b)	<i>Green area in excess of 50%</i>	<i>25%</i>

3(a)	<i>Parking lot sweeping at least once per week</i>	5%
3(b)	<i>Parking lot sweeping at least 5 times per week</i>	10%
	<i>MAXIMUM ALLOWABLE CREDIT</i>	45%

- (7) *Stormwater utility fee credits for retention/detention facilities, or for green areas in excess of 50% percent, will be based upon the percentage of the impervious area on-site, which drains to the stormwater facility.*
- (8) *Credits are subject to annual review by the property owner and city staff to ensure that the facility is in operation and that it is being properly maintained.*
- (9) *Credits for parking lot sweeping shall be applied against the stormwater utility fee for the following fiscal year only after the property owner has paid the full amount of the stormwater fee in the current fiscal year and has provided the city with adequate documentation that sweeping had been performed at the required frequency throughout the current fiscal year.*

Sec. 33.3-37 and Sec. 33.3-38. Reserved.

ARTICLE III. EROSION CONTROL

DIVISION 1. EROSION AND SEDIMENT CONTROL PROGRAM

Sec. 33.3-39. Purpose of article.

The purpose of this article is to safeguard life, limb, property, and the public health, safety, and welfare and to conserve land, water, air, and other natural resources of the city by establishing requirements for the control of soil erosion and sedimentation resulting from land-disturbing activities and by establishing procedures whereby such requirements shall be administered and enforced.

Sec. 33.3-40. Local erosion and sediment control program

Pursuant to § 62.1-44.15:54 of the Code of Virginia, the city hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) and adopts the regulations promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources and the Virginian Stormwater Management Handbook. In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

- (a) For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified 9VAC25-875-600, unless such land-disturbing activities are in accordance with the grandfathering provisions of 9VAC25-875-490.*

- (b) Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer for ESC. Inspections of land-disturbing activities shall be conducted by a certified inspector for ESC. The Erosion and Sediment Control Program of city shall contain a certified program administrator for ESC, a certified plan reviewer for ESC, and a certified inspector for ESC (who may be the same person.)*

- (c) The city hereby designates the department as the VESCP plan-approving authority.*

- (d) *The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the department.*

Sec. 33.3-41. Regulated land-disturbing activities

- (a) *Land-disturbing activities that meet one of the criteria below are regulated as follows:*
- (1) *Land-disturbing activity that disturbs 10,000 square feet or more, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulations).*
 - (2) *Land-disturbing activity that disturbs 2,500 square feet or more, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of the regulations is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.*

Sec. 33.3-42. Exemptions from article.

Notwithstanding any other provisions of this article, the following activities are exempt unless otherwise required by local, state or federal law:

- (1) *Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia);*
- (2) *Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;*
- (3) *Installation, maintenance, or repair of any individual service connections;*

- (4) *Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;*
- (5) *Installation, maintenance, or repair of any septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;*
- (6) *Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;*
- (7) *Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, § 10.1-1100, et seq.) or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);*
- (8) *Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;*
- (9) *Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia, § 10.1-604, et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;*
- (10) *Disturbed land areas of less than ten thousand (10,000) square feet in size or less than two thousand five hundred (2,500) square feet of land area within a Chesapeake Bay preservation district as set forth in the city zoning ordinance;*

- (11) *Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;*
- (12) *Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and*
- (13) *Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.*
- (14) *Discharges to a sanitary sewer system that are not from a land-disturbing activity; and*
- (15) *Repair or rebuilding of the railroad tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.*

Sec. 33.2-43. Relationship of article to other ordinances and regulations.

This article is intended to be adjunct to article II of this chapter, subdivision ordinance, the zoning ordinance, the building code, and other city regulations governing the development of land and the removal of soil. Whenever this article imposes more restrictive standards than those of other city ordinances or regulations, the requirements of this article shall have precedence.

DIVISION 2. PERMIT AND INSPECTION PROCESS

Sec. 33.3-44. Permit required.

It shall be unlawful for any person to engage in any land-disturbing activity, not exempt pursuant to section 33.3-42 without first obtaining a land-disturbing permit from the department in accordance with the provisions of this article. No permit to begin any work that requires a permit covered by this article shall be issued and upon completion of

the construction, no certificate of occupancy shall be issued if the property is the subject of a notice of violation or the owner of said property owns any other property in the City of Hampton that is the subject of a notice of violation under this chapter, chapter 41.1, or the zoning ordinance, which remains pending at the time of application. Nor shall any such permit required by this article be issued until all delinquent real estate taxes and all erosion and sediment control and stormwater management fines owed to the city, which have been properly assessed against the subject property, have been paid.

Sec. 33.3-45. Permit application and fee.

- (a) *Application for a permit required by section 33.3-44 shall be submitted to the agent. Such application shall be made in the name of the owner of the property on which the activity is to take place and shall be signed by such owner or their representative. A PDF file copy of a land-disturbing plan provided pursuant to sections 33.3-50 or 33.3-51 and a stormwater management plan provided pursuant to sections 33.3-50, 33.3-51, or 33.3-11 shall be submitted with the application.*
- (b) *Applicant shall pay a non-refundable fee according to the following schedule. Fees are based on the acreage associated with the disturbed area and shall be levied to cover the costs of processing and investigating the application for and the inspection of the land-disturbing activity as defined herein.*

<i>Area of disturbance</i>	<i>City land disturbance fee</i>	<i>State construction general permit fee (under stormwater management ordinance)</i>	<i>Total permit fee</i>
<i>2,500 square feet—But less than 1.0 acre within the Chesapeake Bay Preservation District:</i>	<i>\$290.00</i>	<i>\$0.00</i>	<i>\$290.00</i>
<i>Single family residential structure separately built—10,000 square feet but less than 5 acres:</i>	<i>\$209.00</i>	<i>\$0.00</i>	<i>\$209.00</i>

<i>10,000 square feet—But less than 0.50 acre:</i>	<i>\$225.00</i>	<i>\$0.00</i>	<i>\$225.00</i>
<i>0.50 acre—But less than 0.75 acre:</i>	<i>\$275.00</i>	<i>\$0.00</i>	<i>\$275.00</i>
<i>0.75 acre—But less than 1.0 acre:</i>	<i>\$290.00</i>	<i>\$0.00</i>	<i>\$290.00</i>
<i>Areas within common plans of development or sale with land-disturbance acreage less than 1.0 acre, except for single-family detached residential structures</i>	<i>\$209.00</i>	<i>\$81.00</i>	<i>\$290.00</i>
<i>1.0 acre—But less than 5.0 acres:</i>	<i>\$1,944.00</i>	<i>\$756.00</i>	<i>\$2,700.00</i>
<i>5.0 acres—But less than 10.0 acres:</i>	<i>\$2,448.00</i>	<i>\$952.00</i>	<i>\$3,400.00</i>
<i>10.0 acres—But less than 50.0 acres:</i>	<i>\$3,240.00</i>	<i>\$1,260.00</i>	<i>\$4,500.00</i>
<i>50.0 acres—But less than 100.0 acres:</i>	<i>\$4,392.00</i>	<i>\$1,708.00</i>	<i>\$6,100.00</i>
<i>100.0 acres or greater:</i>	<i>\$6,912.00</i>	<i>\$2,688.00</i>	<i>\$9,600.00</i>

Sec. 33.3-46. Application of state guidelines, standards, etc.

- (a) *Land-disturbing activities within the city shall be subject to the guidelines and standards for soil erosion and sedimentation control contained in the current edition of the Virginia Stormwater Management Handbook, as amended, which is hereby made a part of this article by reference.*
- (b) *Land-disturbing activities controlled by this article shall be designed and conducted in accordance with the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875 and the program administered by the State Water Control Board pursuant to Code of Virginia, §§ 62.1-44.15:51 through 62.1-44.15:66, including regulations designed to minimize erosion and sedimentation.*

- (c) *Erosion and sediment control practices shall be in compliance with the standards contained in the current edition of the Virginia Stormwater Management Handbook, as amended. Alternative practices may be approved when it is shown that such practices provide equal or improved erosion and sedimentation control.*

Sec. 33.3-47. General requirements.

- (a) *It shall be unlawful for any person to engage in any land-disturbing activity, unless exempted by this article, until such person or representative has first submitted to the agent a PDF file copy of an Erosion and Sediment Control plan and such plan has been approved as in compliance with the intent of, and requirements contained in this article and a permit certifying such approval has been issued as provided in this article.*

This section shall not apply to state agency projects except as provided for in Code of Virginia, § 62.1-44.15:31.

Where land-disturbing activities involve lands under the jurisdiction of more than one (1) local control program, the applicant may submit to the State Water Control Board for review and approval rather than to each jurisdiction concerned.

- (b) *No agency or department authorized under any other ordinance or law to issue building or other required permits for projects involving land development activities covered by this article may issue such required permit unless a land-disturbing plan has been approved, a permit certifying such approval has been issued as provided in this article, and an initial ESC inspection has been approved by the department.*
- (c) *Construction, installation, or maintenance of electric and telephone utility lines and natural gas pipelines, and the railroad tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of railroad companies must be conducted pursuant to Code of Virginia, § 62.1-44.15:31.*
- (d) *As a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of a responsible land disturber to the department as provided by Code of Virginia, § 62.1-44.15:55(B), who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the approved plan. Failure to provide the name of the responsible land disturber may result in revocation of the approval of the plan, and the person responsible for carrying out the plan and/or*

the responsible land disturber shall be subject to penalties or other legal action as provided in this article.

Sec. 33.3-48. Responsibility of property owner when work to be done by contractor.

When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the person owning the property or their representative shall be responsible for submitting all plan requirements and obtaining a permit under this article. The contractor shall be responsible for obtaining a permit under this article for public projects.

Sec. 33.3-49. Responsibility and bond for control measures.

All control measures required by the provisions of this article shall be undertaken at the expense of the owner or their representative; and, pending actual provision thereof, the owner or their representative shall execute and file with the department, prior to the issuance of a permit under this article, a permit/performance agreement and surety in favor of the City of Hampton pursuant to section 33.3-55.

Sec. 33.3-50. Preparation of plan; preliminary plan.

- (a) *Any person proposing to undertake any land-disturbing activity, other than those exempted by section 33.3-42 herein, shall prepare and submit to the agent a land-disturbing plan, prepared in accordance with the following criteria:*
 - (1) *The plan required by this article shall be prepared by a certified professional engineer or land surveyor duly licensed by the commonwealth and shall be developed in accordance with the Virginia Erosion and Sediment Control Law, Virginia Code § 62.1-44.15:51, et seq., and the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, et seq.*
 - (2) *The plan shall consist of a recent physical survey of the parcel(s)/lot(s) where the land-disturbing activity is proposed drawn to a graphic scale and shall include:*
 - a. *Property owner's name and address;*
 - b. *Deed book and page number of recorded deed;*
 - c. *Land Record Serial Number ("LRSN");*

- d. *Property lines with dimensions of property;*
- e. *Names of adjacent property owners;*
- f. *Existing trees, watercourses, and utilities;*
- g. *Existing drainage culverts, septic tanks, and septic fields;*
- h. *Existing drainage patterns and elevations;*
- i. *Date and signature of person preparing survey;*
- j. *Location of 100-year floodplain, if applicable;*
- k. *North arrow; and*
- l. *Area of disturbance in square feet.*

(3) *The land disturbing plan also shall include:*

- a. *Text and graphic information for purposes of clearly indicating the type, magnitude, and location of the proposed activity to include but not be limited to the horizontal and vertical limits of any proposed excavation, clearing and grading, and the location, amount, and composition of all proposed fill material;*
- b. *The Chesapeake Bay Preservation District boundary in accordance with the city zoning ordinance, chapter 9, article II, section 9-13;*
- c. *The proposed drainage scheme;*
- d. *The location, method, and materials required and proposed to protect and preserve existing vegetation to be retained;*
- e. *All required and proposed erosion and sediment control practices in accordance with section 33.3-46 herein and any erosion and sediment control practices required pursuant to chapter 9, article II of the city zoning ordinance and article II of this chapter;*
- f. *A written description of the anticipated conservation problems; and*
- g. *The name, valid certificate of competence number, and contact information of the responsible land disturber, if known. If the responsible land disturber is not known at the time the application is presented to the agent, the information shall be supplied by the owner or their representative prior to issuance of any permit.*

- (4) *If the development requires either site plan or subdivision approval, applicant shall submit a copy of all conditions relating to erosion and sediment control.*
- (5) *A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of chapter 9, article II of the city zoning ordinance, and article II of this chapter. Additionally, on properties zoned O-CBP, areas shown on the site plan as undisturbed, or as a buffer proffered as part of a conditional rezoning or required for a use permit, or as part of a resource protection area, shall be protected from disturbance by the following methods:*
- a. *Prior to disturbing the site, undisturbed areas shall be delineated by a form of fencing or markings which clearly identify the area boundaries and intent. Fencing, markers, or similar barriers shall be placed around the undisturbed area and shall display brightly colored flags or signs in a manner that is plainly visible to equipment operators and ground workers. Fencing or markers shall be located such that a distance of not less than six (6) inches for every one (1) foot in diameter of tree trunk shall be maintained from any tree within the undisturbed area.*
 - b. *Equipment, materials, or people shall not be allowed within the undisturbed area.*
 - c. *Boards, signs, wires, and the like shall not be nailed to trees to be retained, nor shall equipment hit against such trees.*
 - d. *Removal of trees not retained shall be in a manner which avoids injury to remaining trees.*
 - e. *When lowering the grade adjacent to an undisturbed area, damaged roots along the edge of the area shall be cut cleanly and immediately covered with moist organic soil and three (3) inches of mulch.*
 - f. *Utility services shall be placed on common trenches when possible and routed around undisturbed areas when possible. Tree roots within the tree protection area shall not be severed; however, boring through or under roots is permitted.*
 - g. *Removal of markers around undisturbed areas shall be permitted after a certificate of occupancy has been issued.*

- (b) *Any person proposing any exempt land-disturbing activity or land-disturbing activity for which a permit is required by this article may submit to the agent, for informal review and comment, a preliminary plan showing the general extent and implications of such activities prior to executing any exempt land-disturbing activity or before submitting a formal permit application.*

Sec. 33.3-51. Single-family detached residences.

- (a) *Single-family detached residential construction which will result in the disturbance of ten thousand (10,000) square feet or more of land, or two thousand five hundred (2,500) square feet or more of land in areas designated as RPA, RMA, or IDA, may substitute an agreement in lieu of an ESC plan.*
- (b) *Any requests for significant deviation from and/or amendments to the Hampton City Standard Erosion Control Plans for single-family detached construction as may be developed by the applicant shall require compliance with the terms of section 33.3-50 of this article.*
- (c) *Building permits for any single-family detached residential construction required to obtain a land-disturbing activity permit under the provisions of this article shall not be issued until the department conducts an initial erosion and sediment control inspection, finds such project to be in compliance with the objectives of the approved land-disturbing plan, determines that all necessary erosion and sediment control measures have been properly installed, and issues an initial erosion and sediment control inspection approval notice.*
- (d) *If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.*
- (e) *Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) or this ordinance if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.*

Sec. 33.3-52. Approval or disapproval of plan.

Following receipt of a plan submitted under this article, the department shall initiate a review of the proposed land-disturbing activity and shall approve or disapprove the plan according to the following criteria:

- (1) The department review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law and 9VAC25-875, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber to the authority, as required by 9VAC25-875-300 and 9VAC25-875-550, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.*
- (2) When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.*
- (3) The department shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.*
- (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the owner. If the plan is not approved, reasons for not approving it shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and the zoning ordinance.*
- (5) Prior to issuance of a permit, the director shall cause the application to be reviewed and approved by the zoning administrator or designee for compliance with the city zoning ordinance. Within 45 days following the receipt of a completed application under section 33.3-45 and approval by*

the zoning administrator or designee, the director shall issue a permit or notify the applicant in writing of the refusal thereof.

- (6) *If a plan meeting all requirements of this chapter and the city zoning ordinance is submitted and no action is taken within the time provided above in subsection (2) herein for review, the plan shall be deemed approved.*

Sec. 33.3-53. Appeals from decisions under article.

Appeals from decisions of this article shall be conducted pursuant to the procedures of article II of this chapter of the city ordinances.

Sec. 33.3-54. Amendment of approved plan.

A plan approved under this article may be amended as follows:

- (1) *The department may require that an approved plan be amended, within a time prescribed by the department, to address any deficiencies noted during inspection; or*
- (2) *Amendments to an approved plan where the person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be carried out effectively, shall be allowed only after review and written approval by the department. The department shall have 60 calendar days to respond in writing either approving or disapproving such request.*

Sec. 33.3-55. Bond.

- (a) *Before a permit is issued under this article, the applicant shall assure compliance with the permit and this article by submitting one (1) of the following forms of security:*
 - (1) *A performance bond covering 100 percent of the cost of the control measures and permanent stormwater management facilities, such bond to be written by a bonding company licensed to do business in the Commonwealth of Virginia;*
 - (2) *An escrow agreement, placing in escrow in a banking institution licensed to do business in the Commonwealth of Virginia, cash equal to 100 percent of*

the cost of the control measures and permanent stormwater management facilities;

- (3) An irrevocable letter of credit covering 100 percent of the cost of the control measures and permanent stormwater management facilities; such letter of credit to be issued by a banking institution licensed to do business in the Commonwealth of Virginia; or*
- (4) A cash deposit covering 100 percent of the costs of the control measures and permanent stormwater management facilities.*

The department may waive the requirement for a form of security if the amount of the security is determined to be less than \$1,000.00 and the land-disturbing activity is associated with the construction or alteration of a single-family residence.

- (b) Each form of security required by this section shall be conditioned that the principal:
 - (1) Comply with all relevant provisions of this article and all applicable laws and ordinances;*
 - (2) Comply with all the terms and conditions of the permit granted under this article and any use permit required by law; and*
 - (3) Complete all of the work within the time specified in the permit or extension thereof.**
- (c) The bond, escrow agreement, letter of credit, or cash deposit shall be approved by the city attorney's office and shall guarantee that the required control measures and permitted stormwater management facilities will be properly and satisfactorily undertaken and maintained.*
- (d) The term of each form of security required by this section shall begin on the date the controlled activity commences and shall remain in effect until such form of security is specifically released, in writing, by the director. The surety executing such form of security, or the deposit referred to in subsection (a) above, shall be firmly bound for the payment of all necessary costs and expenses that may be incurred or expended by the city in causing any and all such obligations to be completed, and the surety or the depositor assents to any lawful extension of time within which to complete the work.*
- (e) No bond, escrow agreement, irrevocable letter of credit, or cash deposit shall be released prior to completion of permitted improvements, achievement of adequate*

stabilization of the land-disturbing activity, and termination of the construction general permit if applicable.

- (f) *Within 60 days of the achievement of adequate stabilization and final approval of the land-disturbing activity, such bond, escrow, letter of credit, or cash deposit, or the unexpended or unobligated portion thereof, shall be refunded to the owner or their representative or terminated, as the case may be, upon the issuance, by the department, or a certificate of completion pursuant to section 33.3-64 herein. Achievement of adequate stabilization and final approval shall be determined by the department.*
- (g) *Conservation measures may be taken by the department at the permittee's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of them by the approved plan as a result of their land-disturbing activity. If the department takes such conservation action upon such failure by the permittee, the department may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.*

Sec. 33.3-56. Issuance or refusal of permit.

- (a) *No permit for land-disturbing activities shall be issued by the department until the following items have been submitted to and approved by the department as prescribed herein:*
 - (1) *The information concerning the responsible land disturber as required by section 33.3-50;*
 - (2) *A permit application that, where required, includes a completed general permit for discharges of stormwater from construction activities registration statement;*
 - (3) *An approved erosion and sediment control plan and an executed permit/performance agreement agreeing to comply with the approved erosion and sediment control plan; and*
 - (4) *An approved stormwater management plan, where required.*
- (b) *No permit shall be issued until receipt of the general permit for discharges of stormwater from construction activities from DEQ is obtained where such DEQ permit is required.*

- (c) *No permit shall be issued until the fees required to be paid pursuant to section 33.3-45 are received and a performance bond required pursuant to section 33.3-55 has been approved.*
- (d) *No permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development, and drainage will be done according to the approved permit.*
- (e) *No building or other local permit shall be issued for a property unless a land-disturbing permit has been issued by the department and initial ESC inspection has been approved by department inspector.*

Sec. 33.3-57. Term of permit.

- (a) *The duration of a permit issued pursuant to this article shall be 12 months or less, as determined by the department. Reasonable extensions may be granted prior to expiration of the permit.*
- (b) *Thirty-day extensions shall be allowed to correct violations following inspection by the department.*
- (c) *If work is not started within 60 days after the date of issuance of a permit under this article, the permit may be revoked, and the permittee shall be notified in writing by the department.*

Sec. 33.3-58. Permit restrictions and conditions.

- (a) *All activity under the permit shall be conducted by the owner of the property or their representative.*
- (b) *In granting any permit required by this article, the department shall impose such conditions thereon as are reasonably necessary to prevent the proposed operations from being conducted in such a manner as to constitute or create a nuisance or a hazard to life or property or cause environmental damage. Such conditions may include, but are not limited to:*
 - (1) *Designation of a reasonable time for the completion of the work.*
 - (2) *Limitations upon the hours of the day, days of the week, and months of the year for conducting the activity.*

- (3) *Indication of the type of material to be used when the project is a fill project.*
- (4) *Requirement that additional measures to further reduce erosion and sediment loss and/or prevent stormwater pollution.*
- (5) *Requirement that additional measures to adequately protect and preserve trees and shrubs designated as plants to remain.*
- (6) *Assurance that the plan will not result in adverse impacts to adjacent properties.*

Sec. 33.3-59. Periodic inspections of land-disturbing activities.

- (a) *The department shall not conduct any inspection prior to the finding of satisfactory evidence of a valid permit,*
- (b) *The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The person responsible for carrying out the plan shall monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.*
- (c) *The department shall inspect the land-disturbing activity during construction for:*
 - (1) *Compliance with the approved erosion and sediment control plan;*
 - (2) *Compliance with the approved stormwater management plan;*
 - (3) *Development, updating, and implementation of a pollution prevention plan; and/or*
 - (4) *Development and implementation of any additional control measures necessary to address a total maximum daily load requirement.*
- (d) *An initial inspection of the land-disturbing activity is required and must be approved prior to issuance of other required permits. The city will conduct up to two (2) initial and two (2) final inspections at no additional cost. Should subsequent initial and final inspections not result in approval, permittee shall pay a reinspection fee of 10% of the total permit fee for any third and subsequent initial and/or final inspections. Should permittee fail to pay the reinspection fee, a notice of violation*

will be issued until the violation is cured. No subsequent inspections will be conducted until the reinspection fee is paid.

- (e) At reasonable times and under reasonable circumstances, the department may enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article and this chapter of the city ordinances. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection and such inspection shall be conducted in accordance with § 62.1-44.15:60 and the land-disturbing permit.*
- (f) In accordance with a performance bond with surety, cash escrow, or letter of credit, the department also may enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.*
- (g) Pursuant to Code of Virginia § 62.1-44.15:40, the department may require every land-disturbing permit applicant or permittee, or any such person subject to land-disturbing permit requirements under this article, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters or such other information as may be necessary to accomplish the purposed of this article.*

Sec. 33.3-60. Use of certain fill material prohibited.

None of the following materials shall be used as fill in any activity covered by a permit issued under this article:

- (1) Wood or chemical substances of wood;*
- (2) Hazardous waste;*
- (3) Paper or plastics;*
- (4) Metal or metal products; or*
- (5) Garbage, which is defined as the refuse of animal and vegetable food stuffs.*

Sec. 33.3-61. Covering of fill projects.

No fill material, other than dirt, shall be left uncovered for longer than 30 days. Progressive covering shall be required as the fill progresses. The initial cover shall be a minimum of 6 inches, and the final cover shall consist of 12 inches of dirt or topsoil free of debris or other material. Such cover shall be protected against erosion.

Sec. 33.3-62. Right of entry of department.

The department shall have access at reasonable times to the premises upon which any controlled activity is being conducted. No person shall hinder or prevent the department from entering onto and inspecting any property on which such activity is taking place.

Sec. 33.3-63. Correction of dangerous conditions and revocation.

Whenever the department determines, by inspection, that a project conducted pursuant to a permit issued under this article has become dangerous to life, limb, or property or affects the safety, usability, or stability of a public way, or harmful to the environment, the department shall notify the owner of the property or their representative of such defects and the action necessary to correct the condition. Within 30 days from the date of such written notice, the owner or their representative shall repair, reconstruct, eliminate, or correct such condition so that it will conform to the requirements of this article or otherwise remedy the condition to the department's satisfaction so that it no longer will constitute a menace or danger or cause environmental damage. A shorter period of time to repair, reconstruct, or correct such condition may be specified by the department if any imminent hazard is found to exist.

Any permit issued under this article may be revoked for the violation of any condition of the permit, the violation of any provision of this article, or any other applicable law or ordinance or the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.

Sec. 33.3-64. Final inspection for land-disturbing activity.

Upon completion of a land-disturbing activity in accordance with the approved plan and adequate stabilization of all areas disturbed by the land-disturbing activity, the permittee shall request a final inspection of the project by the department. Upon finding satisfactory evidence of compliance with the approved plan and adequate stabilization of

all areas disturbed by the land-disturbing activity and receipt of the notice of termination for the general permit for discharges of stormwater from construction activities, the agent shall issue a passing final inspection. Should subsequent final inspections not result in approval, the permittee shall pay a reinspection fee of 10% of the total permit fee for any third and subsequent final inspections. After a passing final inspection has been issued, the department shall release the surety.

Sec. 33.3-65. Completion of work by surety or city forces.

In the event of the default in the performance of any term or condition of a permit issued under this article, the surety on the bond required by this article, or any person employed by or on behalf of such surety, or forces of the city shall have the right to go upon the premises to complete the required work.

DIVISION 3. ENFORCEMENT

Sec. 33.3-66. Agent designated for administration and enforcement of article.

The agent shall be responsible for the approval and disapproval of land-disturbing plans pertaining to site plans and single-family dwellings, as required under this article. The department shall be responsible for the approval and disapproval of land-disturbing plans for all other controlled land-disturbing activities. Both agent and department shall jointly administer and enforce the provisions of this article, that is, they are authorized to and shall make such inspections as may be necessary to ensure compliance with the terms of this article, including any conditions of approval for specific projects, and are authorized to take such steps as provided in this article, and as may be necessary, to ensure compliance with its terms.

Sec. 33.3-67. Notice of Violations.

- (a) *If the department determines that there is a failure to comply with the plan, notice to comply may be served upon the permittee or person responsible for carrying out the plan. The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a*

reasonable time within which such measures shall be completed. The department, upon determination of a failure to comply with a plan or a violation of this article, shall immediately serve upon the permittee, by registered or certified mail to the address specified in permittee's application, or by delivery at the site of the land-disturbing activity to the employee supervising such activity, a notice to comply or a notice of violation. Such notice shall set forth the measures needed to comply and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he shall be deemed to be in violation of this article and may be subject to revocation of the permit and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this article.

- (b) *Upon receipt of a sworn complaint of a substantial violation of this article, the department, in conjunction with or subsequent to a notice of violation as specified in this article, may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.*

If land-disturbing activities have commenced without an approved ESC plan and a passing initial inspection, the department may issue an order requiring that all of the land-disturbing activities be stopped until an approved ESC plan and any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land-disturbing activities have commenced without an approved plan, such an order may be issued regardless of whether the alleged violator has been issued a notice of violation as specified in this article. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice of violation.

The stop work order shall be served in the same manner as a notice of violation and shall remain in effect for seven (7) days from the date of service, pending application by the department or alleged violator for appropriate relief to the circuit court. The department shall serve such order for disturbance without an approved plan upon the owner by mailing with confirmation of delivery to the address specified in the land records. The order shall be posted on the site where the disturbance is occurring.

If the alleged violator has not obtained an approved plan within seven (7) days from the date of service of the stop work order, the department may issue an order to the owner requiring that all construction and other work on the site, other than

corrective measures, be stopped until an approved plan has been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land record.

Upon completion of corrective action, the order shall be lifted immediately. Nothing in this section shall prevent the department or agent from taking any other action specified in this article or other applicable laws.

- (c) This section shall not apply to violations of section 33.3-68.*
- (d) Revoked land-disturbing activity permits shall not be reinstated. The agent must issue all new permits after receipt of all fees and sureties required in this article, prior to resuming any site work.*

Sec. 33.3-68. Damaging, removing, etc., erosion-prevention bags.

It shall be unlawful for any person to willfully and maliciously destroy, cut, remove, injure, interfere, or tamper with any sandbag or erosion bag, public or private, without the consent of the owner or their representative, which such device is in place for the prevention of erosion. A violation of this section shall constitute a Class 1 misdemeanor.

Sec. 33.3-69. Violations, or exceeding scope of approval.

- (a) Any person who engages in or causes any regulated land-disturbing activity, without first receiving approval and a permit for such activity as prescribed by this article, shall be in violation of this article.*
- (b) Any person who violates or causes to be violated any condition of approval of a plan under this article or who exceeds the scope of approval of any such plan shall be in violation of this article.*

Sec. 33.3-70. Penalties, injunctions, and other legal actions.

- (a) Violators of this article shall be guilty of a Class 1 misdemeanor. Each day the violation continues constitutes a separate offense.*
- (b) The city may apply to the circuit court of the city for injunctive relief to enjoin a violation or a threatened violation of the terms of this article, without the necessity of showing that there does not exist an adequate remedy at law.*

- (c) *In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the city in a civil action for damages.*
- (d) *In lieu of criminal sanctions, any person who violates any provision of this article, any condition of that person's permit, or any provision of the person's program, upon the finding of the general district court for the city, shall be assessed the following civil penalties:*
 - (1) *A civil penalty for any one (1) violation of not less than \$100.00 nor more than \$1,000.00.*
 - (2) *A civil penalty in the amount of \$1,000.00 shall be assessed for commencement of land-disturbing activities without a city approved plan and a land disturbing permit.*
 - (3) *Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000.00.*
 - (4) *The director may issue a summons for collection of a civil penalty, and the action may be prosecuted by the city attorney.*
- (e) *Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation.*
- (f) *With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the department or any condition of a permit or any provision of this article, the city may require the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (e). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d).*
- (g) *Upon the department's request, the city attorney shall take legal action to enforce the provisions of this article.*
- (h) *Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.*

- (i) *Civil penalties collected pursuant to this article shall be deposited into the stormwater management revenues of the city's treasury.*