

City of Fairfax

Chesapeake Bay Preservation Ordinance

City Code

Section 110-76

Through

Section 110-91

Last Amended:

November 25, 2003

DIVISION 3. CHESAPEAKE BAY PRESERVATION*

***Editor's note:** Ord. No. 2003-22, adopted Nov. 25, 2003, amended div. 3 in its entirety and enacted similar provisions as set out herein. The former div. 3 derived from Code 1978, §§ 26-18, 26-18.1, 26-18.2, 26-19.1--26-19.3; and Ord. No. 2001-4, adopted May 22, 2001.

Sec. 110-76. Title.

This division shall be known and referenced as the "Chesapeake Bay preservation area ordinance" of the city.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-77. Findings of fact.

The Chesapeake Bay together with its tributaries is one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of the city and the commonwealth.

The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from existing land uses and new development. Existing high quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the City Council as Chesapeake Bay preservation areas, need to be protected from destruction and damage in order to protect the quality of water in the bay and consequently the quality of water in the city and the commonwealth.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-78. Purpose and intent.

(a) This division is enacted to implement the requirements of Code of Virginia, § 10.1-2100 et seq., the Chesapeake Bay Preservation Act. These regulations establish the criteria that the city shall use to determine the extent of the Chesapeake Bay preservation areas. These regulations also establish criteria for use by the city in approving, denying or modifying requests to rezone, subdivide, use, develop and/or redevelop land in Chesapeake Bay preservation areas. The intent of the city council and the purpose of this division is to:

- (1) Protect sensitive environmental lands within the city;
- (2) Safeguard the quality of state waters;
- (3) Prevent further increase in pollution of state waters;
- (4) Reduce existing pollution of state waters; and
- (5) Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the city.

(b) Unless otherwise stated in this division, the review and approval procedures provided for in

chapter 110 of the City Code, Zoning, shall be adhered to in reviewing and approving development, redevelopment and uses governed by this division.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-79. Areas of applicability.

(a) The Chesapeake Bay preservation area ordinance shall apply to all lands identified as Chesapeake Bay preservation areas as designated by the city council and as shown on the city Chesapeake Bay preservation area map.

The Chesapeake Bay preservation area map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this division. The map entitled "City of Fairfax Chesapeake Bay Preservation Area Map" shall be identified by the signature of the zoning administrator, attested to by the city clerk, together with the date of adoption by city council. The map shall show the general location of Chesapeake Bay preservation areas within the city and should be consulted by persons contemplating activities within the city prior to engaging in a regulated activity. The specific delineation of the Chesapeake Bay preservation area boundaries is the responsibility of the applicant in accordance with section 110-83 of this division.

(1) The resource protection area includes:

- a. Tidal wetlands;
- b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- c. Tidal shores;
- d. Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development, as depicted on the city's Chesapeake Bay preservation area map;
- e. Water bodies with perennial flow, as depicted on the city's Chesapeake Bay preservation area map; and
- f. A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subparagraphs a. through e. above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the resource protection area notwithstanding the presence of permitted uses, encroachments or permitted vegetation clearing in compliance with the performance criteria of this division.

(2) The resource management area includes all lands in the city that are not designated as resource protection areas.

(b) If the boundaries of a Chesapeake Bay Preservation Area include a portion of a lot, parcel, or development project, only that portion of the lot, parcel, or development project shall be subject to the requirements of this division except as provided for in section 110-80(d). The division of property shall not constitute an exemption from this requirement.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-80. Use regulations.

(a) Development, land disturbances and uses authorized by underlying zoning classifications are allowed provided that they are carried out in accordance with the applicable general performance standards set forth in section 110-84 of this division or otherwise modified by the requirements set forth herein.

- (b) Development in resource protection areas (RPAs) may be permitted if it:
- (1) Constitutes redevelopment; or
 - (2) Is a roadway or driveway not exempt under section 110-88, provided that:
 - a. There are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality; and
 - c. The design and construction of the road or driveway satisfy all applicable criteria of this ordinance, including the submission of a water quality impact assessment.
 - (3) Is a flood-control or stormwater-management facility that drains or treats water from multiple development projects or from a significant portion of a watershed, provided that:
 - a. The location of the facility within the RPA is the optimum location;
 - b. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
 - c. The facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay local assistance board as a phase I modification to this program;
 - d. All applicable permits for construction in state and federal waters are obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; and
 - e. Approval from the city prior to construction.
 - (4) Is a new use established pursuant to subsection 110-84(d)(2).
- (c) Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of this section to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within an RPA.
- (d) All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in section 110-84 as well as the development review procedures outlined in section 110-86.
- (e) A water quality impact assessment shall be required for any proposed development or redevelopment within a resource management area or resource protection area. Upon determination, however, that the proposed development or redevelopment would not significantly impact water quality, the zoning administrator may waive the requirement for a water quality impact assessment. If a water quality impact assessment is required, the assessment shall include the entire lot, parcel or development project as the area of impact and shall be conducted in accordance with section 110-85 of this division.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-81. Lot size.

The creation of new lots shall be subject to the requirements of the subdivision and zoning ordinances provided that any lot shall have sufficient area outside the resource protection area to accommodate an intended development in accordance with the general performance standards in section 110-84.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-82. Conflict with other regulations.

In any case where the requirements of this division conflict with any other provision of the City Code, the more stringent provision shall apply.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-83. Interpretation of resource protection area and resource management area boundaries.

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

(b) *Where conflict arises over delineation.* Where the applicant has provided a site-specific delineation of the resource protection area, the zoning administrator shall review and verify the accuracy of the boundary delineation. In determining the site-specific resource protection area boundary, the zoning administrator may render adjustments to the applicant's boundary delineation based on the RPA site-specific study features required in subsection 110-86(c).

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-84. General performance standards for Chesapeake Bay preservation areas.

(a) *Purpose and intent.* The performance standards included in this division establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The performance standards are intended to prevent a net increase in nonpoint source pollution from new development and to achieve a ten percent reduction in nonpoint source pollution from redevelopment.

(b) *Development and redevelopment in Chesapeake Bay preservation areas.*

(1) Land disturbance shall be minimized and limited to the area necessary to provide for the desired use or development.

a. In accordance with an approved subdivision or site plan, the extent of land disturbing activity, including clearing or grading, shall be limited to the specified construction footprint. The limits of disturbance shall be clearly shown on submitted plans and physically marked on the development site.

b. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the zoning administrator.

(2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development proposed and in accordance with the "Virginia Erosion and Sediment Control Handbook."

a. Existing trees shall be preserved outside the limits of disturbance, however, diseased trees or trees weakened by age, storm, fire or other injury may be

removed.

b. Clearing and grading shall be limited outside the defined limits of disturbance. Clearing shall be allowed only to provide public roads, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the zoning administrator.

c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected at the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be permitted within the area protected by the barrier.

(3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.

(4) Notwithstanding any other provisions of this division, or any exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks, and drainfields, shall comply with the requirements of the chapter 110, division 12, Erosion and sediment control.

(5) All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years. However, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

(6) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the state water control board until the structure is served by public sewer.

(7) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations that achieve the following:

a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based upon the city's average land cover condition of 45 percent;

b. For redevelopment, the nonpoint source pollution load shall be reduced by at least ten percent. However, in no case shall redevelopment be required to reduce impervious surface below the city's 45 percent average land cover condition. The zoning administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control provided the following provisions are satisfied:

1. In no case may the postdevelopment nonpoint source pollution runoff load exceed the predevelopment load;

2. Runoff pollution loads shall have been calculated and the BMPs selected for the express purpose of controlling nonpoint source pollution;

3. If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The zoning administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may also be required

to ensure compliance with this division.

4. Facilities provided to reduce nonpoint source pollution in runoff shall be provided onsite; however, the director of public works may approve the payment of a fee to the city in lieu of onsite detention. Such fee shall be used for the construction and/or maintenance of one or more public facilities to be located at the discretion of the city. The amount of the fee shall be based on the projected nutrient load from the development site, the cost of design and construction of the facility, any land acquisition costs and facility maintenance.

c. For redevelopment, both the pre and postdevelopment loadings shall be calculated in accordance with the procedures outlined in the current edition of the Virginia Stormwater Management Handbook. However, where design data are available, the original post-development nonpoint source pollution loadings may be substituted for the existing development loadings.

(8) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator in accordance with the development review procedures outlined in section 110-86.

(c) *Performance criteria for resource protection areas.* The following criteria shall apply specifically within resource protection areas and supplement the general performance criteria contained in section 110-84:

(1) All redevelopment activities shall conform to the regulations contained in article II, division 2, Floodplains; Division 11, Storm Drainage Facilities; and division 12, Erosion and Sediment Control; of this chapter as well as the criteria for redevelopment in subsection 110-84(b)(7). Redevelopment shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover within the RPA and no further encroachment within the RPA.

(2) A water quality impact assessment shall be required for any proposed development in accordance with section 110-85.

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

The buffer area shall be maintained to meet the following additional performance standards:

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

a. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff;

b. Any path shall be constructed and surfaced so as to effectively control erosion;

c. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees may be allowed with approval of the zoning administrator in accordance with section 110-254, Diseased or dangerous trees; and

d. Trees and woody vegetation may be removed, necessary control techniques

employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

(2) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the zoning administrator may permit encroachments into the required buffer area pursuant to section 110-89, Administrative waivers and special exceptions, and in accordance with the following provisions:

- a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
- b. Where practicable, a vegetated area shall be established elsewhere on the lot or parcel in a manner that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area; and
- c. In no case shall the encroachment extend into the seaward 50 feet of the buffer area.

(3) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and November 25, 2003, the zoning administrator may permit encroachments into the required buffer area pursuant to section 110-89, Administrative waivers and special exceptions, and in accordance with the following provisions:

- a. The lot or parcel was created as a result of a legal process conducted in conformity with the city's subdivision regulations;
- b. Conditions or mitigation measures imposed through a previously-approved exception shall be met;
- c. If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required;
- d. The criteria listed in subsection 110-84(d)(2) shall be satisfied.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-85. Water quality impact assessment.

(a) *Purpose and intent.* The purpose of the water quality impact assessment is to:

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

(b) *Water quality impact assessment required.* A water quality impact assessment shall be submitted for:

- (1) Any proposed land disturbance, development or redevelopment within a resource protection area including any buffer area modification or reduction as provided for in section 110-84; or
- (2) Any proposed development or redevelopment in the resource management area that may significantly impact water quality due to the unique characteristics of the site or

intensity of the proposed use or development. The zoning administrator may waive this requirement as stated in subsection 110-80(d).

There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

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

- (1) Location of the components of any RPA, including the 100-foot buffer area;
- (2) Location and nature of the proposed improvements, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
- (3) Type and location of proposed best management practices to meet the required general performance standards specified in section 110-84.
- (4) Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification; and
- (5) A revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

(d) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any development that exceeds 5,000 square feet land disturbance or that encroaches onto the seaward 50 feet of the 100-foot buffer area; or is located in the resource management area and is deemed necessary by the zoning administrator.

The information required in this section shall be considered a minimum, unless the zoning administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

The following elements shall be included in the preparation and submission of a major water quality impact assessment:

- (1) All of the information required in a minor water quality impact assessment, as specified in subsection (c) above;
 - (2) A hydrogeological element that describes existing topography, estimates of soils characteristics and potential for erosion, hydrology of the area, impacts on wetlands and streams, proposed mitigation measures, and a listing of requisite permits with permit or application status.
 - (3) A landscape element that fully describes existing trees required to be identified as part of a tree-management plan in accordance with subsection 110-252(c); limits of clearing and grading; trees and indigenous vegetation that are to be preserved within the disturbed area; measures to be taken to protect vegetation, proposed plantings, and other vegetative measures used to enhance water quality; and a proposed construction schedule that includes all activities related to clearing, grading, and proposed plantings; and
 - (4) Such other measures as deemed necessary by the zoning administrator to ensure the impact to water quality can be accurately predicted.
- (e) *Submission and review requirements.*
- (1) Copies of all site drawings and other applicable information as required by subsections (c) and (d) above shall be submitted to the zoning administrator for review and approval.

(2) All information required in this section shall be certified as complete and accurate by a class IIIB certified land surveyor and a professional wetlands expert.

(3) Water quality impact assessments shall be prepared and submitted to the zoning administrator in conjunction with the development review procedures outlined in section 110-86.

(4) As part of any major water quality impact assessment submittal, the zoning administrator may require review and written comments by the Chesapeake Bay local assistance department (CBLAD). The zoning administrator should incorporate comments made by CBLAD into the final review of the major water quality impact assessment.

(f) *Evaluation procedure.*

(1) Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed modification or reduction to the buffer area is consistent with the provisions of this division and make a finding based upon the following criteria:

- a. The proposed encroachment is necessary and there is no other location on site to place improvements without disturbing the buffer area;
- b. The impervious surface is minimized;
- c. The proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
- d. The development, as proposed, meets the purpose and intent of this division;
- e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality; and
- f. Any other information deemed necessary by the zoning administrator.

(2) Upon the completed review of a major water quality impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of this division and make a finding based upon the following criteria:

- a. The disturbance of any wetlands is minimized;
- b. The development will not result in significant disruption of the hydrology of the site;
- c. The development will not result in significant degradation to aquatic life;
- d. The development will not result in unnecessary destruction of plant materials on site;
- e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent offsite sedimentation;
- f. Proposed stormwater-management measures are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
- g. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
- h. The design and location of any proposed drainfield will be in accordance with the general performance standards outlined in section 110-84;
- i. The development, as proposed, is consistent with the purpose and intent of this division;
- j. The cumulative impact of the proposed development, when considered in

relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(3) The zoning administrator may require additional mitigation measures where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the zoning administrator based on the criteria listed above in subsections (1) and (2).

(4) The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of this division when the impacts created by the proposal cannot be mitigated.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-86. Development review procedures.

(a) *Generally.* Any land disturbance, development, or redevelopment with land disturbing activity exceeding 2,500 square feet shall comply with the development review procedures outlined herein, where applicable, prior to any clearing, grading or construction on the site.

(b) *Required information.* The following plans or studies shall be submitted, unless otherwise provided for:

- (1) If applicable, a subdivision or site plan submitted in accordance with the provisions of chapter 86, Subdivisions, and chapter 110, Zoning, of the City Code;
- (2) A RPA site-specific study as provided for in subsection 110-86(c) of this division;
- (3) If applicable, a water quality impact assessment as required in section 110-85;
- (4) A tree-management plan consistent with the provisions of chapter 110, division 10, Tree preservation, landscaping and screening;
- (5) A stormwater plan consistent with the design and performance standards of chapter 110, division 11, Storm drainage facilities;
- (6) An erosion and sediment control plan consistent with the provisions of chapter 110, division 12, Erosion and sediment control; and
- (7) Copies of all wetlands permits required by law.

The required plans and studies shall include the delineation of the RPA boundary, the delineation of required buffer areas, and a maintenance agreement as deemed necessary by the zoning administrator to ensure proper maintenance of best management practices in order to continue their functions. These required plans and studies may be coordinated or combined as deemed appropriate by the zoning administrator. However, the zoning administrator may also determine that any of the information required in this section may be unnecessary due to the scope and nature of the proposed development.

(c) *RPA site-specific study.* An RPA site-specific study shall be submitted as part of the development review procedures required by this division and in conjunction with site plan or subdivision approval.

- (1) The RPA site-specific study shall be drawn to scale and clearly delineate the resource protection area components outlined in subsection 110-79(a)(1).
- (2) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987.
- (3) The RPA site-specific study shall delineate the site-specific geographic extent of the resource protection area.
- (4) The RPA site specific study shall be drawn at the same scale as the site plan or subdivision plan and shall be certified as complete and accurate by a class IIIB certified land surveyor and a professional wetlands expert.

(d) *Tree-management plan.* A tree-management plan shall be submitted as part of the development review procedures required by this division and shall be prepared in accordance with the requirements set forth in subsection 110-252(c). No clearing, grading, or construction on any lot or parcel shall be permitted without an approved tree management plan.

In addition to the tree management plan contents required in subsection 110-252(c), the following supplemental information shall be provided for land disturbance, development, or redevelopment activity proposed within the resource protection area:

(1) Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this division, shall be shown on the tree management plan.

(2) Within the buffer area, trees to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this division, shall be shown on the plan. Vegetation required by this division to replace any existing trees within the buffer area shall also be shown on the tree management plan.

(3) Trees to be removed for stream bank stabilization projects and any replacement vegetation required by this division shall be shown on the landscaping plan.

(e) *Stormwater plan.* A stormwater plan shall be submitted as part of the development review procedures required by this division and in conjunction with site plan or subdivision approval.

(1) *Contents.* In addition to the design and performance standards outlined in chapter 110, division 11, Storm drainage facilities, the stormwater plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations and citations to supporting references as appropriate to communicate the information required by this division. At a minimum, the stormwater plan shall contain the following:

- a. Location and design of all planned stormwater control devices;
- b. Procedures for implementing nonstructural stormwater control practices and techniques;
- c. Pre and postdevelopment nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and
- d. For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certification.

(2) All engineering calculations shall be performed in accordance with procedures outlined in the current edition of the "Virginia State Stormwater Management Handbook."

(3) The plan shall establish a longterm schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance.

(f) *Erosion and sediment control plan.* An erosion and sediment control plan shall be submitted as part of the development review procedures required by this division in conjunction with site plan or subdivision approval that satisfies the requirements of chapter 110, division 12, Erosion and sediment control, of the Code of the city.

(g) Physical improvements required by this division may be bonded in accordance with sections 86-4 and 110-107 of the Code of the city.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-87. Nonconforming uses and structures.

(a) The lawful use of a building or structure that existed on September 17, 1990, or that exists at the time of any amendment to this division, and that is not in conformity with the provisions of this division may be continued in accordance with chapter 110, division 5, Nonconforming uses.

(b) The zoning administrator may grant an administrative waiver for remodeling or alteration to an existing nonconforming principal or accessory structure provided that:

- (1) There will be no increase in nonpoint source pollution load; and
- (2) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this division.

(c) The zoning administrator may grant an administrative waiver for expansion, restoration or replacement of an existing nonconforming principal structure provided that:

(1) If a nonconforming structure is destroyed or damaged in any manner, it shall be restored only if such use complies with the requirements of this division. Any such repair or restoration shall be commenced within 12 months and completed within 18 months from the date of destruction. If the repairs are not completed within 18 months of the date of destruction, the applicant shall file a request for an extension with the zoning administrator. Approval of the request will be subject to demonstration by the applicant that reconstruction by the applicant was pursued in good faith.

(2) The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure determined to be nonconforming.

(d) The zoning administrator may grant an administrative waiver only after making the required written findings outlined in subsection 110-89(d).

(e) Administrative waivers shall become null and void 12 months from the date issued if no substantial work has commenced.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-88. Exemptions.

The following uses shall be exempt from the criteria contained in this division:

(a) Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, public roads, public trails, and their appurtenant structures; provided that said construction, installation, operation and maintenance is in accordance with the Erosion and Sediment Control Law (Code of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of Virginia, § 10.1-603.1 et seq.). An erosion and sediment control plan and a stormwater management plan approved by the state department of conservation and recreation, or local water quality protection criteria at least as stringent as the above state requirements shall be deemed to constitute compliance with this provision. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize both encroachment into the RPA and adverse effects on water quality.

(b) Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines [owned, permitted, or both, by the city or regional service authority], provided that:

- (1) Such utilities and facilities shall be located outside the RPA to the degree possible;
- (2) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
- (3) All construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
- (4) Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements.

(c) The following land disturbances within the RPA shall be exempted from this division: (i) water wells; (ii) passive recreation facilities, such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the zoning administrator that:

- (1) Any required permits, except those to which this exemption specifically applies, shall have been issued;
- (2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
- (3) The intended use does not conflict with nearby planned or approved uses; and
- (4) Any land disturbance exceeding an area of 2,500 square feet shall comply with all city erosion and sediment control requirements.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-89. Administrative waivers and special exceptions.

(a) *Administrative waivers.* The following administrative waivers may be granted by the zoning administrator:

- (1) Encroachments into the landward 50 feet of the buffer component of the RPA, provided that the requirements of subsections 110-84(d)(2) or (3) and 110-85(f) are met;
- (2) Remodeling and alterations to existing nonconforming principal or accessory structures, provided that the requirements of subsection 110-87(b)(1) are met;
- (3) Restoration or replacement of existing nonconforming principal or accessory structures provided that the requirements of subsection 110-87(b)(2) are met; or
- (4) Modifications and additions to existing legal principal structures provided the findings of subsection 110-89(d) are made.

(b) *Special exceptions.* Special exceptions to the general performance criteria for resource management and resource protection areas detailed in section 110-84 may be granted by the city council provided the findings of subsection 110-89(d) are made.

(c) *[Exceptions.]* Administrative waivers and special exceptions may not be granted for new accessory structures.

(d) *Required findings.* In granting an administrative waiver or a special exception, the zoning administrator or the city council shall make a written finding that:

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

(e) *Administrative waiver process.*

- (1) The applicant shall submit an administrative waiver request to the zoning administrator. The request shall identify the potential impacts of the waiver on water quality and on lands within the resource protection area through the performance of a

water quality impact assessment that complies with the provisions of section 110-85.

(2) The zoning administrator shall review the administrative waiver request and the water quality impact assessment and may grant the waiver with such conditions and safeguards as deemed necessary to ensure and further the purpose and intent of this division.

(3) If the zoning administrator cannot make the required findings or denies the administrative waiver request, the zoning administrator shall provide written findings and rationale for the decision to the applicant. Denial by the zoning administrator may be appealed to the board of zoning appeals pursuant to section 110-1105.

(f) *Special exception process.*

(1) The applicant shall submit a special exception request to the zoning administrator. The request shall identify the potential impacts of the special exception request on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of section 110-85.

(2) Each special exception request shall be reviewed by the zoning administrator and scheduled for public hearing before the city council following notification of the affected public of any such exception requests in accordance with Code of Virginia, § 15.2-2204, except that only one hearing shall be required.

(3) The city council shall review the special exception request and the water quality impact assessment and may grant the special exception with such conditions and safeguards as deemed necessary, pursuant to section 110-366, to ensure and further the purpose and intent of this division, provided the findings of subsections 110-89(d)(1) through (5) are met.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-90. Violations and penalties.

(a) The decisions of all departments, officials and public employees of the city that are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this division. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this division. Any such permit, if issued in conflict with the provisions of this division, shall be null and void.

(b) The zoning administrator is granted all necessary authority on behalf of the city council to administer and enforce this division, including the authority in righting or remedying any condition found in violation of this division, and the bringing of legal action to secure compliance with this division, including injunctive abatement, the imposition of civil penalties, or other appropriate action or proceeding.

(Ord. No. 2003-22, 11-25-2003)

Sec. 110-91. Appeals.

Any order, determinations or decision made by the zoning administrator in administration and enforcement of the provisions of this division may be appealed to the board of zoning appeals where it is alleged that an error occurred. Such appeal shall be made within 30 days from the date of the order, determination or decision and shall further state with particularity the grounds of such appeal. Appeals shall further be made in accordance with section 110-1105 of the Code of the city and Code of Virginia, § 15.1-2311.

(Ord. No. 2003-22, 11-25-2003)

Secs. 110-92--110-100. Reserved.