

ADOPTED

JUN 11 2024

**Board of Supervisors
James City County, VA**

ORDINANCE NO. 85A-24

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 8, EROSION AND SEDIMENT CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY REPEALING ARTICLE I, EROSION AND SEDIMENT CONTROL, SECTION 8-1, TITLE, PURPOSE, AND AUTHORITY; SECTION 8-2, DEFINITIONS; SECTION 8-3, EROSION AND SEDIMENT CONTROL PROGRAM; SECTION 8-4, REGULATED LAND DISTURBING ACTIVITIES; SUBMISSION AND APPROVAL OF PLANS, CONTENTS OF PLANS; SECTION 8-5, PERMITS; FEES, BONDING, ETC.; SECTION 8-6, MONITORING REPORTS, AND INSPECTIONS; SECTION 8-7, PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS, SECTION 8-8, APPEALS AND JUDICIAL REVIEW; SECTIONS 8-9 – 8-19, RESERVED; ARTICLE II, THE VIRGINIA STORMWATER MANAGEMENT PROGRAM, SECTION 8-20, TITLE, PURPOSE AND AUTHORITY; SECTION 8-21, DEFINITIONS; SECTION 8-22, STORMWATER PERMIT REQUIREMENT; EXEMPTIONS; SECTION 8-23, STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHBITIONS; SECTION 8-24, STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS, SECTION 8-25, STORMWATER MANAGEMENT PLAN; CONTENTS OF PLANS; SECTION 8-26, POLLUTION PREVENTION PLAN; CONTENTS OF PLANS; SECTION 8-27, REVIEW OF STORMWATER MANAGEMENT PLAN; SECTION 8-28, TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES; SECTION 8-29, LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES; SECTION 8-30, MONITORING AND INSPECTIONS; SECTION 8-31, HEARINGS; SECTION 8-32, APPEALS; SECTION 8-33, ENFORCEMENT; SECTION 8-34, FEES; SECTION 8-35, PERFORMANCE SURETY; AND BY AMENDING CHAPTER 8 EROSION AND STORMWATER MANAGEMENT PROGRAM BY REPLACING WITH NEW SECTION 8-1, TITLE, PURPOSE, AND AUTHORITY; SECTION 8-2, DEFINITIONS; SECTION 8-3, VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SECTION 8-4, REGULATED LAND DISTURBING ACTIVITIES; SECTION 8-5, REVIEW OF SOIL EROSION CONTROL AND STORMWATER MANAGEMENT PLANS; PROHIBITIONS; SECTION 8-6, APPROVAL OF SOIL EROSION CONTROL AND STORMWATER MANAGEMENT PLAN (ESM PLAN); SECTION 8-7, SOIL EROSION CONTROL AND STORMWATER LAND DISTURBING APPROVAL REQUIREMENT; EXEMPTIONS; SECTION 8-8, STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS; SECTION 8-9, STORMWATER MANAGEMENT PLAN; CONTENTS OF PLANS; SECTION 8-10, POLLUTION PREVENTION PLAN; CONTENTS OF PLANS; SECTION 8-11, EROSION AND SEDIMENT CONTROL PLAN; CONTENTS OF PLANS;

SECTION 8-12, TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES; SECTION 8-13, VARIANCES AND EXCEPTIONS; SECTION 8-14, LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES; SECTION 8-15, MONITORING AND INSPECTIONS; SECTION 8-16, HEARINGS; SECTION 8-17, APPEALS; SECTION 8-18, RIGHT OF ENTRY; SECTION 8-19, ENFORCEMENT; SECTION 8-20, PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS; SECTION 8-21, FEES; AND SECTION 8-22; PERFORMANCE SURETY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 8, Erosion and Sediment Control, is hereby amended and reordained by repealing Article I, Erosion and Sediment Control; Section 8-1, Title, purpose, and authority; Section 8-2, Definitions; Section 8-3, Erosion and sediment control program; Section 8-4, Regulated land disturbing activities; submission and approval of plans, contents of plans; Section 8-5, Permits, fees, bonding, etc.; Section 8-6, Monitoring reports, and inspections; Section 8-7, Penalties, injunctions, and other legal actions; Section 8-8, Appeals and judicial review; Sections 8-9 - 8-19, Reserved; Article II, The Virginia Stormwater Management Program, Section 8-20, Title, purpose and authority; Section 8-21, Definitions; Section 8-22, Stormwater permit requirement; exemptions; Section 8-23, Stormwater management program established; submission and approval of plans; prohibitions; Section 8-24, Stormwater pollution prevention plan; contents of plans; Section 8-25, Stormwater management plan; contents of plans; Section 8-26, Pollution prevention plan; contents of plans; Section 8-27, Review of stormwater management plan; Section 8-28, Technical criteria for regulated land disturbing activities; Section 8-29, Long-term maintenance of permanent stormwater facilities; Section 8-30, Monitoring and inspections; Section 8-31, Hearings; Section 8-32, Appeals; Section 8-33, Enforcement; Section 8-34, Fees; Section 8-35, Performance surety; and by amending Chapter 8 Erosion and Stormwater Management Program by replacing with new Section 8-1, Title, purpose, and authority; Section 8-2, Definitions; Section 8-3, Virginia Erosion and Stormwater Management Program Established; Section 8-4, Regulated land disturbing activities; Section 8-5, Review Of Soil Erosion Control and Stormwater Management plans; prohibitions; Section 8-6, Approval of Soil Erosion Control and Stormwater Management Plan (ESM Plan); Section 8-7, Soil Erosion Control and Stormwater Land Disturbing Approval Requirement; Exemptions; Section 8-8, Stormwater pollution prevention plan; contents of plans; Section 8-9, Stormwater management plan; contents of plans; Section 8-10, Pollution prevention plan; contents of plans; Section 8-11, Erosion and sediment control plan; contents of plans; Section 8-12, Technical criteria for regulated land disturbing activities; Section 8-13, Variances and Exceptions; Section 8-14, Long-term maintenance of permanent stormwater facilities; Section 8-15, Monitoring and inspections; Section 8-16, Hearings; Section 8-17, Appeals; Section 8-18,

Right Of Entry; Section 8-19, Enforcement; Section 8-20, Penalties, injunctions, and other legal actions; Section 8-21, Fees; Section 8-22; and Performance surety.

Chapter 8. Erosion and Sediment Control

Article I. Erosion and Sediment Control

Sec. 8-1. Title, purpose, and authority

~~This chapter shall be known as the "Erosion and Sediment Control Ordinance of James City County." The purpose of this chapter is to conserve the land, water, air, and other natural resources of the county by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.~~

Sec. 8-2. Definitions

~~As used in the chapter, unless the context requires a different meaning:~~

~~*Agreement in lieu of a plan.* A contract between the plan approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the plan approving authority in lieu of a formal site plan.~~

~~*Applicant.* Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.~~

~~*Board.* The Virginia Soil and Water Conservation Board.~~

~~*Certified inspector.* An employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of project inspection or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.~~

~~*Certified plan reviewer.* An employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of plan review, (ii) is enrolled in the board'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, certified landscape architect or land surveyor pursuant to article 1 (Sec. 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia (1950).~~

~~*Certified program administrator.* The director of the engineering and resource protection division who (i) holds a certificate of competence from the board in the area of program administration or (ii) is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.~~

~~Clearing.~~ Any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

~~Conservation plan, erosion and sediment control plan, or 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 assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

~~County.~~ James City County.

~~Department.~~ The Department of Conservation and Recreation.

~~Development.~~ A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

~~Director.~~ The director of the department.

~~District or soil and water conservation district.~~ Refers to the Colonial Soil and Water Conservation District.

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

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

~~Filling.~~ Any depositing or stockpiling of earth materials.

~~Grading.~~ Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

~~Land disturbing activity.~~ Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- ~~(1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;~~
- ~~(2) Individual service connections;~~
- ~~(3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;~~

- ~~(4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;~~
- ~~(5) Surface or deep mining;~~
- ~~(6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;~~
- ~~(7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Code of Virginia sections 10.1-604 et seq., 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 sections 10.1-1100 et seq. of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of Code of Virginia section 10.1-1163;~~
- ~~(8) Repair or rebuilding of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of a railroad company;~~
- ~~(9) Disturbed land areas of less than 2,500 square feet in size; provided, that the engineering and resource protection division can determine a land disturbing permit shall be required if, in its discretion, it is deemed necessary to adequately safeguard the control of erosion and sedimentation;~~
- ~~(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;~~
- ~~(11) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; and~~
- ~~(12) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.~~

~~*Land disturbing permit.* A permit issued by county for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.~~

~~*Local erosion and sediment control program or local control program.* An outline of the various methods employed by the county to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.~~

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

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

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

~~*Plan approving authority.* The engineering and resource protection division responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of lands and for approving plans.~~

~~*Program authority.* The county which has adopted a soil erosion and sediment control program approved by the board.~~

~~*Single family residence.* A noncommercial dwelling that is occupied exclusively by one family.~~

~~*State erosion and sediment control program or state program.* The program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code including regulations designed to minimize erosion and sedimentation.~~

~~*State waters.* All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdictions.~~

~~*Transporting.* Any moving of earth materials from one place to another place 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.~~

Sec. 8-3. Erosion and sediment control program

- ~~(a) The county adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board and the James City County Guidelines for Design and Construction of Stormwater Management BMPs for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook, Third Edition, dated 1992.~~
- ~~(b) An erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land disturbing activities shall be conducted by a certified inspector. The erosion control program of the county shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.~~
- ~~(c) The county hereby designates the engineering and resource protection division as the plan approving authority.~~

Sec. 8-4. Regulated land disturbing activities; submission and approval of plans, contents of plans

- ~~(a) Except as provided herein, no person may engage in any land disturbing activity until he has submitted to the engineering and resource protection division for the county an erosion and sediment control plan for the land disturbing activity and such plan has been approved by the plan approving authority. Where land disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the board for review and approval rather than to each jurisdiction concerned. Where the land disturbing activity results from the construction of a single family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan approving authority.~~
- ~~(b) The standards contained within the Virginia Erosion and Sediment Control Regulations, including the Minimum Standards, the Virginia Erosion and Sediment Control Handbook and the James City County Guidelines for Design and Construction of Stormwater Management BMPs (Guidelines) are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The plan approving authority, in considering the adequacy of a submitted plan, shall be guided by these same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence except for the MS 19 two year storm criteria, whereas James City County has adopted a one year storm criteria as specified in the Guidelines.~~
- ~~(c) The plan approving authority shall, within 45 days from receipt thereof, approve any such plan, if it is determined that the plan meets the requirements of the local control program, 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 conform to the provisions of this chapter. In addition, as a prerequisite to approval of the plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, as provided by the state Department of Conservation and Recreation, who will be in charge of and responsible for carrying out the land disturbing activity. Any disapproval of a plan shall be in writing and any disapproval shall specify the reasons for such disapproval. When the plan is determined to be inadequate, the plan approving authority 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.~~
- ~~(d) An approved plan may be changed by the plan approving authority when:~~

 - ~~(1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or~~
 - ~~(2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan approving authority and the person responsible for carrying out the plans.~~
- ~~(e) In order to prevent further erosion, the county may require approval of a conservation plan for any land identified in the local program as an erosion impact area.~~

- ~~(f) When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.~~
- ~~(g) Whenever electric and telephone utility companies, interstate and intrastate natural gas pipeline companies or railroad companies undertake any of the activities included in subparagraphs (1) and (2) of this subsection, they shall be considered exempt from the provisions of this chapter.~~
 - ~~(1) Construction, installation and maintenance of electric, natural gas and telephone utility lines and pipelines; and~~
 - ~~(2) Construction of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of the railroad company.~~
 - ~~(3) Projects not included in subparagraphs (1) and (2) of this subsection shall comply with the requirements of the county erosion and sediment control program.~~
- ~~(h) State agency projects are exempt from the provisions of this chapter except as provided for in the Code of Virginia, section 10.1-564.~~

~~Sec. 8-5. Permits, fees, bonding, etc.~~

- ~~(a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.~~
- ~~(b) No person may engage in any land disturbing activity until he has acquired a land disturbing permit, unless the proposed land disturbing activity is specifically exempt from the provisions of this chapter, and has paid the fees and posted the required bond.~~
- ~~(c) Fees. The administrative fees set forth in County Code Appendix A—Fee Schedule for Development Related Permits shall be paid to the county.~~
 - ~~(1) Payment of any permit fees set forth in County Code Appendix A—Fee Schedule for Development Related Permits shall be waived for the county, any entity created solely by the county and those regional entities to which the county is a party provided that: (i) The other parties to the regional entity similarly waive fees; and (ii) The regional entity has locations in more than one locality.~~
- ~~(d) No land disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.~~
- ~~(e) Performance surety. All applicants for permits shall provide to the county a performance bond, cash escrow, or an irrevocable letter of credit, any combination thereof, or other legal arrangements as is acceptable to the county attorney, to ensure that measures could be taken by the county at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land disturbing activity.~~

~~The amount of the performance surety shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty five percent of the cost of the conservation action. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held.~~

~~Within 60 days of adequate stabilization, as determined by the engineering and resource protection division, in any project or section of a project, such performance surety, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section.~~

~~(f) Any land disturbing permit shall contain a right of entry to allow the manager or his designees access to the property until a final inspection determines that the land is adequately stabilized.~~

~~(g) These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.~~

~~(h) Any approved erosion and sediment control plan shall become null and void one year after the date of issuance of the land disturbing permit, and no further work subject to this chapter shall be allowed unless and until an additional or updated erosion and sediment control plan has been submitted and approved in accordance with the provisions of this chapter or unless all requirements of the approved control plan have been completed in less than one year in accord with such plan and verified by the on-site inspection by the manager.~~

Sec. 8-6. Monitoring, reports, and inspections

~~(a) The certified program administrator may require the person responsible for carrying out the plan to 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.~~

~~(b) The engineering and resource protection division shall periodically inspect the land disturbing activity as prescribed in the Virginia Erosion and Sediment Control Regulations and require that an individual holding a certificate of competence, as provided by the state Department of Conservation and Recreation, who will be in charge of and responsible for carrying out the land disturbing activity, be identified to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.~~

~~If the engineering and resource protection division determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities.~~

~~The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and shall be subject to the penalties provided by this chapter.~~

~~(e) Upon determination of a violation of this chapter, the engineering and resource protection division may, in conjunction with or subsequent to a notice to comply as specified in this chapter, 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 plan, the engineering and resource protection division may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land disturbing activities be stopped until an approved plan or 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 or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.~~

~~The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of James City County.~~

~~If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the engineering and resource protection division 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 and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the county.~~

~~The owner may appeal the issuance of an order to the circuit court of James City County.~~

~~Any person violating or failing, neglecting or refusing to obey an order issued by the engineering and resource protection division may be compelled in a proceeding instituted in the circuit court of James City County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.~~

~~Nothing in this section shall prevent the engineering and resource protection division from taking any other action authorized by this chapter.~~

Sec. 8-7. Penalties, injunctions, and other legal actions

(a) ~~Schedule of civil penalties~~

~~(1) Any person who violates any provision of this chapter shall, upon a finding of the district court of James City County, be assessed a civil penalty. A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:~~

- ~~a. Commencement of land disturbing activity without an approved erosion control plan as provided in section 8-4 shall be \$1,000.00 per day.~~
- ~~b. Vegetative measures—failure to comply with items 1, 2, 3, 5, and 7 of the Minimum Standards shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.~~
- ~~c. Structural measures—failure to comply with items 2, 4, 6, 8, 9, 10, 11, 15, and 17 of the Minimum Standards shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.~~
- ~~d. Waterecourse measures—failure to comply with items 12, 13, 14, and 15 of the Minimum Standards shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.~~
- ~~e. Underground utility measures—failure to comply with item 16(a), and/or (c) of the Minimum Standards shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.~~
- ~~f. Failure to obey a stop work order shall be not less than \$100.00 nor more than \$1,000.00 per day.~~
- ~~g. Failure to stop work when permit is revoked shall be not less than \$100.00 nor more than \$1,000.00 per day.~~
- ~~h. All other violations of this chapter not specifically enumerated in items (a) through (g) of this section shall be not less than \$100.00 nor more than \$1,000.00 per day.~~

~~(b) 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, including a series of violations arising from the commencement of land disturbing activities without an approved plan for any site.~~

~~(c) The engineering and resource protection division, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court of James City County to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.~~

~~However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.~~

- ~~(d) In addition to any penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.~~
- ~~(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 for each violation. A civil action for such violation or failure may be brought by the county. Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.~~
- ~~(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000. Such civil charges shall be instead of any appropriate civil penalty.~~
- ~~(g) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.~~

Sec. 8-8. Appeals and judicial review

- ~~(a) Any applicant under the provision of this chapter who is aggrieved by any action of the county or its agent in disapproving plans submitted pursuant to this chapter shall have the right to apply for and receive a review of such action by the board of supervisors provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the board of supervisors shall be heard at the next regularly scheduled board of supervisors' public hearing provided that the board of supervisors and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the board of supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the board of supervisors may affirm, reverse or modify the action. The board of supervisors' decision shall be final, subject only to review by the circuit court of James City County.~~
- ~~(b) Final decisions of the county under this chapter shall be subject to review by the James City County circuit court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.~~

Sec. 8-9 — 8-19. Reserved

Article II. The Virginia Stormwater Management Program

Sec. 8-20. Title, purpose and authority

- ~~(a) This ordinance shall be known and may be cited as "The Virginia Stormwater Management Program Ordinance."~~

- (b) ~~Pursuant to § 62.1-44.15:27 of the Code of Virginia, this ordinance is adopted to address the mandate to integrate the County stormwater management requirements with the county erosion and sediment control (Chapter 8), flood insurance and floodplain management (Chapter 24, Article VI Overlay Districts, Division 3), Chesapeake Bay Preservation (Chapter 23) and Stormwater Management, Illicit Discharge Detection and Elimination (Chapter 18A) requirements into a unified stormwater program. The unified stormwater program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the county and those responsible for compliance with these programs.~~
- (c) ~~The purpose of this article is to protect the general health, safety, welfare, and property of the citizens of the county 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, waterways and other natural resources, and to establish procedures whereby stormwater management and stormwater pollution prevention requirements related to water quality and quantity shall be administered and enforced.~~
- (d) ~~This article is adopted pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of the Code of Virginia and 9VAC25-870 et seq. of the Virginia Administrative Code.~~

Sec. 8-21. Definitions

~~In addition to the definitions set forth in 9VAC25-870-10 et seq. of the Virginia Stormwater Management Program (VSMP) Regulations, 9VAC25-840-10 et seq. of the Virginia Erosion and Sediment Control Regulations, 9VAC25-850-10 et seq. of the Virginia Erosion and Sediment Control and Stormwater Management Certification Regulations, and 9VAC25-830-10 et seq. of the Chesapeake Bay Preservation Area Designation and Management Regulations, which are expressly adopted and incorporated herein by reference, the following words and terms used in this article have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence:~~

~~*Act.* The Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.~~

~~*Administrator.* The director of the county division of engineering and resource protection who is responsible for administering the VSMP on behalf of the county and is designated as VSMP authority.~~

~~*Agreement in lieu of a plan.* A contract between the Virginia Erosion and Sediment Control Program (VЕСP) or VSMP authority and the owner that specifies conservation measures that shall be implemented in the construction of a single family residence. This contract may be executed by the VЕСP or VSMP authority in lieu of a formal site plan or site erosion and sediment control plan.~~

~~*Agreement in lieu of a stormwater plan.* A contract between the VSMP authority 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; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.~~

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

~~Approval Authority.~~ The state water control board or its designee.

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

~~Board or state board.~~ The state water control board.

~~Certificates of competence.~~ The issuance of a certificate to persons who have completed state board approved training programs and met any additional eligibility requirements pursuant to 9VAC25-850-10 et seq., as amended of the Virginia Administrative Code in the areas of erosion and sediment control, stormwater management, or a combination of both known as dual certification. Certification can be for program administrator, plan reviewer, project inspector or combined for either or both erosion and sediment control and stormwater management.

~~Chesapeake Bay Preservation Act land disturbing activity.~~ A land disturbing activity including clearing, grading or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre subject to the Chesapeake Bay Preservation Area Designation and Management Regulation 9VAC25-830 et seq. of the Virginia Administrative Code adopted pursuant to the Chesapeake Bay Preservation Act, Article 2.5 of the Code of Virginia, § 62.1-44.15:67 et seq. of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

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

~~Clean Water Act or CWA.~~ The federal Clean Water Act (33 USC § 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.

~~Department.~~ The Commonwealth of Virginia, Department of Environmental Quality.

~~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 these regulations and chapter, does not include the exemptions found in 9VAC25-870-300 of the Virginia Administrative Code.

~~Erosion and Sediment Control law, attendant regulations and local ordinance.~~ Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the Virginia Erosion and Sediment Control Regulations (9VAC25-840 et seq.) of the Virginia Administrative Code, and this article.

~~*Erosion and sediment control 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 treated to achieve conservation objectives.~~

~~*General permit.* A state permit authorizing a category of discharges under the CWA and the Act within a geographical area.~~

~~*Land disturbance or land disturbing activity.* A manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, excavation, transporting of fill and filling of land except that the term shall not include those exemptions specified in section 8-22(e) of this article.~~

~~*Large construction activity.* A 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.~~

~~*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. Designation of an area as subject to localized flooding is at the discretion of the administrator or VSMP authority based on factual information which may include documented complaints, reports of problem drainage areas or flooding, county performed studies or drainage analyses, or direct observations of site and drainage conditions during rainfall runoff conditions.~~

~~*Minor modification.* For the purposes of this article, a minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40CFR122.63 and as specified in 9VAC25-870-640 of the Virginia Administrative Code. Minor modification for the purposes of this article also means other modifications and amendments 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 state permit modification or amendment does not substantially alter state 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.~~

~~*Municipal separate storm sewer system or MS4.* All separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380(A)(1).~~

~~National Pollutant Discharge Elimination System or NPDES.~~ The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

~~Operator.~~ The owner or operator of any facility or activity subject to the Act and this article. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or, (ii) the person has day to day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from municipal separate storm sewer systems (MS4s), operator means the operator of the regulated MS4 system.

~~Permit or VSMP authority permit.~~ An approval to conduct a land disturbing activity issued by the VSMP authority for the initiation of a land disturbing activity after evidence of general permit coverage has been provided where applicable.

~~Permittee.~~ The person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

~~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.

~~Regulations.~~ The Virginia Stormwater Management Program (VSMP) regulations, 9VAC25-870-10, et seq., as amended.

~~Resource Protection Area or RPA.~~ That component of a Chesapeake Bay preservation area as defined in Chapter 23 of the county code.

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

~~Small construction activity.~~ Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development will ultimately disturb equal to or greater than one and less than five acres. Small 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.

~~State permit.~~ An approval to conduct a land disturbing activity issued by the Approval Authority in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the Approval Authority for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act, the regulations, and this article. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and after June 30, 2014, a state permit for conducting a land disturbing activity issued pursuant to the Act are also a type of VPDES Permit. State permit does not include any state permit that has not yet been the subject of final Approval Authority action, such as a draft state permit. Approvals issued pursuant to this article, 9VAC25-880 and 9VAC25-890 of Virginia Administrative Code are not issuances of a permit under §62.1-44.15:01 of the Code of Virginia.

~~State Water Control Law.~~ Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

~~State waters.~~ All water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

~~Steep Slopes.~~ Slopes of 25 percent or greater as defined in section 23-5 of the county code.

~~Stormwater.~~ 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 Conveyance System.~~ A combination of drainage components that are used to convey stormwater discharge, either within or downstream of, the land disturbing activity. This includes (i) manmade stormwater conveyance system(s) means a pipe, ditch, vegetated swale, or other stormwater conveyance system(s) constructed by man except for restored stormwater conveyance systems; or, (ii) natural stormwater conveyance system(s) means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or, (iii) restored stormwater conveyance system means a stormwater conveyance system(s) that have been designed and constructed using natural channel system design concepts. Restored stormwater conveyance system(s) include the main channel and the flood-prone area adjacent to the main channel.

~~Stormwater Discharge Associated with Construction Activity.~~ The discharge of stormwater runoff from areas where land disturbing activities (e.g. clearing, grading, filling, or excavation); construction materials or equipment storage and maintenance (e.g. fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater related to the construction process (e.g., concrete or asphalt batch plants) are located.

~~Stormwater management facility.~~ A control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, or the period of release or the velocity of flow.

~~Stormwater management plan.~~ A document containing materials describing methods for complying with the requirements of the VSMP or section 8-25 of this article.

~~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 may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities 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 (E&SC) plan, an approved stormwater management (SWM) plan, and an approved pollution prevention plan (PPP).

~~Subdivision.~~ As defined in §15.2-2201 of Chapter 22 of Title 15.2 of the Code of Virginia and as subject to Chapter 19 of the county code.

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

~~Virginia Erosion and Sediment Control Handbook.~~ A collection of pertinent information that provides general guidance for compliance with the Erosion and Sediment Control law and associated regulations and is developed by the Department with advice from a stakeholder advisory committee, referring to the 3rd edition, 1992, or most current version of the handbook.

~~Virginia Erosion and Sediment Control Program or VESCP.~~ A program approved by the board that has been 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 such as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan of development review, inspection, enforcement where authorized in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

~~Virginia Erosion and Sediment Control program authority or VESCP authority.~~ An authority approved by the board to operate a Virginia erosion and sediment control program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

~~VESCP authority permit.~~ A permit issued by the VESCP authority and evidence of approval to initiate and conduct land-disturbing activity if no VSMP authority permit is required in accordance with this article and which may only be issued after evidence of coverage under the general permit for discharges of stormwater from construction activities has been provided.

~~Virginia Pollutant Discharge Elimination System (VPDES) permit or VPDES permit.~~ A document issued by the state water control board pursuant to the state water control law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

~~Virginia runoff reduction method or VRRM.~~ The calculation method as documented by reference in 9VAC25-870 and which is used in part to comply with water quality and quantity provisions of the Virginia Stormwater Management Program (VSMP) regulations 9VAC25-870 et seq. and as a specific chapter in the Virginia stormwater management handbook. The method includes compliance spreadsheets for new development and redevelopment scenarios.

~~Virginia stormwater BMP clearinghouse website.~~ A website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations. The website can be found at <http://www.vwrrc.vt.edu/swef/>.

~~Virginia Stormwater Management Act.~~ Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

~~Virginia Stormwater Management Handbook.~~ A collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the Department with advice from a stakeholder advisory committee, referring to the 2nd edition, 2013, or most current version of the handbook.

~~Virginia Stormwater Management Program or VSMP.~~ A program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan of development review, inspection, enforcement, where authorized in the Act or associated regulations or this article, and evaluation consistent with the requirements of the Act and associated regulations and this article.

~~Virginia Stormwater Management Program authority or VSMP authority.~~ An authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.2 et seq. of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the board must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this article including the General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR-10), 9VAC25-880.

~~VSMP authority permit.~~ A permit issued by the VSMP authority and evidence of approval to initiate and conduct land disturbing activity if no VSMP authority permit is required in accordance with this article and which may only be issued after a VESCP authority permit has been issued and evidence of coverage under the general permit for discharges of stormwater from construction activities has been provided.

~~Watershed.~~ A defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

Sec. 8-22. Stormwater permit requirement; exemptions

- (a) ~~Except as provided herein, no person may engage in any land disturbing activity until a VSMP authority permit has been issued by the administrator in accordance with the provisions of this article. VESCP and VSMP authority permits may be combined into a single consolidated permit that is consistent with the provisions of the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia).~~
- (b) ~~After June 30, 2014, and consistent with 9VAC25-870-51, a Chesapeake Bay preservation area land disturbing activity shall not require completion of a registration statement or require coverage under the general VPDES permit for discharges of stormwater from construction activities (VAR10) but shall be subject to erosion and sediment control plan requirements consistent with Virginia erosion and sediment control law and regulations, this article, stormwater management plan requirements as outlined under section 8-25, technical criteria and administrative requirements for land disturbing activities as outlined in section 8-28, and the requirements for control measures for long-term maintenance as outlined in section 8-29.~~
- (c) ~~Notwithstanding any other provisions of this article, the following activities are exempt, upon verification by the administrator, and unless otherwise required by federal law. The administrator is authorized and directed to determine if a particular activity meets or qualifies for a specific exemption. Any appeal of the administrator's decision shall be heard by the board of supervisors.~~
 - (1) ~~Minor residential, business, and community landscaping activities such as tilling, adding soil amendments such as compost, and mulching for small-scale features such as vegetable, flower or herb gardens, annual or perennial flower beds, ornamental plantings, wildflower plantings, edge borders, and reasonable turfgrass establishment. Exempted work under this provision cannot be situated in RPA and is normally reserved for aesthetic, beautification or scenic purposes and shall not include clearing, grading, placement of impervious cover, or soil disturbance due to placement of earthen fill or deep depths or quantities of topsoil beyond that expected for landscape purposes;~~
 - (2) ~~Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~
 - (3) ~~Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the state 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 Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;~~
 - (4) ~~Single family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single family detached residential structures. However, localities subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may regulate these single family residences where land disturbance exceeds 2,500 square feet;~~

- ~~(5) Land disturbing activities that disturb less than one acre of land except for land disturbing activity exceeding an area of 2,500 square feet in all areas of the county designated as subject to the Chesapeake Bay preservation area designation and management regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, the board of supervisors may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exemption shall apply;~~
- ~~(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 previously approved project, including obligated storm drainage and stormwater management or BMP facility maintenance, provided it is performed to maintain proper stormwater function and structural integrity of previously approved and installed systems, does not result in any type of improvement such as new pipes, channels, or the addition of access structures such as inlets or manholes, or results in a change in conveyance method, capacity, slope, size, alignment, material type, area, hydraulic radius, storage volume, or the physical location of any part of the system. 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;~~
- ~~(9) Small scale archaeological and geotechnical or other similar investigative activities, unless the administrator deems that work for access and the investigative activity are of such a scale or magnitude to threaten natural resources or environmental inventory components as outlined in section 23-10 of the county code;~~
- ~~(10) Small scale projects performed by the county pursuant to federal or state grant funds received and of which are solely for educational or demonstration purposes for water quality improvement or nonpoint source pollution control;~~
- ~~(11) Reclamation or stabilization projects in which the county draws on erosion and sediment control, siltation, public improvement, subdivision or other performance surety as secured for a development project in accordance with section 8-35 of this article. Work under this item shall be of sole purpose to immediately stabilize or implement temporary erosion and sediment control measures at a site because of default on the project and to prevent damage or threatening conditions to adjacent or downstream property or water resources. Work under this provision shall be procured, contracted and managed by the VSMP authority or designee in accordance with county and county purchasing department requirements; and~~
- ~~(12) Conducting land disturbing activities in response to a public emergency, declared or otherwise, where the related work requires immediate authorization to avoid imminent endangerment to property, human health or the environment. In such situations, the administrator shall be advised of the disturbance within seven days of commencing the land disturbing activity and compliance with the administrative requirements of subsection (a) is required within 30 days of commencing the land disturbing activity.~~

~~Sec. 8-23. Stormwater management program established; submission and approval of plans; prohibitions~~

- ~~(a) Pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of the Code of Virginia and 9VAC25-870 et seq. of the Virginia Administrative Code, the county hereby establishes a stormwater management program for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the state board for the purposes set out in section 8-20 of this article. For the purposes of this article, the board of supervisors hereby designates the director of the county division of engineering and resource protection as the administrator of the VSMP.~~
- ~~(b) For the purposes of this article, an applicant will need to employ a mix of site design, runoff reduction, and pollutant control strategies and practices, including structural and non-structural BMP practices, suitable for application in the coastal plain of Virginia and specific to the climate, rainfall, terrain, topography, slopes, soils, and groundwater tables in the county, in order to comply with the state stormwater standards for water quality and quantity criteria in accordance with the regulations and this article. The standards contained within the VSMP Regulations 9VAC25-870-10 et seq. and the General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10) 9VAC25-880 et seq. of the Virginia Administrative Code including but not limited to the following, the minimum standards of the Virginia Erosion and Sediment Control Regulations 9VAC25-840-40, the VESCH, the Virginia stormwater BMP clearinghouse website, the Virginia stormwater management handbook, the Virginia Runoff Reduction Method, and any VESCP or VSMP related technical bulletins issued by the Department, are to be used by the applicant when making a submittal under the provisions of this article and in the preparation of a SWPPP or any applicable components required thereof. The VESCP and VSMP authority, in considering the adequacy of a submitted plan shall be guided by these same regulations, standards and guidelines.~~
- ~~(c) No VSMP authority 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. A registration statement is not required for detached single-family home construction within or outside a common plan of development or sale, but such projects must adhere to the requirements of the general permit;~~
 - ~~(2) Evidence of general permit coverage;~~
 - ~~(3) An approved erosion and sediment control plan, in accordance with Virginia erosion and sediment control law and regulations and this article; and~~
 - ~~(4) A stormwater management plan that meets the requirements of section 8-25 of this article. After July 1, 2014, an executed agreement in lieu of a stormwater management plan may be used for single-family residences if such contract is executed by the VSMP authority in lieu of a stormwater management plan.~~
- ~~(d) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.~~
- ~~(e) No VSMP authority permit shall be issued until the fees required to be paid pursuant to section 8-34 are received and a reasonable performance surety as required pursuant to section 8-35 of this article has been submitted in a satisfactory manner.~~

- ~~(f) No VSMP authority 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, drainage, stormwater management, and stormwater pollution prevention will be done according to the approved plans and permit.~~
- ~~(g) No VSMP authority permit shall be issued until all wetland permits required by federal, state, and county laws and regulations are obtained and evidence of such provided to the administrator or VSMP authority. For those projects where no wetlands are proposed to be impacted or where the impacts do not require written authorization by wetland permit agencies, documentation shall be submitted to the administrator or the VSMP authority by a qualified wetlands professional attesting that the wetlands permitting process has been completed and no further documentation is necessary from applicable regulatory agencies.~~
- ~~(h) No grading, building, or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the administrator.~~

Sec. 8-24. Stormwater pollution prevention plan; contents of plans

- ~~(a) The stormwater pollution prevention plan shall include the content specified by 9VAC25-870-54 of the regulations and must comply with the requirements and general information set forth in 9VAC25-880-70, Part II, stormwater pollution prevention plan, of the General VPDES Permit for Discharge of Stormwater from Construction Activities (VAR10).~~
- ~~(b) A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, an approved pollution prevention plan for regulated land disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of 9VAC25-870-54 of the Virginia Administrative Code.~~
 - ~~(1) A stormwater management plan or an agreement in lieu of a stormwater management plan, as applicable, consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.~~
- ~~(c) The stormwater pollution prevention plan shall be amended 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 stormwater pollution prevention plan.~~
- ~~(d) The stormwater pollution prevention plan must be maintained at a central location on-site. If an onsite location is unavailable, notice of the stormwater pollution prevention plan location must be posted near the main entrance at the construction site. Operators shall make the stormwater pollution prevention plan available for public review in accordance with Part II of the General VPDES Permit for discharge of stormwater from construction activities (VAR10), either electronically or in hard copy.~~
- ~~(e) The stormwater pollution prevention plan shall adhere to the general performance standards of section 23-9(b) of the county code and 4VAC50-90-130 of the Virginia Administrative Code and, if not otherwise provided for erosion and sediment control plan purposes in accordance with VESCP requirements in accordance with this article and 9VAC25-840, an environmental inventory shall be provided in accordance with section 23-10(2) of the county code.~~

- (f) ~~Rainwater harvesting, as a component of a stormwater pollution prevention plan, is encouraged consistent with § 62.1-44.15:28(A)(9) of the Code of Virginia and 9VAC25-870-74 of the regulations.~~

Sec. 8-25. Stormwater management plan; contents of plans

- (a) ~~A stormwater management plan shall be developed and submitted to the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VSMP authority and shall be developed in accordance with the following:~~
- ~~(1) The stormwater management plan for a land disturbing activity as required in section 8-23 of this article shall apply the stormwater management technical criteria set forth in section 8-28 of this article to the land disturbing activity. Individual lots in new residential, commercial or industrial plans of development shall not be considered to be separate land disturbing activities; however, shall be subject to agreement in lieu of stormwater management plan requirements, as applicable.~~
 - ~~(2) Stormwater management plans for residential, commercial, or industrial subdivisions which are approved govern the development of individual parcels within that plan throughout the development life of the project, even if ownership changes. However, agreement in lieu of stormwater management plan requirements will apply to these parcels, as applicable.~~
 - ~~(3) The stormwater management plan as required in section 8-23 of this article shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.~~
- (b) ~~A complete stormwater management plan shall include the following elements:~~
- ~~(1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters, and the pre-development and post-development drainage areas;~~
 - ~~(2) Identification of the county watershed or subwatershed and hydrologic unit code (HUC) based on Virginia's 6th order National Watershed Boundary Dataset (NWBD) hydrologic units (VAHU6) which the project is situated in;~~
 - ~~(3) Contact information including the name, address, email, and telephone number of the owner and the tax map reference number and parcel number of the property or properties affected;~~
 - ~~(4) A narrative that includes a description of current site conditions and final site conditions, including the amount of disturbed area, the amount of proposed impervious cover, and the percent impervious cover of the site;~~
 - ~~(5) 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;~~
 - ~~(6) Information on proposed stormwater management facilities, including:~~

- a. ~~The types of facilities;~~
 - b. ~~The location by geographic coordinates, latitude and longitude;~~
 - c. ~~Drainage area and impervious cover area treated by facilities (in acres); and~~
 - d. ~~The surface waters into which the facility will discharge;~~
- (7) ~~Hydrologic and hydraulic computations, including runoff characteristics, presented in a clear and organized format;~~
- (8) ~~Documentation and calculations verifying compliance with the water quality and quantity requirements of section 8-28 of this article, including providing a summary Virginia runoff reduction method compliance spreadsheet or worksheet for the project;~~
- (9) ~~A map or maps of the site that depict the characteristics or features of the site and includes:~~
- a. ~~All contributing drainage areas;~~
 - b. ~~Existing topography and drainage patterns;~~
 - c. ~~Existing streams, ponds, culverts, storm drainage systems, channels, ditches, wetlands, other water bodies, RPAs, conservation easements, and floodplains;~~
 - d. ~~Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;~~
 - e. ~~Current land use including existing structures, roads, and locations of known utilities and easements;~~
 - f. ~~Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on those parcels;~~
 - g. ~~The limits of disturbance (clearing and grading) for the project including proposed access and all onsite and off-site work activities;~~
 - h. ~~Proposed grading, contours and drainage patterns on the site or project;~~
 - i. ~~Proposed buildings, roads, parking areas, utilities, and stormwater drainage and management facilities;~~
 - j. ~~Proposed land use with tabulations of the percentage of surface area to be adapted to various land uses including but not limited to planned locations of impervious cover, turfgrass, utilities, roads, open spaces, and easements, including conserved open spaces; and~~
 - k. ~~Proposed percent impervious cover of the site or project;~~
- (10) ~~If an operator intends to meet the water quality and/or quantity requirements set forth in 9VAC25-870-63 or 9VAC25-870-66 and section 8-28 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 § 62.1-44.15:35 of the Code of Virginia and 9VAC25-870-69.~~

- ~~(11) If payment of a fee is required for a stormwater management plan submission by the VSMP authority, the fee and the required fee form shall be submitted.~~
- ~~(c) Elements of the stormwater management plan that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.~~
- ~~(d) A construction record drawing (as built) and construction certification for permanent stormwater management facilities shall be submitted to the administrator. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. Construction record drawing and construction certification submittal requirements shall be established by the administrator or the VSMP authority and in accordance with 9VAC25-870-108 and 9VAC25-870-112. The administrator may elect to not require construction record drawings and construction certifications for stormwater management facilities for which maintenance agreements are not required pursuant to section 8-29(b).~~
- ~~(e) A construction record drawing and construction certification for permanent stormwater conveyance system facilities (inlets, pipes, channels, etc.) shall be submitted to the administrator. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater conveyance system facilities have been constructed in accordance with the approved plan. Construction record drawing and construction certification submittal requirements shall be established by the administrator or the VSMP authority. The administrator may elect to not require construction record drawings and construction certifications for stormwater conveyance system facilities for which maintenance agreements are not required pursuant to section 8-29(b).~~
- ~~(f) An internal closed circuit television (CCTV) post installation inspection, performed by the operator, is required for all stormwater conveyance system pipes, access or inlet structures, and culverts of 15-inch nominal diameter size or greater as part of the construction record and construction certification process. CCTV inspections shall follow standards and specifications developed by the administrator or the VSMP authority.~~

Sec. 8-26. Pollution prevention plan; contents of plans

- ~~(a) A pollution prevention plan, required by 9VAC25-870-56 of the regulations, 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 prior to discharge into a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;~~

- ~~(2) Minimize exposure of all materials on site to precipitation and stormwater. This may include, but is not limited to, minimizing the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and~~
- ~~(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.~~
- ~~(b) 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.~~
- ~~(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.~~
- ~~(d) A pollution prevention plan as required to be developed and implemented in accordance with subsections a – c above is required for all plans of development, including those site or plot plans required for single family building permit applications, and shall be submitted for review and approval by the administrator or VSMP authority prior to site implementation, modification or update. Pollution prevention plans as developed for implementation under the single family building permit application process may be accepted and processed by the VSMP authority through the agreement in lieu of plan process as established under the county VESCP and VSMP authority programs, including an agreement in lieu of a stormwater management plan for construction of a single family residence, as such contract may be executed by the VSMP authority in lieu of a stormwater management plan.~~

Sec. 8-27. Review of stormwater management plan

- ~~(a) The administrator or VSMP authority or any duly authorized agent of the administrator thereof shall review stormwater management plans and shall approve or disapprove a SWM plan according to the following:~~
 - ~~(1) The administrator shall determine the completeness of a plan in accordance with section 8-25 of this article, and shall notify the applicant, in writing, of such determination, within fifteen calendar days of receipt. If the plan is deemed to be incomplete, the above written 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 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 his designated agent. If the plan is not approved, the reasons for not approving the plan 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) for review, the plan shall be deemed approved.~~
- ~~(b) Approved SWM 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.~~
- ~~(c) The administrator shall require the submission of a construction record drawing and construction certification for permanent stormwater management facilities. Construction record drawing and construction certification submittal requirements shall follow standards developed by the administrator or the VSMP authority and in accordance with 9VAC25-870-108 and 9VAC25-870-112. The administrator may elect not to require construction record drawings and construction certifications for stormwater management facilities for which recorded maintenance agreements are not required pursuant to section 8-29(b).~~
- ~~(d) A construction record drawing and construction certification for permanent stormwater conveyance system facilities (inlets, pipes, channels, etc.) shall be submitted to the administrator. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional engineer registered in the Commonwealth of Virginia, certifying that the stormwater conveyance system facilities have been constructed in accordance with the approved plan. Construction record drawing and construction certification submittal requirements shall follow standards developed by the administrator or the VSMP authority. The administrator may elect to not require construction record drawings and construction certifications for stormwater conveyance system facilities for which maintenance agreements are not required pursuant to section 8-29(b).~~
- ~~(e) An internal CCTV post-installation inspection, performed by the operator, is required for all stormwater conveyance system pipes, access or inlet structures and culverts of 15-inch nominal diameter size or greater as part of the construction record and construction certification process. CCTV inspections shall follow standards and specifications developed by the administrator or the VSMP authority.~~

Sec. 8-28. Technical criteria for regulated land disturbing activities

- (a) ~~To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities, the county hereby adopts the technical criteria for regulated land disturbing activities set forth in Part IIB, Technical Criteria for Regulated Land Disturbing Activities of the regulations, 9VAC25-870-62 through 92, as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [off site compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development projects]; and 9VAC25-870-85 [stormwater management impoundment structures or facilities]; which shall apply to all land disturbing activities regulated pursuant to this article, except for grandfathering provisions as expressly set forth in subsection (c) through (f) of this section.~~
- (b) ~~Pre-development and post-development site, runoff and hydrology characteristics for water quantity control requirements under the provisions of 9VAC25-870-66 must be verified by site inspections, topographic surveys, available soil mapping or studies and calculations consistent with good engineering practices. Guidance provided in the Virginia stormwater BMP clearinghouse and the Virginia stormwater management handbook shall be considered appropriate practices.~~
- (c) ~~Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to Part IIC technical criteria of the VSMP regulations, sections 9VAC25-870-93 through 99, Technical Criteria for Regulated Land Disturbing Activities: Grandfathered Projects and Projects Subject to the Provisions of 9VAC25-870-47B, provided that:~~
 - (1) ~~A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the administrator to be equivalent thereto, such as a county approved master stormwater management plan, which (i) was approved by the county prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-870-10; (iii) will comply with the Part IIC technical criteria of the VSMP regulation; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;~~
 - (2) ~~A state permit has not been issued prior to July 1, 2014; and~~
 - (3) ~~Land disturbance did not commence prior to July 1, 2014.~~
- (d) ~~County, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part IIC technical criteria of the VSMP regulation provided that:~~
 - (1) ~~There has been an obligation of county, state, or federal funding, in whole or in part, prior to July 1, 2012; or the Department has approved a stormwater management plan prior to July 1, 2012;~~
 - (2) ~~A state permit has not been issued prior to July 1, 2014; and~~
 - (3) ~~Land disturbance did not commence prior to July 1, 2014.~~

- ~~(e) Land disturbing activities grandfathered under subsections c–d in this section shall remain subject to the Part IIC technical criteria of the VSMP regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the state board.~~
- ~~(f) 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 Part IIC technical criteria of the VSMP regulations.~~
- ~~(g) The administrator may grant exceptions to the technical criteria adopted in subsections Part IIB or Part IIC of the regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Virginia Stormwater Management Act, the VSMP regulations, and this article are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone shall not be a sufficient reason to grant an exception from the requirements of this article.~~
 - ~~(1) Exceptions to the requirement that the land disturbing activity obtain a required VSMP authority permit shall not be given by the administrator, nor shall the administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website (<http://vwrrc.vt.edu/swe/>), or any other control measure duly approved by the Department.~~
 - ~~(2) Exceptions to requirements for phosphorus reductions shall not be allowed unless off-site options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not to be available.~~
- ~~(h) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his/her discretion.~~

Sec. 8-29. Long-term maintenance of permanent stormwater 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 general permit termination or earlier as required by the administrator and shall at a minimum:~~
 - ~~(1) Utilize a general template for the instrument document which shall be made available by the VSMP authority;~~
 - ~~(2) Be submitted to the administrator for review and approval prior to the approval of the stormwater management plan;~~
 - ~~(3) Be approved as to form by the county attorney's office;~~
 - ~~(4) Be stated to run with the land;~~
 - ~~(5) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;~~

- ~~(6) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the administrator; and~~
- ~~(7) 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 they are 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 section 8-29(b), 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 they are located. Such a strategy may include periodic inspections, homeowner outreach and education, declarations of covenants and restrictions, plat notes, or other similar methods targeted at promoting the long term maintenance of such facilities. The alternative strategy shall follow standards and procedures as developed by the administrator or the VSMP authority. Such facilities shall not be subject to the requirement for an inspection to be conducted by the administrator.~~

Sec. 8-30. Monitoring and inspections

- ~~(a) The administrator, or any duly authorized agent of 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~~
 - ~~(4) Development and implementation of any additional control measures necessary to address a TMDL.~~
- ~~(b) The administrator or the VSMP authority, or any duly authorized agent thereof, may at reasonable times and under reasonable circumstances, 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. In accordance with a performance surety such as bond, letter of credit, bank escrow account, or cash surety or escrow in the form of a cashier's or certified check made payable to the Treasurer, James City County, any combination thereof, or such other legal arrangement satisfactory to the county attorney, the administrator or the VSMP authority, or any duly authorized agent thereof, may also 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.~~
- ~~(c) Pursuant to §62.1-44.15:40 of the Code of Virginia, the administrator or VSMP authority may require every VSMP authority permit applicant or permittee, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of their discharge on the quality of state waters, or such other information as~~

~~may be necessary to accomplish the purposes of this article. Post construction inspections of stormwater maintenance facilities required by the provisions of this article shall be conducted by the administrator or VSMP authority or any duly authorized agent thereof, pursuant to the locality's adopted and state board approved inspection program and shall occur, at a minimum, at least once every five years except as may otherwise be provided for in section 8-29.~~

Sec. 8-31. Hearings

- ~~(a) Any permit applicant or permittee or person subject to an administrative decision, order or requirements of this article, aggrieved by any action of the county taken without a formal hearing, or by inaction of the county, may demand in writing a formal hearing by the county causing such grievance, provided a petition requesting such hearing is filed with the administrator within 30 days after notice of such action is given by the administrator.~~
- ~~(b) The board of supervisors shall hold hearings under this article and shall do so in a manner consistent with § 62.1-44.26 and § 62.1-44.15:44 of the Code of Virginia. Local hearings held under this section shall be conducted by the board of supervisors at a regular or special meeting of the board of supervisors, or at any such time as may be designated.~~
- ~~(c) The board of supervisors shall hear the appeal as soon as practical after receipt of the written request. The appellant, the board of supervisors, and any person or agency expressing an interest in the matter shall be notified by the board, or its agent, not less than ten days prior to the date of the hearing. Published notice of the board's public meetings shall state that appeals from decision under the Virginia stormwater management ordinance may be heard.~~
- ~~(d) A verbatim record of the proceedings of such hearings shall be taken and filed with the local governing body. Depositions may be taken and read as in actions at law.~~
- ~~(e) The local governing body or its designated member, as the case may be, 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 local governing body, or its designated member, which action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed may receive the same fees and reimbursement for mileage as in civil actions.~~

Sec. 8-32. Appeals

~~Appeals shall be conducted in accordance with local appeal procedures. Appeals shall include an opportunity for judicial review in the circuit court of James City County. Unless otherwise provided by the law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the court of appeals. A permit applicant or permittee or person subject to a local decision, order or requirement of an appeal, may appeal to the circuit court of James City County no later than 30 days after the final decision. A "final decision" is the decision that resolves the merits of the action pending or effects a dismissal of the case.~~

Sec. 8-33. Enforcement

~~(a) If the administrator determines that there is a failure to comply with the VSMP authority 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: verbal warnings, inspection reports, notices to comply, notices of corrective action, and consent special orders. 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 agent 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 or the permit may be revoked by the administrator.~~

~~(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 ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.~~

~~Such orders shall be issued in accordance with established local procedures developed by the administrator or the VSMP authority. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of 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 Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, 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 section 8-33(c).~~

~~(b) In addition to any other remedy provided by this article, if the administrator or his or her designee determines that there is a failure to comply with the provisions of this article, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with established local procedures or policies.~~

~~(c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification or guidance document, or any permit condition issued by the administrator may be compelled in a proceeding instituted in the circuit court of James City County by the locality to obey 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 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 permit registration, unless such statement is not required;~~
 - ~~b. No stormwater pollution prevention plan;~~
 - ~~c. An incomplete stormwater pollution prevention plan;~~
 - ~~d. A stormwater pollution prevention plan not available for review;~~
 - ~~e. No approved erosion and sediment control plan;~~
 - ~~f. Failure to install stormwater management BMPs or erosion and sediment controls;~~
 - ~~g. Stormwater management 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 VPDES Permit for the Discharge of Stormwater from Construction Activities (VAR10).~~
- ~~(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 county shall be paid into the treasury of the county to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the county and abating environmental pollution therein in such manner as the court may, by order, direct.~~
- ~~(e) Notwithstanding any other civil or equitable remedy provided by this section or by the Virginia Stormwater Management Act or Virginia Stormwater Management Regulations, 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, or both.~~

Sec. 8-34. Fees

- (a) ~~Fees to cover the costs associated with erosion and sediment control plan review and inspection shall be imposed in accordance with requirements of the VESCP authority and section 8-5 of the county code and are set forth in County Code Appendix A Fee Schedule for Development Related Permits.~~
- (b) ~~Fees to cover the costs associated with stormwater facility inspections shall be imposed in accordance with requirements of the VSMP authority and section 19-15 and section 24-7, as applicable, of the county code and are set forth in County Code Appendix A Fee Schedule for Development Related Permits.~~
- (c) ~~Fees to cover costs associated with stormwater management and pollution prevention plan review including implementation of a VSMP related to land disturbing activities and issuance of permit coverage and VSMP authority permits shall be imposed by the VSMP authority and are set forth in County Code Appendix A Fee Schedule for Development Related Permits. When a site or sites have been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites which are set forth in County Code Appendix A Fee Schedule for Development Related Permits. The VSMP authority portion of the statewide permit fee for coverage under the general permit for discharges of stormwater for construction activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land disturbance acreage of less than one acre within a common plan of development or sale. Neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to subdivision A.5 of § 62.1-44.15:28 of the Code of Virginia 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.~~
- (d) ~~Fees for the modification or transfer of registration statements from the general permit issued by the state board shall be imposed in accordance with the fee schedule set forth in County Code Appendix A Fee Schedule for Development Related Permits. If the general permit modifications result in changes to stormwater management plans that require additional review by the county, such reviews shall be subject to the fees set forth in County Code Appendix A Fee Schedule for Development Related Permits. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in County Code Appendix A Fee Schedule for Development Related Permits. All fees specified in this subsection are payable to the locality.~~

- ~~(e) The following annual permit maintenance shall be imposed in accordance with County Code Appendix A Fee Schedule for Development Related Permits, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated by the administrator or the VSMP authority. All fees specified in this subsection are payable to the county, except for those individual permits or for projects completely administered by the Department such as state or federal projects, which shall be paid to the Department. General permit coverage maintenance fees shall be paid annually to the county on or before the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a notice of termination is effective.~~
- ~~(f) The fees established in sections (e) (e), above and set forth in County Code Appendix A Fee Schedule for Development Related Permits shall apply to:~~
- ~~(1) All persons seeking coverage under the general permit;~~
 - ~~(2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit;~~
 - ~~(3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an individual permit for discharges of stormwater from construction activities;~~
 - ~~(4) Permit and permit coverage maintenance fees established under section 8-34(e) County Code Appendix A Fee Schedule for Development Related Permits may apply to each general permit holder.~~
- ~~(g) No permit application fees will be assessed to:~~
- ~~(1) Permittees who request minor modifications to permits as defined in section 8-21 of this article. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the administrator shall not be exempt pursuant to this section.~~
 - ~~(2) Permittees whose permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the administrator or errors related to the acreage of the site.~~
 - ~~(3) The county, any entity created solely by the county and those regional entities to which the county is a party provided that: (1) the other parties to the regional entity similarly waive fees; (2) the regional entity has locations in more than one locality; and (3) those portions of the fees required to be paid to the Department are completed.~~
- ~~(h) All incomplete payments will be deemed as non-payments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and will be calculated on a monthly basis at the applicable periodic rate. A ten percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The county shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.~~

- (i) ~~Nothing in this section shall prohibit the Department and VSMP authority from entering into an agreement whereby the total fee to be paid by the applicant for coverage under the general permit for discharge of stormwater from construction activities (VAR10) 9VAC25-880 is payable to the VSMP authority and the VSMP authority transmits the Department portion set forth in 9VAC25-870-820 of the Virginia Administrative Code to the Department on a schedule set forth by the Department.~~

Sec. 8-35. Performance surety

- (a) ~~Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance surety such as a bond, letter of credit, bank escrow account, or cash surety or escrow in the form of a cashier's or certified check made payable to the Treasurer, James City County, or any combination thereof, or such other legal arrangement acceptable to the county attorney to ensure that measures could be taken by the county at the applicant's expense should he/she fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him/her by the permit conditions as a result of his/her land-disturbing activity. If the county takes such action upon such failure by the applicant, the locality may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, including permit termination and proper submittal and approval of construction record drawings and construction certifications for permanent BMP facilities and permanent stormwater conveyance system facilities by the administrator or the VSMP authority, such surety including bond, letter of credit, bank escrow account, or cash surety, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be released or refunded to the applicant or terminated, as applicable.~~
- (b) ~~Fees to cover the costs associated with the administration of the performance surety requirement of this section are set forth in County Code Appendix A Fee Schedule for Development Related Permits.~~

Chapter 8. Erosion and Stormwater Management Program

Sec. 8-1. Title, purpose, and authority.

- (a) *This chapter shall be known as the "Erosion and Stormwater Management Ordinance of James City County."*
- (b) *The purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of James City County, protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, 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.*
- (c) *This ordinance is authorized by § 62.1-44.15:27 of the Code of Virginia.*

Sec. 8-2. Definitions.

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly requires a different meaning:

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 director of the county division of stormwater and resource protection who is responsible for administering the VESMP on behalf of the county.

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

Applicant. Person submitting a soil erosion control and stormwater management plan to a VESMP authority for approval in order to obtain authorization to commence a land-disturbing activity.

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

1. *Nonproprietary best management practice.* Both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.
2. *Proprietary best management practice.* Both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

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.

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.

Chesapeake Bay Preservation Act land disturbing activity. A land disturbing activity including clearing, grading or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre subject to the Chesapeake Bay Preservation Area Designation and Management Regulation 9VAC25-830 et seq. of the Virginia Administrative Code adopted pursuant to the Chesapeake Bay Preservation Act, Article 2.5 of the Code of Virginia, § 62.1-44.15:67 et seq. of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

Clean Water Act or CWA. The federal Clean Water Act (33 USC § 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. Any activity which removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.

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.

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.

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.

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

County. James City County.

CWA and regulations. The Clean Water Act and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this ordinance, it includes state program requirements.

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 Environmental Quality.

Development. Land disturbance and the resulting landform associated with this construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural 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.

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 Stormwater and Resource Division.

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

Discharge of a pollutant:

1. *Any addition of any pollutant or combination of pollutants to state waters from any point source; or*
2. *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 or soil and water conservation 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. Refers to the Colonial Soil and Water Conservation District.

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.

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

Environmental Protection Agency or EPA. The United States Environmental Protection Agency.

Erosion and sediment control 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 not associated with 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.

ESC. Erosion and sediment control.

ESM plan. A soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

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 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. A permit authorizing a category of discharges under the CWA and the VESMA within a geographical area.

Grading. Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

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 cover. A surface composed of material that significantly impedes or prevents natural infiltration of water into soil. Impervious cover includes, but is not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted aggregate surface. Pervious pavement surfaces will not be considered as totally impervious cover but will be given partial credit based on the open area and runoff characteristics of the paver structure and the proposed installation.

Incorporated place. A city, town, township, or village that is incorporated under the Code of Virginia.

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 the VESMA and applicable regulations.

Karst area. Any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

Karst features. Sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

Land disturbance or land disturbing activity. A manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as clearing, grading, excavating, or filling of land.

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.

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

Land disturbing permit. A permit issued by county for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

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.

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. James City County.

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. Designation of an area as subject to localized flooding is at the discretion of the administrator or VESMP authority based on factual information which may include documented complaints, reports of problem drainage areas or flooding, County performed studies or drainage analyses, or direct observations of site and drainage conditions during rainfall-runoff 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. Modifications and amendments not requiring extensive review and evaluation including 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 permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

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.

Nonerodible. A material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

Nonpoint source pollution. Pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

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

Owner. The same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

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

Percent impervious. The impervious area within the site divided by the area of the site multiplied by 100.

Permit. A VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

Permittee. The person to whom the permit is issued.

Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

Plan-approving authority. The stormwater and resource protection division responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of lands and for approving plans.

Point of discharge. A location at which concentrated stormwater runoff is released.

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. Refers to 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.

Predevelopment. Refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the VESMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity 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.

Resource Protection Area or RPA. That component of a Chesapeake Bay Preservation Area as defined in chapter 23 of the county code.

Responsible land disturber or RLD. An individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan, ESM plan, or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

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. Includes 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 basin. A temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

Sediment trap. A temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

Sheet flow (also called 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 residence. A noncommercial dwelling that is occupied exclusively by one family.

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

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.

Slope drain. Tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

Small construction activity:

1. *Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small 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. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.*

2. *Any other construction activity designated by either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.*

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

Soil erosion control and stormwater management plan. Commonly referred to as the erosion control and stormwater management plan, or "ESM plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this ordinance.

Stabilized. Land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

State. The Commonwealth of Virginia.

State application or application. The standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the department for applying for a permit.

State Water Control Law. Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

State waters. All water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Steep slopes. Slopes of 25 percent or greater.

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

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 conveyance system. A combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. *Manmade stormwater conveyance system. A pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;*
2. *Natural stormwater conveyance system. The main channel of a natural stream and the flood-prone area adjacent to the main channel; or*
3. *Restored stormwater conveyance system. A stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.*

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

Stormwater Discharge Associated with Construction Activity. The discharge of stormwater runoff from areas where land disturbing activities (e.g. clearing, grading, filling, or excavation); construction materials or equipment storage and maintenance (e.g. fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater related to the construction process (e.g., concrete or asphalt batch plants) are located.

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. A document containing material describing methods for complying with the requirements of the VESMP or section 8-9 of this article.

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 may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under the VESMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Subdivision. The same as defined in Virginia Code § 15.2-2201 and Chapter 19 of the County code.

Surface waters:

1. *All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;*
2. *All interstate waters, including interstate wetlands;*
3. *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:*
 - a. *That are or could be used by interstate or foreign travelers for recreational or other purposes;*
 - b. *From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
 - c. *That are used or could be used for industrial purposes by industries in interstate commerce;*
4. *All impoundments of waters otherwise defined as surface waters under this definition;*
5. *Tributaries of waters identified in subdivisions 1 through 4 of this definition;*
6. *The territorial sea; and*
7. *Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.*

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

SWM. Stormwater management.

Temporary vehicular stream crossing. A temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

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.

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

Town. An incorporated town.

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.

Transporting. Any moving of earth materials from one place to another place 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.

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. James City county is the entity approved by the department to operate the VESMP. The county has designated the division of stormwater and resource protection as the department responsible for administering the VESMP on behalf of the County.

Virginia Pollutant Discharge Elimination System (VPDES) permit or VPDES permit. A document issued by the department 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 department 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 defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

Wetlands. Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Sec. 8-3. Virginia Erosion and Stormwater Management Program Established.

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, James City County hereby establishes a Virginia Erosion and Stormwater Management Program for land-disturbing activities and adopts the Virginia Erosion and Stormwater Management Regulations that specify standards and specifications for VESMPs promulgated by the State Water Control Board for the purposes set out in Section 8-1 of this Ordinance. James City County hereby designates the Director of the Stormwater and Resource Protection Division as the Administrator of the Virginia Erosion and Stormwater Management Program established by this Ordinance.

Sec. 8-4. 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 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 Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

- (2) *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.*
- (3) *Land-disturbing activity 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 federal law.*

Sec. 8-5. Review of soil erosion control and stormwater management plans; prohibitions.

- (a) *A person who wishes to conduct a land-disturbing activity in James City County shall submit a soil erosion control and stormwater management plan (ESM) to the James City County Stormwater and Resource Protection Division. The administrator shall review and approve soil erosion control plans and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA), pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.*
- (b) *A person shall not conduct any land disturbing activity in James City County until:*
 - (1) *An application that includes a permit registration statement, if required, and an erosion and sediment control plan and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to the county.*
 - (2) *The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia is submitted to the county. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA; and*
 - (3) *The county has issued its land-disturbance approval in accordance with section 8-6.*
- (c) *The county may require changes to an approved ESM plan in the following cases:*
 - (1) *Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or*
 - (2) *Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner. Any amendment to a plan pursuant to this paragraph shall be submitted in the same way a new application is submitted pursuant to this chapter 8.*

- (d) In order to prevent further erosion, the county may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area.*
- (e) Prior to issuance of any land-disturbance approval, the county shall require a performance surety in accordance with section 8-22. State agencies and federal entities are excluded from the requirements of this paragraph and section 8-22.*
- (f) The county may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.*
- (g) No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.*
- (h) The county is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.*

Sec. 8-6. Approval of soil erosion control and stormwater management plan (ESM Plan).

- (a) The county shall approve or disapprove an ESM plan according to the following:*
 - (1) The county shall determine the completeness of any application within 15 days after receipt and shall act on any application within 60 days after it has been determined by the county to be complete.*
 - (2) The county shall issue either land-disturbance approval or denial and provide written rationale for any denial.*
 - (3) Prior to issuing a land-disturbance approval, the county shall be required to obtain evidence of permit coverage when such coverage is required.*
 - (4) The county shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.*
- (b) Approved ESM plans may be modified as follows:*
 - (1) Modifications to an approved 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 plan be amended, within a time prescribed by the administrator, to address any deficiencies noted during inspection.*

Sec. 8-7. Soil erosion control and stormwater land disturbing approval requirement; exemptions.

- (a) Except as provided herein, no person may engage in any land disturbing activity until Land Disturbing Approval has been issued by the county in accordance with the provisions of this ordinance.*
- (b) Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless otherwise required by federal law. The determination of whether a Soil Erosion Control and Stormwater Land Disturbing Approval is required pursuant to this section 8-7 is made by the administrator. Any appeal of the Administrator's decision regarding an exemption pursuant to this section 8-7 shall be in accordance with section 8-16 and 8-17.*
 - (1) Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;*
 - (2) Installation, maintenance, or repair of any individual service connection;*
 - (3) Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;*
 - (4) Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;*
 - (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;*
 - (6) Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including 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; or as additionally set forth by the Board in regulations. 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 Chapter 11 (§ 10.1-1100 et seq. of the Code of Virginia) or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of the Code of Virginia;*
 - (7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;*
 - (8) 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 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 the VESMA and the regulations adopted pursuant thereto;*

- (9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;*
- (10) 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 administrator shall be advised of the disturbance within seven days of commencing the land disturbing activity, and compliance with the administrative requirements of subsection (a) is required within 30 days of commencing the land disturbing activity;*
- (11) Discharges to a sanitary sewer or a combined sewer system; that are not from a land-disturbing activity;*
- (12) Reclamation or stabilization projects in which the county draws on erosion and sediment control, siltation, public improvement, subdivision or other performance surety as secured for a development project in accordance with section 8-22 of this article. Work under this item shall be of sole purpose to immediately stabilize or implement temporary erosion and sediment control measures at a site because of default on the project and to prevent damage or threatening conditions to adjacent or downstream property or water resources. Work under this provision shall be procured, contracted and managed by the VESMP authority or designee in accordance with county and county purchasing department requirements; and*
- (c) Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements and obtain a Land Disturbing Approval but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:*
 - (1) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;*
 - (2) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the previously approved 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, including obligated storm drainage and stormwater management or BMP facility maintenance, provided it is performed to maintain proper stormwater function and structural integrity of previously approved and installed systems, does not result in any type of improvement such as new pipes, channels, or the addition of access structures such as inlets or manholes, or results in a change in conveyance method, capacity, slope, size, alignment, material type, area, hydraulic radius, storage volume, or the physical location of any part of the system.*
 - (3) Discharges from a land-disturbing activity to a sanitary sewer.*
- (d) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.*

- (e) No person may engage in any land disturbing activity until he has acquired a land disturbing approval, unless the proposed land disturbing activity is specifically exempt from the provisions of this chapter and he has paid the fees and posted the required bond.*
- (f) No land disturbing approval shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.*
- (g) These requirements are in addition to all other provisions of this ordinance and applicable statutes and regulations relating to the performance of land disturbing activities and are not intended to otherwise affect said requirements to conduct land disturbing activities.*

Sec. 8-8. Stormwater pollution prevention plan; contents of plans.

- (a) A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, an approved pollution prevention plan for regulated land disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection (d) of this section.*
- (b) A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the county in accordance with the VESMA, this ordinance, and attendant regulations.*
- (c) A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.*
- (d) In addition to the requirements of subsections (a) through (c) of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.*
- (e) The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:*
 - (1) Control stormwater volume and velocity within the site to minimize soil erosion;*
 - (2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;*

- (3) *Minimize the amount of soil exposed during construction activity;*
 - (4) *Minimize the disturbance of steep slopes;*
 - (5) *Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;*
 - (6) *Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;*
 - (7) *Minimize soil compaction and, unless infeasible, preserve topsoil;*
 - (8) *Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and*
 - (9) *Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.*
- (f) *The stormwater pollution prevention plan shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the stormwater pollution prevention plan. The stormwater pollution prevention plan must be maintained at a central location on-site. If an onsite location is unavailable, notice of the stormwater pollution prevention plan location must be posted near the main entrance at the construction site.*

Sec. 8-9. Stormwater management plan; contents of plans.

- (a) *A stormwater management plan shall be developed and submitted to the VESMP authority. The stormwater management plan shall be implemented as approved or modified by the VESMP authority and shall be developed in accordance with the following:*
- (1) *A stormwater management plan for a land disturbing activity shall apply the stormwater management technical criteria set forth in this ordinance and Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation 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.*
 - (2) *A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.*

(b) A complete stormwater management plan shall include the following elements:

- (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 pre-development and post-development drainage areas;*
- (2) Identification of the county watershed or subwatershed and hydrologic unit code (HUC) based on Virginia's 6th order National Watershed Boundary Dataset (NWBD) hydrologic units (VAHU6) which the project is situated in;*
- (3) Contact information including the name, address, email, and telephone number of the owner and the tax map reference number and parcel number of the property or properties affected;*
- (4) A narrative that includes a description of current site conditions and final site conditions including the amount of disturbed area, the amount of proposed impervious cover, and the percent impervious cover of the site;*
- (5) 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;*
- (6) Information on the proposed stormwater management facilities, including:*
 - a. Detailed narrative on the conversion to a long-term stormwater facility if the facility was used as a temporary ESC measure;*
 - b. The types of facilities;*
 - c. Location including geographic coordinates;*
 - d. Drainage area and impervious cover area treated by facilities (in acres); and*
 - e. The surface waters or karst features into which the facility will discharge;*
- (7) Hydrologic and hydraulic computations, including runoff characteristics;*
- (8) Documentation and calculations verifying compliance with the water quality and quantity requirements of this chapter;*
- (9) A map or maps of the site that depict the characteristics or features of the site and includes:*
 - a. All contributing drainage areas;*
 - b. Existing topography and drainage patterns;*
 - c. Existing streams, ponds, culverts, storm drainage systems, channels, ditches, wetlands, other water bodies, RPAs, conservation easements, and floodplains;*
 - d. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;*
 - e. Current land use including existing structures, roads, and locations of known utilities and easements;*
 - f. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;*
 - g. The limits of disturbance (clearing and grading) including proposed access and all onsite and off-site work activities;*

- h. Proposed grading, contours and drainage patterns on the site;*
 - i. Proposed buildings, roads, parking areas, utilities, and stormwater conveyance systems and management facilities;*
 - j. Proposed land use with tabulations of the percentage of surface area to be adapted to various land uses, including planned locations of impervious cover, turfgrass, utilities, roads, open spaces, and easements, including conserved open spaces; and*
 - k. Proposed percent impervious cover of the site;*
- (10) If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 and section 8-12 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 performance of any land disturbing activity and prior to the county's issuance of the Land Disturbing Approval.*
- (11) If the county requires payment of a fee with the stormwater management plan submission, the fee and the required fee form in accordance with section 8-21 of this chapter must have been submitted.*
- (c) All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§54.1-400 et seq.) or 22 (§54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his or her area of professional competence.*
- (d) No VESMP authority permit or approval shall be issued until all wetland permits and approvals required by federal, state, and county laws and regulations are obtained and evidence of such provided to the administrator or VESMP authority. For those projects where no wetlands are proposed to be impacted or where the impacts do not require written authorization by wetland permit agencies, documentation shall be submitted to the administrator or the VESMP authority by a qualified wetlands professional attesting that the wetlands permitting process has been completed and no further documentation is necessary from applicable regulatory agencies.*

Sec. 8-10. Pollution prevention plan; contents of plans.

- (a) A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) 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 exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and*

- (3) *Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.*
- (b) *The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):*
 - (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.*
- (c) *Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).*

Sec. 8-11. Erosion and sediment control plan; contents of plans.

- (a) *An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control 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 in 9VAC25-875-560. The erosion and sediment control plan may include:*
 - (1) *Appropriate maps;*
 - (2) *An appropriate soil and water plan inventory and management information with needed interpretations; and*
 - (3) *A record of decisions contributing to conservation treatment.*
- (b) *The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESMP authority.*
- (c) *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.*
- (d) *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 VESMA if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.*

Sec. 8-12. Technical criteria for regulated land disturbing activities.

- (a) *To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities, the county hereby adopts the technical criteria for regulated land disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9VAC25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater*

management impoundment structures or facilities], which shall apply to all land disturbing activities regulated pursuant to this ordinance, except as expressly set forth in subsection (c) through (f) of this section. In addition to the above references to the Virginia Administrative Code, the technical criteria may also include James City County administrative guidelines and additional supporting information, methodologies and guidance related to the technical criteria as outlined in applicable Virginia Department of Environmental Quality guidance or manuals related to erosion and sediment control and stormwater management.

- (b) The county adopts 9VAC25-875-480 and 9VAC25-875-490 for time-limited and grandfathered projects.*
- (c) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his/her discretion.*

Sec. 8-13. Variances and exceptions.

- (a) The administrator may grant variances to waive or modify any of the erosion and sediment control requirements of this ordinance that are deemed inappropriate or too restrictive for site conditions. The variance may be requested from the administrator under these conditions:*
 - (1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the authority shall be documented in the plan.*
 - (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the authority. The authority shall respond in writing either approving or disapproving such a request. If the authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.*
- (b) The administrator may grant exceptions to the provisions of Article 3 of Part V of 9VAC25-875-570 et seq., provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the VESMA, and this article are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.*
 - (1) Economic hardship alone shall not be a sufficient reason to grant an exception from the requirements of this article.*
 - (2) Under no circumstances shall the authority (i) grant an exception to the requirement that the land-disturbing activity obtain required permits, or (ii) approve the use of a BMP not found through the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 4 of Part V of 9VAC25-875-670 et seq.*
 - (3) Exceptions to requirements for phosphorus reductions shall not be allowed unless off-site options available through 9VAC25-875-610 have been considered and found not to be available.*

- (4) *A record of all exceptions granted shall be maintained by the authority in accordance with 9VAC25-875-180.*

Sec. 8-14. Long-term maintenance of permanent stormwater facilities.

- (a) *The operator shall submit a construction record drawing (as-built) and construction certification for permanent stormwater management facilities to the administrator in accordance with 9VAC25-875-535. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the stormwater management facilities have been constructed in accordance with the approved plan and that the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serves as a permanent record of the actual location of all constructed elements. Construction record drawing and construction certification submittal requirements shall be established by the administrator or the VESMP authority and in accordance with 9VAC25-875-110 and 9VAC25-875-130. The administrator may elect waive the requirements contained in this paragraph pursuant to section 8-14(e).*
- (b) *The operator shall submit a construction record drawing and construction certification for permanent stormwater conveyance system facilities (inlets, pipes, channels, etc.) to the administrator. The construction record drawing and construction certification shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, certifying that the stormwater conveyance system facilities have been constructed in accordance with the approved plan. Construction record drawing and construction certification submittal requirements shall follow standards developed by the administrator or the VESMP authority. The administrator may elect to not require construction record drawings and construction certifications for stormwater conveyance system facilities for which maintenance agreements are not required pursuant to section 8-14(e).*
- (c) *An internal closed-circuit television (CCTV) post installation inspection, performed by the operator, is required for all stormwater conveyance system pipes, access or inlet structures, and culverts of 15-inch nominal diameter size or greater as part of the construction record and construction certification process. CCTV inspections shall follow standards and specifications and administrative guidelines developed by the administrator or the VESMP authority.*
- (d) *The county 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 general permit termination or earlier as required by the county and shall at a minimum:*
- (1) Be submitted to the administrator for review and approval prior to the approval of the stormwater management plan;*
 - (2) Be approved as to form by the county attorney's office;*
 - (3) Be stated to run with the land;*
 - (4) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;*
 - (5) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the county; and*
 - (6) Be enforceable by all appropriate governmental parties.*

- (e) *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 they are located, provided it is demonstrated to the satisfaction of the administrator that future maintenance for those facilities will be addressed through an enforceable mechanism at the discretion of the administrator.*
- (f) *If a recorded instrument is not required pursuant to section 8-14(e), 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 they are located. Such a strategy may include periodic inspections, homeowner outreach and education, declarations of covenants and restrictions, plat notes, or other similar methods targeted at promoting the long term maintenance of such facilities. The alternative strategy shall follow standards and procedures as developed by the administrator or the VESMP authority. Such facilities shall not be subject to the requirement for an inspection to be conducted by the administrator or its duly authorized agent.*

Sec. 8-15. Monitoring and inspections.

- (a) *The county 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*
 - (4) *Development and implementation of any additional control measures necessary to address a TMDL.*
- (b) *The county shall conduct periodic inspections on all projects during construction. The county shall either:*
 - (1) *Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or*
 - (2) *Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:*
 - a. *Approved by the department prior to implementation;*
 - b. *Established in writing;*
 - c. *Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and*
 - d. *Documented by inspection records.*
- (c) *The county shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:*
 - (1) *Be approved by the department;*
 - (2) *Ensure that each stormwater management facility is inspected by the county, or its designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and*
 - (3) *Be documented by records.*

- (d) *The person responsible for carrying out the plan shall monitor the land disturbing activity. The person responsible for carrying out the plan shall 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.*
- (e) *The stormwater and resource protection division shall periodically inspect the land disturbing activity as prescribed in the Virginia Erosion and Stormwater Management Regulations and require that an individual holding a certificate of competence, as provided by the state Department of Environmental Quality, who will be in charge of and responsible for carrying out the land disturbing activity, be identified to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.*
- (f) *The county may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.*
- (g) *If a recorded instrument is not required pursuant to 9VAC25-875-130, the county shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method 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 county.*

Sec. 8-16. Hearings.

- (a) *Any land disturbing approval applicant, permit applicant or permittee or person subject to the requirements of this article, aggrieved by any action of the county taken without a formal hearing, or by inaction of the county, may demand in writing a formal hearing by the county causing such grievance, provided a petition requesting such hearing is filed with the administrator within 30 days after notice of such action is given by the administrator.*
- (b) *The hearings held under this Section shall be conducted by the board of supervisors at a regular or special meeting of the board of supervisors, or by at least one member of the board of supervisors designated by the board of supervisors to conduct such hearings on behalf of the board of supervisors at any other time and place authorized by the board of supervisors.*
- (c) *The board of supervisors shall hear the appeal as soon as practical after receipt of the written request. The appellant, the board of supervisors, and any person or agency expressing an interest in the matter shall be notified by the board, or its agent, not less than ten days prior to the date of the hearing. Published notice of the board's public meetings shall state that appeals from decision under the Virginia erosion and stormwater management ordinance may be heard.*
- (d) *A verbatim record of the proceedings of such hearings shall be taken and filed with the local governing body. Depositions may be taken and read as in actions at law.*

- (e) *The board of supervisors or its designated member, as the case may be, 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 local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed may receive the same fees and reimbursement for mileage as in civil actions.*

Sec. 8-17. Appeals.

- (a) *The board of supervisors' decision pursuant to section 8-16 shall be a final decision of the county, subject only to review by the circuit court of James City County.*
- (b) *An appeal of a final decision of the County under section 8-16 shall be filed with the circuit court of James City County within 30 days from the date of the final decision.*
- (c) *The circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the court of appeals.*

Sec. 8-18. Right of entry.

- (a) *The administrator or the VESMP authority, or any duly authorized agent thereof, may at reasonable times and under reasonable circumstances, 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 ordinance.*
- (b) *In accordance with a performance surety such as bond, letter of credit, bank escrow account, or cash surety or escrow in the form of a cashier's or certified check made payable to the Treasurer, James City County, any combination thereof, or such other legal arrangement satisfactory to the county attorney, the administrator or the VESMP authority, or any duly authorized agent thereof, may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the VESMP authority associated with a land disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.*
- (c) *Upon application to the county for any permit or plan, any land disturbing permit or agreement in lieu, shall contain a right of entry to allow the administrator or his designees access to the property until a final inspection determines that the land is adequately stabilized.*

Sec. 8-19. Enforcement.

(a) *If the administrator determines that there is a failure to comply with the approval or permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit and approval conditions by any of the following: verbal warnings and inspection reports, notices to comply, notices of corrective action, and consent special orders. 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 agent or employee supervising such activities.*

(1) *The notice shall specify the measures needed to comply with the permit and approval 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 or the permit may be revoked by the administrator.*

(2) *If a permittee or person responsible for carrying out the permit and approval conditions 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, land disturbing approval, 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 ceased, or an approved plan, land disturbing approval, and required permits are obtained, and specified corrective measures have been completed.*

Such orders shall be issued in accordance with established local procedures developed by the administrator or the VESMP authority. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of 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 Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, 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 section 8-20.

(b) *In addition to any other remedy provided by this article, if the administrator or his or her designee determines that there is a failure to comply with the provisions of this article, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with established local procedures or policies including, but not limited to the remedies contained in section 8-20.*

(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 in the circuit court of James City County by the locality to obey same and to comply therewith by the injunction, mandamus or other appropriate remedy.*

- (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 stormwater pollution prevention plan;*
 - c. Incomplete stormwater pollution prevention plan;*
 - d. Stormwater pollution prevention plan 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 9VAC25-880-70.*
- (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 county shall be paid into the treasury of the county to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the county and abating environmental pollution therein in such manner as the court may, by order, direct.*
- (d) 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, or both.*

Sec. 8-20. Penalties, injunctions, and other legal actions.

(a) Schedule of civil penalties

- (1) Any person who violates any provision of this chapter shall, upon a finding of the district court of James City County, be assessed a civil penalty. A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:*
 - a. Commencement of land disturbing activity without an approved plan as provided in section 8-4 shall be \$1,000.00 per day.*
 - b. Vegetative measures - failure to comply with erosion control criteria and items 1, 2, 3, 5, and 7 of the Minimum Standards as outlined in 9VAC25-875-560 shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.*
 - c. Structural measures – failure to comply with erosion control criteria and items 2, 4, 6, 8, 9, 10, 11, 15, and 17 of the Minimum Standards as outlined in 9VAC25-875-560 shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.*

- d. *Watercourse measures - failure to comply with erosion control criteria and items 12, 13, 14, and 15 of the Minimum Standards as outlined in 9VAC25-875-560 shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.*
- e. *Underground utility measures - failure to comply with erosion control criteria and item 16(a), and/or (c) of the Minimum Standards as outlined in 9VAC25-875-560 shall be not less than \$100.00 nor more than \$1,000.00 per violation per day.*
- f. *Failure to obey a stop work order shall be not less than \$100.00 nor more than \$1,000.00 per day.*
- g. *Failure to stop work when a permit is revoked shall be not less than \$100.00 nor more than \$1,000.00 per day.*
- h. *All other violations of this chapter not specifically enumerated in items (a) through (g) of this section shall be not less than \$100.00 nor more than \$1,000.00 per day.*

(b) *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, including a series of violations arising from the commencement of land disturbing activities without an approved plan for any site.*

(c) *The stormwater and resource protection division, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court of James City County to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.*

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

(d) *In addition to any penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.*

(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 for each violation. A civil action for such violation or failure may be brought by the county.*

Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(f) *With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000. Such civil charges shall be instead of any appropriate civil penalty.*

(g) *Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.*

Sec. 8-21. Fees.

- (a) *Fees to cover the costs associated with plan review and inspection shall be imposed in accordance with requirements of the VESMP authority and this chapter of the county code and are set forth in County Code Appendix A—Fee Schedule for Development Related Permits.*
- (b) *Fees to cover the costs associated with stormwater facility inspections shall be imposed in accordance with requirements of this chapter and section 19-15 and section 24-7, as applicable, of the county code and are set forth in County Code Appendix A—Fee Schedule for Development Related Permits.*
- (c) *Fees to cover costs associated with implementation of a VESMP related to land disturbing activities and issuance of general permit coverage and VESMP authority permits shall be imposed in accordance with County Code Appendix A—Fee Schedule for Development Related Permits. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to County Code Appendix A—Fee Schedule for Development Related Permits.*
- (d) *Fees for the modification or transfer of registration statements from the general permit issued by the department shall be imposed in accordance with the fee schedule set forth in County Code Appendix A—Fee Schedule for Development Related Permits. If the general permit modifications result in changes to stormwater management plans that require additional review by the county, such reviews shall be subject to the fees set forth in County Code Appendix A—Fee Schedule for Development Related Permits. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in County Code Appendix A—Fee Schedule for Development Related Permits.*
- (e) *The following annual permit maintenance shall be imposed in accordance with County Code Appendix A—Fee Schedule for Development Related Permits, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. General permit coverage maintenance fees shall be paid annually to the county, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a notice of termination is effective.*
- (f) *The fees established in sections (a)–(e), above and set forth in County Code Appendix A—Fee Schedule for Development Related Permits shall apply to:*
 - (1) *All persons seeking coverage under the general permit;*
 - (2) *All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit;*
 - (3) *Persons whose coverage under the general permit has been revoked shall apply to the department for an individual permit for discharges of stormwater from construction activities;*
 - (4) *Permit and permit coverage maintenance fees established under section 8-21(e) County Code Appendix A—Fee Schedule for Development Related Permits may apply to each general permit holder.*

(g) No permit application fees will be assessed to:

- (1) Permittees who request minor modifications to permits as defined in section 8-2 of this article. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the administrator shall not be exempt pursuant to this section.*
 - (2) Permittees whose permits are modified or amended at the initiative of the department, excluding errors in the registration statement identified by the administrator or errors related to the acreage of the site.*
 - (3) The county, any entity created solely by the county and those regional entities to which the county is a party provided that: (1) the other parties to the regional entity similarly waive fees; (2) the regional entity has locations in more than one locality; and (3) those portions of the fees required to be paid to the department are completed.*
- (h) All incomplete payments will be deemed as non-payments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A ten percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The county shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.*
- (i) Nothing in this section shall prohibit the Department and VESMP authority from entering into an agreement whereby the total fee to be paid by the applicant for coverage under the general permit for discharge of stormwater from construction activities (VAR10) 9VAC25-880 is payable to the VESMP authority and the VESMP authority transmits the Department portion set forth in 9VAC25-875-1400 of the Virginia Administrative Code to the Department on a schedule set forth by the Department.*

Sec. 8-22. Performance surety.

- (a) Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance surety such as a bond, letter of credit, bank escrow account, or cash surety or escrow in the form of a cashier's or certified check made payable to the Treasurer, James City County, or any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county at the applicant's expense should he/she fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him/her by the permit conditions as a result of his/her land disturbing activity. If the county takes such action upon such failure by the applicant, the locality may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, including permit termination and proper submittal and approval of public street dedication, construction record drawings and construction certifications for permanent BMP facilities, permanent stormwater conveyance system facilities, and private streets by the administrator or the VESMP authority, such surety including bond, letter of credit, bank escrow account, or cash surety, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be released or refunded to the applicant or terminated, as applicable.*

- (b) *Fees to cover the costs associated with the administration of the performance surety requirement of this section are set forth in County Code Appendix A—Fee Schedule for Development Related Permits.*
- (c) *Performance surety. All applicants for permits shall provide to the county a performance bond, cash escrow, or an irrevocable letter of credit, any combination thereof, or other legal arrangements as is acceptable to the county attorney, to ensure that measures could be taken by the county at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land disturbing activity.*

The amount of the performance surety shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held.

Within 60 days of adequate stabilization, as determined by the stormwater and resource protection division, in any project or section of a project, such performance surety, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section.



Ruth M. Larson
Chair, Board of Supervisors

ATTEST:



Teresa J. Saeed
Deputy Clerk to the Board

NULL
HIPPLE
MCGLENNON
ICENHOUR
LARSON

VOTES

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of June, 2024.

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