

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-09-14

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 23rd day of June, 2014:

Present:	Vote:
C. Thomas Tiller	Aye
James H. Burrell	Absent
Ron Stiers	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye

Motion was made by Mr. Davis, which carried 4:0, to adopt the following ordinance:

**AN ORDINANCE REPEALING, AMENDING, RESTATING
AND READOPTING CHAPTER 82 “ENVIRONMENT” TO
THE NEW KENT COUNTY CODE OF ORDINANCES**

WHEREAS, the Commonwealth of Virginia is integrating stormwater management and erosion and sediment control into a unified stormwater program; and

WHEREAS, the County has reviewed Chapter 82 and made changes pursuant to changes in the State Code; and

WHEREAS, localities are tasked with administering the unified stormwater program pursuant to the Stormwater Management Programs, Section 62.1-44.15.27 of the Code of Virginia or any subsequent revisions thereof; and

WHEREAS, the Board of Supervisors desires to protect the health, safety, welfare, and property of New Kent County residents and businesses and the quality of waters within the County;

NOW THEREFORE BE IT ORDAINED that the New Kent County Code be repealed, amended, restated, and readopted as follows:

CHAPTER 82 ENVIRONMENT

Article I. In General

Sec. 82-01. Definitions.

The following words and terms used in this Chapter have the following meanings unless the context clearly indicates a different meaning:

“Administrator” - means the New Kent County Certified VSMP Program Administrator or his/her designated agent.

“Agreement in lieu of plan” means a contract between the plan-approving 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” means any person submitting an application for a permit or requesting issuance of a permit under this Chapter.

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

“Best management practice implementation plan” or “BMP Implementation Plan” is a site specific design plan for the implementation of BMPs on an individual lot or parcel within a larger common plan of development. The BMP Implementation plan documents compliance with the BMP pollutant load and volume reduction performance goals assigned to the individual lot or parcel as well as any applicable elements of the Pollution Prevention Plan (“PPP”), and Total Maximum Daily Load (“TMDL”), Action Plans of the Virginia Stormwater Management Program (“VSMP”) Authority Permit issued by New Kent County for the larger common plan of development.

“Board” means the Virginia Soil and Water Conservation Board, or “VSWCB”.

"Certified combined administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the combined ESC classifications of program administrator, plan reviewer, and project inspector in the area of ESC.

"Certified combined administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the combined classifications of program administrator, plan reviewer, and project inspector in the area of SWM.

"Certified plan reviewer for ESC" means an employee or agent of a VESCP authority who: (i) holds a certificate of competence from the board in the classification of plan reviewer in the area of ESC; (ii) is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of

the Code of Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

"Certified plan reviewer for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of plan reviewer in the area of SWM.

"Certified program administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of program administrator in the area of ESC.

"Certified program administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of program administrator in the area of SWM.

"Certified project inspector for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of project inspector in the area of ESC.

"Certified project inspector for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of project inspector in the area of SWM.

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VESCP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VSMP authority.

"Chesapeake Bay Preservation Act land-disturbing activity" means 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 in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, §10.1-2100, et seq.

"Clean Water Act" or "CWA" means 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” means any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.

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

“Control measure” means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

“County” means New Kent County, Virginia.

“Department” or “DEQ” Department of Environmental Quality.

“Development” means 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.

“Director” means the Director of the Department of Environmental Quality.

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

“Erosion Control Handbook” means the state adopted erosion and sediment control handbook or the equivalent with such amendments, modifications and supplements as may, from time to time, be properly adopted.

“Erosion Impact Area” means 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” means any digging, scooping or other method of removing earth materials.

“Flood Fringe” means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes, but is not limited to, the flood or floodway fringe designated by the Federal Emergency Management Agency.

“Flooding” means 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” means 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, but is not limited to, the floodplain designated by the Federal Emergency Management Agency.

“Flood-prone area” means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

“Filling” means any depositing or stockpiling of earth materials.

“Floodway” means 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, but is not limited to, the floodway designated by the Federal Emergency Management Agency.

“General permit” means the permit issued by the Department of Environmental Quality, and titled the VSMP GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found at 4VAC50-60-1100, et. seq. or subsequent versions of the regulation authorizing a category of discharges under the Clean Water Act (“CWA”) and Virginia Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

“Grading” means any excavating or filling of earth materials, or any combination thereof, including the land in it excavated or filled condition.

“Hydrologic Unit Code” or “HUC” means a watershed unit established in the most recent version of Virginia’s 6th Order National Watershed Boundary District.

“Impervious Cover” means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

“Inspection” means an on-site review of the project’s compliance with the permit or the state permit, the VSMP, and 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 Act and this Chapter.

“Karst area” means 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” means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

“Land disturbance” or “land-disturbing activity” means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 82-24 of this Article.

“Layout” means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

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

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

“Major modification” means, for the purposes of this Chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

“Maximum extent practicable” or “MEP” means the technology-based discharge standard for municipal separate storm sewer systems established by CWA §402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural BMPs and rejecting ineffective BMPs and replacing them with effective BMPs. MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator’s MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

“Minor modification” means an amendment to an existing permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor 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” means the utilization of engineering analysis based on 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 floodplain.

“Natural Stream” means 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.

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

“Operator” means the owner or operator of any facility or activity subject to regulation under this Ordinance.

“Owner” means the owner of a freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receive, executor, trustee, lessee or other person, firm or corporation in control of a property.

“Peak flow rate” means the maximum instantaneous flow from a prescribed design storm at a particular location.

“Percent impervious” means the impervious area within the site divided by the area of the site multiplied by 100.

“Permit” or “VSMP authority permit” means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general permit coverage has been provided where applicable.

“Permittee” means the person to whom the Permit is issued.

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

“Point of discharge” means a location at which concentrated stormwater runoff is released.

“Postdevelopment” refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

“Predevelopment” refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the plan approval VSMP 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 first item being submitted shall establish predevelopment conditions.

“Prior developed lands” means 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-disturbance activity.

“Regulations” means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 4 VAC 50-60, as amended, or subsequent revisions thereof.

“Resource management area” or “RMA” means that component of the Chesapeake Bay Preservation Area that is not classified as a resource protection area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

“Resource protection area” or “RPA” means that component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

“Responsible land disturber” means an individual from the project or development team, who will be in charge and responsible for carrying out a land disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a responsible land disturber certificate of competence, (ii) holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review, (iii) holds a current contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Section 54.1-400 *et seq.* of Chapter 4 of Title 54.1 of the Code of Virginia or any subsequent revisions thereof.

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

“Runoff characteristics” include maximum velocity, peak flow rate, and flow duration.

“Runoff volume” means the volume of water that runs off the site from a prescribed design storm.

“Single-family residence” means a noncommercial dwelling that is occupied exclusively by one family.

“Site” means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated area of a parcel in which the land development project is located. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

“Site hydrology” means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

“State” means the Commonwealth of Virginia.

“State Board” – means the Virginia Soil and Water Conservation Board.

“State Permit” – means an approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board 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 Virginia Stormwater Management Programs and the regulations.

“State Water Control Law” means Chapter 3.1 (62.1-44.2 *et seq.*) of Title 62.1 of the Code of Virginia or any subsequent revisions thereof.

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

“Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater conveyance system” means 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” means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. “Natural stormwater conveyance system” means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. “Restored stormwater conveyance system” means 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 discharge associated with construction activity” means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g. concrete or asphalt batch plants) are located.

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

“Stormwater management plan” or “SMP” means a document(s) containing material for describing methods for complying with the requirements of Section 82-95 of this Chapter.

“Stormwater Pollution Prevention Plan” or “SWPPP” means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Chapter.

“Subdivision” means the same as defined in Section 91-5 of the New Kent County Subdivision Code entitled “Definitions.”

“Surface waters” means:

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 (i) that are or could be used by interstate or foreign travelers for recreational or other purposes, (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce, or (iii) 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.

“Total maximum daily load” or “TMDL” means the sum of the individual wasteload allocations for point sources, load allocations 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.

“Transporting” means any moving of earth materials from one place to another, other than such movement incidental to grading when such movement results in destroying the vegetative ground cover either by tracking or by 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 Stormwater Management Programs” or “Programs” means Section 62.1-44.15.27 of the Code of Virginia or any subsequent revision thereof.

“Virginia Stormwater BMP Clearinghouse website” means 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 Programs and associated regulations.

“Virginia Stormwater Management Program” or “VSMP” means a program approved by the VSWCB after September 13, 2011, and until June 30, 2013, or the State Water Control Board on or after June 30, 2013 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 review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

“Virginia Stormwater Management Program authority” or “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or 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 §62.1-44.15:31 of the Code of Virginia or any subsequent revisions thereof, 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 or any subsequent revisions thereof.

“VSMP Authority Permit” means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Chapter, and which may only be issued after evidence of general permit coverage has been provided by the Department, where applicable.

“Wasteload Allocation” or “Wasteload” or “WLA” means the portion of a receiving surface water’s loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

“Water quality volume” means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

“Watershed” means 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 for the watershed.

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

Sec. 82-02. Severability.

If any of the Articles, sections, paragraphs, sentences, clauses, or phrases of this Chapter shall be declared unconstitutional or invalid by a valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its entirety or any of the remaining Articles, sections, paragraphs, sentences, clauses, and phrases.

Sec. 82-03. Hearings and Appeals.

- (a) Any permit applicant, permittee, or person subject to the requirements of this Chapter, who is aggrieved by any action of New Kent County or its employees taken without a formal hearing, or by inaction of New Kent County or its employees, may demand in writing a formal hearing by the Board of Supervisors provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the County.
- (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 Chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board of Supervisors.
- (c) A verbatim recording of the proceedings of such hearings shall be taken and filed with the Board of Supervisors. Depositions may be taken and read as in actions at law.
- (d) The Board of Supervisors or its designated member, shall have the 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 testify

or to produce documents shall be acted upon by the Board of Supervisors, or its designated member, which action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

(e) Final decisions of the County under this Chapter shall be subject to review by the County Circuit Court, provided that an appeal is filed within 30 days of the date of any written decision by the administrator or the plan approving authority.

Secs. 82-04—82-30. Reserved.

Article II Erosion and Sediment Control

Sec. 82-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means the county director of planning, or his designee.

Agreement in lieu of a plan means 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 means 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.

Best management practices or BMPs means a practice, or a combination of practices, that is determined by a state or designated area wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

Board means the state soil and water conservation board.

Certified inspector means an employee or agent of the program authority who:

(1)

Holds a certificate of competence from the board in the area of project inspection; or

(2)

Is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

Certified plan reviewer means an employee or agent of a program authority who:

(1)

Holds a certificate of competence from the board in the area of plan review;

(2)

Is enrolled in the board's training program for plan review and successfully completes such program within one year of enrollment; or

(3)

Is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, § 54.1-400 et seq.

Certified program administrator means an employee or agent of a program authority who holds a certificate of competence from the board in the area of program administration or is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

Chesapeake Bay Preservation Area or *CBPA* means any land designated by the board of supervisors of the county pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VR 179-02-01, and Code of Virginia § 10.1-2109. A Chesapeake Bay Preservation Area shall consist of a resource protection area and a resource management area.

Clearing means any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.

County means New Kent County, Virginia.

Department means the Virginia Department of Conservation and Recreation.

Development means 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 means the director of the Virginia Department of Conservation and Recreation.

District or soil and water conservation district means the Colonial Soil and Water Conservation District.

Erosion impact area means 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.

Erosion and sediment control plan, conservation plan or plan means a document containing material for the conservation of soil and water resources of a unit or a 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 as to achieve the conservation objectives.

Excavating means any digging, scooping or other method of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

Grading means any excavating or filling of earth materials, or any combination thereof, including the land in it excavated or filled condition.

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

- (1) Disturbed land areas of less than 2,500 square feet in size;
- (2) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance;
- (3) Individual service connections;
- (4) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided that such land-disturbing activity is confined to the area of the road, street, or sidewalk which is hard-surfaced;
- (5) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (6) Surface or deep mining;
- (7)

Exploration or drilling for oil and gas, including the well site; roads, feeder lines and off-site disposal areas;

(8)

Tilling, planting or harvesting of agricultural, horticultural or forest crops, or livestock feedlot operations, including engineering operations and agricultural engineering options 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, § 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, § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);

(9)

Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(10)

Installation of fenceposts and signposts or telephone and electric poles and other kinds of posts or poles;

(11)

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 this chapter and the regulations set forth herein; and

(12)

Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.

Land-disturbing permit means a permit issued by the program authority for the clearing, filling, excavating, grading, transporting of land or for any combination thereof for any purpose set forth in this article.

Local erosion and sediment control program or program means an outline of the various methods employed by the program authority 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 means the owner of a freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receive, executor, trustee, lessee or other person, firm or corporation in control of a property.

Permittee means 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 means 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 this state, any interstate body, or any other legal entity.

Plan approving authority shall mean the planning department of the county.

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

Resource management area or *RMA* means that component of the Chesapeake Bay Preservation Area that is not classified as a resource protection area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

Resource protection area or *RPA* means that component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

Responsible land disturber means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan, who (i) holds a responsible land-disturber certificate of competence, (ii) holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review, (iii) holds a current contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

Single family residence means a noncommercial dwelling that is occupied exclusively by one family.

State erosion and sediment control program or state program means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, § 10.1-560 et seq., including regulations designed to minimize erosion and sedimentation.

State waters means all waters on the surface and under the ground, wholly or partially within or bordering the commonwealth or within its jurisdictions.

Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading when such movement results in destroying the vegetative ground cover either by tracking or by 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.

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

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

State law reference—Similar provisions, Code of Virginia, § 10.1-560.

~~Sec. 82-32. Utility and railroad companies.~~

~~Construction, installation or maintenance of electric and telephone utility lines and natural gas pipelines, and the tracks, rights of way, bridges, communication facilities and other related structures and facilities of railroad companies must be conducted pursuant to Code of Virginia, § 10.1-563(D).~~

~~*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)*~~

~~Sec. 82-33. Standards.~~

~~Pursuant to Code of Virginia, § 10.1-562, the county hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board for the effective control of soil erosion and sedimentation 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 sedimentation control are included in, but not limited to, the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.~~

~~*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)*~~

~~Sec. 82-34. Application.~~

~~All development and redevelopment exceeding 2,500 square feet of land disturbances, including construction of all single-family houses, and septic tanks and drainfields relating to construction of buildings to be served thereby, shall be subject to a plan of development process,~~

including the approval of a site plan in accordance with the provisions of chapter 98 or a subdivision plat in accordance with chapter 90. This section shall not apply to state agency projects except as provided for in Code of Virginia § 10.1-564.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)

Sec. 82-35. ~~Erosion and sediment control plan; requirements; fees.~~

(a)

The plan required by section 82-34 shall include an erosion and sediment control plan detailing those methods and techniques to be utilized in the control of erosion and sedimentation. 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. The standards contained within the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, and as adopted by the county pursuant to section 82-33, are to be used by the applicant when making a submittal under the provisions of this article and in the preparation of an erosion and sediment control plan.

(b)

Pursuant to Code of Virginia § 10.1-561.1, an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer.

(c)

Upon approval of an erosion and sediment control plan, a land-disturbing permit shall be issued. No such permit shall be issued until performance is secured as required by this article and all required fees have been paid.

(d)

A plan review and inspection fee shall be charged according to the fee ordinance of the county.

(e)

Except as otherwise allowed by law, no agency authorized under law to issue grading, building or other permits for activities involving land-disturbing activities may issue any such permits until the applicant therefor submits with his application evidence of a plan approved under the provisions of this article.

(f)

Where the land-disturbing activities involve lands under the jurisdictions of more than one local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the state water control board for review and approval rather than to each jurisdiction concerned.

(g)

The preparation, submission and approval of an erosion and sediment control plan shall ultimately be the responsibility of the landowner.

(h)

Except as provided herein, no person may engage in any land-disturbing activities until he has submitted to the program authority an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan approving authority in conformance with this chapter.

(Ord. No. O 12-01, 11-5-2001; Ord. No. O 29-02, 12-9-2002)

Sec. 82-36. Plan submission; requirements and approval; bonding.

(a)

Erosion and sediment control plans shall be prepared and certified by a Virginia licensed professional engineer, architect, certified landscape architect or land surveyor.

(b)

Five copies of the erosion and sediment control plan shall be submitted to the administrator, and be accompanied by the following information:

(1)

Name, address and phone number of applicant.

(2)

Name, address and phone number of landowner of record.

(3)

Name, address and phone number of the person preparing the plan.

(4)

Location of the site including, but not limited to, road number, tax map reference and lot number.

(5)

Other information as determined by the administrator, which may include, but is not limited to, units of clearing and grading, wood lines, tree size, topography, soils, boundaries of areas designated as RPAs and/or RMAs pursuant to chapter 94 of this Code.

(e)

Upon submission of an erosion and sediment control plan to the administrator:

(1)

The plan approving authority shall, within 45 days, approve any such plan if it determines the plan meets the conservation standards adopted by this article and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this article.

(2)

The plan approving authority shall act on all plans submitted within 45 days from their receipt by either approving such plan in writing or by disapproving such plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this article is found, upon review, to be inadequate, the plan approving authority shall specify such modifications, terms and condition as will permit approval of the plan and communicate those requirements to the applicant within 45 days.

(3)

If no action is taken by the plan approving authority within the time specified in this section, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d)

Surety. All control measures required by this article shall be undertaken at the expense of the owner or his agent; and pending actual compliance with the terms of this article, the owner or his agent shall execute and file with the administrator prior to the issuance of the land-disturbing permit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to pay the approximate total cost of providing the erosion and sediment control improvements and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost of the conservation action. The surety required by this section must be in a form approved by the county attorney, guaranteeing that the required control measures will be properly and satisfactory undertaken and maintained. Should it be necessary for the county to take such conservation action and call upon the Surety to pay for the control measures undertaken, due to the owner's failure, after proper notice, within the time specified in [section 82-40](#), to initiate or maintain appropriate conservation action, the county may also collect from the applicant any cost in excess of the amount of the surety held. The minimum performance bond with surety, cash escrow, letter of credit, or any combination thereof required under this section shall be \$500.00. Within 60 days of the adequate stabilization of the land-disturbing activity such performance bond with surety, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, shall be released or refunded to the owner or his agent or terminated as the case may be. Adequate stabilization will consist of at least 85 percent vegetative cover. The administrator shall have the sole authority to determine whether adequate vegetation exists.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

Sec. 82-37. Name of responsible land disturber.

As a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an responsible land disturber to the program authority as provided by Code of Virginia, § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the approved plan. Failure to provide the name of the responsible land disturber may result in revocation of the approval of the

plan and the person responsible for carrying out the plan and/or the responsible land disturber shall be subject to penalties as provided in this chapter.

(Ord. No. O-12-03, 11-3-2003)

Editor's note—

Ord. No. O-12-03, adopted Nov. 3, 2003, renumbered the former §§ ~~82-37~~—82-42 as §§ ~~82-38~~—82-43 and enacted a new § ~~82-37~~ as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. ~~82-38~~. Amendment of plan.

An approved plan may be changed by the plan approving authority in the following cases:

(1)

~~Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or~~

(2)

~~Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.~~

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

State law reference— Similar provisions, Code of Virginia, 10.1-563.

Note— See the editor's note to [§ ~~82-37~~](#)

Sec. ~~82-39~~. Designation of erosion impact area.

~~The program authority will require the approval of a conservation plan for any land identified as an erosion impact area in order to prevent further erosion.~~

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

State law reference— Code of Virginia, § 10.1-563(E).

Note— See the editor's note to [§ ~~82-37~~](#)

Sec. ~~82-40~~. Inspection and enforcement.

(a)

Inspection and enforcement of this article shall rest with the administrator who is authorized to enter upon any property in the county when the administrator has reasonable cause to believe that a violation exists upon the property.

(b)

The plan approving authority shall provide for periodic on-site inspections as set forth in VESCR 4 VAC 50-30-60B and require that a responsible land disturber be in charge of and responsible for carrying out the land disturbing activity. Pursuant to Code of Virginia, § 10.1-566(A), the owner, permittee or person responsible for carrying out the plan shall be provided an opportunity to accompany the administrator. Notice of the right of inspection shall be included in all land disturbing permits issued. The administrator shall be responsible for developing and implementing a filing system for land disturbing projects. The responsible land disturber shall be required by the plan approving authority to periodically inspect the land disturbing activity.

(e)

Upon determination that a violation exists or that the permittee has failed to comply with the plan, the administrator shall prepare a notice to comply which shall contain a detailed description of the conservation measures necessary for compliance. Such notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified by the permittee in the permit application. If no action is taken within 48 hours of delivery of the notice to comply, the permittee shall be deemed to be in violation of this article and shall be subject to the penalties set forth in [section 82-43](#). If the permittee fails to comply within the 48 hours required by this section, the administrator may revoke the land disturbing permit and may issue a stop work 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 or, if land disturbing activities have commenced without an approved plan, requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained. If a stop work order is issued, the administrator shall simultaneously file for appropriate relief with the circuit court. The administrator may also prepare a letter of intent to utilize the performance cash escrow or other legal arrangement to perform the conservation measures to correct the deficiency.

(1)

Except as provided in this subsection, the stop work order may be issued only after the alleged violator has failed to comply with a notice to comply. The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court. 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, a stop work order may be issued whether or not the alleged violator has been issued a notice to comply.

(2)

If the administrator sends a letter of intent to utilize the performance guarantee to the permittee, it shall be sent by registered or certified mail. If no action is taken to correct the deficiencies within five days of the sending of the letter of intent to utilize the security, then the administrator shall proceed to authorize the corrective measures to be made and to recover the cost from the security.

(3)

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the stop work order, the administrator may issue a second stop work order to the owner requiring that all construction and any other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

Note—See the editor's note to [§ 82-37](#)

Sec. 82-41. Administrative appeal; judicial review.

Final decisions of the administrator or the plan approving authority under this article shall be subject to review by the county circuit court, provided that an appeal is filed within 30 days of the date of any written decision by the administrator or the plan approving authority.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

Note—See the editor's note to [§ 82-37](#)

Sec. 82-42. Liability for land-disturbing activities.

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

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

Note—See the editor's note to [§ 82-37](#)

Sec. 82-43. Civil penalties for violation of article.

(a)

Any violations of any regulation or order of the administrator, any provision of the program, any condition of a permit or any provision of this article shall upon a finding of an appropriate general district court or circuit court be subject to a civil penalty as set forth in subsection (b) of this section, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000.00. Each day during which the violation is found to exist shall constitute a separate offence. 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 \$3,000.00, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00.

(b)

A civil penalty is hereby established for the violation of any state erosion and sediment control minimum standards as set forth in the Erosion and Sediment Control Handbook, in the amount of \$100.00 for any one violation.

(e)

Nothing in this section shall be deemed to limit the authority of the county to apply to the county circuit court for injunctive relief to enjoin a violation or threatened violation of this article, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for conservation efforts undertaken by the county.

(d)

Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, 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.

(e)

Any person who has violated or failed, neglected or refused to obey any regulation or order of the administrator or the plan approving authority, or any condition of a permit or any provision of this article, may consent to the payment of civil charges for violations in specific sums, as set forth in subsection (b) not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (a) or (d).

(Ord. No. O 12-01, 11-5-2001; Ord. No. O 29-02, 12-9-2002; Ord. No. O 12-03, 11-3-2003)

State law reference — Penalties, injunctions and other legal actions, Code of Virginia, § 10.1-562(J) and § 10.1-569.

Article III Stormwater Management

Sec. 82-71. Purpose of article.

In addition to an erosion and sediment control plan, a stormwater management plan shall be submitted as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan preliminary approval. The stormwater management plan shall provide adequate water quality protection in accordance with the goals and objectives of [chapter 94](#), article II of this Code.

(Code 1999, § 9-11)

Sec. 82-72. Stormwater management criteria.

(a)

The following stormwater management options shall be considered adequate to control stormwater runoff:

(1)

Incorporation on the site of best management practices that achieve the required control as detailed in [section 82-73](#)

(2)

Compliance with a locally adopted regional stormwater management program incorporating pro rata share payments pursuant to the authority provided in Code of Virginia, § 15.2-2243 that results in achievement of equivalent water quality protection.

(3)

For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20 percent of the site to vegetated open space.

(b)

Any maintenance, alteration, use or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the county director of planning, may be exempted from the below stormwater management requirements.

(c)

Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an intensely developed area designated by the county.

(Code 1999, § 9-12)

Sec. 82-73. Minimum requirements.

For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:

(1)

The post-development peak runoff rate from a two-year storm and a ten-year storm, considered individually, shall not exceed the predevelopment rates.

(2)

For development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on the calculated

average land cover conditions as determined by the director of planning. This subsection shall not apply to areas not located within a Chesapeake Bay Preservation Area.

(3)

For redevelopment sites, the existing nonpoint source pollution runoff load shall be reduced by at least ten percent. The county may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided that the following provisions are satisfied:

a.

In no case may the post-development nonpoint source pollution runoff load exceed the predevelopment load.

b.

Runoff pollution loads must have been calculated and the BMPs selected for the purpose of controlling nonpoint source pollution and to provide adequate quality control.

c.

If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The director of planning may require a review of both the original structural design and maintenance plans to verify this subsection. A maintenance agreement will be required to ensure compliance with this article on forms acceptable to the county. This subsection shall not apply to areas not located within a Chesapeake Bay Preservation Area.

(4)

For redevelopment, both the predevelopment and post-development loadings shall be calculated by the same procedure. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

(Code 1999, § 9-13)

Sec. 82-74. Exemptions and exceptions.

Exemptions and exceptions to the requirements of this article are contained in chapter 94, article II, Chesapeake Bay Preservation Areas, section 94-45 and section 94-46 of this Code.

(Code 1999, § 9-14)

Sec. 82-75. Contents.

(a)

The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations and citations to supporting references as appropriated to communicate the information required by this article. At a minimum, the stormwater management plan shall contain the following:

(1)

Location and design of stormwater control devices and BMPs.

(2)

Procedures for implementing nonstructural stormwater control practices and techniques.

(3)

Predevelopment and post-development and nonpoint source pollution loading with supporting documentation of all utilized coefficients and calculations.

(4)

Predevelopment and post-development peak runoff rates from the site for both a two-year storm and ten-year storm, considered individually, with supporting documentation of all utilized coefficients and calculations.

(5)

For facilities, verification of structural soundness, including a professional engineer or class III B surveyor certification.

(b)

The plan shall establish a longterm schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. A maintenance agreement shall be executed between the responsible party and the county.

(Code 1999, § 9-15)

Sec. 82-76. Performance assurances.

Performance assurances shall be provided that all BMPs required in plans of development shall be constructed to comply with the performance criteria set forth therein. The form of agreement and type of bond, letter of credit or other security shall be to the satisfaction of and approved by the county attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the director of planning.

(Code 1999, § 9-16)

Article II. VSMP Authority

Sec. 82-31. Establishment of New Kent County as a Virginia Stormwater Management Program Authority.

- (a) In order to ensure the health, safety, and welfare of its citizens and to protect property, state waters, stream channels, and other natural resources from the potential harm of unmanaged stormwater, New Kent County is hereby designated as a VSMP Authority. Following the guidance of the Virginia State Water Control Board (“VSWCB”), the County establishes procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (b) Administration and enforcement of the VSMP shall be the duty of a Certified VSMP Administrator (“the Administrator”) and/or his or her designee.
- (c) This ordinance is adopted pursuant to the Stormwater Management Programs, Section 62.1-44:15.27 of the Code of Virginia or any subsequent revisions thereof and any subsequent revisions thereof.
- (d) The VSMP Authority, New Kent County, may require every permit applicant, every permittee, or any persons subject to state permit requirements under this Chapter to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article with disclosure to be in compliance with Virginia Code Section 62.1-44-15:40.

Sec. 82-32. Land Disturbing Activities.

Except as provided in the exemptions found in section 82-24, no person may engage in any land-disturbing activity until a VSMP permit has been issued by the Administrator in accordance with the provisions of this Article. Furthermore, no grading, building or other permit shall be issued for property unless a VSMP authority permit has been issued by the Administrator.

Sec. 82-33. VSMP Permit; Requirements.

- (a) The Administrator shall issue a VSMP authority permit to applicants who:

 - (1) Submit a VSMP permit application which includes:

 - (A) The general permit registration statement;

- (B) An approved Erosion and Sediment Control (“ESC”) Plan pursuant to sections 82-111 *et seq.* of this Chapter; and
 - (C) A SWMP approved by the Administrator pursuant to the requirements of sections 82-71 *et seq.* of this Chapter;
 - (2) Provide evidence that general permit coverage has been issued by the State;
 - (3) Pay all fees required pursuant to the New Kent County Fee Schedule and post the required surety; and
 - (4) Demonstrate, through the application and other documentation, all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (b) Permit applications shall be acted upon within 60 days after the Administrator has determined that the application is complete. The Administrator may either issue the permit or deny the permit and shall provide written rationale for the denial. Any permit application that has been previously denied shall be acted on within 45 days after the application has been revised, resubmitted for approval, and deemed complete.
- (c) VSMP Permits are issued for a term of five (5) years. Activity requiring a VSMP Permit may obtain coverage at anytime during the permit term. Land-disturbing activities grandfathered pursuant to section 82-73 of this Chapter may remain subject to the technical criteria of Part 11(c) of the Virginia Stormwater Regulations for two (2) additional permit cycles provided coverage under the original VSMP Permit coverage is maintained. After two (2) permit cycles passed, or should the original VSMP Permit coverage not be maintained, portions of the project not under construction shall become subject to any new technical criteria adopted after original VSMP permit coverage was issued.

Sec. 82-34. 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 Ordinance.

(b) A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, a stormwater management plan as outlined in Section 82-75, the technical criteria and administrative requirements for land-disturbing activities outlined in

Section 82-73, and the requirements for control measures long-term maintenance outlined under Section 82-39.

(ab) Notwithstanding any other provisions of this Chapter, the following activities are exempt, unless otherwise required by federal law:

- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia or any subsequent revisions thereof;
- (2) 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 VSWCB 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 of Title 10.1 of the Code of Virginia regarding (10.1-1100 *et seq.*) 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 or any subsequent revisions thereof ;
- (3) Single family residents 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 under the land disturbance exceeds 2,500 square feet in which case the Chesapeake Bay Preservation Areas Ordinance (New Kent County Code Chapter 94) will apply.
- (4) Land disturbing activities that disturb less than one acre of land area unless the land disturbance exceeds 2,500 square feet in which case the Chesapeake Bay Preservation Areas Ordinance (New Kent County Code Chapter 94) will apply or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance.
- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a State or Federal reclamation program to return an abandoned property to an agricultural or open land use;

- (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
- (8) Conducting land disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent danger 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 Sec. 82-23 is required within 30 days of commencing the land-disturbing activity.

Sec. 82-35. Stormwater Pollution Prevention Plan Requirements.

- (a) A Stormwater Pollution Prevention Plan (“SWPPP”), required for the general permit issued by the State, shall include:
 - (1) An approved Erosion and Settlement Control plan pursuant to Article 3, section 82-115 *et seq.* of this Chapter;
 - (2) A Stormwater Management Plan approved by the Administrator pursuant to the requirements Article 4, section 82-75 *et seq.*, of this Chapter or an agreement in lieu of a plan as defined in section 82-01;
 - (3) A Pollution Prevention Plan (“PPP”) consistent with the requirements of section 82-36 of this Chapter; and
 - (4) If a specific Wasteload Allocation (“WLA”) for a pollutant has been established in a 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 WLA in a State Water Control Board-approved TMDL.
- (b) The SWPPP must address the following requirements, 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 VSMP 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 VSMP authority; and
 - (9) Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
- (c) The SWPPP 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 SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

Sec. 82-36. Pollution Prevention Plan. ("PPP")

- (a) PPP measures during construction activities shall be developed, implemented, and updated as necessary. The PPP shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 - (2) Minimize the exposure 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 PPP 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.

Sec. 82-37. Applicability of and Conflicts with Other Laws and Regulations.

- (a) Nothing in this Article shall be construed as limiting the applicability of other laws, and regulations, including, but not limited to the Clean Water Act, the Virginia Stormwater Management Program, the Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act and all applicable regulations adopted in accordance with those laws with the following exception,

compliance with the requirements of this Chapter shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§10.1-2100 *et seq.*) and attendant regulations and Chapter 94 of the Code of New Kent County.

- (b) Nothing in this Article shall be construed as limiting the rights of other federal agencies, state agencies, or the County to impose more stringent technical criteria or other requirements allowed by law. Whenever any provision of this Article imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Article shall govern. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by the Article, the provision of such State or Federal statute or other County ordinance or regulation shall govern.
- (c) The Department of Environmental Quality shall consider any requirements imposed by this Article that are more stringent than those imposed by the Regulations and any requirements of a comprehensive stormwater management plan in its review of state agency projects.
- (d) Nothing in this Article shall be construed as authorizing the County to regulate, or to require prior approval by the County for, a state or federal project, unless authorized by separate statute.

Sec. 82-38. Right of Entry.

The Administrator, or any duly authorized agent of the Administrator, may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purposes of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Article.

In order to assure compliance with the provisions of this chapter, and all applicable county ordinances, state and federal laws, orders or regulations, the Administrator or any duly authorized agent of the Administrator shall have the right to inspect any property, public, or private, within the county at any reasonable time. In the event that the Administrator or his agent shall be denied access to property, the Administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this ordinance has occurred, required that the magistrate or court grant the Administrator or his agent an inspection warrant to enable the Administrator or his agent to enter the property for the purpose of determining whether a violation of this ordinance exists. The Administrator or his agent shall make a reasonable effort to obtain consent from the owner or occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the Administrator or his

agent access to the property after the Administrator or his agent has obtained an inspection warrant from a magistrate or court of competent jurisdiction for the inspection of such property.

Sec. 82-39. Long-term maintenance of permanent stormwater management facilities.

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to state permit termination or earlier as required by the Administrator 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 stated to run with the land;
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
 - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which 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.

Sec. 82-40. Monitoring and Inspections.

- (a) The Administrator shall inspect the land-disturbing activity during construction for:
- (1) Compliance with the approved ESC;
 - (2) Compliance with the approved SWMP;

- (3) Development, updating, and implementation of a PPP; and
 - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:
 - (1) Be approved by the VSWCB;
 - (2) Ensure that each stormwater management facility is inspected by the Administrator or his/her designee, except as provided in subsections c and d of this section, at least once every five years; and
 - (3) Be documented by records.
- (c) The Administrator 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:
 - (1) 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 of the Code of Virginia or any subsequent revisions thereof;
 - (2) Works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or
 - (3) Holds an appropriate certificate of competence from the VSWCB.
- (d) If a recorded instrument is not required pursuant to section 82-39, 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, 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 Administrator.

Sec. 82-41. 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 and inspection

reports, notices of corrective action, consent special orders, and notices to comply. 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 New Kent County procedures. 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 County, 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 Subsection (c).

(b) In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with New Kent County Policies and Procedures.

(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 New Kent County by the New Kent County Board of Supervisors to obey same and comply therewith by injunction, mandamus or other appropriate remedy.

(d) Any person who violates any provision of this Ordinance 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 the violation of each requirement constitutes a separate offense.

(1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:

(i) No state permit registration;

(ii) No SWPPP;

(iii) Incomplete SWPPP;

(iv) SWPPP not available for review;

(v) No approved erosion and sediment control plan;

(vi) Failure to install stormwater BMPs or erosion and sediment controls;

(vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;

(viii) Operational deficiencies;

(ix) Failure to conduct required inspections;

(x) Incomplete, Improper or missed inspections; and

(xi) Discharges not in compliance with the requirements of Section 4VAC50-60-1170 of the general permit.

(2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

(3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(4) Any civil penalties assessed by a court as a result of a summons issued by New Kent County shall be paid into the Treasury of New Kent 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.

Sec. 82-42. Fees.

Fees will be assessed pursuant to the fees listed in Appendix A “Fees” of the County Code.

82-.43. Reporting

(a) Reporting to the Virginia Department of Environmental Quality will be done in compliance with 9VAC25-870-126 and any amendments thereto.

Secs. 82-44—82-70. Reserved.

Article III. Stormwater Management

Sec. 82-71. Purpose of Article.

This Article shall be known as the Stormwater Management Ordinance of New Kent. This purpose of this Article is to promote and protect the general health, safety, and welfare of the citizens of New Kent and to protect property, state waters, stream channels, and other natural resources from the potential harm of unmanaged stormwater, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

Sec. 82-72. Stormwater management criteria.

- (a) The following stormwater management options shall be considered adequate to control stormwater runoff:
 - (1) Incorporation on the site of best management practices that achieve the required control as detailed in section 82-73;
 - (2) Compliance with a locally adopted regional stormwater management program incorporating pro rata share payments pursuant to the authority provided in Code of Virginia, § 15.2-2243 or any subsequent revisions

thereof, that results in achievement of equivalent water quality protection; and

(3) For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20 percent of the site to vegetated open space.

(b) Any maintenance, alteration, use or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the Administrator, may be exempted from the below stormwater management requirements.

(c) Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an intensely developed area designated by the County.

(Code 1999, § 9-12)

Sec. 82-73. Technical requirements.

(a) Except as provided in subsection (b), New Kent County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Virginia Stormwater Management Regulations, as amended, expressly to include 4 VAC 50-60-62 et seq. or any subsequent revisions thereof. This expressly includes 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC-25-870-69 [offsite compliance options]; 9-VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; 9VAC25-870-85 [stormwater management impoundment structures or facilities]; 9VAC25-870-92 [comprehensive stormwater management plans] and 9VAC25-870-93 – 9VAC25-870-99 which shall apply to all land-disturbing activities regulated pursuant to this ordinance. The specific compliance requirements to satisfy these technical criteria shall be set forth in the Stormwater regulations promulgated by the Commonwealth of Virginia.

(b) Notwithstanding any other provisions of this Chapter, New Kent County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II C of the Virginia Stormwater Management Regulations, as amended, expressly to include 4 VAC 50-60-93.1 et seq. or any subsequent revisions thereof, for the following regulated-land disturbing activities:

(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 New Kent County to be equivalent thereto;

(i) was approved by New Kent prior to July 1, 2012,

(ii) provided a layout as defined in 9VAC25-871-10,

(iii) will comply with Part II C 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.

(c) Locality, State and Federal projects shall be considered grandfathered by the VSMP authority and shall be subject to Part II C technical criteria of the VSMP Regulation provided:

(1) There has been an obligation of locality, 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.

(d) Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the Part II C 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 board.

(e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.

(f) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

(g) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that:

- (1) the exception is the minimum necessary to afford relief;
- (2) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved;
- (3) granting the exception will not confer any special privileges that are denied in other similar circumstances; and
- (4) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
- (5) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 9VAC25-870-69 have been considered and found not available.
- (6) Under no circumstances shall the VSMP authority grant an exception to the requirement that the land disturbing activity obtain required state permits, nor approve the use of a BMP not found on the Stormwater BMP Clearinghouse Website, except where allowed under Part IIC of this chapter.

Sec. 82-74. Exemptions and exceptions.

Exemptions and exceptions to the requirements of this Article are contained in Chapter 94, Article II, Chesapeake Bay Preservation Areas, section 94-44 and section 94-45 of the County Code.

Sec. 82-75. Contents.

- (a) A SWMP shall be developed and submitted to the Administrator. The SWMP shall be implemented as approved or modified by the Administrator and shall be developed in accordance with the following:
 - (1) A SWMP for a land-disturbing activity shall apply the stormwater management technical criteria set forth in section 82-73 to the entire land-disturbing activity. Individual lots in new residential, commercial, or

industrial developments shall not be considered separate land-disturbing activities.

(2) A SWMP shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(b) A complete SWMP shall include the following elements:

(1) Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and postdevelopment drainage areas;

(2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;

(3) A narrative that includes a description of current site conditions and final site conditions or if allowed by the Administrator, the information provided and documented during the review process that addresses the current and final site conditions;

(4) 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;

(5) Information on the proposed stormwater management facilities, including (i) the type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the surface waters or karst features into which the facility will discharge;

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;

(8) A map or maps of the site that depicts the topography of the site and includes:

(A) All contributing drainage areas;

- (B) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (C) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (D) Current land use including existing structures, roads, and locations of known utilities and easements;
 - (E) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (F) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (G) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (H) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements;
- (9) If an operator intends to meet the requirements established in 9 VAC 25-870-63 or 9 VAC 25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and
- (10) If payment of a fee is required with the SWMP submission by the Administrator pursuant to the fee schedule in Appendix A, the fee and the required fee form must have been submitted.
- (c) Elements of the SWMP 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 or any subsequent revisions thereof.
- (d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator in accordance with the Virginia Stormwater Management Regulations of 9 VAC 50-60-108 and 9 VAC 50-60-112 or any subsequent revisions thereof. The construction record drawing 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.

(Code 1999, § 9-15)

Sec. 82-76. Performance assurances.

Performance assurances shall be provided that all BMPs required in plans of development shall be constructed to comply with the performance criteria set forth therein. The form of agreement and type of bond, letter of credit or other security shall be to the satisfaction of and approved by the county attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the Administrator.

(Code 1999, § 9-16)

Sec. 82-77. Stormwater Management Plan Review.

- (a) The Administrator shall review and approve stormwater management plans.
- (b) The Administrator shall approve or disapprove a stormwater management plan according to the following:
 - (1) The Administrator shall determine the completeness of a plan in accordance with section 82-75 and shall notify the applicant of any determination within 15 calendar days of receipt. Where available to the applicant, email or equivalent electronic communication may be considered communication in writing.
 - (A) If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
 - (B) If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.
 - (C) If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60

calendar days from the date of submission will be allowed for the review of the plan.

(D) The Administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.

(2) 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 Chapter and of the Administrator. Where available to the applicant, email or equivalent electronic communication may be considered communication in writing.

(3) If a plan meeting all requirements of this Chapter and of the Administrator is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

(c) Each approved plan may be modified in accordance with the following:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such requests.

(2) Based upon an inspection, the Administrator may require amendments to the approved stormwater management plan to address any deficiencies within a time frame set by the stormwater program administrative authority.

(d) The Administrator shall be required to obtain evidence of state permit coverage, where it is required, prior to providing approval to begin land disturbance.

(e) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with 4 VAC 50-60-55 of the Virginia Stormwater Management Regulations. The Administrator may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4 VAC 50-60-112.

Secs. 82-78—82-110. Reserved.

Article IV. Erosion and Sediment Control

Sec. 82-111. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Administrator” means the County Administrator, or his designee.

“Director” means the director of the Virginia Department of Conservation and Recreation.

“District” or “soil and water conservation district” means the Colonial Soil and Water Conservation District.

“Erosion and sediment control plan,” “conservation plan,” or “plan” means a document containing material for the conservation of soil and water resources of a unit or a 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 as to achieve the conservation objectives.

“Land-disturbing permit” means a permit issued by the program authority for the clearing, filling, excavating, grading, transporting of land or for any combination thereof for any purpose set forth in this Article.

“Local erosion and sediment control program” or “program” means an outline of the various methods employed by the program authority 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.

“Plan approving authority” means the planning department of the county.

“Program authority” means the county which has adopted a soil erosion and sediment control program approved by the board.

“State erosion and sediment control program” or “state program” means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, § 10.1-560 et seq., including regulations designed to minimize erosion and sedimentation.

Sec. 82-112. Utility and railroad companies.

Construction, installation or maintenance of electric and telephone utility lines and natural gas pipelines, and the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of railroad companies must be conducted pursuant to Code of Virginia, § 10.1-563(D).

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)

Sec. 82-113. Standards.

Pursuant to Code of Virginia, § 10.1-562, the county hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board for the effective control of soil erosion and sedimentation 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 sedimentation control are included in, but not limited to, the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)

Sec. 82-114. Application.

All development and redevelopment exceeding 2,500 square feet of land disturbances, including construction of all single-family houses, and septic tanks and drainfields relating to construction of buildings to be served thereby, shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of Chapter 98 subdivision plat in accordance with Chapter 90. This section shall not apply to state agency projects except as provided for in Code of Virginia § 10.1-564.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)

Sec. 82-115. Erosion and sediment control plan; requirements; fees.

- (a) The plan required by section 82-114 shall include an erosion and sediment control plan detailing those methods and techniques to be utilized in the control of

erosion and sedimentation. 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. The standards contained within the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, and as adopted by the county pursuant to section 82-113, are to be used by the applicant when making a submittal under the provisions of this Article and in the preparation of an erosion and sediment control plan.

- (b) Pursuant to Code of Virginia § 10.1-561.1, an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer.
- (c) Upon approval of an erosion and sediment control plan, a land-disturbing permit shall be issued. No such permit shall be issued until performance is secured as required by this Article and all required fees have been paid.
- (d) A plan review and inspection fee shall be charged according to the fee ordinance of the county.
- (e) Except as otherwise allowed by law, no agency authorized under law to issue grading, building or other permits for activities involving land-disturbing activities may issue any such permits until the applicant therefor submits with his application evidence of a plan approved under the provisions of this Article.
- (f) Where the land-disturbing activities involve lands under the jurisdictions of more than one local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the state water control board for review and approval rather than to each jurisdiction concerned.
- (g) The preparation, submission and approval of an erosion and sediment control plan shall ultimately be the responsibility of the landowner.
- (h) Except as provided herein, no person may engage in any land-disturbing activities until he has submitted to the program authority an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan approving authority in conformance with this Chapter.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)

Sec. 82-116. Plan submission; requirements and approval; bonding.

- (a) Erosion and sediment control plans shall be prepared and certified by a Virginia licensed professional engineer, architect, certified landscape architect or land surveyor.
- (b) Five copies of the erosion and sediment control plan shall be submitted to the administrator, and be accompanied by the following information:

 - (1) Name, address and phone number of applicant.
 - (2) Name, address and phone number of landowner of record.
 - (3) Name, address and phone number of the person preparing the plan.
 - (4) Location of the site including, but not limited to, road number, tax map reference and lot number.
 - (5) Other information as determined by the administrator, which may include, but is not limited to, units of clearing and grading, wood lines, tree size, topography, soils, boundaries of areas designated as RPAs and/or RMAs pursuant to Chapter 94 of this Code.
- (c) Upon submission of an erosion and sediment control plan to the administrator:

 - (1) The plan approving authority shall, within 45 days, approve any such plan if it determines the plan meets the conservation standards adopted by this Article and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this Article.
 - (2) The plan approving authority shall act on all plans submitted within 45 days from their receipt by either approving such plan in writing or by disapproving such plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this Article is found, upon review, to be inadequate, the plan approving authority shall specify such modifications, terms and condition as will permit approval of the plan and communicate those requirements to the applicant within 45 days.

(3) If no action is taken by the plan approving authority within the time specified in this section, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d) Surety. All control measures required by this Article shall be undertaken at the expense of the owner or his agent; and pending actual compliance with the terms of this Article, the owner or his agent shall execute and file with the administrator prior to the issuance of the land-disturbing permit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to pay the approximate total cost of providing the erosion and sediment control improvements and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 10 percent of the estimated cost of the conservation action. The surety required by this section must be in a form approved by the county attorney, guaranteeing that the required control measures will be properly and satisfactory undertaken and maintained. Should it be necessary for the county to take such conservation action and call upon the Surety to pay for the control measures undertaken, due to the owner's failure, after proper notice, within the time specified in section 82-70 120 to initiate or maintain appropriate conservation action, the county may also collect from the applicant any cost in excess of the amount of the surety held. The minimum performance bond with surety, cash escrow, letter of credit, or any combination thereof required under this section shall be \$500.00. Within 60 days of the adequate stabilization of the land-disturbing activity such performance bond with surety, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, shall be released or refunded to the owner or his agent or terminated as the case may be. Adequate stabilization will consist of at least 85 percent vegetative cover. The administrator shall have the sole authority to determine whether adequate vegetation exists.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

Sec. 82-117. Name of responsible land disturber.

As a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an responsible land disturber to the program authority as provided by Code of Virginia, § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the approved plan. Failure to provide the name of the responsible land disturber may result in revocation of the approval of the plan and the person responsible for carrying out the plan and/or the responsible land disturber shall be subject to penalties as provided in this Chapter.

(Ord. No. O-12-03, 11-3-2003)

Editor's note—Ord. No. O-12-03, adopted Nov. 3, 2003, renumbered the former §§ 82-37—82-42 as §§ 82-38—82-43 and enacted a new § 82-37 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 82-118. Amendment of plan.

- (a) An approved plan may be changed by the plan approving authority in the following cases:
- (1) Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
 - (2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

State law reference— Similar provisions, Code of Virginia, 10.1-563.

Note—See the editor's note to § 82-37

Sec. 82-119. Designation of erosion impact area.

The program authority will require the approval of a conservation plan for any land identified as an erosion impact area in order to prevent further erosion.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

State law reference— Code of Virginia, § 10.1-563(E).

Note—See the editor's note to § 82-37

Sec. 82-120 Inspection and enforcement.

- (a) Inspection and enforcement of this Article shall rest with the Administrator who is authorized to enter upon any property in the county when the Administrator has reasonable cause to believe that a violation exists upon the property.
- (b) The plan approving authority shall provide for periodic on-site inspections as set forth in VESCR 9 VAC 23 840 60B and require that a responsible land disturber be in charge of and responsible for carrying out the land-disturbing activity. Pursuant to Code of Virginia, § 10.1-566(A), the owner, permittee or person

responsible for carrying out the plan shall be provided an opportunity to accompany the administrator. Notice of the right of inspection shall be included in all land-disturbing permits issued. The administrator shall be responsible for developing and implementing a filing system for land-disturbing projects. The responsible land disturber shall be required by the plan approving authority to periodically inspect the land-disturbing activity.

(c) Upon determination that a violation exists or that the permittee has failed to comply with the plan, the administrator shall prepare a notice to comply which shall contain a detailed description of the conservation measures necessary for compliance. Such notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified by the permittee in the permit application. If no action is taken within 48 hours of delivery of the notice to comply, the permittee shall be deemed to be in violation of this Article and shall be subject to the penalties set forth in section 82-122. If the permittee fails to comply within the 48 hours required by this section, the administrator may revoke the land-disturbing permit and may issue a stop work 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 or, if land-disturbing activities have commenced without an approved plan, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. If a stop work order is issued, the administrator shall simultaneously file for appropriate relief with the circuit court. The administrator may also prepare a letter of intent to utilize the performance cash escrow or other legal arrangement to perform the conservation measures to correct the deficiency.

(1) Except as provided in this subsection, the stop work order may be issued only after the alleged violator has failed to comply with a notice to comply. The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court. 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, a stop work order may be issued whether or not the alleged violator has been issued a notice to comply.

(2) If the administrator sends a letter of intent to utilize the performance guarantee to the permittee, it shall be sent by registered or certified mail. If

no action is taken to correct the deficiencies within five days of the sending of the letter of intent to utilize the security, then the administrator shall proceed to authorize the corrective measures to be made and to recover the cost from the security.

- (3) If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the stop work order, the administrator may issue a second stop work order to the owner requiring that all construction and any other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

Note—See the editor's note to § 82-37

Sec. 82-121. Liability for land-disturbing activities.

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

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

Note—See the editor's note to § 82-37

Sec. 82-122. Civil penalties for violation of Article.

- (a) Any violations of any regulation or order of the administrator, any provision of the program, any condition of a permit or any provision of this Article shall upon a finding of an appropriate general district court or circuit court be subject to a civil penalty as set forth in subsection (b) of this section, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000.00. Each day during which the violation is found to exist shall constitute a separate offence. 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 \$3,000.00, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00.
- (b) A civil penalty is hereby established for the violation of any state erosion and sediment control minimum standards as set forth in the Erosion and Sediment Control Handbook, in the amount of \$100.00 for any one violation.

- (c) Nothing in this section shall be deemed to limit the authority of the county to apply to the county circuit court for injunctive relief to enjoin a violation or threatened violation of this Article, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for conservation efforts undertaken by the county.
- (d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, 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.
- (e) Any person who has violated or failed, neglected or refused to obey any regulation or order of the administrator or the plan approving authority, or any condition of a permit or any provision of this Article, may consent to the payment of civil charges for violations in specific sums, as set forth in subsection (b) not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (a) or (d).

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

State law reference— Penalties, injunctions and other legal actions, Code of Virginia, § 10.1-562(J) and § 10.1-569.

Note—See the editor's note to § 82-37

Secs. 82-122—82-130. Reserved.

~~Article IV. Wetlands.~~

Article V. Wetlands (only renumbered, no text changes)

Sec. 82-131. Wetlands board.

(a)

There is hereby created a wetlands board in the county which shall consist of five residents of the county appointed by the board of supervisors. All board members' terms of office shall be for five years, and the term of one board member shall expire each year. The chairman of the wetlands board shall notify the board of supervisors at least 30 days in advance of the expiration of any term of office, and shall also notify the board of supervisors promptly if any vacancy occurs. Such vacancy shall be filled by the board of supervisors without delay upon receipt of such notice. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may serve successive terms. Members of the wetlands board shall hold no other public office in the county except that they may be members of the planning commission, director of soil and water conservation boards, or members of the board of zoning appeals. A member whose term expires shall continue to serve until his successor is appointed and qualified. When members of the wetlands board are also members of the planning commission, directors of soil and water conservation boards, or members of the board of zoning appeals, their terms of appointment to the wetlands board shall be coterminous with their membership on such other boards.

(b)

The wetlands board shall elect from its membership a chairman and such other officers as it deems necessary who shall serve one-year terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall not be less than three members of the board. The board may make, alter and rescind rules and forms for its procedures consistent with the ordinances of the county and the general laws of the commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the board of supervisors at least once a year and a copy of its report to the state marine resources commission.

(c)

The board of supervisors shall supply reasonable meeting space and such reasonable secretarial, clerical, legal and consulting services as may be needed by the wetlands board. Any wetlands board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just causes by the board of supervisors after a hearing held after at least 15 days' notice to such board member.

(Code 1999, § 9-20)

Cross reference— Boards and commissions, § 2-111 et seq.

Secs. 82-132—82-140. Reserved.

Sec. 82-141. Adoption of division.

The county board of supervisors acting pursuant to Code of Virginia, § 28.2-1300 et seq., adopts this division regulating the use and development of wetlands.

State law reference— *Similar provisions, Code of Virginia, § 28.2-1302(1).*

Sec. 82-142. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Back Bay and its tributaries means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

Commission means the state marine resources commission.

Commissioner means the state commissioner of marine resources.

Governmental activity means any of the services provided by this county to its citizens for the purpose of maintaining this county including, but not limited to, such services as constructing, repairing and maintaining roads; providing sewage facilities and streetlights; supplying and treating water; and constructing public buildings.

Nonvegetated wetlands means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

North Landing River and its tributaries means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocaty River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6,400 feet due west of the point where Blackwater Road crosses

the Blackwater River at the Village of Blackwater, and Millbank Creek west of Blackwater Road.

Person means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

Vegetated wetlands means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1½ times the mean tide range at the site of the proposed project in the county, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

Vegetated wetlands of Back Bay and its tributaries and *vegetated wetlands of the North Landing River and its tributaries* mean all marshes subject to flooding by normal and wind tides but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

Wetlands means both vegetated and nonvegetated wetlands.

Wetlands board and *board* mean the New Kent Wetlands Board, created pursuant to Code of Virginia, § 28.2-1303.

(Code 1999, § 9-21)

Cross reference— Definitions generally, § 1-2.

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(2).

Sec. 82-143. Authorized uses and activities.

The following uses of and activities in wetlands are authorized if otherwise permitted by law:

- (1)
The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
- (2)
The cultivation and harvesting of shellfish and worms for bait;
- (3)
Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subsection (1) of this section;
- (4)
Other outdoor recreational activities, provided that they do not impair the natural functions or alter the natural contour of the wetlands;
- (5)
Grazing, haying and cultivating and harvesting agricultural, forestry or horticultural products;
- (6)
Conservation, repletion and research activities of the commission, the Virginia Institute of Marine Science, the state department of game and inland fisheries and other conservation-related agencies;
- (7)
The construction or maintenance of aids to navigation which are authorized by governmental authority;
- (8)
Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

(9)

The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

(10)

Governmental activity in wetlands owned or leased by the commonwealth or a political subdivision thereof; and

(11)

The normal maintenance of manmade drainage ditches, provided that no additional wetlands are covered. This subsection does not authorize the construction of any drainage ditch.

(Code 1999, § 9-22)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(3).

Sec. 82-144. Applications, maps and documents are public records.

All applications, maps and documents submitted under this division shall be open for public inspection at the office of the county director of planning.

(Code 1999, § 9-24)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(5).

Sec. 82-145. Fulfillment of responsibilities of the board.

In fulfilling its responsibilities under this division, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation.

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(9).

Sec. 82-146. Violations; penalties.

(a)

No person shall conduct any activity which would require a permit under this division unless such person has a permit therefor.

(b)

Any person who knowingly, intentionally, negligently or continually violates any order, rule or regulation of the wetlands board, or violates any provision of this division, or any provision of a permit granted by the wetlands board, shall be guilty of a class 1 misdemeanor.

(c)

Upon the petition of the commission or the wetlands board to the county circuit court, when any act is done or threatened which is unlawful under this division, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect and preserve the wetlands involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under subsection (b) of this section.

(Code 1999, § 9-30)

State law reference— Similar provisions, Code of Virginia, §§ 28.2-1318, 28.2-1319.

Secs. 82-147—82-160. Reserved.

Sec. 82-161. Required; application.

(a)

Any person who desires to use or develop any wetland within this county, other than for the purpose of conducting the activities specified in section 82-133 143, shall first file an application for a permit directly with the wetlands board or with the commission.

(b)

The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental off-site effects; the completion date of the proposed work, project or structure; and such additional materials and documentation as the wetlands board may require.

(c)

A nonrefundable processing fee as provided in appendix A to this Code shall accompany each permit application. The fee is set by the board of supervisors with due regard for the services to be rendered, including the time, skill and administrator's expense involved.

(Code 1999, § 9-23; Ord. No. O-09-00, 12-11-2000)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(4).

Sec. 82-162. Notice and hearing.

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, board of supervisors, commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the state department of game and inland fisheries, the state water control board, the state department of transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in the county. The published notice shall specify the place or places within the county where copies of the application may be examined. The costs of publication shall be paid by the applicant.

(Code 1999, § 9-25)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(6).

Sec. 82-163. Hearing procedures.

(a)

Approval of a permit application shall require the affirmative vote of three members of the five-member board.

(b)

The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.

(c)

The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the

commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall promptly notify the applicant and the commission that the application is deemed approved. For purposes of this section, the term "act" means taking a vote on the application. If the application receives less than three affirmative votes from the five-member board, the permit shall be denied.

(d)

If the board's decision is reviewed or appealed, the board shall transmit the record of its bearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under [section 82-134 144](#)

(Code 1999, § 9-26)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(7).

Sec. 82-164. Compliance guarantees; suspension or revocation of permit.

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this division, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

(Code 1999, § 9-27)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(8).

Sec. 82-165. Standards for review.

(a)

In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

(1)

The testimony of any person in support of or in opposition to the permit application;

(2)

The impact of the proposed development on the public health, safety and welfare; and

(3)

The proposed development's conformance with standards prescribed in Code of Virginia, § 28.2-1308 and guidelines promulgated pursuant to Code of Virginia, § 28.2-1301.

(b)

The board shall grant the permit if all of the following criteria are met:

(1)

The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

(2)

The proposed development conforms with the standards prescribed in Code of Virginia, § 28.2-1308 and guidelines promulgated pursuant to Code of Virginia, § 28.2-1301.

(3)

The proposed activity does not violate the purposes and intent of this division or Code of Virginia, § 28.2-1300 et seq.

(c)

If the board finds that any of the criteria listed in subsection (b) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

(Code 1999, § 9-28)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(10).

Sec. 82-166. Permits generally.

(a)

The permit shall be in writing, signed by the chairman of the board or his authorized representative, and notarized. A copy of the permit shall be transmitted to the commissioner.

(b)

No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

(c)

No permit granted by the wetlands board shall in any way affect the applicable zoning and land use ordinances of the county or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

(Code 1999, § 9-29)

State law reference— Similar provisions, Code of Virginia, § 28.2-1302(11)—(13).

Secs. 82-167—82-180. Reserved.

~~**Article V. Sand Dunes and Beaches.**~~

Article VI. Sand Dunes and Beaches (only renumbered no text changes)

Sec. 82-181. Adoption of article.

The board of supervisors, acting pursuant to Code of Virginia § 28.2-1400 et seq., adopts this article regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this article, such references shall also include beaches.

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-182. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Beach means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of storm waves), or the nearest impermeable man-made structure, such as a bulkhead, revetment, or paved road.

Coastal primary sand dune or *dune* means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (*Ammophila breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostyles* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Honckenya peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); Japanese sedge or Asiatic sand sedge (*Carex kobomugi*); Virginia pine (*Pinus virginiana*); broom sedge (*Andropogon virginicus*); and short dune grass (*Panicum amarum*). For purposes of this article, "coastal primary sand dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment, or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

Commission means the Virginia Marine Resources Commission.

Commissioner means the commissioner of marine resources.

Governmental activity means any of the services provided by the commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing, and maintaining roads; providing streetlights and sewage facilities; supplying and treating water; and constructing public buildings.

Wetlands board or board means the board created pursuant to Code of Virginia § 28.2-1303.

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-183. Authorized uses and activities.

The following uses of and activities in dunes are authorized if otherwise permitted by law:

(1)

The construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;

(2)

The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;

(3)

The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

(4)

The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;

(5)

Sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;

(6)

The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;

(7)

The normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the United States, this commonwealth or any of its counties or cities, or of any person, provided no coastal primary sand dunes are altered;

(8)

Outdoor recreational activities, provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;

(9)

The conservation and research activities of the commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;

(10)

The construction and maintenance of aids to navigation which are authorized by governmental authority;

(11)

Activities pursuant to any emergency declaration by the governing body of any local government or the governor of the commonwealth or any public health officer for the purposes of protecting the public health and safety; and

(12)

Governmental activity in coastal primary sand dunes owned or leased by the commonwealth or a political subdivision thereof.

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-184. Applications, maps, and documents are public records.

All applications, maps, and documents submitted under this article shall be open for public inspection at the office of the county director of planning

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-185. Fulfillment of responsibilities of the board.

In fulfilling its responsibilities under this article, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-186. Violations; penalties.

(a)

No person shall conduct any activity which would require a permit under this article unless such person has a permit therefore

(b)

Any person who knowingly, intentionally, negligently, or continually violates any order, rule, or regulation of the wetlands board, or violates any provision of this article, or any provision of a permit granted by the wetlands board, shall be guilty of a class 1 misdemeanor.

(c)

Upon the petition of the commission or the wetlands board to the county circuit court, when any act occurs or is threatened which is unlawful under this article, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect, and preserve the wetlands involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under subsection (b) of this section.

(Ord. No. O-08-09, 8-10-2009)

Secs. 82-187—82-200. Reserved.

Sec. 82-201. Required; application.

(a)

Any person who desires to use or alter any coastal primary sand dune within this county, other than for the purpose of conducting the activities specified in [section 82-183](#), shall first file an application directly with the wetlands board or with the commission.

(b)

The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including

further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

(c)

A nonrefundable processing fee shall as provided in Appendix a to this Code shall accompany each permit application. The fee shall be set by the board of supervisors with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under [section 82-161](#) and Code of Virginia § 28.2-1300 et seq. Under those circumstances, the fee shall be established pursuant to [section 82-161](#)

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-202. Notice and hearing.

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the department of game and inland fisheries, the state water control board, the department of transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this county. The costs of publication shall be paid by the applicant.

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-203. Hearing procedures.

(a)

Approval of a permit application shall require the affirmative vote of three members of a five-member board.

(b)

The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the

proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings, and decision of the board, and the rationale for the decision.

(c)

The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall promptly notify the applicant and the commission that the application is deemed approved.

(d)

If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under [section 82-184](#)

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-204. Compliance guarantees; suspension or revocation of permit.

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this article, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-205. Standards for review.

(a)

In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:

(1)

The testimony of any person in support of or in opposition to the permit application;

(2)

The impact of the proposed development on the public health, safety, and welfare; and

(3)

The proposed development's conformance with standards prescribed in Code of Virginia § 28.2-1408 and guidelines promulgated pursuant to Code of Virginia § 28.2-1401.

(b)

The board shall grant the permit if all of the following criteria are met:

(1)

The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

(2)

The proposed development conforms to the standards prescribed in Code of Virginia § 28.2-1408 and guidelines promulgated pursuant to Code of Virginia § 28.2-1401.

(3)

The proposed activity does not violate the purposes and intent of this article or Code of Virginia § 28.2-1400 et seq.

(c)

If the board finds that any of the criteria listed in subsection (b) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

(Ord. No. O-08-09, 8-10-2009)

Sec. 82-206. Permits generally.

(a)

The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the commissioner.

(b)

No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

(c)

No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

(Ord. No. O-08-09, 8-10-2009)

Acronyms Glossary

BMP – Best Management Practice

CDA – Contributing Drainage Area

CGP – Construction General Permit or State General Permit for Discharges from Construction Activities

VDCR – Virginia Department of Conservation and Recreation

VDEQ – Virginia Department of Environmental Quality

VESC – Virginia Erosion and Sediment Control Program

ERI – Environmental Resources Inventory

EW – Exceptional Waters as defined in the Stormwater regulations

HUC – Hydrologic Unit Code

LDP – Land Disturbance Permit

MS4 - Municipal Separate Storm Sewer System

NOAA – U.S. National Oceanic and Atmospheric Administration

NRCS – U.S. Department of Agriculture’s Natural Resources Conservation Service

PPP – Pollution Prevention Plan

SWM – Stormwater Management

VSMH – Virginia Stormwater Management Handbook

SWPPP – Stormwater Pollution Prevention Plan

TMDL – Total Maximum Daily Load

VAC – Virginia Administrative Code

VESCP – Virginia Erosion and Sediment Control Program

VESCH – Virginia Erosion and Sediment Control Handbook

VESCR – Virginia Erosion and Sediment Control Regulations

VRRM – Virginia Runoff Reduction Method

VSMR – Virginia Stormwater Management Regulations

VSMP – Virginia Stormwater Management Program

WLA – Waste Load Allocation

BE IT FURTHER ORDAINED by the New Kent County Board of Supervisors that the current APPENDIX A - FEES be amended to add the following:

STORMWATER

Item	Fees for Permit Issuance	Fees for the Modification, Transfer Or Registration Statements for General Permit for Discharges of Stormwater from Construction Activities	Permit Maintenance Fees
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$290.00	n/a	50.00
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage of less than 1 acre.	\$290.00	\$20.00	\$50.00
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 acres)	\$2,700.00	\$200.00	\$400.00
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400.00	\$250.00	\$500.00

General / Stormwater Management – Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]	\$4,500.00	\$300.00	\$650.00
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100.00	\$450.00	\$900.00
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600.00	\$700.00	\$1,400.00

(a) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with the fees set out in the fee schedule entitled “Fees for Permit Issuance.” 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 as listed in the “Fees for Permit Issuance” table.

(b) 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 table entitled “Fees for the Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities.” If the general permit modifications result in changes to stormwater management plans that require additional review by the County of New Kent, such reviews shall be subject to the fees set out in the table referenced in this paragraph. 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 the table entitled “Fees for Permit Issuance.”

(c) The annual permit maintenance shall be imposed in accordance with the table entitled “Permit Maintenance Fees,” 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 of New Kent, by the anniversary date of the 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.

(d) The fees set forth in Subsections (a) through (c) above, 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 of an Individual Permit for Discharges of Stormwater from Construction Activities.
4. Permit and permit coverage maintenance fees outlined in Appendix A "Fees" may apply to each general permit holder.

(e) No general permit application fees will be assessed to:

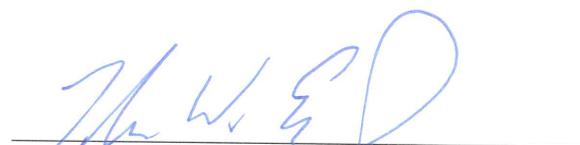
1. Permittees who request minor modifications to general permits as defined in Section 82-01. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.
2. Permittees whose general 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.

(f) 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 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The County of New Kent shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

This Ordinance to be effective July 1, 2014.



Rodney A. Hathaway
County Administrator



Thomas W. Evelyn
Chairman