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## **EROSION AND STORMWATER MANAGEMENT ORDINANCE**

Pursuant to §62.1-44.15:27 of the Code of Virginia, this ordinance is adopted as part of an initiative to integrate the Town of Warrenton stormwater management requirements with the Town of Warrenton erosion and sediment control, flood insurance, and flood plain management requirements into a consolidated erosion and stormwater management program. The erosion and stormwater management program are intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities for land-disturbing activities into a more convenient and efficient manner for both the Town of Warrenton and those responsible for compliance with these programs.

### **Section XXX Title**

The ordinance shall be known as the Erosion and Stormwater Management Ordinance of the Town of Warrenton.

### **Section XXX Authority**

This chapter is authorized pursuant to the authority and mandates of the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:27 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, and the Virginia Stormwater Program (VSMP) Permit Regulations (9VAC25-870 et seq.),

### **Section XXX Purpose**

The purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of the Town of Warrenton, protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced. The chapter establishes a local erosion and stormwater program that shall be administered in conjunction with the Town's Municipal Separate Storm Sewer System (MS4) Program.

### **Section XXX Conflicting Content with other Codes and Ordinances**

Whenever any provisions of any Commonwealth or Federal statute or other provisions impose a greater requirement, or higher standard, than is required by these regulations, the provisions of the Commonwealth or Federal statute, provision, or regulation shall govern.

### **Section XXX Virginia Erosion and Stormwater Management Program Established**

- A. Pursuant to § 62.1-44.15:27 of the Code of Virginia, the Town hereby establishes a Virginia Erosion and Stormwater Management Program for land-disturbing activities and adopts the Virginia Erosion and Stormwater Management Regulation that specify standards and specifications for VESMPs promulgated by the State Water Control Board for the purposes set out in Section XXX of this Ordinance. The Town Council hereby designates the Town Manager as the appointment authority for the Stormwater Administrator of the Virginia Erosion and Stormwater Management Program established by this Ordinance.

**Section XXX Applicability**

- A. Land-disturbing activities that meet one of the criteria below are regulated as follows:
1. Land-disturbing activity that disturbs 2,000 square feet to 10,000 square feet, less than one acre, not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et. seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation.
    - a. Single-family residences separately built and disturbing more than 2,000 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures shall not be considered exempt from the provisions of 9VAC25-875-540. These will require an “agreement in lieu of plan” for erosion and stormwater control, may require other permits such as floodplain, zoning, etc.
  2. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, and more than 10,000 square feet of impervious is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.
    - a. Land-disturbing activities of less than 2,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this ordinance if the total land-disturbing activity in the development is equal to or greater than 2,000 square feet.
  3. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.
  4. Land disturbing activities that disturb less than 10,000 square feet of land area or activities that are part of a larger common plan of development or sale that is one (1) acre or greater of disturbance, and a VESMP Permit is currently in effect for that common plan of development.
- B. Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

**Section XXX Review and approval of plans (§ 62.1-44.15:34 of the Code of Virginia); Prohibitions**

- A. The Stormwater Administrator or the Public Utilities Director/Acting Director of Public Utilities as the duly authorized agent of the Administrator shall review, approve, or disapprove an erosion control and stormwater management (ESM) plans according to the following:

1. The Administrator shall determine the completeness of a plan in accordance with this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
  2. The Administrator shall have 60 calendar days from the date of the communication of completeness to review the plan.
  3. The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
  4. During the review period, the plan shall be approved or disapproved, and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.
  5. If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.
  6. Any changes or modifications to the plans initiated by the applicant during the review process (not responses to staff comments) will reset the 60-day calendar review process as of the date of the applicant's request.
- B. Approved erosion and stormwater plans may be modified as follows:
1. Modifications to an approved erosion and/or stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
  2. The Administrator may require that an approved erosion and/or stormwater management plan be amended, within the time prescribed by the Administrator, to address any deficiencies noted during inspection.
- C. The Administrator may require changes to an approved ESM plan in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
  2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner.
- D. In order to prevent further erosion, the Administrator may require approval of an erosion control plan and stormwater management plan for any land it identifies as an erosion impact area. (§ 62.1-44.15:34)

- E. Prior to issuance of any land-disturbance approval, the Administrator may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement it finds acceptable, to ensure that it can take measures at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions it imposes as a result of his land-disturbing activity. If the Administrator takes such action upon such failure by the applicant, it may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the Administrator's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
- F. The Town may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.
- G. No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.
- H. The Town of Warrenton is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.

**Section XXX Technical Criteria for Regulated Land Disturbing Activities;  
Grandfathering; Exceptions**

- A. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, The Town of Warrenton hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9VAC25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in Subsection B of this Section.
- B. Any land-disturbing activity shall be considered grandfathered and shall be subject to Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation provided:
  - 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 Town to be equivalent thereto (i) was approved by Town prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of Article 4 of Part V of 9VAC25-875, 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 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 Town of Warrenton and shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875 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 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 technical criteria of Article 4 of Part V of 9VAC25-875 for one additional 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 Article 4 of Part V of 9VAC25-875.
- 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 (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
1. Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
  2. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

**Section XXX Land Disturbance Permit Requirements; Exemptions**

- A. Except as provided herein, no person may engage in any land-disturbing activity until a permit has been issued by the Administrator in accordance with the provisions of this ordinance and the Regulation.
- B. A person shall not conduct any land-disturbing activity in the Town of Warrenton until:
1. An application that includes a land disturbance permit application, if required, a state permit registration statement, SWPPP, an erosion control and stormwater management plan or an executed agreement in lieu of a plan has been submitted to the Administrator.
  2. The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia is submitted to the Administrator. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA; and
  3. The land disturbance permit will be issued after the site development plan is approved in its entirety in accordance with Town of Warrenton Zoning Ordinance, Section 8-7 Acceptable Tree Species, Section 8-9 Conservation of Heritage and Specimen Trees, Section 8-10 Retention and Replacement of Trees Requirements and Article 10 Site Development Plan; Town of Warrenton Subdivision Ordinance, and Chapter 840 of the Virginia and Erosion Control Regulations.
  4. All required documentation, including proof of purchase of off-site nutrients and (or) wetland credits, copies of wetland permits, and all easements, plats, bonds, or surety contracts have been submitted and approved as applicable.
- C. Should a land-disturbing activity not begin during the 180-day period following plan approval or cease for more than 180 days, the VESCP authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the VESMP authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.
- D. Once a land disturbance permit is issued, if site conditions reveal the plan is inadequate to satisfy applicable regulations or the approved plan cannot be effectively carried out, proposed amendments to the erosion control and stormwater plan will require approval by the Stormwater Administrator, and Zoning Administrator.
- E. Exemptions. Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless otherwise required by federal law:
1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
  2. Installation, maintenance, or repair of any individual service connection;

3. Installation, maintenance, or repair of any public underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
  4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
  5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
  6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq. of the Code of Virginia) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
  7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
  8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto;
  9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
  10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and
  11. Discharges to a sanitary sewer or a combined sewer system; that are not from a land-disturbing activity.
- F. Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:



1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the 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
3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

### **Section XXX Stormwater Plan Submission Requirements; Contents of Plan (9VAC25-875-510)**

- A. The requirement for development requires approval of a site plan pursuant to section XXX of the zoning ordinance or a construction/infrastructure plan pursuant to section XX of the subdivision ordinance, the erosion control and stormwater management plan shall be submitted as part of the site plan or construction/infrastructure plan application and shall be processed as part of such site plan or construction/infrastructure plan.
- B. In order to protect and conserve the land and water resources of this Town for the use and benefit of the public, measures for the adequate drainage of surface waters shall be taken and facilities provided in connection with all land development activities.
  1. Adequate drainage of surface water means the effective conveyance of storm and other surface waters through and from the onsite stormwater management facilities into a(n):
    - a. natural watercourse, i.e., a stream with incised channel (bed and banks),
    - b. drainage facility of sufficient capacity without adverse impact upon the land over which the waters are conveyed or upon the watercourse or facility into which such waters are discharged, or
    - c. adequate channel as defined in Section XXX of these regulations.
  2. The drainage system should be designed such that properties over which the surface waters are conveyed, from the development site to discharge point(s), are not subject to increased erosion or flooding.
  3. Storm sewers shall be discharged into the area least likely to erode. The following should be considered:
    - a. Generally, it is preferred to discharge at the floodplain limit into an adequate watercourse channel leading to the main stream-bed, rather than disturb the floodplain by extending the storm sewer.
    - b. If an adequate watercourse channel does not exist, the only alternative is to discharge into the main stream-bed.
    - c. In either case energy dissipating devices are required.
  4. In cases where the drainage plans of a proposed development do not satisfy the minimum requirements because necessary offsite facilities or improvements are lacking, the applicant/developer shall delay development until the necessary offsite facilities or improvements are constructed or other arrangements are made which are suitable to the Director of Public Utilities and/or Stormwater Administrator. In such event, the plans, or

- plans, if otherwise satisfactory, will be approved when the requirements of this Article are satisfied. Alternatively, the applicant/developer may choose to supply the offsite facilities that are necessary for adequate drainage.
5. If the discharge conditions are not met and the discharge may aggravate an existing drainage concern or contribute to a drainage problem, the applicant/developer must provide a drainage system satisfactory to the Director of Public Utilities and/or Stormwater Administrator. These improvements will be contained with a suitable drainage easement.
- C. A stormwater management plan shall be developed and submitted to the Administrator. The stormwater management plan shall be implemented as approved or modified by Administrator and shall be developed in accordance with the following:
1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this ordinance and Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
  2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- D. A complete stormwater management plan 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 post-development drainage areas;
    - a. The drainage system shall be designed:
      - i. to honor natural drainage divides,
      - ii. to account for both offsite and onsite surface waters,
      - iii. To convey such waters to a natural watercourse, i.e., a natural watercourse at the natural elevation, or an existing or proposed stormwater management facility, and
      - iv. To discharge the surface waters into a natural watercourse at the natural elevation, or an existing or proposed stormwater management facility, and
  2. Contact information including the name, address, telephone number, and email address 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 VESMP authority, 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
    - a. detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure;
    - b. the type of facilities;
    - c. location, including geographic coordinates;

- d. acres treated; and
  - e. the surface waters or karst features into which the facility will discharge;
6. Hydrologic and hydraulic computations to accommodate the maximum expected flow of surface waters for a given watershed, or portion thereof, for the duration an intensity of rainfall as specified in the town's Public Facilities Manual (PFM), including runoff characteristics;
  7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
  8. A map 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 planned locations of utilities, roads, and easements;
  9. If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 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 the Administrator requires payment of a fee with the stormwater management plan submission, the fee, and the required fee form in accordance with Section XXX of this ordinance must have been submitted.
- E. All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

### **Section XXX Erosion Control Plan (ESM); Contents of Plans**

- A. The requirement for development requires approval of a site plan pursuant to section XXX of the zoning ordinance or a construction/infrastructure plan pursuant to section XX of the subdivision ordinance, the erosion control and stormwater management plan shall be submitted as part of the site plan or construction/infrastructure plan application and shall be processed as part of such site plan or construction/infrastructure plan.

- B. An erosion and sediment control plan containing a narrative of the Erosion and Sediment Control measures appropriate for best management practices of the entire unit or units of land under construction as outlined in the Minimum Standards objectives in 9VAC25-840-40. The plan must make use of the practices that preserve the existing natural conditions to the maximum extent possible. The erosion and sediment control plan shall include the following:
1. Project description briefly describing the nature and purpose of the land disturbing activity and the acreage to be disturbed;
  2. Existing site conditions description of existing topography, land use, cover, and drainage patterns at the site;
  3. Adjacent area description of neighboring on-site or offsite areas such as streams, lakes, property, roads, etc. and potential impacts due to concentrated flow or runoff from land disturbing activities;
  4. Off-site disturbed areas description of proposed borrow sites, waste, surplus areas, utility extension and erosion and sediment controls to be implemented;
  5. Soils description briefly summarizing site, disturbed area, and soils including name, unit, hydrologic soils group (HSG) classification, surface runoff potential, erodibility, permeability, depth, texture, structure, erosion hazards, shrink-swell potential, limitations for use and anticipated depths to bedrock and the season water table as applicable;
  6. Critical areas on the site which may have potentially serious erosion and sediment controls problems, and special consideration required (i.e., steep slopes, hydric soils, channels, springs, sinkholes, water supply reservoirs, groundwater recharge, etc);
  7. Proposed erosion and sediment control measures inclusive to the specific erosion and sediment control plan as proposed for the land disturbing activity. Measures should be consistent with those proposed onsite drawings. Address general use, installation, limitations, sequencing and maintenance requirements for each control measure;
  8. Stabilization measures required for the site, either temporary or permanent, and during and following construction including temporary and permanent seeding, and mulching, paving, stone, soil stabilization blankets and matting, sodding, landscaping or special stabilization techniques to be utilized at the site; and
  9. Stormwater management considerations for the site, either of temporary or permanent nature, and strategies sequences and measure required for control. May reference the stormwater management plan for the site, if prepared, for permanent stormwater management facilities and control of drainage once the site is stabilized.
- C. A plan or set of plans drawn at a scale of one inch = fifty feet (1" = 50'), or larger to include:
1. Vicinity map locating the site in relation to the surrounding area. Include any major Landmarks which might assist in physical locating the site;
  2. Indicate north direction in relation to the site;
  3. Limits of clearing and grading for the site including that required for implementation of

- erosion and sediment control, stockpile areas, and utilities;
4. Disturbed area estimates in acres or square feet for the project;
  5. Existing topography or contours for the site at no more than five-foot contour intervals;
  6. Final topography contours or proposed site grading in accordance with the design plan which indicates changes to existing topography and drainage patterns at no more than two foot contour intervals (or one-foot contours where required);
  7. Existing and proposed spot elevations to supplement existing and proposed contours, topography or site grading information. Spot elevations may replace final contours in some instances, especially if terrain is in a low-lying area or relatively flat;
  8. Phasing plan required for projects sites that are to be developed in stages or phases;
  9. Existing vegetation including existing tree lines, grassed or unique vegetation areas;
  10. Existing site features including roads, buildings, homes, utilities, streams, fences, structures, and other important surface features of the site;
  11. Soil map with soil symbols, boundaries and legend in accordance with the current soil survey of Fauquier County;
  12. Environmental inventory that includes wetlands, non-tidal wetlands, hydric soils and slope steeper than twenty-five (25) percent. For wetlands, provide a copy of issued permits or satisfactory evidence that appropriate permits are being pursued for the entire project;
  13. 100-year floodplain limits or any special flood hazard areas or flood zones based on appropriate federal management agency flood insurance rate maps;
  14. Drainage areas for offsite and onsite areas, existing or proposed as applicable. Include drainage divides and directional labels for all subareas at points of interest and size (in areas), weighted runoff coefficient or curve number and times of concentration for each subareas;
  15. Critical erosion areas which require special consideration or unique erosion and sediment control measures.
  16. Development plan for the site showing all improvements such as buildings, structures, parking areas, access roadways, above and below ground utilities, stormwater management and drainage facilities, trails or sidewalks, proposed vegetation, and land scaping, amenities, etc.
  17. Location of practices proposed for erosion and sediment control, tree protection and temporary stormwater management due to land disturbance activities at the site. Use standard abbreviations, labels and symbols consistent for plan views based on minimum standards and specifications in chapter 3 of the VESCH;
  18. Offsite land disturbing areas including borrow sites, waste areas, utility etensions, etc.,

and required erosion and sediment controls. If none are anticipated for the project, then indicate on the plans by general or erosion control notes.

19. Details or alternately, appropriate reference to current minimum standards and specifications of the VESCH for each measure proposed for the project. Non-modified, standard duplicated details (silt fence, diversion dikes, etc.) may be referenced to the current version of the VESCH. Specific dimensional or modified standards (basins, traps, outlet protections, check dams, etc.) require presentation on detail sheets. Schedules or tables may be used for multiple site measures such as sediment traps, basins, channels, slope drains, etc. Any modification to standard details should be clearly defined, explained and illustrated;
  20. Maintenance plan or alternately, appropriate reference to current minimum standards and specifications of the VESCH, outlining the inspection frequency and maintenance requirements for all erosion and sediment control measures proposed for the project;
  21. Trench dewatering methods and erosion and sediment controls, if anticipated for the project;
  22. Construction sequence outlining the anticipated sequence for installation for erosion and sediment controls and site, grading, and utility work to be performed for the project by the site contractor;
  23. Professional seal and signature is required on all plans, drawings, technical reports, and specifications.
- D. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the Administrator.
- E. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner where applicable.
- F. The Administrator may waive or modify any regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance.
1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP authority shall be documented in the plan.
  2. During construction, the person responsible for implementing the approved ESC plan shall request a variance in writing from the Administrator. The Administrator shall respond in writing either approving or disapproving such a request.
  3. If variances submitted during construction are not approved within ten (10) days of receipt of the variance request, the request shall be considered disapproved.

**Section XXX Stormwater Pollution Prevention Plan (SWPPP); Contents of Plans  
(9VAC25-875-500)**

- A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection D of this section.
- B. A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the Administrator in accordance with the VESMA, this ordinance, and attendant regulations.
- C. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.
- D. In addition to the requirements of subsections A through C of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.
- E. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:
  - 1. Control stormwater volume and velocity within the site to minimize soil erosion;
  - 2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
  - 3. Minimize the amount of soil exposed during construction activity;
  - 4. Minimize the disturbance of steep slopes;
  - 5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
  - 6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;
  - 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
  - 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where

- initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and
9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
- F. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  2. Minimize 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.
- H. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):
1. Wastewater from washout of concrete, unless managed by an appropriate control;
  2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  4. Soaps or solvents used in vehicle and equipment washing.
- I. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).
- J. 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.
- K. At the discretion of the Administrator, the SWPPP may be waived for projects less than 1 acre and where the proposed new impervious area is less than 10,000 square feet.

#### **Section XXX Pollution Prevention Plan; MS4**



- A. Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to prevent the discharge of pollutants to the Town of Warrenton MS4 according to the requirements of the Town's MS4 Permit. Only the following non-stormwater discharges are authorized by Town's MS4 permit, unless the State Water Control Board or the Town determines the discharge to be a significant source of pollutants to surface waters:
1. Water line flushing; landscape irrigation; diverted stream flows; rising ground waters;
  2. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water;
  3. Discharges from potable water sources; foundation drains; air conditioning condensation; irrigation water; springs; water from crawl space pumps; footing drains;
  4. Lawn watering; individual residential car washing;
  5. Flows from riparian habitats and wetlands;
  6. Dechlorinated swimming pool discharges;
  7. Discharges or flows from firefighting;
  8. Other activities generating discharges identified by the Department as not requiring Virginia Pollutant Discharge Elimination System ("VDPES") authorization.

### **Section XXX Long-Term Maintenance of Permanent Stormwater Facilities**

- A. The operator shall submit a construction record drawing for permanent stormwater management facilities to the Administrator in accordance with 9VAC25-875-535. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the Stormwater Management Plan made during construction and serve as a permanent record of the actual location of all constructed elements.
- B. The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit or land disturbance permit issuance 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 Town of Warrenton; and
  5. Be enforceable by all appropriate governmental parties.
- C. When landscaping is a component of the stormwater management facility, a project specific maintenance schedule for the landscaping shall be provided that is reflective of the plan species that are used. The land scaping maintenance schedule shall contain guidance regarding methods, frequency, and time of year for landscape maintenance and fertilization.

### **Section XXX Easements**

- A. For the purpose of inspection and repair all drainage improvements and/or stormwater management facilities shall be located within easements that shall be maintained by the landowner, an owners or homeowner's association, or other legal entity approved by the Town Council. All access and maintenance easements shall be recorded by the applicant in the land records prior to approval of the state permit or land disturbance permit issuance. These easements shall run with the land in all transfers, assigns, assumptions, or other of title to the property.
- B. Concentrated surface waters shall not be discharged on adjoining property, unless an easement expressly authorizing such discharge has been granted by the owner of the affected land or unless the discharge is into a natural watercourse, or other appropriate discharge point as set for the above.
- C. Drainage structures shall be constructed in such a manner that they may be maintained at a reasonable cost. Drainage structures and treatment facilities designed for treatment of stormwater runoff from multiple building lots shall not be located on or within an individual building lot or lots. It shall be within a commonly owned area and shall be located to be easily accessible for maintenance purposes.
1. All drainage ways, including overland relief pathways, must be separated from buildings. No building, foundations, structures, walls, or other permanent structure may be built on or in a storm drainage system or easement. In addition, easements that shall contain open channels shall not be obstructed by fences or vegetation.
  2. If drainage easement or stormwater management improvements are found to have been constructed outside of the easement; then, the permittee will be responsible for vacating the original easement and recording a new easement, in the property location at the permittee's expense.
  3. Storm drainage easement shall not be located within 10 feet of the rear wall of any individual single-family residential structure.
- D. If offsite downstream construction and easements are necessary to obtain an adequate drainage outfall, no plans shall receive final approval until such storm drainage easements, extending to the nearest natural and well defined, adequate, stabilized watercourse, or adequate man-made drainage channel or pipe, have obtained and recorded among the land records of Fauquier County, Virginia.

**Section XXX Performance Bond (4VAC50-60-104.D and Code § 603.8(A))**

- A. Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town's Attorney, to ensure that measures could be taken by the Town of Warrenton at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the Town takes such action upon such failure by the applicant, the Town may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. The release of the bond will not occur until such time as all temporary erosion and sediment control measures have been replaced with permanent conservation measures, and the entity responsible for the long-term maintenance, spelled out in the maintenance agreement, has reviewed, accepted the facility, and until is demonstrated to the stormwater administrator and zoning administrator that the facility functions as specified.

**Section XXX Monitoring and Inspections**

- A. The Administrator or any duly authorized agent of the Administrator shall inspect the land-disturbing activity during construction for:
1. Compliance with the approved erosion and sediment control plan;
  2. Compliance with the approved stormwater management plan;
  3. Development, updating, and implementation of a pollution prevention plan; and
  4. Development and implementation of any additional control measures necessary to address a TMDL.
- B. The Administrator or any duly authorized agent of the Administrator shall conduct periodic inspections on all projects during construction:
1. Pre-construction meeting is required prior to commencement of construction and/or site work.
  2. An initial site inspection shall be made prior to the start of construction to assure that all required initial E&S measures are installed and functioning per the approved plan to protect waterways and adjacent properties from sediment deposition. Written notice will be provided to the owner, owner's representative, and RLD granting or denying permission to allow construction to commence.
  3. Conduct inspections during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds;
- C. 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 purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.

- D. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- E. Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, 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 Ordinance.
- F. Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation and of all inspection.
- G. Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the Town's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years.
  - 1. The Administrator may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established, if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.
- H. If a recorded instrument is not required pursuant to 9VAC25-875-130, 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 or his/her designee.

### **Section XXX Hearings**

- A. Any permit applicant or permittee, or person subject to the requirements of this ordinance, aggrieved by any action of the Town taken without a formal hearing, or by inaction of the Town may demand in writing a formal hearing by the **Town Board of Zoning Appeals** causing such grievance, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.
- B. The hearings held under this Section shall be conducted by the Town at a regular or special

meeting of the Board of Zoning Appeals.

- C. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board of Zoning Appeals. Depositions may be taken and read as in actions at law.
- D. The Board of Zoning Appeals or its designated member shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

### **Section XXX Appeals**

**[NOTE: The locality shall adopt an appeals procedure. This procedure should be appropriate for the erosion and stormwater management ordinance provisions and be consistent with the limitations within § 10.1-603.13 of Chapter 6 of Title 10.1 of the Code of Virginia.]**

- A. Any person aggrieved by a final case decision of the Town of Zoning Appeals in the administration, interpretation or enforcement of the Erosion and Stormwater Ordinance or any application hereunder may appeal such decision to the circuit court within 30 days of the Town of Zoning Appeal's final decision.

### **Section XXX Right of Entry**

- A. The Administrator or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this ordinance.
- B. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, the Administrator or his/her designee may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by Administrator on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

### **Section XXX Enforcement**

- A. If the Administrator determines that there is a failure to comply with the 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 2 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 a stop work 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 Article 11 of the Town Zoning Ordinance. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 5.7.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 the Town Zoning Ordinance and/or the Public Facilities Manual.
  - C. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Fauquier County by the Town of Warrenton to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
  - D. 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 Fauquier County by the Town of Warrenton to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
1. Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
    - 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 9VAC25-880-70.
2. The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  3. In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and the economic benefit to the violator from noncompliance.
  4. Any civil penalties assessed by a court as a result of a summons issued by the Administrator shall be paid into the treasury of the Town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- E. Notwithstanding any other civil or equitable remedy provided by this ordinance or by law, any person who willfully or negligently violates any provision of this ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

### **Section XXX Fees**

- A. A reasonable fee to defray the cost of plan review, including site inspections for the duration of the construction process, shall be paid to the Town. These charges shall be in accordance to the Site Plan Review fee schedule as adopted by the Town Council and relative permits such as the Land Disturbance Permit.
- B. Fees to cover costs associated with implementation of a VESMP related to land disturbing activities and issuance of general permit coverage and VESMP authority permits shall be imposed in accordance with Table 1. 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 (“total fee to be paid by applicant” column) in accordance with the disturbed acreage of their site or sites according to Table 1.

**Table 1: Fees for permit issuance**

Fee type	Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)	Department portion of “total fee to be paid by applicant” (based on 28% of total fee paid*)
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres). No registration statement required: must adhere to general permit requirements.	\$209	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$290	\$81
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	\$756
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	\$952
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	\$1,260
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	\$1,708
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	\$2,688

\* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.



- C. Fees for the modification or transfer of registration statements from the general permit issued by the department shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the Town, such reviews shall be subject to the fees set out in Table 2. 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 Table 1.

**Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities**

Type of Permit	Fee Amount
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
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 and less than 5 acres)	\$200
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)	\$250
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)	\$300
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)	\$450
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)	\$700

- D. The following annual permit maintenance shall be imposed in accordance with Table 3, 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.

**Table 3: Permit Maintenance Fees**

Type of Permit	Fee Amount
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites 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)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
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)	\$500
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)	\$650
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)	\$900
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 100 acres)	\$1,400

General permit coverage maintenance fees shall be paid annually to the Town of Warrenton, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

- E. The fees set forth in Subsections A through C of this section, shall apply to:
  - 1. All persons seeking coverage under the general permit.
  - 2. All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
  - 3. Persons whose coverage under the general permit has been revoked shall apply to the department for an Individual Permit for Discharges of Stormwater From Construction Activities.
  
- F. Permit and permit coverage maintenance fees outlined under Section 5.8 may apply to each general permit holder.

- G. No general permit application fees will be assessed to:
1. Permittees who request minor modifications to general permits as defined in Section 1.2 of this ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Program 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 Program Administrator or errors related to the acreage of the site.
- H. All incomplete payments will be deemed as nonpayments, 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 Town shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

### **Section XXX Definitions**

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise.

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

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

“Administrator” The Stormwater Administrator for the Town of Warrenton under the E&S and Stormwater Management Program.

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

"Applicant" means person submitting a soil erosion control and (or) stormwater management plan to a VESMP authority for approval in order to obtain authorization to commence a land-disturbing activity.

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

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

"Board" means the State Water Control Board.

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

"Channel" means a natural stream or manmade waterway.

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

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"Clean Water Act" or "CWA" 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.

"Clear-cutting or Clearing" means the indiscriminate removal of trees, shrubs, or undergrowth with the intention of preparing real property for nonagricultural development purposes, or any activity that removes the vegetative ground cover, including but not limited to the removal of vegetation, root mat removal, and/or topsoil removal. This definition does not include the selective removal of non-native tree and shrub species when the soil is left relatively undisturbed; removal of dead trees and shrubs; or normal mowing operations.

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

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

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

"Conservation Easement" means an easement granting a right or interest in real property that is appropriate to retaining land or water areas and their structures in their built, natural, scenic, open, or wooded conditions, for the purpose of maintaining existing land uses; for stormwater management or protection of wetlands, floodplain, soils, slopes, or critical areas; protection and enhancement of scenic views or visual corridors for the preservation of historic, architectural, cultural resources, or for the other local, environmental, cultural, historic reasons that further the objectives of the Comprehensive plan, the Zoning Ordinance, or the Town Code.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

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

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

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

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

"Department" means the Virginia 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 nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

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

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

"Discharge of a pollutant" means:

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

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

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

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

"Dormant" means denuded land that is not actively being brought to a desired grade or condition.

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

"Drainage easement" means a legal right granted by a landowner to a grantee allowing the use of private land for drainage and stormwater management purposes.

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

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

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

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

"ESC" means erosion and sediment control.

"ESM plan" means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

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

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

"Filling" means any depositing or stockpiling of 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 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 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 the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"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 the floodway designated by the Federal Emergency Management Agency.

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

"General permit" means a permit authorizing a category of discharges under the CWA and the VESMA within a geographical area.

"Grading" means any excavating or filling of earth materials or any combination thereof, including the land in its 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 Dataset unless specifically identified as another order.

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

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

"Inspection" means an on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

"Karst area" 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 may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

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

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

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means Town of Warrenton.

"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 the stormwater conveyance system that contains the base flow and small frequent storm events.

"Manmade" means constructed by man.

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

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

"MS4" means a municipal separate storm sewer system as defined in 9VAC25-870.

"MS4 service area" means: (i) for Phase I MS4 permittees, the service area delineated in accordance with the permit issued pursuant to 9VAC25-870-380 A3; and (ii) for Phase II MS4 permittees, the term as described in 9VAC25-890.

"Municipal separate storm sewer" or "MS4" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains: (1) Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters; (2) Designed or used for collecting or conveying stormwater; (3) That is not a combined sewer; and (4) That is not part of a publicly owned treatment works.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

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

"Natural stream" 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.

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

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

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

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

"Peak flow rate" 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" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

"Permittee" means the person to whom the permit is issued.

"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 the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

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

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

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

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable

for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this ordinance.

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

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

"Prior developed lands" 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-disturbing activity.

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

"Regulations" means the Virginia Erosion and Stormwater Program (VESMP) Permit Regulations, 9VAC25-870-10 et. seq., as amended.

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

"Redevelopment" means the process of developing land that is or has been previously developed by the construction of residential, commercial, industrial, institutional, recreational, transportation or utility facilities or structures.

"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" includes maximum velocity, peak flow rate, volume, and flow duration.

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

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

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

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

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

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

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

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

"Small construction activity" means:

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

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

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

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

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

"State" means the Commonwealth of Virginia.

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

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

"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.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater," for the purposes of the VESMA, 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 detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

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

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of the VESMP.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under the VESMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"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:
  - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. That are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

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

"SWM" means stormwater management.

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

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

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

"Town" means an incorporated town.

"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 vegetative ground cover, either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over when such transporting occurs.

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

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

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by the VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means Town of Warrenton approved by the department to operate the VESMP.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

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

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

"Wasteload allocation" or "wasteload" 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. Wasteload allocations are a type of water quality-based effluent limitation.

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

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

"Watershed" 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. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

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