PLANNING COMMISSION REGULAR MEETING

Tuesday, July 16, 2024 at 7:00 PM

AGENDA

CALL TO ORDER AND ESTABLISHMENT OF A QUORUM.

ADOPTION OF MINUTES.

1. Draft June 18, 2024 Regular Meeting Minutes

HEARING OF PUBLIC HEARING ITEMS.

2. ZOTA-24-2 - Zoning Ordinance Text Amendment to Remove Articles 4 and 5 to Address Changes to the Erosion and Stormwater Control Ordinance. The Town Council adopted on June 11, 2024, a new, combined Erosion and Stormwater Management Ordinance that is a separate, stand-alone document, as required by Virginia State law. As a part of the creation of the new, stand-alone Ordinance, the Zoning Ordinance must be revised to remove the out of date erosion and stormwater management regulations found in Article 4 and Article 5, as well as update several sections of the Zoning Ordinance that currently refer to Articles 4 and 5. This is a Town-initiated text amendment so as to remain in conformance with the requirements of the Code of Virginia, Section 62.1.44.15:51 Erosion and Sediment Control Law and Section 62.1-44.15:24 Stormwater Management Act, which became effective on July 1, 2024.

WORKSESSION ITEMS.

3. ZMA 2023-01 Warrenton United Methodist Church/Hero's Bridge: A Zoning Map Amendment is being proposed by Trustees of Warrenton United Methodist Church (Owners) and Hero's Bridge (Applicant) for a Residential Planned Unit Development (R-PUD) . The R-PUD is to allow for construction of 44-duplex units for age restricted affordable housing to serve veterans, walking trails, office/community center, a multi-purpose recreation center, and the existing church. The approximate 9.8640 acres is located at 341 Church Street is zoned R-10 (Residential) and RO (Residential Office). The Future Land Use Map designation is Medium Density Residential. (GPINs 6984-16-7013, 6984-15-1823, 6984-15-1930, and 6984-16-5101)

COMMENTS FROM THE COMMISSION.

COMMENTS FROM THE STAFF.

ADJOURN.

PLANNING COMMISSION REGULAR MEETING

21 Main Street

Tuesday, June 18, 2024, at 7:00 PM

MINUTES

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE TOWN OF WARRENTON, VIRGINIA, WAS HELD ON JUNE 18, 2024, at 7:00 PM

Regular Meeting

PRESENT	Mr. Ryan Stewart, Chair; Mr. Terry Lasher, Vice Chair; Ms. Darine Barbour, Secretary; Mr. James Lawrence; Ms. Denise Harris, Planning Manager; Mr. Rob Walton, Director Community Development; Tolley Gwinn, Town Attorney
ABSENT	Mr. Steve Ainsworth

The minutes laid out will be a brief recap of the agenda items. Please see recorded video for more in-depth information.

REGULAR MEETING - 7:00 PM

At 7:00 PM on Tuesday, June 18, 2024. The Planning Commission meeting was called to order by the Chair and a quorum was established.

APPROVAL OF THE MINUTES.

April 16, 2024, Regular Meeting Minutes

Vice Chair Lasher motioned to adopt the April 16, 2024, Planning Commission Regular Meeting Minutes.

Secretary Barbour seconded the motion.

Vote 4-0-1 (Ainsworth absent) to approve.

April 23, 2024, Work Session Minutes

Secretary Barbour motioned to adopt the April 23, 2024, Planning Commission Regular Meeting Minutes.

Commissioner Lawrence seconded the motion.

Vote 4-0-1 (Ainsworth absent) to approve.

PUBLIC HEARINGS.

1. SUP 2022-05 Warrenton Village Center, the Owners, Jefferson Associates LP and Warrenton Center, LLC with the Applicant, NewCastle Development Group, seek a Special Use Permit for two parcels

totaling approximately 29.05 acres to create a mixed-use development in the existing Warrenton Village Center. The proposal includes up to 320 apartments, 34 2 over 2s, and 32 townhomes with the addition of central plaza, parking garage, enhanced internal road network, and pedestrian infrastructure to promote walkability. The properties are zoned Commercial and designated in the New Town Character District of Plan Warrenton 2040. (GPINs 6985-20-7247 and 6984-29-6753)

Ms. Denise Harris, Planning Manager gave an overview of the application.

The Applicant's representative Kedrick Whitmore gave an overview of the application and highlights of the previous three work sessions.

Chair Stewart opened the Public Hearing at 7:26PM. The following citizens spoke to the application:

Rebecca Segal of 500 Hospital Dr, Warrenton VA 20186 – In favor

Charla Malone of 452 Ridge Ct, Warrenton VA 20186 - Opposed

Connor Hedges of 102 Dorset Ln , Warrenton VA 20186 - In favor

James Meizanis of 4020 University Dr, Ste 300, Fairfax VA 22030 on behalf of his client Highland School – Traffic Concerns will keep working with Applicant

Steve Wojcik of 621 Old Meetze Rd, Warrenton VA 20186 - In favor

Ernie Huetez of 7379 Leigh Rd, Warrenton VA 20186 - In favor

Sherrie Dennee 584 Broadview Ave, Warrenton VA 20186 - Opposed

Brett York 512 Electric Ave, Culpeper VA 22031- In favor

James Whitehead 253 Waterloo St, Warrenton VA 20186 - Opposed

Fred Verdi 589 Foxcroft Rd, Warrenton VA 20186 – Opposed

Geoffrey Grambo 300 Winchester St, Warrenton VA 20186 – Opposed

Roy Francis 147 Northview, Warrenton VA 20186 – Opposed

Chair Stewart closed the Public Hearing at **7:56 PM.**

Commissioner Lawrence asked the Applicant a series of questions regarding the amount of the water and sewer tap fees that will be generated; possible no left turns on Broadview Avenue; and the amending the draft Conditions of Approval to remove the word "similar" and replace with "identical" in Condition 11.C.

John Wright of Bohler Engineering stated the Applicant is not yet at full site design and therefore cannot answer the question regarding the needed size of the pipes to serve Block 1.

Kedrick Whitmore, Applicant's representative, stated the intent is to have identical units and that there is no problem revising the language in Condition 11.C.

Chair Stewart spoke to the TIA facts vs the perceived transportation impacts. The TIA finds the Level of Service impacts do not warrant additional turn lanes or signals.

Vice Chair Lasher spoke to the walkability both within the site and linkages to the surrounding neighborhoods.

Secretary Barbour spoke to the positive improvements the proposal is making for affordable dwelling units and walkability.

Chair Stewart stated the application is the right direction to meet the goals of the Town. He stated support for the Applicant to continue to work with Highland and the Town to consider no left turns on Broadview.

Commissioner Lawrence stated he appreciated the work on the affordable dwelling units and the additional efforts the Applicant made to provide more than was required.

Vice Chair Lasher stated he believes this is a good faith effort on the part of the Applicant and he thanked them for working with the community.

Commissioner Lawrence moved to adopt the resolution recommending approval of SUP 2022-05 with the conditions as amended.

The motion was seconded by Commissioner Lasher.

Ayes:	Mr. Ryan Stewart, Chair; Mr. Terry Lasher, Vice Chair; Ms. Darine Barbour, Secretary; Mr. James Lawrence
Nays:	***N/A***
Abstention:	***N/A***
Absent:	Mr. Steve Ainsworth

The motion 4-0-1 (Ainsworth absent) to approve.

WORKSESSION ITEMS.

1. ZOTA 2024 - 02 - Zoning Text Amendment to Remove Articles 4 and 5 per State Code. On June 11, 2024, the Town Council adopted Erosion and Sediment Control and Stormwater Management regulations in a standalone document based on a state model ordinance. This procedural text amendment removes Articles 4 and 5 from the Zoning Ordinance as the updated regulations are contained in the new document.

Ms. Harris briefed reviewed the Zoning Text Amendment that is needed to clean up the Zoning Ordinance per State Code and will be scheduled for public hearing at the July Planning Commission meeting.

COMMENTS FROM THE COMMISSION.

Chair Stewart reminded the group of the Juneteenth holiday and that Town Hall will be closed.

COMMENTS FROM THE STAFF.

Ms. Harris reviewed the kick off of the Zoning Ordinance update and thanked the Planning Commissioners that attended the public workshop and/or Town Council work session.

ADJOURN.

Commissioner Lawrence moved to adjourn, seconded by Vice Chair Lasher. With no further business, the Chair adjourned at **8:51 PM.**

DRAFT

I hereby certify that this is a true and exact record of actions taken by the Planning Commission of the Town of Warrenton on June 18, 2024.

_____

Darine Barbour, Secretary
Planning Commission

DRAFT

DRAFT

Office of the Town Manager
Frank Cassidy

STAFF REPORT

Warrenton Town Council
Carter Nevill, Mayor
Heather Sutphin, Ward 1
William Semple, Ward 2
Brett Hamby, Ward 3
James Hartman, Ward 4 Vice Mayor
Eric Gagnon, Ward 5
Paul Mooney, At Large
David McGuire, At Large

Planning Commission Meeting Date:	July 16, 2024
Agenda Title:	Zoning Ordinance Text Amendment to Remove Articles 4 and 5 to Address Changes to the Erosion and Stormwater Control Ordinance
Requested Action:	Hold a Public Hearing, and Recommend Approval
Department / Agency Lead:	Community Development
Staff Lead:	Heather Jenkins, Zoning Administrator

EXECUTIVE SUMMARY

Town Council adopted a new, combined Erosion and Stormwater Management Ordinance on June 11, 2024, as required by State law; this ordinance is now found in Chapter 21 of the Town Code, effective as of July 1, 2024. So as to keep the Zoning Ordinance up to date, the Ordinance must be revised to remove the current, out of date erosion and stormwater management regulations found in Article 4 and Article 5, as well as update several sections of the Ordinance that currently refer to Articles 4 and 5. Town Council initiated this text amendment on April 9, 2024; a copy of this Resolution is included with this staff report at Attachment A.

BACKGROUND

On June 23, 2023, the State Water Control Board approved and adopted the new Virginia Erosion and Stormwater Management (VESM) Regulation and approved the repeal of the Erosion and Sediment Control Regulations, Erosion and Sediment Control and Stormwater Management Certification Regulations, and VA Stormwater Management Program Regulations. This action by the Board revised §62.1-44.15:27 of the Code of Virginia to combine the Erosion and Sediment Control and Stormwater Management regulations into a single regulatory section. As a part of this change to State law, all jurisdictions that have an Erosion Control and Stormwater Management program were required to update their ordinances to reflect the new, combined regulations. A copy of the State Water Control Board *Final Action for Combined Erosion and Stormwater Control Regulations*, published December 4, 2023, is included with this staff report as Attachment B.

Town Council adopted the new, combined Erosion and Stormwater Management Ordinance on June 11, 2024 in compliance with State law, creating Chapter 21 of the Town Code of Warrenton; a copy of Town Council's approval of the new combined ordinance is included with this staff report at Attachment C. As a part of the creation of the new, stand-alone Erosion and Stormwater Management Ordinance, the Zoning Ordinance must be revised to remove the current, out of date erosion and stormwater management regulations found in Article 4 – Site Conservation Manual and Article 5 – Stormwater Management, update sections of the Zoning Ordinance that refer to Articles 4 and 5, and delete the definitions found in Article 12 as listed under *Erosion and Sediment Control* that specifically apply to Articles 4 and 5. A red-lined copy of

Articles 4 and 5, and the erosion control definitions in Article 12, are included with this staff report as Attachment D.

STAFF RECOMMENDATION

Staff requests that the Planning Commission hold a public hearing. At the conclusion of the public hearing, staff recommends that the Commission should issue a recommendation of approval to Town Council. A Resolution recommending approval of this text amendment is included with this staff report as Attachment E.

Service Level/Collaborative Impact

A new, combined Erosion and Stormwater Management Ordinance is now adopted as Chapter 21 of the Town Code. To avoid having overlapping and conflicting ordinances, the Zoning Ordinance must be updated to remove those regulations that are now part of the Town Code.

Policy Direction/Warrenton Plan 2040

Plan Warrenton 2040 seeks to preserve, enhance, and protect the environmental, scenic, and natural quality of the Town. The new Erosion and Stormwater Management Ordinance found in Chapter 21 of the Town Code ensures all construction activities are properly regulated and maintained and limits pollution and enhance water quality through proper Stormwater Management practices. It directly relates to Community Facilities Goal of: CF-4: Ensure healthy, safe, adequate water and wastewater services.

Fiscal Impact

None identified at this time.

Legal Impact

Town Code Chapter 21 – Erosion and Stormwater Management became effective on July 1, 2024.

ATTACHMENTS

- Attachment A - Resolution to Initiate Text Amendment, April 9, 2024
- Attachment B- Copy of State Water Control Board Final Action for Combined Erosion and Stormwater Control Regulations, published December 4, 2023
- Attachment C - Ordinance Adopting Town Code Chapter 21 - Erosion and Stormwater Management, June 11, 2024
- Attachment D - Red-lined Ordinances – Articles 2, 4, 5, 10, 11, 12, and the Table of Contents of the Town of Warrenton Zoning Ordinance
- Attachment E - Resolution to Recommend Approval of the Text Amendment to Town Council

Resolution

April 9, 2024
Town Council
Regular Meeting

A RESOLUTION TO INITIATE ZOTA-24-2, A ZONING ORDINANCE TEXT AMENDMENT TO ARTICLES 2, 3, 4, 5, 10, 11, 12 AND THE TABLE OF CONTENTS, TO ADDRESS THE CREATION OF A NEW STAND-ALONE EROSION AND STORMWATER CONTROL ORDINANCE

WHEREAS, Warrenton, VA (Hereinafter "the Town") is a municipal corporation located within the County of Fauquier; and

WHEREAS, the Warrenton Town Council may, by ordinance, amend, supplement, or change the regulations of the Zoning Ordinance of the Town whenever the public necessity, convenience, general welfare or good zoning practice may require such an amendment; and

WHEREAS, such an amendment may be initiated by resolution of the Town Council in accord with the procedures and requirements of Section 11-3.9 of the Zoning Ordinance; and

WHEREAS, on June 23, 2023, the State Water Control Board approved and adopted the new Virginia Erosion and Stormwater Management Regulations so as to create a new, combined Ordinance which will take effect on July 1, 2024; and

WHEREAS, the Town of Warrenton Zoning Ordinance must now be amended and revised so as to reflect the creation of this new, combined Erosion and Stormwater Control Ordinance; and

WHEREAS, these affected Zoning Ordinance sections include Article 4 *Site Conservation Manual* and Article *5 Stormwater Management*, which must be repealed in entirety; and

WHEREAS, additionally Zoning Ordinance Articles 2 *General Provisions*, 3 *Zoning Districts and Map*, 10 *Site Development Plans*, 11 *Administration*, *Procedures and Enforcement*, 12 *Definitions*, and the *Table of Contents*, must also be revised to refer to the new, combined Erosion and Stormwater Control Ordinance; and

WHEREAS, the Warrenton Town Council hereby refers this text amendment to the Planning Commission for consideration; now, therefore, be it

RESOLVED, by the Warrenton Town Council this 9th day of April 2024, that the Town Council hereby initiates a text amendment to Articles 2, 3, 4, 5, 10, 11, 12 and the Table of Contents of the Town of Warrenton Zoning Ordinance.

Votes:
Ayes:
Nays:
Absent from Vote:
Absent from Meeting:

For Information:
Community Development Director,
Town Attorney

ATTEST: _____
Town Recorder

TITLE 9. ENVIRONMENT
STATE WATER CONTROL BOARD
Chapter 875
Final

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with the ninth enactment of Chapters 68 and 758 of the 2016 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act, however the board must (i) provide a Notice of Intended Regulatory Action, (ii) form a stakeholders advisory group, (iii) provide for a 60-day public comment period prior to the board's adoption of the regulations, and (iv) provide the board with a written summary of comments received and responses to comments prior to the board's adoption of the regulations.

Titles of Regulations: **9VAC25-840. Erosion and Sediment Control Regulations (repealing 9VAC25-840-10 through 9VAC25-840-100).**

9VAC25-850. Erosion and Sediment Control and Stormwater Management Certification Regulations (repealing 9VAC25-850-10 through 9VAC25-850-90).

9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (repealing 9VAC25-870-10 through 9VAC25-870-830).

9VAC25-875. Virginia Erosion and Stormwater Management Regulation (adding 9VAC25-875-10 through 9VAC25-875-1420).

Statutory Authority: § 62.1-44.15:28 of the Code of Virginia; Chapters 68 and 758 of the 2016 Acts of Assembly.

Effective Date: July 1, 2024.

Agency Contact: Rebeccah W. Rochet, Deputy Director, Division of Water Permitting, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 801-2950, or email rebeccah.rochet@deq.virginia.gov.

Background: Chapters 68 and 758 of the 2016 Acts of Assembly combine the existing Virginia Stormwater Management Act and Virginia Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act. The legislation directs the State Water Control Board to permit, regulate, and control both erosion and stormwater runoff for this legislation to become effective. In promulgating the regulation to trigger the effectiveness of the legislation, the board was required to (i) provide a Notice of Intended Regulatory Action, (ii) form a stakeholders advisory group, (iii) provide for a 60-day public comment period prior to the board's adoption of the regulations, and (iv) provide a written summary of comments received and responses to comments prior to adopting of the regulation.

Summary:

Pursuant to Chapters 68 and 758 of the 2016 Acts of Assembly, this regulatory action consolidates 9VAC25-840 (Erosion and Sediment Control Regulations), 9VAC25-850 (Erosion and Sediment Control and Stormwater Certification Regulations), and 9VAC25-870 (Virginia Stormwater Management Program Regulations) into a single regulatory chapter, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). Through consolidating these three chapters, the new regulation (i) clarifies program requirements, (ii) eliminates redundancies, and (iii) corrects inconsistencies between erosion and sediment control regulations and stormwater management program regulations. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action.

Chapter 875

Virginia Erosion and Stormwater Management Regulation

Part I

Definitions and Applicability for Virginia Erosion and Stormwater Management Programs and Virginia Erosion and Sediment Control Programs

9VAC25-875-10. General.

For the purpose of applying this chapter, the words and terms shall have the meanings given to them in 9VAC25-875-20. The words and terms defined in Part II (9VAC25-875-40 et seq.), Part III (9VAC25-875-210 et seq.), Article 4 (9VAC25-875-670 et seq.) of Part V (9VAC25-875-470 et seq.), and Part VII (9VAC25-875-850 et seq.) of this chapter are applicable only to the part in which they are defined.

9VAC25-875-20. Definitions.

"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, neither overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Agreement in lieu of a plan" means a contract between the VESMP authority or the department acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of VESMA 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 5.0%; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the department acting as a VSMP authority in lieu of a stormwater management plan.

"Applicant" means a person submitting a soil erosion control and stormwater management plan to a VESMP authority, or a stormwater management plan to the department when it is serving as a VSMP 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. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"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.

"Certification" means the designation issued by the department, on behalf of the Commonwealth, to individuals who have completed department-approved training programs and met any additional eligibility requirements or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of 9VAC25-875-410 related to the specified classifications (9VAC25-875-400) within the separate subject areas of ESC or SWM or both.

"Certified inspector" means an employee or agent of a VESCP, VESMP, or VSMP authority who (i) holds a certification from the department in the area of project inspection or (ii) is enrolled in the department's training program for project inspection and successfully completes such program within one year after enrollment.

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

"Certified program administrator" means an employee or agent of a VESCP, VESMP, or VSMP authority who holds a certification from the department in the classification of program administrator.

"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).

"Classification" means the four specific certification designations assigned to the roles of program administrator, plan reviewer, inspector, and combined administrator within the areas of ESC, SWM, or both ESC and SWM for a dual classification.

"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.

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

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

reviewer, and inspector of a VSMP authority or the SWM component of a VESMP authority.

"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.

"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.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-875-1120 and 9VAC25-875-1130.

"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 chapter, 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 Department of Environmental Quality.

"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.

"Director" means the Director of the Department of Environmental Quality or the director's designee.

"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 that 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.

"Dual combined administrator for ESC and SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VESMP authority.

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

"Environmental Protection Agency" or "EPA" means the U.S. 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 and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program" or “ESCL” means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"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

"ESC" means erosion and sediment control.

"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.

"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.

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

"Inspector" means the individual who, as a representative of a VESCP authority, a VESMP authority, or a VSMP authority, is responsible for periodically examining the ESC, SWM, or both ESC and SWM activities and premises of a land-disturbing activity for compliance with the ESCL VESMA, and associated regulations as may be applicable.

"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 (i) a VESMP or VSMP authority after the requirements of § 62.1-44.15:34 of the Code of Virginia have been met or (ii) a VESCP authority after the requirements of § 62.1-44.15:55 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 a county, city, or town.

"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.

modification as defined in this chapter.

"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, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-875-1240. "Minor modification" for the purposes of this chapter also means other 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.

"Municipal separate storm sewer system" or "MS4" means the same as the term "municipal separate storm sewer" is defined in § 62.1-44.3 of the Code of Virginia.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a MS4 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 VESMA and its 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, for example, riprap, concrete, or plastic, 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 chapter. 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., the person is authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from an MS4, "operator" means the operator of the regulated MS4 system.

"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 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 or MS4.

"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.

"Plan reviewer" means anyone who is responsible for reviewing and evaluating ESC, SWM, or ESM plans and supporting documents for approval by a VESCP authority in the area of ESC, a VSMP authority in the area of SWM, or a VESMP authority in the areas of both ESC and SWM.

"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.

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 (i) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (a) 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 that by itself is not sufficient to cause pollution, but that, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) 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 chapter.

"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 VESCP, VESMP, or VSMP authority. Where phased development or plan approval occurs (e.g., preliminary grading, demolition of existing structures, or roads and utilities), 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.

"Program administrator" means the individual responsible for administering and enforcing the program of a VESCP authority in the area of ESC, the program of a VSMP authority in the area of SWM, or the program of a VESMP authority in the areas of both ESC and SWM.

"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.

"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. 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 or permit as defined in this chapter as a prerequisite for engaging in land disturbance.

"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" means 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.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

"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 that is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" or "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 U.S. 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

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," "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 chapter.

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

"State project" means any land development project that is undertaken by any state agency, board, commission, authority, or any branch of state government, including state-supported institutions of higher learning.

"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 system" includes 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 a VESMP or VSMP.

"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 a VESMP or VSMP 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.

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 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.

"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.

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one permit cycle.

"Town" means an incorporated town.

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

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality that is approved by the department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Only a locality for which the department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq. of the Code of Virginia). A locality that has chosen not to establish a VESMP pursuant to subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia is required to become a VESCP authority in accordance with the ESCL.

"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 a 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 the department or a locality approved by the department to operate a VESMP. For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the department shall serve as the VESMP authority.

"Virginia Pollutant Discharge Elimination System 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.

~~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.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the department pursuant to § 62.1-44.15:27.1 of the Code of Virginia on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the department when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia, has chosen not to adopt and administer a VESMP.

"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.

9VAC25-875-30. Applicability of incorporated by references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, 2022, update.

Part II

Virginia Erosion and Stormwater Management Program

Article 1

Definitions, Purpose, and Applicability

9VAC25-875-40. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

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

"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.

9VAC25-875-50. Purpose.

The purpose of this part is to provide the framework for the administration, implementation, and enforcement of the VESMA. This part delineates the roles and responsibilities associated with a locality's VESMP and the department's VSMP. This part also establishes the department's procedures for approving the administration of a VESMP authority and includes the department's oversight authority over a VESMP.

9VAC25-875-60. Applicability.

This part is applicable to:

1. Any local government that administers a VESMP;

2. The department that administers a VESMP and VSMP; and

3. The department in its administrative oversight of VESMPs.

Article 2

Land-Disturbing Activities

9VAC25-875-70. Regulated land-disturbing activities.

1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for single-family detached residential structures, Article 2 of Part V and water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.

3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 and Article 3 of Part V unless Article 4 of Part V of this chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 and Article 3 of Part V unless Article 4 of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-80. Land-disturbing activities in a Chesapeake Bay Preservation Area.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with land-disturbing activities in a Chesapeake Bay Preservation Area that are equal to or greater than 2,500 square feet but less than one acre in accordance with the following:

1. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) but shall be subject to the technical criteria and program and administrative requirements set out in 9VAC25-875-740.

2. A local land disturbance approval, as applicable, shall be provided for the land-disturbing activity.

3. The locality shall regulate such land-disturbing activities in compliance with the:

a. Program requirements in 9VAC25-875-100;

b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;

c. Long-term stormwater management facility requirements of 9VAC25-875-130;

d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3 and A 4 of 9VAC25-875-140;

e. Enforcement components of 9VAC25-875-150;

f. Hearing procedures in effect in the locality;

g. Exception conditions of 9VAC25-875-170, excluding subsection A of 9VAC25-875-170, which is not applicable; and

h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception of subdivision B 3 of 9VAC25-875-180.

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as specified in 9VAC25-875-1400.

9VAC25-875-90. Activities not required to comply with the VESMA.

A. Notwithstanding any other provisions of the VESMA, the following activities are not required to comply with the requirements of the VESMA 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 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;

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 Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of 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 Virginia Marine Resources Commission, or the U.S. 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 VESMP or VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of 9VAC25-875-530 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.

B. Notwithstanding any other provision of the VESMA, 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.

Article 3

Programs Operated by a VESMP Authority

9VAC25-875-100. Criteria for programs operated by a VESMP authority.

A. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and that shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with the VESMA;

2. Requirements for land-disturbance approvals;

3. Requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;

4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § 62.1-44.15:28 of the Code of Virginia, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;

5. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of land-disturbance approvals, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

B. A VESMP authority may enter into agreements or contracts with the department, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections.

C. A VESMP authority shall obtain evidence of permit coverage from the department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

conditions of its land-disturbance approval and plan specifications.

E. A locality serving as a VESMP authority is authorized to adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the board's minimum regulations when adopted in accordance with § 62.1-44.15:33 of the Code of Virginia.

F. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.

G. A VESMP authority may require, excluding state agencies and federal entities, the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § 62.1-44.15:34 of the Code of Virginia.

H. A VESMP authority shall have provisions for collection, distribution to the state if required, and expenditure of permit fees.

I. Notice of termination of general permit coverage.

1. A VESMP authority shall recommend that the department terminate coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.

2. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VESMP authority of a complete notice of termination from the operator of the construction activity.

3. If a VESMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VESMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

9VAC25-875-110. Plan review requirements.

A. A VESMP authority shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.

B. Section 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-530 state that a person shall not conduct any land-disturbing activity until (i) that person has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required; and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, 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 shall be submitted to the VESMP authority. Any VESMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan; however, if a violation occurs during the land-disturbing activity, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber Certificate as provided by § 62.1-14:30 of the Code of Virginia. 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.

C. A VESMP authority shall approve or disapprove an ESM plan according to the following:

1. A VESMP authority shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined to be complete.

2. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial.

3. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

4. The VESMP authority shall act on the resubmitted application within 45 days after receipt including determination of completeness within the first 15 days.

D. Prior to issuance of any land-disturbance approval, the VESMP authority 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 acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should the applicant fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of the applicant's land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority 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 VESMP authority'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.

E. The VESMP authority 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.

management plan for any land identified as an erosion impact area by the VESMP authority.

G. A VESMP authority 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.

H. No VESMP authority may grant an exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements 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.

I. A VESMP authority 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.

9VAC25-875-120. Plan review coordination with the department.

A. A VESCP authority that chooses to become a VESMP authority may opt to coordinate the plan review component of its program with the department through an executed agreement pursuant to § 62.1-44.15:27 B 2 of the Code of Virginia. The department may recover the cost of the plan review service from the VESMP authority.

B. A VESMP authority implementing its program in coordination with the department pursuant to § 62.1-44.15:27 B 2 of the Code of Virginia shall determine the completeness of any application within 15 days after receipt, and shall:

1. Act on any application within 60 days after it has been determined by the VESMP authority to be complete;

2. Forward a soil erosion control and stormwater management plan to the department for review within five days of receipt. If the plan is incomplete, the department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the department shall review the plan for compliance with the water quality and water quantity technical criteria and provide the department's recommendation to the VESMP authority; and

3. Either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after the application has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

C. The VESMP authority also shall forward to the department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The department shall review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

9VAC25-875-130. Long-term maintenance of stormwater management facilities.

A. As required in 9VAC25-875-535, the operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP authority. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, stating that to the best of the professional's 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 provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality or quantity of runoff is required. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit termination or earlier as required by the authority and shall at a minimum:

1. Be submitted to the authority 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 VESCP, VESMP, or VSMP authority; and

5. Be enforceable by all appropriate governmental parties.

C. At the discretion of the VESMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which such facilities are located, provided it is demonstrated to the satisfaction of the authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the authority.

9VAC25-875-140. Inspections.

A. The VESMP authority 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;

4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The VESMP authority shall conduct periodic inspections on all projects during construction. The VESMP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or

2. Establish an alternative inspection program that ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:

a. Approved by the department prior to implementation;

b. Established in writing;

c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and

d. Documented by inspection records.

C. The VESMP authority shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the department;

2. Ensure that each stormwater management facility is inspected by the VESMP authority or the VESMP authority's designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and

3. Be documented by records.

D. The VESMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the code of Virginia; 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.

E. If a recorded instrument is not required pursuant to 9VAC25-875-130, a VESMP authority 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 VESMP authority.

9VAC25-875-150. Enforcement.

A. A locality's VESMP authority shall incorporate components from subdivisions 1 and 2 of this subsection into its ordinance.

1. Informal and formal administrative enforcement procedures may include:

a. Right of entry in accordance with § 62.1-44.15:39 of the Code of Virginia.

b. Verbal warnings and inspection reports;

c. Notices of corrective action;

d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;

e. Stop work orders in accordance with § 62.1-44.15:37 of the Code of Virginia;

f. Special orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia;

g. Consent orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia; and

h. Public notice and comment periods.

2. Civil and criminal judicial enforcement procedures may include:

a. Schedule of civil penalties in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code of Virginia;

b. Criminal penalties in accordance with § 62.1-44.15:48 of the Code of Virginia; and

c. Injunctions in accordance with § 62.1-44.15:48 of the Code of Virginia.

B. A locality's VESMP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the VESMA and attendant regulations and local ordinances.

C. Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal separate storm sewer system management program that is consistent with this chapter and that contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil penalty

the Code of Virginia, the civil charges as authorized in § 62.1-44.15:25.1 of the Code of Virginia, and the criminal provisions in § 62.1-44.32 of the Code of Virginia, to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction in accordance with § 62.1-44.15:49 of the Code of Virginia.

D. Penalties imposed in accordance with § 62.1-44.15:48 of the Code of Virginia may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.

E. Pursuant to subsection L of § 62.1-44.15:27 of the Code of Virginia, authorization to administer a VESMP program shall not remove from the department the authority to enforce the provisions of the VESMA and attendant regulations.

F. The department may terminate permit coverage during its term and require application for an individual permit or deny a permit renewal application for failure to comply with permit conditions or on its own initiative in accordance with the VESMA and this chapter.

G. Pursuant to § 62.1-44.15:48 of the Code of Virginia, civil penalties recovered by a locality's VESMP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects.

9VAC25-875-160. Hearings.

Any permit applicant, permittee, or person subject to permit requirements under the VESMA aggrieved by any action of the department taken without a formal hearing may demand in writing a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do so in a manner consistent with local hearing procedures. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this chapter.

9VAC25-875-170. Variances and exceptions.

A. A VESMP authority may grant variances to waive or modify any of the erosion and sediment control requirements of Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter that are deemed inappropriate or too restrictive for site conditions may be requested from the VESMP authority under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the authority shall be documented in the plan.

2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the authority. The authority shall respond in writing either approving or disapproving such a request. If the authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

B. A VESMP authority may grant exceptions to the provisions of Article 3 (9VAC25-875-570 et seq.) of Part V of this chapter. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the VESMA and this chapter 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.

C. Economic hardship alone is not a sufficient reason to grant an exception from the requirements of this chapter.

D. Under no circumstance shall the authority (i) grant an exception to the requirement that the land-disturbing activity obtain required permits, or (ii) approve the use of a BMP not found through the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter.

E. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 9VAC25-875-610 have been considered and found not available.

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

9VAC25-875-180. Reports and recordkeeping.

A. On a fiscal year basis (July 1 to June 30), a VESMP authority shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information, not previously reported to the department through other reporting requirements, on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;

2. A listing of each land-disturbing activity for which a plan has been approved by the VESMP authority;

3. Number and type of enforcement actions during the fiscal year; and

B. A VESMP authority shall keep records in accordance with the following:

1. Project records, including approved soil erosion control and stormwater management plans, shall be kept for three years after permit termination or project completion;

2. Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection;

3. Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed; and

4. All registration statements submitted in accordance with 9VAC25-875-530 shall be documented and retained for at least three years from the date of project completion or permit termination.

Article 4

Authorization and Review Procedures for VESMPs

9VAC25-875-190. Review and evaluation of VESMPs.

A. The department shall review each approved VESMP at least once every five years on a review schedule approved by the department. The department may review a VESMP on a more frequent basis if deemed necessary and shall notify the VESMP authority if such review is scheduled.

B. The review of an approved VESMP shall consist of the following:

1. Consultation with the VESMP administrator or designee;

2. A review of the local ordinances and other applicable documents;

3. A review of a subset of the plans approved by the VESMP authority for consistency of application, including exceptions granted and calculations or other documentation that demonstrates that all erosion and sediment control minimum standards are met and required nutrient reductions are achieved using appropriate onsite and offsite compliance options;

4. Inspections of regulated activities; and

5. A review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.

C. The department shall coordinate the once per five year review with the department's other program reviews for the same entity to avoid redundancy.

D. The department shall determine if the VESMP and ordinances where applicable are consistent with the VESMA and this chapter and notify the VESMP authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the department and the judicial review thereof.

E. If the department determines that the deficiencies noted in the review will cause the VESMP to be out of compliance with the VESMA and attendant regulations, the department shall notify the VESMP authority concerning the deficiencies and provide a reasonable period of time in accordance with subdivision 19 of § 62.1-44.15 of the Code of Virginia for corrective action to be taken. If the VESMP authority agrees to the corrective action approved by the department, the VESMP will be considered to be conditionally compliant with the VESMA and attendant regulations until a subsequent finding of compliance is issued by the department. If the VESMP authority fails to implement the necessary compliance actions identified by the department within the specified time, the department may take action pursuant to subdivision 19 of § 62.1-44.15 of the Code of Virginia.

Article 5

VSMP Operated by the Department

9VAC25-875-200. Criteria for a VSMP.

A. The department shall administer a VSMP on behalf of any locality that notifies the department that the locality has chosen to not administer a VESMP as provided by § 62.1-44.15:27 B 3 of the Code of Virginia.

B. Per § 62.1-44.15:27.1 B of the Code of Virginia, the department shall administer a VSMP consistent with the stormwater management requirements defined for a VESMP.

C. The department shall review and approve stormwater management plans by the schedule defined in 9VAC25-875-110, except for activities not required to comply with the requirements of the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-90.

D. The director or the director's designee may perform any act of the department provided under the VESMA and this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

Part III

Virginia Erosion and Sediment Control Program

Article 1

9VAC25-875-210. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Act" means the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in 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 5.0%; this contract may be executed by the VESCP authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

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

"Land disturbance" or "land-disturbing activity" means any manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Owner" means the same as provided in § 62.1-44.3 of the Code of Virginia. For a land-disturbing activity that is regulated under the ESCL, "owner" also includes the owner 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.

9VAC25-875-220. Purpose.

The purpose of this part is to provide the framework for the administration, implementation, and enforcement of the Virginia Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL). This part delineates the roles associated with a VESCP. This part also establishes the department's procedures for approving the administration of a VESCP authority and includes the department's oversight authority over a VESCP.

9VAC25-875-230. Applicability.

This part is applicable to:

1. Any local government that administers a VESCP;

2. The department that administers a VESCP; and

3. The department in its administrative oversight of VESCPs.

Article 2

Land-Disturbing Activities

9VAC25-875-240. Criteria for determining status of land-disturbing activity.

A. The program administrator shall determine the validity of a claim of exempt status by a property owner who disturbs 10,000 square feet or more or 2,500 square feet or more in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830). As soon as a nonexempt status is determined, the requirements of the ESCL shall be immediately enforced.

B. Should a land-disturbing activity not begin during the 180-day period following approval of the erosion and sediment control plan 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 VESCP 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.

C. Shoreline erosion control projects are not subject to Part V (9VAC25-875-470 et seq.) of this chapter. However, land-disturbing activity immediately outside the limits of the shoreline erosion project is subject to the ESCL and Part V of this chapter.

D. Whenever land-disturbing activity involves activity at a separate location, including borrow and disposal areas, the VESCP authority may either:

1. Consider the offsite activity as being part of the proposed land-disturbing activity; or

2. If the offsite activity is already covered by an approved erosion and sediment control plan, the VESCP authority may require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with the ESCL and Part V of this chapter.

9VAC25-875-250. Regulated land-disturbing activities.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 of Part V of this chapter.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-260. Land-disturbing activities in Chesapeake Bay Preservation Areas.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with land-disturbing activities in a Chesapeake Bay Preservation Area equal to or greater than 2,500 square feet but less than one acre in accordance with the following:

1. The technical criteria and program and administrative requirements set out in 9VAC25-875-740;

2. A local land disturbance approval, as applicable, shall be provided for the land-disturbing activity;

3. The locality shall regulate such land-disturbing activities in compliance with the:

a. Program requirements in 9VAC25-875-100;

b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;

c. Long-term stormwater management facility requirements of 9VAC25-875-130;

d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3 and A 4 of 9VAC25-875-140;

e. Enforcement components of 9VAC25-875-150;

f. Hearing procedures in effect in the locality;

g. Exception conditions of 9VAC25-875-170, excluding subsection A of 9VAC25-875-170, which is not applicable; and

h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception of subdivision B 3 of 9VAC25-875-180.

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as specified in 9VAC25-875-1400.

9VAC25-875-270. State agency land-disturbing activities.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has either (i) submitted standards and specifications for its conduct of land-disturbing activities that has been reviewed and approved by the department as being consistent with the ESCL and attendant regulations, or (ii) an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the ESCL and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The department may also pursue enforcement as provided by § 62.1-44.15:63 of the Code of Virginia.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-875-280. Activities not required to comply with the ESCL.

Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

3. Installation, maintenance, or repair of any individual service connection;

4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

5. 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;

6. Permitted surface or deep mining operations and projects or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;

7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; 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 Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;

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 VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Article 3

Programs Operated by a VESCP Authority

9VAC25-875-290. Criteria for programs operated by a VESCP authority.

A. At a minimum, a VESCP shall provide that (i) an erosion and sediment control plan shall be reviewed and approved by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person pursuant to § 62.1-44.15:53 of the Code of Virginia. The requirements for each position identified in this subsection are specified in Part IV (9VAC25-875-380 et seq.) of this chapter.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this chapter, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on units of land as well as for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

C. The VESCP operated by a county, city, or town shall include provisions for the coordination of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs pursuant to § 62-1.44-15:54 of the Code of Virginia.

D. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

E. Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) a farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than 5.0%, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority pursuant to § 62-1.44-15:55 A of the Code of Virginia. For a single-family detached residential structure with less than one acre of land disturbance, an agreement in lieu of a plan may be used when either (a) it is located within a common plan of development or sale with an approved stormwater pollution prevention plan consistent with 9VAC25-875-500 and a permit, if required; or (b) the single-family detached residential is located outside of a common plan of development or sale.

F. A VESCP authority may adopt more stringent soil erosion and sediment control ordinances pursuant to § 62.1-44.15:65 of the Code of Virginia.

G. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services

9VAC25-875-300. Plan review requirements.

A. The VESCP authority shall review erosion and sediment control plans that detail the criteria, techniques, and methods as defined in 9VAC25-875-550 for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.

B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.

C. When the VESCP authority determines a plan is inadequate, written notice stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that are necessary for approval of the plan. If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment control plan that has been previously deemed inadequate within 45 days after receipt of a revised plan if deemed adequate.

D. For sites requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such coverage prior to approving the erosion and sediment control plan.

E. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority who will be in charge of and responsible for carrying out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:55 of the Code of Virginia.

F. The VESCP authority may require approval of an erosion and sediment control plan for any land identified as an erosion impact area in accordance with § 62.1-44.15.55 of the Code of Virginia.

G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.

9VAC25-875-310. Plan review coordination with the department for solar projects.

A. Any VESCP authority that does not operate a regulated municipal separate storm sewer system and for which the department did not administer a Virginia Stormwater Management Program as of July 1, 2020, shall notify the department if it decides to have the department provide the VESCP authority with (i) review of the erosion and sediment control plan required by § 62.1-44.15:55 A of the Code of Virginia and (ii) a recommendation on the plan's compliance with the requirements of Part V (9VAC25-875-470 et seq.) of this chapter for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.

B. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the erosion and sediment control plan forward the plan to the department for review. If the plan forwarded to the department is incomplete, the department shall return the plan to the VESCP authority immediately, and the application process shall start over. If the plan forwarded to the department is complete, the department shall review the plan for compliance with the requirements of Part V of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.

C. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the resubmittal of a previously disapproved erosion and sediment control plan forward the resubmitted plan to the department for review. The department shall review the resubmitted plan for compliance with the requirements of Part V of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.

9VAC25-875-320. Long-term maintenance of stormwater management facilities.

A. A recorded instrument shall be submitted to the VESCP authority in accordance with 9VAC25-875-535.

B. The department shall enforce permits and require compliance with its applicable regulations, including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance with § 62.1-44.15:27 of the Code of Virginia.

9VAC25-875-330. Inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § 62.1-44.15:52 of the Code of Virginia, will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reporting from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan.

B. Periodic inspections by the VESCP authority are required on all projects. The VESCP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or

inspection program shall be:

a. Approved by the department prior to implementation;

b. Established in writing;

c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and

d. Documented by inspection records.

9VAC25-875-340. Enforcement.

A. Each VESCP authority shall incorporate components from subdivisions 1 and 2 of this subsection.

1. Informal and formal administrative enforcement procedures may include:

a. Right of entry in accordance § 62.1-44.15:60 of the Code of Virginia.

b. Verbal warnings and inspection reports;

c. Notices of corrective action;

d. Notices to comply in accordance with § 62.1-44.15:58 of the Code of Virginia;

e. Consent special orders and civil charges in accordance § 62.1-44.15:63 of the Code of Virginia;

f. Stop work orders in accordance with of § 62.1-44.15:58 of the Code of Virginia; and

g. Public notice and comment periods for proposed settlements and consent special orders.

2. Civil and judicial enforcement procedures may include:

a. Schedule of civil penalties in accordance with §§ 62.1-44.15:54 and 62.1-44.15:63 of the Code of Virginia; and

b. Injunctions in accordance §§ 62.1-44.15:58 and 62.1-44.15:63 of the Code of Virginia.

B. Each VESCP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the ESCL and attendant regulations and local ordinances.

C. Penalties imposed in accordance with §§ 62.1-44.15:54 and 62.1-44.15:63 of the Code of Virginia may reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.

D. Pursuant to § 62.1-44.15:25 of the Code of Virginia, authorization to administer a VESCP program shall not remove from the department the authority to enforce the provisions of the ESCL and attendant regulations.

E. The department may terminate permit coverage during the permit's term and require application for an individual permit or deny a permit renewal application for failure to comply with permit conditions or on the department's own initiative in accordance with the ESCL and this chapter.

F. Pursuant to § 62.1-44.15:63 A of the Code of Virginia, civil penalties recovered by a VESCP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects.

9VAC25-875-350. Variances.

A variance to waive or modify any of the erosion and sediment control requirements of Article 2 (9VAC25-874-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter that are deemed inappropriate or too restrictive for site conditions may be requested from the VESCP authority under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the authority shall be documented in the plan; or

2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the authority. The authority shall respond in writing either approving or disapproving such a request. If the authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

9VAC25-875-360. VESCP reporting and record keeping requirements.

Each VESCP authority shall report to the department, at least monthly, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the ESCL and this part.

Article 4

Review Procedures for VESCPs

A. This section sets forth the criteria that will be used by the department to determine whether a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies minimum standards of effectiveness, as follows.

Each VESCP must contain an ordinance or other appropriate document adopted by the VESCP authority. Such document must be consistent with the ESCL and Part III (9VAC25-875-210 et seq.) of this chapter, including the following criteria:

1. The document shall include or reference the definition of land-disturbing activity, including exemptions as well as any other significant terms, as necessary to produce an effective VESCP;

2. The document shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the ESCL and Part III of this chapter and must include the requirements and design standards to be used in the program;

3. The document shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either onsite or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity;

4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs; and

5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. The department shall periodically conduct a comprehensive review and evaluation of each VESCP authority pursuant to subdivision (19) of § 62.1-44.15 of the Code of Virginia. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i) consultation with the local program administrator or designee; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial VESCP compliance review.

C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness in carrying out the ESCL and Part III of this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Article 5 (§ 62.1-44.20 et seq.) of Chapter 3.1 of Title 62.1 if the Code of Virginia shall govern the review activities and proceedings of the department and the judicial review thereof. In lieu of issuing a special order or revoking the program, the department is authorized to take legal action against a VESCP authority to ensure compliance.

E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by the department in accordance with subdivision (19) of § 62.1-44.15 of the Code of Virginia.

Part IV

Certification of VESCP, VSMP, and VESMP Personnel

9VAC25-875-380. Purpose.

The purpose of this part is to guide the issuance of certifications required by §§ 62.1-44.15:52 E and 62.1-44.15:53 of the Code of Virginia (ESCL) and § 62.1-44.15:30 of the Code of Virginia (VESMA).

9VAC25-875-390. Applicability.

This part is applicable to:

1. Every VESCP authority, VESMP authority, or VSMP authority that administers a VESCP, VESMP, or VSMP as may be applicable. Staff of a VESCP authority must be certified in accordance with §§ 62.1-44.15:52 E and 62.1-44.15:53 of the ESCL. Staff of a VESMP authority or VSMP authority must be certified in accordance with § 62.1-44.15:30 of the VESMA.

2. Anyone who is contracted by a VESCP authority, a VESMP authority, or a VSMP authority to perform any or all of the functions of that authority as may be applicable. This person will be subject to the same certification requirements as the authority.

3. Any state agency, federal entity, or public or private entity authorized under § 62.1-44.15:31 of the Code of Virginia to implement approved standards and specifications. Personnel implementing approved standards and specifications pursuant to subsection D.5 of § 62.1-44.15:31 of the

§ 44.15:30 of the Code of Virginia.

4. Anyone voluntarily seeking certifications or certificates from the department for classifications described in 9VAC25-875-400.

9VAC25-875-400. Certificates and certifications.

A. Certifications shall be issued by the department to individuals who successfully complete the department-approved training program, which includes obtaining a passing score on the applicable certification examination or otherwise fulfilling the requirements of 9VAC25-875-410 for the following classifications:

1. Program administrator for ESC. This classification applies to individuals who administer the program in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a program administrator for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual program administrator certification.

2. Inspector for ESC. This classification applies to individuals who perform inspections of land-disturbing activities in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed as an inspector for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual inspector certification.

3. Plan reviewer for ESC. This classification applies to individuals who review plans in the area of ESC for approval by a VESCP or VESMP authority pursuant to this chapter. This certification is a requirement for any individual employed as a plan reviewer for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual plan reviewer certification.

4. Combined administrator for ESC. This classification applies to individuals who perform the combined duties of Program Administrator, Inspector, and Plan Reviewer in the area of ESC pursuant to this chapter. This certification is a requirement for any individual employed as a combined administrator for ESC by a VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This certification also serves as the ESC component required for the dual combined administrator certification.

5. Program administrator for SWM. This classification applies to individuals who administer the program in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a program administrator for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual program certification.

6. Inspector for SWM. This classification applies to individuals who conduct inspections in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of an inspector for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual inspector certification.

7. Plan reviewer for SWM. This classification applies to individuals who review plans in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a plan reviewer for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual plan reviewer certification.

8. Combined administrator for SWM. This classification applies to individuals who perform the combined duties of program administrator, inspector, and plan reviewer in the area of SWM pursuant to this chapter. This certification is a requirement for any individual employed to perform the duties of a combined administrator for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority. This certification also serves as the SWM component required for the dual combined administrator certification.

9. Dual program administrator. This classification applies to individuals who administer the program in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual program administrator for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

10. Dual inspector. This classification applies to individuals who conduct inspections in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual inspector for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

11. Dual plan reviewer. This classification applies to individuals who review plans in the areas of ESC and SWM for approval by a VESMP authority pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual plan reviewer for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

12. Dual combined administrator. This classification applies to individuals who perform the combined duties of program administrator, inspector, and plan reviewer in the areas of ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any individual employed as a dual combined administrator for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

B. The classifications in subdivisions A 1 through A 8 of this section may be used to serve as the ESC or SWM components required for personnel implementing department-approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant regulations.

C. A certificate shall be issued by the department for the responsible land disturber.

Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for ESC and will not require a certification from the department. In lieu of an individual holding this department certification, such individual shall produce a current professional license or certification upon request of the department.

E. Any individual who holds a valid and unexpired certification issued by the department in the classification of ESC or SWM, or who obtains such certification, and who later successfully obtains an additional certification from the department in the parallel ESC or SWM classification may surrender both certifications to the department for issuance of a dual certification in both ESC and SWM. Such a request must be made while both of the ESC and SWM certifications obtained are valid and unexpired. The expiration date of the dual certification shall be three years from the date of expiration of the additional certification acquired.

9VAC25-875-410. Eligibility requirements.

A. Certification may be achieved by:

1. Obtaining a total of 800 hours of experience as an ESC, SWM, or a dual program administrator, plan reviewer, inspector, or combined administrator and obtaining a passing score on the certification examination administered by the department in the applicable ESC or SWM area; or both ESC and SWM for the dual certification; or

2. Completing a department-approved training program in the classifications of program administrator, plan reviewer, inspector, or combined administrator and, within one year of completing the training program, obtain a passing score on the certification examination administered by the department in the applicable ESC or SWM area, or both ESC and SWM for the dual certification.

a. Combined administrators must complete the training program for program administrator, inspector, and plan reviewer within the applicable area of ESC or SWM.

b. Dual combined administrators must complete the training program for program administrator, inspector, and plan reviewer within both areas of ESC and SWM.

B. Certification and recertification shall be valid for three years except as otherwise set out in 9VAC25-875-400 D or 9VAC25-875-460.

C. Recertification may be obtained for classifications outlined in 9VAC25-875-400 of this part prior to the expiration date of a certification by:

1. Completing continuing education contact hours in accordance with department guidance and paying the required fee for recertification;

2. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia, and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for ESC classifications in subdivisions A 1 through A 4 of 9VAC25-875-400. However, such professionals when in the classification of plan reviewer for ESC shall be exempt from the recertification requirements and fees of this part provided they maintain their professional license;

3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for SWM and dual classifications in subdivisions A 5 through A 12 of 9VAC25-875-400;

4. Successfully completing a department-approved training program and paying the required fee for recertification; or

5. Obtaining a passing score on the recertification examination.

D. Responsible Land Disturber (RLD) Certificate may be obtained by completing a department-approved training program for RLDs for ESC.

1. The RLD Certificate and any renewal thereof shall be valid for three years.

2. Renewal of the RLD Certificate may be obtained by completing a department-approved training program for RLDs.

3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be deemed to satisfy the provisions of this subsection for an RLD Certificate in subsection C of 9VAC25-875-400 or any renewal thereof.

9VAC25-875-420. Classification acknowledgment for the purposes of program compliance reviews.

For the purposes of VESCP or VESMP compliance reviews and evaluations, the certification requirements of §§ 62.1-44.15:53 and 62.1-44.15:30 of the Code of Virginia shall be deemed to have been met if the VESCP or VESMP authority has an individual enrolled in the department's ESC or SWM training programs set forth in 9VAC25-875-410 A 2 a and A 2 b for the necessary classifications and such individual obtains certification within one year of completing the necessary training programs.

9VAC25-875-430. Certification program fees.

A. Certification, recertification, dual certification, and RLD Certificate issuance and reissuance fees shall be collected to cover the administrative cost for the certification program.

B. A fee will also be charged to present education and training programs that support the certification program.

9VAC25-875-440. Examination.

A. A department-approved examination shall be administered by the department.

B. An applicant may take the certification examination for the desired certification after fulfilling the prerequisite experience requirement or completing a department-approved training program.

C. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate examination.

D. A minimum passing score of 70% will be required on the appropriate certification examination.

E. All applicants will be notified of the results within 60 days of the examination.

9VAC25-875-450. Reserved.

9VAC25-875-460. Discipline for certified personnel.

The department may suspend, revoke, or refuse to grant or renew the certification or certificate of any individual if the department, in an informal fact finding under § 2.2-4019 of the Code of Virginia, finds that:

1. The certification or certificate was obtained or renewed through fraud or misrepresentation;

2. The individual who holds a certification or certificate has violated or cooperated with others in violating any provision of this part;

3. The individual who holds a certification or certificate has not demonstrated reasonable care, judgment, or application of knowledge and ability in the performance of duties; or

4. The individual who holds a certification or certificate has made any material misrepresentation in the course of performing duties.

Part V

Criteria and Requirements for Regulated Land-Disturbing Activities

Article 1

Administrative Criteria

9VAC25-875-470. Applicability.

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of this part of this chapter.

2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of this part unless Article 4 (9VAC25-875-670 et seq.) of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for single-family detached residential structures, Article 2 of this part and water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.

3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, adopt more stringent local requirements.

9VAC25-875-480. Applicability of other laws and regulations; time limits on applicability of approved design criteria.

A. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, the Clean Water Act, VESMA, ESCL, and the Chesapeake Bay Preservation Act, and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

B. Land-disturbing activities that obtain an initial permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part. Such projects shall remain subject to the technical criteria of Article 4 of this part for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

Article 3 (9VAC25-875-570 et seq.) of this part, except as provided for in 9VAC25-875-490. Land-disturbing activities conducted in accordance with the technical criteria of Article 3 of this part shall remain subject to the technical criteria of Article 3 of this part for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

D. Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

9VAC25-875-490. Grandfathering.

A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part 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 the locality to be equivalent thereto (i) was approved by the locality 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 this part; 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.

B. Locality, state, and federal projects shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 of this part 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.

C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of this part 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.

D. 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 this part.

E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

9VAC25-875-500. Stormwater pollution prevention plan requirements.

A. A stormwater pollution prevention plan shall include 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 E of this section.

B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.

C. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESMP authority or the department.

D. 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.

E. In addition to the requirements of subsections A through D 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.

F. The stormwater pollution prevention plan (SWPPP) 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 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

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 or the department as the VSMP authority. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority or department; and

9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

G. 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.

9VAC25-875-510. Stormwater management plan requirements.

A. A stormwater management plan shall be developed and submitted to the VESMP authority or the department as the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VESMP authority or department 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 part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.

2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

B. A complete stormwater management plan shall include the following elements:

1. Information on the type 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;

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 or department, the information provided and documented during the review process that addresses the current and final site conditions;

4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

5. Information on the proposed stormwater management facilities, including (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into which the facility will discharge;

6. Hydrologic and hydraulic computations, including runoff characteristics;

7. Documentation and calculations verifying compliance with the water quality and quantity requirements of this chapter;

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 offsite compliance options, where applicable, then a letter of availability from the offsite provider must be included; and

~~accordance with Part VIII (9VAC25-875-1230 et seq.) of this chapter must have been submitted.~~

C. All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1- 2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately 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 that person's area of professional competence.

9VAC25-875-520. Pollution prevention plans.

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

9VAC25-875-530. Applying for permit coverage.

A. The operator must submit a complete and accurate registration statement in accordance with the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) if such statement is required, on the official department form to the VESMP or department as the VSMP authority in order to apply for permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-875-940. In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

B. A person shall not conduct any land-disturbing activity until (i) the person has submitted to the appropriate VESMP authority or the department as the VSMP authority an application that includes a permit registration statement, if required, an ESM plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority or department has issued its land-disturbance approval. For a single family detached residential structure with less than one acre of land disturbance, an agreement in lieu of a plan may be used when either (a) it is located within a common plan of development or sale with an approved stormwater pollution prevention plan consistent with 9VAC25-875-500 and a permit, if required; or (b) the single-family detached residential is located outside of a common plan of development or sale.

C. In addition, as a prerequisite to engaging in an approved land-disturbing activity, 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 shall be submitted to the VESMP authority or department.

D. Any VESMP authority or the department as the VSMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan; however, if a violation occurs during the land-disturbing activity, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber Certificate as provided by § 62.1-14:30 of the Code of Virginia. 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 in the VESMA.

9VAC25-875-535. Long-term maintenance of stormwater management facilities.

A. The operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP or VSMP authority based on the locality where the land-disturbing activity will occur. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, stating that to the best of the professional's 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 provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality or quantity of runoff is required. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit

1. Be submitted to the authority 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 VESCP, VSMP, or VESMP authority; and

5. Be enforceable by all appropriate governmental parties.

C. At the discretion of the VESMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the authority.

Article 2

Soil Erosion Requirements

9VAC25-875-540. Applicability.

A. This article sets forth minimum standards for the effective control of soil erosion, sediment deposition, and nonagricultural runoff.

B. In accordance with Item 360 I1 of Chapter 3 of the 2012 Acts of Assembly, Special Session I, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the VESCP or VESMP authority of the locality within which the land-disturbing activity is located, unless such institution submits standards and specifications to the department in accordance with § 62.1-44.15:31 of the Code of Virginia.

9VAC25-875-550. Erosion and sediment control plan requirements.

A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

1. Appropriate maps;

2. An appropriate soil and water plan inventory and management information with needed interpretations; and

3. A record of decisions contributing to conservation treatment.

B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or 62.1-44.15:55 of the Code of Virginia.

C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an agreement in lieu of a plan signed by the property owner.

D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this chapter if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods: minimum standards.

An erosion and sediment control plan consistent with the following criteria, techniques, and methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.

2. During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.

3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, is mature enough to survive, and will inhibit erosion.

4. Sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.

5. Stabilization measures shall be applied to earthen structures such as dams, dikes, and diversions immediately after installation.

a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.

b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.

7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume, or slope drain structure.

9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.

10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.

12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport, and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.

13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.

14. All applicable federal, state, and local requirements pertaining to working in or crossing live watercourses shall be met.

15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.

16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

a. No more than 500 linear feet of trench may be opened at one time.

b. Excavated material shall be placed on the uphill side of trenches.

c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both and discharged in a manner that does not adversely affect flowing streams or off-site property.

d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.

e. Restabilization shall be accomplished in accordance with this chapter.

f. Applicable safety requirements shall be complied with.

17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels:

a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or manmade receiving channel, pipe, or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.

b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is 100 times greater than the contributing drainage area of the project in question; or

of channel bed or banks.

(b) All previously constructed manmade channels shall be analyzed by the use of a 10-year storm to verify that stormwater will not overtop the stormwater's banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and

(c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed manmade channels or pipes are not adequate, the applicant shall:

(1) Improve the channels to a condition where a 10-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel, the bed, or the banks;

(2) Improve the pipe or pipe system to a condition where the 10-year storm is contained within the appurtenances;

(3) Develop a site design that will not cause the predevelopment peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the predevelopment peak runoff rate from a 10-year storm to increase when runoff outfalls into a manmade channel; or

(4) Provide a combination of channel improvement, stormwater detention, or other measures that is satisfactory to the VESCP or VESMP authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention, the applicant shall obtain approval from the VESCP or VESMP authority for a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.

h. All on-site channels must be verified to be adequate.

i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel, pipe, or pipe system or to a detention facility.

j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial, or industrial development shall not be considered to be separate development projects. Instead, the development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate development condition shall be used in all engineering calculations.

k. All measures used to protect properties and waterways shall be employed in a manner that minimizes impacts on the physical, chemical, and biological integrity of rivers, streams, and other waters of the state.

l. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming the site was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when the site was in a good forested condition divided by the runoff volume from the site in the site's proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to § 62.1-44.15:28 of the Code of Virginia (VESMA) or § 62.1-44.15:54 or 62.1-44.15:65 of the Code of Virginia (ESCL).

m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) and this subdivision 19 shall be satisfied by compliance with water quantity requirements in the VESMA and attendant regulations, unless such land-disturbing activities (i) are in accordance with provisions for time limits on applicability of approved design criteria in 9VAC25-875-480 or grandfathering in 9VAC25-875-490, in which case the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) shall apply; or (ii) are exempt pursuant to § 62.1-44.15:34 G 2 of the Code of Virginia (VESMA).

n. Compliance with the water quantity minimum standards set out in 9VAC25-875-600 shall be deemed to satisfy the requirements of this subdivision 19.

Article 3

Water Quantity and Water Quality Technical Criteria

9VAC25-875-570. Applicability.

In accordance with the board's authority and except as provided in 9VAC25-875-490, this article establishes the minimum technical criteria that shall be employed to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from

9VAC25-875-580. Water quality design criteria requirements.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and statewide standards for stormwater management shall be applied to the site.

1. New development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-875-590.

2. Development on prior developed lands.

a. For land-disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.

b. For regulated land-disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.

c. For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivision 2 a or 2 b of this subsection shall be applied to the remainder of the site.

d. In lieu of subdivision 2 c of this subsection, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.

e. The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a locality.

B. Compliance with subsection A of this section shall be determined in accordance with 9VAC25-875-590.

C. Nothing in this section shall prohibit a VESMP authority from establishing more stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of Virginia.

9VAC25-875-590. Water quality compliance.

A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of 9VAC25-875-580 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the department.

B. The BMPs listed in this subsection are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found through the Virginia Stormwater BMP Clearinghouse.

1. Vegetated Roof (Version 2.3, March 1, 2011);

2. Rooftop Disconnection (Version 1.9, March 1, 2011);

3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);

4. Soil Amendments (Version 1.8, March 1, 2011);

5. Permeable Pavement (Version 1.8, March 1, 2011);

6. Grass Channel (Version 1.9, March 1, 2011);

7. Bioretention (Version 1.9, March 1, 2011);

8. Infiltration (Version 1.9, March 1, 2011);

9. Dry Swale (Version 1.9, March 1, 2011);

10. Wet Swale (Version 1.9, March 1, 2011);

11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);

12. Extended Detention Pond (Version 1.9, March 1, 2011);

13. Filtering Practice (Version 1.8, March 1, 2011);

14. Constructed Wetland (Version 1.9, March 1, 2011); and

15. Wet Pond (Version 1.9, March 1, 2011).

C. Nonproprietary BMPs differing from those listed in subsection B of this section shall be reviewed and approved by the director in accordance with procedures established by the department.

D. Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP approved for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the Code of

E. A VESMP authority may establish limitations on the use of specific BMPs in accordance with § 62.1-44.15:33 of the Code of Virginia.

F. The VESMP authority or department as the VSMP authority shall have the discretion to allow for application of the design criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 9VAC25-875-660.

G. Offsite alternatives where allowed in accordance with 9VAC25-875-610 may be utilized to meet the design criteria of subsection A of 9VAC25-875-580.

H. Any publicly owned treatment works that is permitted under the watershed general VPDES permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently retire a portion of the publicly owned treatment works' wasteload allocation to meet the design criteria of subsection A of 9VAC25-875-580. Notice shall be given by such applicant to the VESMP authority and to the department.

9VAC25-875-600. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of the Code of Virginia. Nothing in this section shall prohibit a locality's VESMP authority from establishing a more stringent standard in accordance with § 62.1- 44.15:33 of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-875-560.

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

a. The manmade stormwater conveyance system shall convey the post-development peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VESMP authority or department as the VSMP authority; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

2. Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land-disturbing activity, either:

a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3. Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

a. In accordance with the following methodology:

$Q_{Developed} \leq I.F. * (Q_{Pre\text{-}developed} * RV_{Pre\text{-}Developed}) / RV_{Developed}$

Under no condition shall $Q_{Developed}$ be greater than $Q_{Pre\text{-}Developed}$ nor shall $Q_{Developed}$ be required to be less than that calculated in the equation $(Q_{Forest} * RV_{Forest}) / RV_{Developed}$; where

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

$Q_{Developed}$ = The allowable peak flow rate of runoff from the developed site.

$RV_{Developed}$ = The volume of runoff from the site in the developed condition.

$Q_{Pre\text{-}Developed}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$RV_{Pre\text{-}Developed}$ = The volume of runoff from the site in pre-developed condition.

Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

b. In accordance with another methodology that is demonstrated by the VESMP authority to achieve equivalent results and is approved by the department.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or

b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VESMP authority.

2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:

a. Confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion at the discretion of the VESMP authority or department as the VSMP authority; or

b. Releases a post-development peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;

b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or

c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas or from physical spreading of concentrated flow through level spreaders shall be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VESMP authority that actual site conditions warrant such considerations.

F. Predevelopment and post-development runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse shall be considered appropriate practices.

9VAC25-875-610. Offsite compliance options.

A. No offsite option shall be used in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14 of the Code of Virginia, (ii) adopted pursuant to § 62.1-44.15:33 of the Code of Virginia or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the department. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

B. Unless prohibited by subsection A of this section, a VESMP authority or the department as the VSMP authority:

1. May allow the use of offsite options for compliance with water quality and water quantity technical criteria established pursuant to § 62.1-44.15:28 of the Code of Virginia, in whole or in part; and

a. Less than five acres of land will be disturbed;

b. The phosphorous water quality reduction requirement is less than 10 pounds per year; or

c. It is demonstrated to the satisfaction of the VESMP authority or department as the VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) compliance with quality technical criteria cannot practicably be met onsite. The requirements of clauses (i) through (iv) of this subdivision shall be deemed to have been met if it is demonstrated that onsite control of at least 75% of the required phosphorous water quality reduction will be achieved.

C. The VESMP authority or department as the VSMP authority shall require that offsite options approved by the department or applicable state board achieve the necessary phosphorous water quality reductions prior to the commencement of the land-disturbing activity. In the case of a phased project, the land disturber may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

D. Nutrient credits shall not be used to address water quantity technical criteria.

E. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the land-disturbing activity. If no credits are available within these subbasins when the VESMP or department as the VSMP authority accepts the final site design, credits available within the same tributary may be used. The following requirements apply to the use of nutrient credits:

1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP authority and the department or the department as the VSMP authority in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

2. Application fees are provided in Certification of Nonpoint Source Nutrient Credits (9VAC25-900). Fees shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29 of the Code of Virginia.

3. For that portion of a site's compliance with water quality technical criteria being obtained through nutrient credits, the land disturber shall (i) comply with a one-to-one ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

4. A VESMP or the department as the VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon determination by the VESMP or department that the conditions established by clause (i) or (ii) of this subdivision have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

F. Exchange of a credit released by the department is subject to the provisions of § 62.1-44.15:35, 62.1-44.19:15, or 62.1-44.19:21 of the Code of Virginia. Where necessary to ensure compliance with local water quality requirements, the exchange of a credit released by the department is conditioned by 9VAC25-900-91 B and C.

9VAC25-875-620. Design storms and hydrologic methods.

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods shall be used to conduct the analyses described in this part.

D. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP authority may allow for the use of the Rational Method for evaluating peak discharges.

E. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

9VAC25-875-630. Stormwater harvesting.

In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulations.

9VAC25-875-640. Linear development projects.

a comprehensive watershed stormwater management plan developed in accordance with this chapter.

9VAC25-875-650. Stormwater management impoundment structures or facilities.

A. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for structural integrity for the 100-year storm event.

B. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 9VAC25-875-580 and the water quantity criteria set out in 9VAC25-875-600. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features.

9VAC25-875-660. Comprehensive stormwater management plans.

A VESMP authority may develop comprehensive stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this part:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the locality's VESMP authority to prevent downstream erosion and flooding.

2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the locality's VESMP authority, such authority shall provide plan amendments to the department for review and approval.

3. During the plan's implementation, the locality's VESMP authority shall document nutrient reductions credited to the BMPs specified in the plan.

4. State agencies and federal entities may develop comprehensive stormwater management plans and may participate in locality-developed comprehensive stormwater management plans where practicable and permitted by the locality's VESMP authority.

Article 4

Water Quantity and Water Quality Technical Criteria for Grandfathered Projects and Time Limits of Applicability Projects

9VAC25-875-670. Definitions.

For the purposes of this article only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior to September 13, 2011.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed and (ii) into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

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

"Grassed swale" means an earthen conveyance system that is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

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

~~delivered in a diffuse manner by stormwater runoff.~~

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area to maintain the desired water surface elevations to support emergent vegetation.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration, and absorption and is dedicated for that purpose.

"Water quality volume" means the volume equal to the first 1/2-inch of runoff multiplied by the impervious surface of the land development project.

9VAC25-875-680. Applicability.

This part specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Article 3 (9VAC25-875-570 et seq.) of this part in accordance with 9VAC25-875-490.

9VAC25-875-690. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided whenever possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program (44 CFR Part 59).

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the ESCL or VESMA, as applicable, and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act provided such facilities are allowed and constructed in accordance with the VESMA and this chapter, and provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-875-660 or with a stormwater management plan that has been approved prior to July 1, 2012, by the department, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to ensure that they continue to function as designed. It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

9VAC25-875-700. Water quality.

A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.

B. Performance-based criteria. For land-disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-developed condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1 or those found in 9VAC25-875-590.

D. Design standards and specifications for the BMPs in Table 1 of this section that meet the required target pollutant removal efficiency are available in the Virginia Stormwater Management Handbook. Other approved BMPs available through the Virginia Stormwater BMP Clearinghouse may also be utilized.

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention basin-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	

*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department

E. The VESMP authority or department as the VSMP authority may allow the use of offsite nutrient credits under Article 4 (9VAC25-875-670 et seq.) of this part in accordance with 9VAC25-875-610.

9VAC25-875-710. Stream channel erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The VESMP authority or department as the VSMP authority shall require compliance with subdivision 19 of 9VAC25-875-560.

C. The locality's VESMP authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities or where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional waters. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, a locality's VESMP authority by local ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state regulation may adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include the following:

1. Criteria and procedures for channel analysis and classification.

2. Procedures for channel data collection.

3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.

4. Criteria for the selection of proposed natural or manmade channel linings.

9VAC25-875-720. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year post-developed peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance in accordance with § 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

9VAC25-875-730. Regional (watershed-wide) stormwater management plans.

9VAC25-875-660.

Article 5

Criteria for Land-Disturbing Activities in Chesapeake Bay Preservation Areas

9VAC25-875-740. Land-disturbing activities in Chesapeake Bay Preservation Areas.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less than one acre shall be regulated by localities subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, the department. In regulating such land-disturbing activities in accordance with subsection B of this section, localities shall have the same authority and responsibilities as set forth for VESCP and VESMP authorities.

B. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements unless excluded under 9VAC25-875-90 and 9VAC25-875-280:

1. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during land-disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP or VESMP authority in accordance with this chapter;

2. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 9VAC25-875-510. Prior to land disturbance, this plan must be approved by the VESCP or VESMP authority;

3. Exceptions may be requested in accordance with 9VAC25-875-170;

4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-875-535;

5. Water quality design criteria in 9VAC25-875-580 shall be applied to the site;

6. Water quality compliance shall be achieved in accordance with 9VAC25-875-590;

7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-875-600 or as permitted by subsection B of 9VAC25-875-750;

8. Offsite compliance options in accordance with 9VAC25-875-610 shall be available to land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less than one acre; and

9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in 9VAC25-875-620, linear development controls in 9VAC25-875-640, and criteria associated with stormwater impoundment structures or facilities in 9VAC25-875-650.

9VAC25-875-750. Land-disturbing activities in Chesapeake Bay Preservation Areas in rural Tidewater localities.

A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and supporting calculations for erosion and sediment control and stormwater management for any land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the following criteria are met:

1. The plans are prepared and submitted by a professional licensed to engage in practice in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and

2. The plan and supporting calculations are appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

B. For determining the water quantity technical criteria applicable to a land disturbance equal to or greater than 2,500 square feet, but less than one acre, any rural Tidewater locality may elect to use certain tiered water quantity control standards based on the percentage of impervious cover in the watershed as provided in § 62.1-44.15:27.2 of the Code of Virginia.

C. Tiered approach to water quantity technical criteria compliance.

1. A rural Tidewater locality may adopt the following tiered approach to water quantity management based on the percent impervious cover of the watershed in accordance with this subsection for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre:

a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment Control Minimum Standard 19 in effect prior to July 1, 2014, for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.

b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

c. For 7.5% impervious cover or more, apply the water quantity technical criteria in accordance with 9VAC25-875-600.

2. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the department.

a. Develop a watershed map that includes the following:

(1) The boundaries of the locality and each watershed located partially or wholly within the locality based on the most recent version of Virginia's 6th order National Watershed Boundary Dataset;

(2) The percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map; and

(3) The locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the water quantity technical criteria in 9VAC25-875-600 shall apply.

b. After the watershed map has been developed, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of the official watershed map, the governing body shall file the watershed map in the office of the clerk of the circuit court.

4. At least once per year, the governing body shall by majority vote make additions to or modifications of the official watershed map to reflect actual development projects. The governing body shall change the indication on the map of the impervious cover percentage within a watershed where the percentage has changed and shall update the map and supporting datasets with actual development project information, including single-family housing projects and any projects covered by the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) and administered by the department for opt-out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may incorporate into the official watershed map the most recent VGIN data, including data on state and federal projects that are not reviewed or approved by the locality. The governing body shall keep current its impervious cover percentage for each watershed located within the locality as reflected in the official watershed map and shall make the map and such percentages available to the public.

5. The locality shall notify the department and update the official watershed map within 12 months of the approval of the development plan for any project that exceeds the percent impervious cover percentage of the watershed in which it is located and causes the impervious cover percentage for the watershed to increase such that the watershed percent impervious cover is categorized by the next higher tier pursuant to subdivision 1 of this subsection.

6. No official watershed map or its adopting or amending ordinance shall take precedence over any duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield to such land-use ordinance.

Article 6

Additional Criteria and Requirements for Land-Disturbing Activities by State Agencies and Federal Entities

9VAC25-875-760. Soil erosion control and stormwater management for land-disturbing activities.

The department shall act as a VESMP where state agencies and federal entities have not submitted standards and specifications to the department for approval. When a state agency or federal entity submits a soil erosion control and stormwater management plan (ESM plan) for a project, land disturbance shall not commence until the department has reviewed and approved the plan and has issued permit coverage when it is required in accordance with § 62.1-44.15:34 of the Code of Virginia.

1. The department shall not approve an ESM plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

2. The department shall not approve an ESM plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

3. If onsite changes occur, the state agency or federal entity shall submit an amended ESM plan to the department.

4. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved ESM plan. As necessary, the department shall provide project oversight and enforcement.

9VAC25-875-770. State agency land-disturbing activities.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has either submitted standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the VESMA and attendant regulations or an erosion and sediment control plan has been submitted to and approved by the department. A formal Notice of Plan Requirement will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the State Water Control Law and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to

department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The department may also pursue enforcement as provided by § 62.1-44.15:48 of the Code of Virginia and Article 5 (§ 62.1- 44.20 et seq.) of the State Water Control Law.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-875-780. Stormwater management permit applications.

A. Approval of a permit application (registration statement) for a land-disturbing activity by a state agency or federal entity shall be subject to the following conditions:

1. The state agency or federal entity shall comply with all applicable requirements of the permit (9VAC25-880) and shall certify that all land clearing, construction, land development, and drainage will be done according to the permit.

2. The land development shall be conducted only within the area specified in the approved plan and covered by the permit.

3. No changes may be made to a plan for which a permit has been issued without review and written approval by the department.

4. The department shall be notified at least one week prior to the preconstruction meeting and at least one week prior to the commencement of land-disturbing activity.

5. The department shall conduct random inspections of the project to ensure compliance with the permit.

6. The department shall require inspections and reports from the state agency or federal entity responsible for compliance with the permit and to determine if the measures required in the permit provide effective stormwater management.

B. Compliance with the permit shall be subject to the following conditions:

1. Where inspection by the responsible state agency or federal entity reveals deficiencies in carrying out a permitted activity, the responsible state agency or federal entity shall ensure compliance with the issued permit, permit conditions, and plan specifications.

2. Where inspections by department personnel reveal deficiencies in carrying out the permit, the responsible state agency or federal entity shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.

3. Whenever the Commonwealth or any of its state agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.

4. Where compliance for a state agency will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, the director shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

5. The department may also seek compliance through other means specified in the State Water Control Law.

9VAC25-875-790. Maintenance and inspections.

A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency or federal entity and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. At a minimum, a stormwater management facility shall be inspected by the responsible state agency or federal entity on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

C. During construction of the stormwater management facilities, the department shall make inspections on a random basis.

D. The department shall require inspections and reports from the state agency or federal entity responsible for ensuring compliance with the permit and to determine if the measures required in the permit provide effective stormwater management.

E. Inspection reports shall be maintained as part of the land disturbance project file.

9VAC25-875-800. Reporting on stormwater management.

State agencies shall report annually, on a schedule to be specified, to the department on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide the

served, the receiving stream or hydrologic unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness of the programs and BMP technologies in current use.

9VAC25-875-810. Technical criteria and requirements for state or federal projects.

A. Erosion and sediment control and stormwater management plans prepared for state projects shall comply with the technical criteria outlined in this part and any locality's VESCP or VESMP authority's technical requirements adopted pursuant to §§ 62.1-44.15:28 and 62.1-44.15:52 of the Code of Virginia.

B. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.

Part VI

Standards and Specifications Program

9VAC25-875-820. Applicability.

This part is applicable to any state agency, federal entity, or public or private entity that is authorized to submit standards and specifications to the department in accordance with § 62.1-44.15:31 of the Code of Virginia.

9VAC25-875-830. Standards and specifications for state agencies, federal entities, and other specified entities.

A. The program requirements in Part V (9VAC25-875-470 et seq.) shall be implemented by a state agency or federal entity, and other specified entities with department-approved standards and specifications.

B. As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities, the Virginia Department of Transportation shall and any other state agency or federal entity may submit standards and specifications for its conduct of land-disturbing activities for department approval. Approved standards and specifications shall be consistent with the VESMA. The department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to the department for approval.

C. As an alternative to submitting soil erosion control and stormwater management plans, electric, natural gas, and telephone utility companies; interstate and intrastate natural gas pipeline companies; railroad companies; and authorities created pursuant to § 15.2-5102 of the Code of Virginia may submit standards and specifications for department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications may be submitted for the following types of projects:

1. Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and

2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

The department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval. A linear project not included in subdivision 1 or 2 of this subsection, or for which the owner chooses not to submit standards and specifications, shall comply with the requirements of the VESMP or the VESCP and VSMP, as appropriate, in any locality within which the project is located.

D. As an alternative to submitting soil erosion control and stormwater management plans, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the department, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers, may submit standards and specifications for department approval that describe how land-disturbing activities shall be conducted. The department shall have 60 days after receipt in which to act on standards and specifications submitted to it or resubmitted to it for approval.

E. All standards and specifications submitted to the department shall be periodically updated according to a schedule to be established by the department and shall be consistent with the requirements of the VESMA. Approval of standards and specifications by the department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations. Standards and specifications shall include:

1. Technical criteria to meet the requirements of the VESMA and regulations developed under it;

2. Provisions for the long-term responsibility and maintenance of any stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;

3. Provisions for administration of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and compliance;

4. Provisions for ensuring that personnel and contractors assisting the owner in carrying out the land-disturbing activity obtain training or qualifications for soil erosion control and stormwater management as set forth in Part IV (9VAC25-875-380 et seq.) of this chapter;

5. Provisions for ensuring that personnel implementing approved standards and specifications pursuant to this section obtain certifications or qualifications comparable to those required for VESMP personnel pursuant to subsection C of § 62.1-44.15:30 of the Code of Virginia;

6. Implementation of a project tracking system that ensures notification to the department of all land-disturbing activities covered under the VESMA; and

F. The department shall perform random site inspections or inspections in response to a complaint to ensure compliance with the VESMA and this chapter.

G. The department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section, including standards and specifications review and approval, project inspections, and compliance. The department may take enforcement actions in accordance with the VESMA and related regulations.

9VAC25-875-840. Reserved.

Part VII

Virginia Pollutant Discharge Elimination System (VPDES) Permits

Article 1

Definitions

9VAC25-875-850. Definitions.

For the purposes of this part only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and VESMA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the CWA.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

"Continuous discharge" means a discharge that occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"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 that 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.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the department, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue an individual or general permit. A notice of intent to deny an individual or general permit is a type of draft permit. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation if these facilities or equipment are of such value as to represent a substantial commitment to construct. The term excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the VPDES program.

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to § 311 of the CWA.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or permit (other than the permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-875-970 D 2 c (3).

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; and

e. Other relevant factors;

4. The department may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the board.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Maximum daily discharge limitation" means the highest allowable daily discharge.

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

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);

townships, or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; or

e. Other relevant factors;

4. The department may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective separate VPDES or permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant that begins discharging at a site for which it does not have a separate VPDES or permit, and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or

2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"Outfall," when used in reference to municipal separate storm sewers, means a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"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 or MS4.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the department and if

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Revoked" means an existing VPDES permit that is terminated by the department before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the VESMA, the CWA, and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" means but is not limited to raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9VAC25-875-950 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), (g), (h), or (i), or 316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System 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.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare,

et seq. of the Code of Virginia, and the CWA (33 USC § 1251 et seq.).

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Article 2

General Program Requirements Related to MS4s and Land-Disturbing Activities

9VAC25-875-860. Exclusions.

The following discharges do not require permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion neither applies to rubbish, trash, garbage, or other such materials discharged overboard nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility, or a seafood processing facility or when secured to a storage facility or a seafood processing facility or when secured to the bed of the ocean, contiguous zone, or surface waters for the purpose of mineral or oil exploration or development.

2. Discharges of dredged or fill material into surface waters that are regulated under § 404 of the CWA.

3. The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the department may otherwise require.

9VAC25-875-870. Prohibitions.

A. Except in compliance with a permit issued by the department pursuant to the Virginia Erosion and Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from municipal separate storm sewer systems or land-disturbing activities.

B. Any person in violation of subsection A of this section that discharges or causes or allows a discharge of stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the State Water Control Law or regulations promulgated under the CWA or the State Water Control Law;

2. When the permit applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;

3. When the regional administrator has objected to issuance of the permit;

5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the department determines permit issuance to be in the public interest; or

b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the State Water Control Law and § 301(b)(1)(A) and (b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The department may waive the submission of information by the new source or new discharger required by this subdivision 9 b if the department determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this subdivision 9 b is to be included in the fact sheet to the permit under 9VAC25-875-1090.

9VAC25-875-880. Effect of a permit.

A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law and with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

B. The issuance of a permit does not convey any property rights of any sort or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights or any infringement of state or local law or regulations.

9VAC25-875-890. Continuation of expiring permits.

A. The permit shall expire at the end of its term, except that the conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and

2. The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit which has been continued;

2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

3. Issue a new permit with appropriate conditions; or

4. Take other actions authorized by this chapter.

9VAC25-875-900. Confidentiality of information.

A. The department or the VESMP authority may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of permit applicant's or permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law and this chapter. Any personal information shall not be disclosed except to an appropriate official of the department or VESMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

considered confidential under Federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions, is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department or the VESMP authority.

2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes," or "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee; and

2. Permit applications, permits, and effluent data.

C. Information required by permit application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

9VAC25-875-910. Guidance documents.

The department may develop and use guidance, as appropriate, to implement technical and regulatory details of the VPDES permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the department or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Virginia Erosion and Stormwater Management Act.

Article 3

Permit Applications

9VAC25-875-920. Application for a permit.

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from municipal separate storm sewer systems or land-disturbing activities and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, shall submit a complete application in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the department. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90-day or 180-day requirements to avoid delay.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the department. The department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness. The department shall not issue a permit before receiving a complete application for a permit except for general permits. An application for a permit is complete when the department receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

F. Information requirements. All applicants for permits shall provide the following information using the application form provided by the department:

1. The activities conducted by the permit applicant which require it to obtain a permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, email address, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received, applied for, or to be applied for under any of the following programs:

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA) (42 USC § 6921);

c. VPDES program under the CWA and the State Water Control Law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA;

i. A permit under the CWA and the Virginia Erosion and Stormwater Management Act; and

j. Other relevant environmental permits;

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, that depicts: the facility and (i) each of the source's intake and discharge structures; (ii) each of the source's hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the permit applicant in the map area; and

8. A brief description of the nature of the business.

G. Variance requests. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided, however, that a § 301(g) variance may only be requested for ammonia, chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA), and any other pollutant that the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number, the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Administrator establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the department may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations that are eligible for variances. In the notice the department may require the permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125

may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions G 2 a (2) or G 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the department. Extensions shall be no more than six months in duration.

I. Recordkeeping. Permit applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

9VAC25-875-930. Permit rationale.

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-875-940. Signatories to permit applications and reports.

A. All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, and other information requested by the department shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Electronic reporting. If documents described in subsection A or B of this section are submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section and shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

9VAC25-875-950. Stormwater discharges.

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be required to obtain a permit except:

a. A discharge with respect to which a permit has been issued prior to February 4, 1987;

c. A discharge from a large municipal separate storm sewer system;

d. A discharge from a medium municipal separate storm sewer system; or

e. A discharge that either the department or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The department may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the department may consider the following factors:

(1) The location of the discharge with respect to surface waters;

(2) The size of the discharge;

(3) The quantity and nature of the pollutants discharged to surface waters; and

(4) Other relevant factors.

2. The department may not require a permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows that are from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

3. a. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The department may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system, including all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a permit application (to be a permittee or a state co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a permit application under the following guidelines:

(a) The regional authority together with permit co-applicants shall have authority over a stormwater management program that is in existence or shall be in existence at the time Part 1 of the application is due;

(b) The permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, which are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

d. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The department may issue one system-wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed, or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. State co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of subsection B of this section, an operator of a stormwater discharge associated with a large construction activity that discharges through a large or medium municipal separate storm sewer system shall submit to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge, the name of the facility; a contact person and telephone number; the location of the discharge; a description, including Standard Industrial Classification, that best reflects the principal products or services provided by each facility; and any existing permit number.

wide basis, jurisdiction wide basis, watershed basis, or other appropriate basis or may issue permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain separate VPDES permits in accordance with the procedures of 9VAC25-31 and are not subject to the provisions of this section.

7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this subsection shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III, or Title VI of the CWA.

8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a permit only if:

(1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-875-970 B;

(2) The discharge is a stormwater discharge associated with small construction activity as defined in 9VAC25-875-20;

(3) The department or the EPA regional administrator determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) that address the pollutants of concern; or

(4) The department or the EPA regional administrator determines that the discharge or category of discharges within a geographic area contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a permit in accordance with 9VAC25-875-970 C, D, and E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a permit in accordance with subdivision B 1 of this section.

c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the department for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the department.

B. Application requirements for stormwater discharges associated with large and small construction activity. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual permit or any discharge of stormwater that the department is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer shall submit a state application in accordance with the requirements of 9VAC25-875-920 as modified and supplemented by the provisions of this subsection.

1. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

a. The location, including a map, and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and VESCP requirements;

d. Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local VESCP requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil, or the quality of the discharge;

f. The name of the receiving water; and

g. The location of Chesapeake Bay Preservation Areas.

2. Permit applicants shall provide such other information the department may reasonably require to determine whether to issue a permit.

C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the department under subdivision A 1 e of this section may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a permit co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include:

1. Part 1 of the application shall consist of:

a. The permit applicant's name, address, telephone number, and email address; ownership status; status as a state or local government entity; and the name, address, telephone number, and email address of a contact person;

b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

c. Source identification.

publicly owned treatment works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(a) The location of known municipal storm sewer system outfalls discharging to surface waters;

(b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth for a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage, or disposal facility for municipal waste;

(d) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a permit;

(e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) The identification of publicly owned parks, recreational areas, and other open lands;

d. Discharge characterization.

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures, and analytical methods used.

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes, and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(b) Listed under § 304(l)(1)(A)(i), (1)(A)(ii), or (l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance, and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under § 314(a) of the CWA (include the following: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes, and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;

(g) Recognized by the permit applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, and the presence of an oil sheen or surface scum, as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the permit applicant shall provide a description of the method used, including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid that contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

storm sewer system, creating a series of cells;

(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells that contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems that are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection because a sufficiently detailed map of the separate storm sewer systems is unavailable shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if fewer); in such circumstances, the permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the permit applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions, and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the permit applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts that authorizes or enables the permit applicant at a minimum to:

(1) Control through ordinance, permit, contract, order, or similar means the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order, or similar means illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order, or similar means the discharge to a municipal separate storm sewer of spills, dumping, or disposal of materials other than stormwater;

(4) Control through interagency agreements among permit co-applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, permits, contracts, or orders; and

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions, including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the permit applicant must collect a sample of effluent in accordance with 9VAC25-875-960 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the permit applicant may use any suitable method but must provide a description of the method. The permit applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(1) Quantitative data from representative outfalls designated by the department (based on information received in Part 1 of the application, the department shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential, and industrial land use activities of the drainage area contributing to the system or where there are less than five outfalls) covered in the application, the department shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at 9VAC25-875-960 (the department may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event that generated the sampled discharge, and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

Chemical oxygen demand (COD)

Biochemical oxygen demand (BOD_5)

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(d) Additional limited quantitative data required by the department for determining permit conditions (the department may require that quantitative data shall be provided for additional parameters and may establish sampling conditions, such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under 9VAC25-875-960) for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions that are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each permit co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or

discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures, including a comprehensive master plan to develop, implement, and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers that receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in subdivision 2 d (4) of this subsection;

(c) A description of practices for operating and maintaining public streets, roads, and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to ensure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste that shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under subdivision 2 d (3) of this subsection); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders, or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances - MBAS), residual chlorine, fluorides, and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation.);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary.

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC § 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

subsection, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing separate VPDES permit for a facility; oil and grease, COD, pH, BOD_5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 9VAC25-875-960 G and H; and

(4) A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which program shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the department may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties) from such requirements. The department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H, or I from any of the permit application requirements under this subdivision except where authorized under this subsection.

D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority or the department to require a separate permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the department to require a permit for a discharge that is composed entirely of stormwater that contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. Any person may petition the department for the designation of a large, medium, or small municipal separate storm sewer system as defined by this chapter.

4. The department shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the department shall make a final determination on the petition within 180 days after the petition's receipt.

9VAC25-875-960. Effluent sampling procedures.

A. Permit applicants for discharges from large and small municipal storm sewers or municipal storm sewers designated under 9VAC25-875-950 A 1 e shall provide the following information to the department, using application forms provided by the department.

B. Information on stormwater discharges that is to be provided as specified in 9VAC25-875-950. When quantitative data for a pollutant are required, the permit applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the permit applicant may use any suitable method but must provide a description of the method. When a permit applicant has two or more outfalls with substantially identical effluents, the department may allow the permit applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subsections F and G of this section that a permit applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the department may waive composite sampling for any outfall for which the permit applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

C. For stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all permit applicants, a flow-

for a stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes. However, a minimum of one grab sample may be taken for stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-875-950 C 1. For all stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-875-950 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The department may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. A permit applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater runoff from the facility.

D. Every permit applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD_5)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

E. The department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subsection C of this section if the permit applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

F. Each permit applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D for the permit applicant's industrial category unless the permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix D lists the organic toxic pollutants in each fraction; The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography or mass spectrometry. A determination that a permit applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the permit applicant's inclusion in that category for any other purposes; and

2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, cyanide, and total phenols).

G. 1. Each permit applicant must indicate whether the permit applicant knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the permit applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the permit applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether the applicant knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subsection F of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the permit applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the permit applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the permit applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. A permit applicant qualifying as a small business is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

H. Each permit applicant must indicate whether the permit applicant knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the permit applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

I. Each permit applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

trichlorophenoxy) ethyl) 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

9VAC25-875-970. Small municipal separate storm sewer systems.

A. Objectives of the stormwater regulations for small MS4s.

1. Subsections A through G of this section are written in a "readable regulation" format that includes both rule requirements and guidance. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate subdivision headed by the word "Note."

2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this portion of the stormwater program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources.

3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways, including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The department strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the state's stormwater program?

1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated if you operate a small MS4, including systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and

a. Your small MS4 is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census (if your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

b. You are designated by the department, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-875-950 D.

2. You may be the subject of a petition to the department to require a permit for your discharge of stormwater. If the department determines that you need a permit, you are required to comply with subsections C through E of this section.

3. The department may waive the requirements otherwise applicable to you if you meet the criteria of subdivision 4 or 5 of this subsection B. If you receive a waiver under this section, you may subsequently be required to seek coverage under a permit in accordance with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of this section).

4. The department may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the department; and

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The department may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

a. The department has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

b. For all such waters, the department has determined that stormwater controls are not needed based on wasteload allocations that are part of an approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

d. The department has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses or other significant water quality impacts, including habitat and biological impacts.

C. If I am an operator of a regulated small MS4, how do I apply for a permit and when do I have to apply?

1. If you operate a regulated small MS4 under subsection B of this section, you must seek coverage under a permit issued by the department.

2. You must seek authorization to discharge under a general or individual permit, as follows:

submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual permit and wish to implement a program under subsection D of this section, you must submit an application to the department that includes the information required under 9VAC25-875-920 F and subdivision D 4 of this section, an estimate of square mileage served by your small MS4, and any additional information that the department requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section will satisfy the map requirement in 9VAC25-875-920 F 7.

(2) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the permit application requirements of 9VAC25-875-950 C. You must submit both parts of the application requirements in 9VAC25-875-950 C 1 and 2 by March 10, 2003. You do not need to submit the information required by 9VAC25-875-950 C 1 b and C 2 regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(3) If allowed by the department, you and another regulated entity may jointly apply under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under an individual permit.

c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a permit and that other MS4 is willing to have you participate in that MS4's stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited state co-permittee. As a limited state co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of 9VAC25-875-950, rather than the requirements of subsection D of this section. You do not need to comply with the specific application requirements of 9VAC25-875-950 C 1 c and d and 9VAC25-875-950 C 2 c (discharge characterization). You may satisfy the requirements in 9VAC25-875-950 C 1 e and 2 d (identification of a management program) by referring to the other MS4's stormwater management program.

d. NOTE: In referencing an MS4's stormwater management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating stormwater pollutant control activities in your MS4 and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under subdivision B 1 a of this section, you must apply for coverage under a permit or apply for a modification of an existing permit under subdivision 2 c of this subsection within 180 days of notice, unless the department grants a later date.

b. Designated under subdivision B 1 b of this section, you must apply for coverage under a permit or apply for a modification of an existing permit under subdivision 2 c of this subsection within 180 days of notice, unless the department grants a later date.

D. As an operator of a regulated small MS4, what will my MS4 permit require?

1. Your MS4 permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Erosion and Stormwater Management Act, and the State Water Control Law. Your stormwater management program must include the minimum control measures described in subdivision 2 of this subsection unless you apply for a permit under 9VAC25-875-950 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the permit required pursuant to subsection C of this section constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. The department will specify a time period of up to five years from the date of permit issuance for you to develop and implement your program.

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

(1) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The department recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The department recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before community

based projects such as storm drain stenciling and watershed and beach cleanups. In addition, the department recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

(2) The department recommends that the public be included in developing, implementing, and reviewing your stormwater management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local stormwater management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement, and enforce a program to detect and eliminate illicit discharges (as defined in 9VAC25-875-850) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

(b) To the extent allowable under state, tribal, or local law effectively prohibit, through ordinance or other regulatory mechanism, nonstormwater discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(c) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to your system; and

(d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

(4) NOTE: The department recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv) procedures for program evaluation and assessment. The department recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of outreach materials.

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the department waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 9VAC25-875-20, you are not required to develop, implement, or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(f) Procedures for site inspection and enforcement of control measures.

(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary penalties, fines, bonding requirements, or permit denials for noncompliance. The department recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with erosion and sediment control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a stormwater pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See 9VAC25-875-1030 L and subdivision E 2 of this section.) The department may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.

e. Post-construction stormwater management in new development and redevelopment.

(1) You must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies that include a combination of structural and nonstructural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal, or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The department recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the department encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the department recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs, and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters, and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The department recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction, or operation and maintenance. Stormwater technologies are constantly being improved, and the department recommends that your requirements be responsive to these changes, developments, or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(2) NOTE: The department recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all stormwater management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

department may include conditions in your permit that direct you to follow that VESMP's requirements rather than the requirements of subdivision 2 of this subsection. A VESMP is a local, state, or tribal municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision 2 of this subsection.

4. a. In your permit application (either a registration statement for coverage under a general permit or an individual permit application), you must identify and submit to the department the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the stormwater minimum control measures provided in subdivision 2 of this subsection;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person responsible for implementing or coordinating your stormwater management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate compliance with the minimum control measures in subdivisions 2 c through f of this subsection unless, prior to submitting your registration statement, EPA or the department has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the department will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The department may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The department strongly recommends that until the evaluation of the stormwater program in subsection G of this section, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

7. Evaluation and assessment.

a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The department may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 9VAC25-875-900 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your permit obligations under subdivision E 1 of this section, you must submit annual reports to the department for your first permit term. For subsequent permit terms, you must submit reports in years two and four unless the department requires more frequent reports. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the department in compliance with this section 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, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. Your report must include:

(1) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under the permit program to satisfy all of your permit obligations, including your obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the department encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

2. In some cases, the department may recognize, either in your individual permit or in a general permit, that another governmental entity is responsible under a permit for implementing one or more of the minimum control measures for your small MS4. Where the department does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in subsections C, D, and E of this section? Permits are enforceable under the Clean Water Act and the Virginia Erosion and Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-44.15:48 of the Code of Virginia and Article 5 of the State Water Control Law. Compliance with a permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future? EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.

9VAC25-875-980. General permits.

A. The department may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-875-1030, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision shall

2 and 40 CFR Part 9 (including, in all cases, 40 CFR Part 9 Subpart B), 9VAC25-870-540, 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, dischargers or treatment works treating domestic sewage may be required to report electronically if specified by a particular permit.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream, and other required data elements as identified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall be signed in accordance with 9VAC25-875-940.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit is authorized to discharge in accordance with the permit either upon receipt of the notice of intent by the department after a waiting period specified in the general permit on a date specified in the general permit or upon receipt of notification of inclusion by the department. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the department, be authorized to discharge under a general permit without submitting a notice of intent where the department finds that a notice of intent requirement would be inappropriate. In making such a finding, the department shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the permit, and (vi) estimated number of discharges to be covered by the permit. The department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The department may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The department may require any discharger authorized by a general permit to apply for and obtain an individual permit. Any interested person may request the department to take action under this subdivision. Cases where an individual permit may be required include the following:

(1) The discharger is not in compliance with the conditions of the general permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;

(4) A water quality management plan, established by the department pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) The discharge is a significant contributor of pollutants. In making this determination, the department may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The department may determine, on a case-by-case basis, that certain stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the department decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the department shall notify the discharger in writing of that decision and the reasons for it and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the department. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the department may require the discharger to submit a permit application or other information regarding the discharge under the State Water Control Law and § 308 of the CWA. In requiring such information, the department shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9VAC25-875-950 A 1 within 60 days of notice or under 9VAC25-875-950 A 8 within 180 days of

for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-875-920 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the individual permit permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

9VAC25-875-990. New sources and new discharges.

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if the source meets the definition of new source in this chapter and

a. The source is constructed at a site at which no other source is located;

b. The source totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The source's processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the department shall consider such factors as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source.

2. A source meeting the requirements of subdivision 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

3. Construction on a site at which an existing source is located results in a permit modification subject to 9VAC25-875-1230 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

4. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous onsite construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in the new source's operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this subdivision 4 b.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources that modify the existing sources' pollution control facilities or construct new pollution control facilities and achieve performance standards, but that are neither new sources nor new dischargers or otherwise do not meet the requirements of this subsection.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source that meets the applicable promulgated new source performance standards before the commencement of discharge may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under § 301(b)(2) of the CWA for the soonest ending of the following periods:

a. 10 years from the date that construction is completed;

b. 10 years from the date the source begins to discharge process or other nonconstruction related wastewater; or

c. The period of depreciation or amortization of the facility for the purposes of § 167 or 169 (or both) of the Internal Revenue Code of 1954 (26 USC § 167 and 26 USC § 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

a. Additional or more stringent permit conditions that are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the State Water Control Law and § 307(a) of the CWA; or

b. Additional permit conditions controlling toxic pollutants or hazardous substances that are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of § 301 of the CWA and any other then applicable requirements of the CWA and the State Water Control Law immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger that commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition and shall start up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this subdivision do not apply if the owner or operator is issued a permit containing a compliance schedule under 9VAC25-875-1060 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Article 4

Permit Conditions

9VAC25-875-1000. Conditions applicable to all permits.

A. The following conditions apply to all permits. Additional conditions applicable to permits are in 9VAC25-875-1010. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

B. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the State Water Control Law but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

C. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

D. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

E. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

F. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

G. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

H. Permits do not convey any property rights of any sort, or any exclusive privilege.

I. The permittee shall furnish to the department, within a reasonable time, any information that the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The department may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Virginia Erosion and Stormwater Management Act. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit.

J. The permittee shall allow the director, the department, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

substances or parameters at any location.

K. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the department.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual who performed the sampling or measurements;

c. The dates analyses were performed;

d. The individual who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods, unless other test procedures have been specified in the permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

L. All applications, reports, or information submitted to the VESMP authority and department shall be signed and certified as required by 9VAC25-875-940.

M. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-875-990 A; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the permit.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. Permits are not transferable to any person except in accordance with 9VAC25-875-1220.

4. Monitoring results shall be reported at the intervals specified in the permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department. As of the start date in Table 1 of 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this section 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.

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as otherwise specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include any discharge resulting from:

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four hour and five-day reporting.

a. The permittee shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report in the format required by the department shall also be provided within five days of the time the permittee becomes aware of the circumstances. The five-day report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(1) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in subdivision 7 a of this subsection (with the exception of time of discovery), as well as the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass events); type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall); discharge volumes untreated by the treatment works treating domestic sewage; types of human health and environmental impacts of the sewer overflow event; and whether the noncompliance was related to wet weather.

(2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 7 shall be submitted electronically by the permittee to the department in compliance with this subdivision 7 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 electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a particular permit.

(3) The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision 7.

b. The following shall be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(2) Any upset that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The department may waive the five-day report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in the format required by the department, at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

a. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in subdivision 7 a of this subsection and the applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 8 shall be submitted electronically by the permittee to the department in compliance with this subdivision 8 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 electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit.

c. The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

10. The owner, operator, or the duly authorized representative of an VPDES-regulated entity is required to electronically submit the required information, as specified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

N. Bypass.

1. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

date of the bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subsection 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.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision M 7 of this section. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee 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.

3. Prohibition of bypass.

a. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in subdivision 3 a of this subsection.

O. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision M 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection E of this section.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

9VAC25-875-1010. Additional conditions applicable to municipal separate storm sewer system permits.

In addition to those conditions set forth in 9VAC25-875-1000, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the department under 9VAC25-875-950 A 1 e must submit an annual report by a date specified in the permit for such system. As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this section shall be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the department in compliance with this section 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, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit. The report shall include:

1. The status of implementing the components of the stormwater management program that are established as permit conditions;

2. Proposed changes to the stormwater management programs that are established as permit conditions. Such proposed changes shall be consistent with 9VAC25-875-950 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

A. In addition to conditions required in all permits, the department shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Virginia Erosion and Stormwater Management Act, the State Water Control Law, the CWA, and attendant regulations. These shall include conditions under 9VAC25-875-1050 (duration of permits), 9VAC25-875-1060 (schedules of compliance), 9VAC25-875-1030 (monitoring), electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

B. 1. An applicable requirement is a state statutory or regulatory requirement that takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit to the extent allowed in Article 6 (9VAC25-875-1210 et seq.) of this part.

2. New or reissued permits, and to the extent allowed under Article 6 of this part modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in 9VAC25-875-1030 and 9VAC25-875-1040.

C. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

9VAC25-875-1030. Establishing limitations, standards, and other permit conditions.

A. In addition to the conditions established under 9VAC25-875-1020 A, each permit shall include conditions meeting the following requirements when applicable.

1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-875-990 B (protection period).

2. The department may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a permit to forgo sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition, and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318, and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the department shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

C. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318, and 405 of the CWA necessary to:

1. Achieve water quality standards established under the State Water Control Law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) that the department determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the department shall use procedures that account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the department determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the department determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the department demonstrates in the fact sheet or statement of basis of the permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the department must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant that the department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information that may include EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-875-1090 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern that are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision 1 the department shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7;

2. Attain or maintain a specified water quality through water quality related effluent limits established under the State Water Control Law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the State Water Control Law and § 401 of the CWA;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the State Water Control Law or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management Plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D.

D. Technology-based controls for toxic pollutants. Limitations established under subsection A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants that the department determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants that, in the judgment of the department, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A.

E. A notification level that exceeds the notification level of 9VAC25-31-200, upon a petition from the permittee or on the department's initiative. This new notification level may not exceed the level that can be achieved by the technology-based treatment requirements appropriate to the permittee.

F. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9VAC25-875-1000 M 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any

G. Durations for permits, as set forth in 9VAC25-875-1050.

H. Monitoring requirements.

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity, including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-875-1000, subdivisions 5 through 8 of this subsection, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Reporting shall be no less frequent than specified in the regulations cited in this subdivision;

4. To ensure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate, including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be necessary on a case-by-case basis pursuant to the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the CWA;

d. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods; and

e. With analyses performed according to test procedures approved under 40 CFR Part 136 being performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less that once a year. All results shall be electronically reported in compliance with 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;

6. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for stormwater discharges (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9VAC25-875-940; and

8. Permits that do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9VAC25-875-1000 M 1, 4, 5, 6, and 7 at least annually.

I. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;

2. Numeric effluent limitations are infeasible; or

3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and the CWA.

J. Reissued permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

stringent effluent limitation applicable to a pollutant if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

b. (1) Information is available that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The department determines that technical mistakes or mistaken interpretations of the State Water Control Law were made in issuing the permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the Virginia Erosion and Stormwater Management Act, the State Water Control Law, and § 301(c), (g), (h), (i), (k), and (n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised wasteload allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the State Water Control Law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-875-1170.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity defined in 9VAC25-875-20, the department may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the department must include those elements as conditions in the permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste, at the construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal, or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the department may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal, or local erosion and sediment control program is one that includes the elements listed in subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

9VAC25-875-1040. Calculating permit conditions.

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 9VAC25-875-1030.

B. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

dissolved or valent or total form to carry out the provisions of the CWA, Virginia Erosion and Stormwater Management Act, and the State Water Control Law; or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

C. Discharges that are not continuous, as defined in 9VAC25-875-850, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;

2. Total mass;

3. Maximum rate of discharge of pollutants during the discharge; and

4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

D. Mass limitations.

1. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants that cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of total suspended solids from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

9VAC25-875-1050. Duration of permits.

A. Permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 9VAC25-875-890, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The department may issue any permit for a duration that is less than the full allowable term under this section.

D. A permit may be issued to expire on or after the statutory deadline set forth in § 301(b)(2)(A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements of § 301(b)(2)(A), (C), (D), (E), and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

9VAC25-875-1060. Schedules of compliance.

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Virginia Erosion and Stormwater Management Act, the CWA, and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible but not later than the applicable statutory deadline under the CWA.

2. The first permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

3. Schedules of compliance may be established in permits for existing sources that are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the permit, for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule of compliance that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements or submit progress reports if subdivision 4 b of this subsection is applicable.

to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit that has already been issued:

a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with applicable requirements no later than the statutory deadline;

3. If the permittee is undecided whether to cease conducting regulated activities, the department may issue or modify a permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subdivision 3 a of this subsection, the permittee shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The permit applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the department, such as a resolution of the board of directors of a corporation.

Article 5

Public Involvement

9VAC25-875-1070. Draft permits.

A. Once an application for an individual permit is complete, the department shall tentatively decide whether to prepare a draft individual permit or to deny the application.

B. If the department tentatively decides to deny the individual permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to department action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the department shall provide public notice and opportunity for a public hearing prior to department action on the application.

C. If the department tentatively decides to issue a general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the department decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under 9VAC25-875-1000 and 9VAC25-875-1020;

2. All compliance schedules under 9VAC25-875-1060;

3. All monitoring requirements under 9VAC25-875-1030; and

4. Effluent limitations, standards, prohibitions, and conditions under 9VAC25-875-1000, 9VAC25-875-1010, and 9VAC25-875-1030, and all variances that are to be included.

9VAC25-875-1080. Statement of basis.

A statement of basis shall be prepared for every draft permit for which a fact sheet under 9VAC25-875-1090 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the permit applicant and, on request, to any other person.

9VAC25-875-1090. Fact sheet.

A. A fact sheet shall be prepared for every draft individual permit for a major facility or activity for every general permit, for every draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, and for every draft permit that the department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The department shall send this fact sheet to the permit applicant and, on request, to any other person.

1. A brief description of the type of facility or activity that is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions;

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit, including:

a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;

b. Procedures for requesting a public hearing and the nature of that hearing; and

c. Any other procedures by which the public may participate in the final decision;

6. Name, telephone number, and email address of a person to contact for additional information;

7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

a. Limitations to control toxic pollutants;

b. Limitations on indicator pollutants;

c. Technology-based limitations set on a case-by-case basis;

d. Limitations to meet the criteria for permit issuance under 9VAC25-875-870; or

e. Waivers from monitoring requirements granted under 9VAC25-875-1030 A; and

9. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

9VAC25-875-1100. Public notice of draft permit actions and public comment period.

A. Scope.

1. The department shall give public notice that the following actions have occurred:

a. A draft permit has been prepared under 9VAC25-875-1070 D;

b. A public hearing has been scheduled under 9VAC25-875-1120; or

c. A new source determination has been made under 9VAC25-875-990.

2. No public notice is required when a request for an individual permit modification, revocation and reissuance, or termination is denied under 9VAC25-875-1210 B. Written notice of that denial shall be given to the requester and to the permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

3. Public notices may describe more than one draft permit or draft permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing, either by electronic or postal delivery, a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive the right to receive notice for any classes and categories of permits):

a. The permit applicant (except for general permits when there is no permit applicant);

b. Any other agency that the department knows has issued or is required to issue a VPDES permit;

c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);

d. Any state agency responsible for plan development under § 208(b)(2) or (b)(4) or 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service;

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request; and

f. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of draft general permits;

c. A brief description of the business conducted at the facility or activity described in the individual permit application or the draft permit, for general permits when there is no application;

d. Name, address, telephone number, and email address of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final individual or general permit decision;

f. For an individual permit, a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

g. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-875-1120 shall contain the following information:

a. Reference to the date of previous public notices relating to the draft permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual permit application (if any), and the draft permit (if any).

9VAC25-875-1110. Public comments and requests for public hearings.

During the public comment period provided under 9VAC25-875-1100, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall meet the requirements of 9VAC25-875-1120 and 9VAC25-875-1130. All comments shall be considered in making the final decision and shall be answered as provided in 9VAC25-875-1160.

9VAC25-875-1120. Public hearings.

A. 1. Procedures for public hearings and permits before the department are those set forth in 9VAC25-875-1130.

2. Public notice of the public hearing shall be given as specified in 9VAC25-875-1100.

3. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of individual permit applications may be considered at any such public hearing.

allowed for oral statements, and the submission of statements in writing may be required.

C. A recording or written transcript of the hearing shall be made available to the public.

9VAC25-875-1130. Criteria for requesting and granting a public hearing in a permit action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of the permit.

B. Requests for a public hearing shall contain the following information:

1. The name and postal mailing or email address of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative;

3. The reason for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and the conditions of the permit in question, together with suggested revisions and alterations to those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action and, within 30 calendar days following the expiration of the time period for the submission of requests, shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, federal law, or any regulation promulgated thereunder.

D. The director shall notify by email or mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing; and

2. Cause or require the applicant to publish notice of a public hearing to be published once in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may at the director's discretion convene a public hearing in a permit action.

9VAC25-875-1140. Controversial permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the board, and (iii) the agency files.

9VAC25-875-1150. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC25-875-1160. Response to comments.

A. At the time that a final individual or general permit is issued, the department shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft individual or general permit have been changed in the final individual or general permit decision, and the reasons for the change; and

hearing.

B. The response to comments shall be available to the public.

9VAC25-875-1170. Conditions requested by the Corps of Engineers and other government agencies.

A. If during the comment period for a draft permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of an individual or general permit, the individual or general permit shall be denied and the individual permit applicant so notified. If the district engineer advises the department that imposing specified conditions upon the individual or general permit is necessary to avoid any substantial impairment of anchorage or navigation, then the department shall include the specified conditions in the individual or general permit. Review or appeal of denial of an individual or general permit or of conditions specified by the district engineer shall be made through the applicable procedures of the U.S Army Corps of Engineers and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the U.S Army Corps of Engineers, those conditions shall be considered stayed in the individual or general permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the individual or general permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the department may include the specified conditions in the individual or general permit to the extent they are determined necessary to carry out the provisions of this regulation, the State Water Control Law, and the CWA.

C. In appropriate cases the department may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

9VAC25-875-1180. Decisions on variances.

A. The department may grant or deny requests for variances requested pursuant to 9VAC25-875-920 G 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H.

B. The department may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the individual permit applicant submitted pursuant to 9VAC25-875-920 G 2; or

2. A variance based on water quality related effluent limitations submitted pursuant to 9VAC25-875-920 G 3.

C. If EPA approves the variance, the department may prepare a draft individual permit incorporating the variance. Any public notice of a draft individual permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The department may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D; or

2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-875-920 G 2.

E. If the administrator approves the variance, the department may prepare a draft individual permit incorporating the variance. Any public notice of a draft individual permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

9VAC25-875-1190. Appeals of variances.

When the department issues an individual permit on which EPA has made a variance decision, separate appeals of the individual permit and of the EPA variance decision are possible.

9VAC25-875-1200. Computation of time.

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

C. If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon the party or interested person by mail or by electronic or postal delivery, three days shall be added to the prescribed time.

Article 6

Transfer, Modification, Revocation and Reissuance, and Termination of Permits

9VAC25-875-1210. Modification, revocation and reissuance, or termination of permits.

the department's initiative. When the department receives any information (e.g., inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) it may determine whether one or more of the causes listed in this section for modification or revocation and reissuance, or both exist. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 9VAC25-875-1230 or 9VAC25-875-1250. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the department shall not modify, revoke and reissue, or terminate the permit. If a permit modification satisfies the criteria for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Article 5 (9VAC25-875-1070 et seq.) of this part followed.

B. If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the department tentatively decides to modify or revoke and reissue a permit, the department shall prepare a draft permit incorporating the proposed changes. The department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the department shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued and the permit is reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 9VAC25-875-1240 are not subject to the requirements of this section.

D. If the department tentatively decides to terminate a permit under 9VAC25-875-1250, where the permittee objects, the department shall do so in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC25-875-1220. Transfer of permits.

A. Except as provided in subsection B of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the Virginia Erosion and Stormwater Management Act and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

9VAC25-875-1230. Modification or revocation and reissuance of permits.

A. Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit.

2. The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger permits this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved, or promulgated water quality standards;

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved a state action with regard to a water quality standard on which the permit condition was based; and

request is based.

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of permits.

4. The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the permittee has filed a request for a variance pursuant to 9VAC25-875-920 G within the time specified in this chapter.

6. When required to incorporate an applicable § 307(a) of the CWA toxic effluent standard or prohibition.

7. When required by the reopener conditions in a permit that are established under 9VAC25-875-1030 B.

8. Upon failure to notify another state whose waters may be affected by a discharge.

9. When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee.

10. To establish a notification level as provided in 9VAC25-875-1030 E.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the State Water Control Law and § 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline.

13. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 9VAC25-875-970 D 2 when:

a. The permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and

b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9VAC25-875-1250, and the department determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

9VAC25-875-1240. Minor modifications of individual permits.

Upon the consent of the permittee, the department may modify an individual permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Article 5 (9VAC25-875-1070 et seq.) of this part. Any individual permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

1. Correct typographical errors;

2. Require more frequent monitoring or reporting by the permittee;

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing individual permit and does not interfere with attainment of the final compliance date requirement;

4. Allow for a change in ownership or operational control of a facility where the department determines that no other change in the individual permit is necessary, provided that a written agreement containing a specific date for transfer of individual permit responsibility, coverage, and liability between the current and new individual permittees has been submitted to the department;

5. a. Change the construction schedule for a discharger that is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or

b. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

(9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

9VAC25-875-1250. Termination of permits.

A. The following are causes for terminating a permit during the permit's term or for denying an individual permit or coverage under a general permit renewal application after notice and opportunity for a hearing by the department.

1. The permittee has violated any regulation of the board or order of the department, any order of the VESMP authority, any provision of the State Water Control Law or this chapter, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations that in the opinion of the department, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

2. Noncompliance by the permittee with any condition of the permit;

3. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a permit or in any other report or document required under the State Water Control Law or this chapter;

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the permit;

6. The activity for which the permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

7. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

B. The department shall follow the applicable procedures in this chapter in terminating any permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the department may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the department shall follow the applicable procedures for termination under 9VAC25-875-1210 D. Expedited permit termination procedures are not available to permittees that are subject to pending state or federal enforcement actions, including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.

C. Permittees that wish to terminate their permit must submit a notice of termination (NOT) to the department. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection 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, the permittee may be required to report electronically if specified by a particular permit.

Article 7

Enforcement of Permits

9VAC25-875-1260. Enforcement.

A. The department may enforce the provisions of this chapter by:

1. Issuing directives in accordance with the State Water Control Law;

2. Issuing special orders in accordance with the State Water Control Law;

3. Issuing emergency special orders in accordance with the State Water Control Law;

4. Seeking injunction, mandamus, or other appropriate remedy as authorized by the State Water Control Law;

5. Seeking civil penalties under the State Water Control Law; or

6. Seeking remedies under the State Water Control Law or the CWA or under other laws, including the common law.

B. The department encourages citizen participation in all its activities, including enforcement. In particular:

1. The department will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the department's purview;

rule; and

3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the department will publish public notice of such settlement or order in a newspaper of general circulation in the county, city, or town in which the discharge is located, and in the Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken, and specify where a copy of the settlement or order can be obtained. A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The department shall consider all comments received during the comment period before taking final action.

C. When a permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

1. The permit amendment does not have to go to public notice; and

2. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by agreement without further notice when a hearing has been scheduled to issue a special order to the affected owner, whether or not the hearing is actually held.

Article 8

Miscellaneous

9VAC25-875-1270. Transition.

Upon the effective date of this chapter the following will occur:

1. All applications received after the effective date of this chapter will be processed in accordance with these procedures.

2. Permits issued by the Soil and Water Conservation Board allowing the discharge of stormwater into surface waters from municipal separate storm sewer systems or land-disturbing activities that have not expired or been revoked or terminated before or on the program transfer date to the department shall continue to remain in effect until their specified expiration dates.

9VAC25-875-1280. Operators shall comply with the electronic reporting requirements set forth in Part XI of 9VAC25-31.

Operators shall comply with the electronic reporting requirements set forth in Part XI of 9VAC25-31.

Part VIII

Fees

9VAC25-875-1290. Purpose.

Sections 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia authorize the establishment of a statewide fee schedule, including administrative charges for state agencies, for stormwater management for land-disturbing activities, and for municipal separate storm sewer systems. This part establishes the fee assessment and the collection and distribution systems for those fees. The fees shall be established for individual permits or coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (permits for stormwater management for land-disturbing activities) to cover all costs associated with the implementation of a VESMP by a VESMP authority that has been approved by the department. Such fee attributes include the costs associated with plan review, registration statement review, permit issuance, state-coverage verification, inspections, reporting, database management, and compliance activities associated with the land-disturbing activities as well as for program oversight costs. Fees shall also be established for permit maintenance, modification, and transfer.

Fees collected pursuant to this part shall be in addition to any general fund appropriations made to the department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the department and the VESMP authority to fully carry out their responsibilities under the VESMA, this chapter, local ordinances, or standards and specifications where applicable.

When establishing a VESMP, the VESMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in 9VAC25-875-1400 as available to the department for program oversight responsibilities pursuant to § 62.1-44.15:28 A 9 of the Code of Virginia. Accordingly, should a VESMP authority demonstrate to the department its ability to fully and successfully implement a VESMP without a full implementation of the fees set out in this part, the department may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth in this part.

A VESMP authority may establish greater fees than those base fees specified by this part should it be demonstrated to the department that such greater fees are necessary to properly administer the VESMP. Any fee increases established by the VESMP authority beyond those base fees established in this part shall not be subject to the fee distribution formula set out in 9VAC25-875-1360. Nothing in this part shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions.

A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under the VESMA, this chapter, ordinances, or standards and specifications.

department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent.

9VAC25-875-1300. Authority.

The authority for this part is §§ 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia.

9VAC25-875-1310. Applicability.

A. This part applies to:

1. All persons seeking coverage of a MS4 under a new permit. The fee due shall be as specified under 9VAC25-875-1380.

2. All operators who request that an existing MS4 individual permit be modified, except as specifically exempt under 9VAC25-875-1320. The fee due shall be as specified under 9VAC25-875-1390.

3. All persons seeking coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities or a person seeking an Individual VPDES Permit for Discharges of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-875-1400.

4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities or of an Individual VPDES Permit for Discharges of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-875-1410 in addition to any additional fees necessary pursuant to 9VAC25-875-1400 due to an increase in acreage.

5. Reinspection fees assessed by the department to recoup the costs associated with each visit to a land-disturbing project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection. The fee due shall be as specified under 9VAC25-875-1370.

6. Business transaction costs assessed associated with processing credit card payments.

B. Persons who are applicants for an individual municipal separate stormwater sewer system permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 9VAC25-875-1380.

Persons whose coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities has been revoked shall reapply for an Individual VPDES Permit for Discharges of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-875-1400.

C. Permit maintenance fees may apply to each permit holder. The fee due shall be as specified under 9VAC25-875-1420.

9VAC25-875-1320. Exemptions.

A. No permit application fees will be assessed to:

1. Permittees who request minor modifications to permits as defined in 9VAC25-875-20 or other minor amendments at the discretion of the VESMP authority.

2. Permittees whose permits are modified or amended at the request of the VESMP authority or department. This does not include errors in the registration statement identified by the VESMP authority or department or errors related to the acreage of the site.

B. Permit modifications at the request of the permittee resulting in changes to stormwater management or ESM plans that require additional review by the VESMP authority shall not be exempt pursuant to this section and shall be subject to fees specified under 9VAC25-875-1410.

9VAC25-875-1330. Due dates for permits.

A. Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 9VAC25-875-1340.

B. Individual permit or general permit coverage maintenance fees shall be paid annually to the department or the VESMP authority, as applicable. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a notice of termination is effective.

Permit maintenance fees for MS4 individual permits or MS4 general permit coverages are due by October 1 of each year. Effective April 1, 2014, any operator whose permit or general permit coverage, including operators whose permits or general permit coverages have been administratively continued, is effective as of April 1 of any given year shall pay the permit maintenance fee or fees to the department or the VESMP authority by October 1 of that same year.

Permit maintenance fees for discharges of stormwater from construction activities pursuant to 9VAC25-875-1420 are due by April 1 of each year. After approval of a VESMP authority, including the department when acting in that capacity, any owner whose permit or general permit coverage authorizing discharges of stormwater from construction activities, including owners whose permits or general permit coverages have been administratively continued, is effective as of the effective date of the VESMP authority shall pay the permit maintenance fee or fees to the department or the VESMP authority by April 1 of that same year.

9VAC25-875-1340. Method of payment.

the discretion of the department, submitted electronically or be paid by check, draft, or postal money order payable to:

1. The Treasurer of Virginia for a MS4 individual or general permit or for a coverage issued by the department under the General VPDES Permit for Discharges of Stormwater from Construction Activities or Individual VPDES Permit for Discharges of Stormwater from Construction Activities and must be in United States currency, except that agencies and institutions of the Commonwealth of Virginia may submit interagency transfers for the amount of the fee. The department may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the Virginia Department of Environmental Quality.

2. The VESMP authority, for VESMP operational costs of the VESMP authority under the General VPDES Permit for Discharges of Stormwater from Construction Activities, and must be in United States currency.

B. When fees are collected electronically pursuant to this part through credit cards, business transaction costs associated with processing such payments may be additionally assessed.

C. Nothing in this part shall prohibit the department and a VESMP authority from entering into an agreement whereby the total fee to be paid by the applicant for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities is payable to the VESMP authority, and the VESMP authority transmits the department's portion set forth in 9VAC25-875-1400 to the department on a schedule established by the department.

D. Required information for permits or permit coverage. All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the department Permit Application Fee Form:

1. Applicant name, address, and daytime telephone number.

2. The name of the facility or activity and the facility or activity location.

3. The type of permit applied for.

4. Whether the application is for a new permit issuance, permit reissuance, permit maintenance, or permit modification.

5. The amount of fee submitted.

6. The existing permit number, if applicable.

7. Other information as required by the VESMP authority.

9VAC25-875-1350. Incomplete and late payments.

All incomplete payments will be deemed as nonpayments. The department or the VESMP authority, as applicable, shall provide notification to the applicant 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 department and the VESMP authority are entitled to all remedies available under the Code of Virginia in collecting any past due amount.

9VAC25-875-1360. Deposit and use of fees.

A. All fees collected by the department pursuant to this chapter shall be deposited into the Virginia Stormwater Management Fund and shall be used and accounted for as specified in § 62.1-44.15:29 of the Code of Virginia. Fees collected by the department shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a VESMP authority pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the VESMP authority's responsibilities pursuant to the VESMA, Article 3 (9VAC25-875-100 et seq.) of Part II (9VAC25-875-40 et seq.) and Part V (9VAC25-875-470 et seq.) of this chapter, local ordinances, or standards and specifications.

Pursuant to subdivision A 9 of § 62.1-44.15:28 of the Code of Virginia, whenever the department has authorized the administration of a VESMP by a VESMP authority, 28% of the total revenue generated by the statewide stormwater management fees collected in accordance with 9VAC25-875-1400 shall be remitted on a schedule determined by the department to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the VESMP authority waives or reduces any fee due in accordance with 9VAC25-875-1400, the VESMP authority shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the VESMP authority beyond the base fees established in this part shall not be subject to the fee distribution formula.

9VAC25-875-1370. General.

The fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed a separate fee, as applicable.

9VAC25-875-1380. Fee schedules for municipal separate storm sewer system new permit issuance.

The following fee schedule applies to permit applications for issuance of a new individual municipal separate storm sewer system permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration

Municipal Stormwater / MS4 Individual (Large and Medium)	$16,000
Municipal Stormwater / MS4 Individual (Small)	$8,000
Municipal Stormwater / MS4 General Permit (Small)	$4,000

9VAC25-875-1390. Fee schedules for major modification of MS4 individual permits requested by the operator.

The following fee schedule applies to applications for major modification of an individual MS4 permit requested by the permittee:

Municipal Stormwater / MS4 Individual (Large and Medium)	$5,000
Municipal Stormwater / MS4 Individual (Small)	$2,500

9VAC25-875-1400. Fees for individual permit or coverage under the General Permit of Discharges of Stormwater from Construction Activities.

The following total fees to be paid by an applicant apply to any operator seeking coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a state agency or federal entity that does not file standards and specifications or an individual permit issued by the department. On and after approval by the department of a VESMP authority for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 9VAC25-875-530. The remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities.

When a site is 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 the applicant's site according to the following table.

Fee type	Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)	Department portion fee to be paid by a (based on 28% of paid*)
Land-Disturbing Activity in a Chesapeake Bay Preservation Area (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 one acre)	$290	$0
General / Stormwater Management - Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)	$209	$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	$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 one acre and less than five 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 five 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

within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)		
Individual VPDES Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	$15,000	$15,000

*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, t applicant fee shall be paid to the department.

The following fees apply to coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities issued by the department for a state agency or federal entity that has standards and specifications approved by the department.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)

9VAC25-875-1410. Fees for the modification or transfer of individual permits or of registration statements for the General VPDES Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General VPDES Permit for Discharges of Stormwater from Construction Activities issued by the department. If the permit modifications result in changes to stormwater management plans that require additional review by the VESMP authority, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the 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 9VAC25-875-1400. No modification or transfer fee shall be required until such department-approved programs exist. These fees shall only be effective when assessed by a VESMP authority, including the department when acting in that capacity, that has been approved by the department. No modification fee shall be required for the General VPDES Permit for Discharges of Stormwater from Construction Activities for a state agency or federal entity that is administering a project in accordance with approved standards and specifications but shall apply to all other state or federal agency projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)
General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)
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 five acres where the department is the VSMP authority)
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 one and less than five acres)
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 five acres and less than 10 acres)
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)
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)
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)
Individual VPDES Permit for Discharges of Stormwater from Construction Activities

9VAC25-875-1420. Permit maintenance fees.

permit coverage is terminated and shall only be effective when assessed by a VESMP authority, including the department when acting in that capacity that has been approved by the department. No maintenance fee shall be required for the General VPDES Permit for Discharges of Stormwater from Construction Activities for a state agency or federal entity that is administering a project in accordance with approved standards and specifications but shall apply to all other state or federal agency projects. All regulated MS4s that are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out in the following table:

Municipal Stormwater / MS4 Individual (Large and Medium)
Municipal Stormwater / MS4 Individual (Small)
Municipal Stormwater / MS4 General Permit (Small)
Land-Disturbing Activity in a Chesapeake Bay Preservation Area (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 one acre)
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)
General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)
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 five acres where the department is the VSMP authority)
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 one acre and less than five acres)
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 five acres and less than 10 acres)
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)
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)
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)
Individual VPDES Permit for Discharges from Construction Activities

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, 4th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-875)

EPA Application Form 1 General Information NPDES Permitting Program (rev. 3/2019)

Virginia Department of Environmental Quality General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10) Registration Statement 2019

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-875)

Virginia Runoff Reduction Method: Instructions and Documentation, March 28, 2011

Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014

VA.R. Doc. No. R19-5787; Filed November 08, 2023

Home
- Home

VA Register Online
- Current Issue
- Previous Issues

Emergency Regulations
- Emergency Regulations

Guidance Documents
- Guidance Documents

Learn
- History of the VA Register
- About this Site
- Register of Regulations FAQs
- Regulatory Processes
- Citizen Participation

Agency Resources
- Publication Form & Procedure Manual
- RIS Resources
- Publication Schedule
- Regulation Filing FAQs
- VA Register Style Manual (pdf)
- Guidance Document List Instructions (pdf)

Follow us on Twitter | 201 N. Ninth Street, Richmond, VA 23219. Email: codes@dls.virginia.gov

© Copyright Commonwealth of Virginia, 2013-2024. All rights reserved. Site developed by the Division of Legislative Automated Systems (DLAS)

June 11, 2024
Town Council
Public Hearing
Ord. No. 2024-13

ORDINANCE 2024-13
AN ORDINANCE CREATING CHAPTER 21 "EROSION AND STORMWATER MANAGEMENT", OF THE CODE OF THE TOWN OF WARRENTON
EFFECTIVE JULY 1, 2024

WHEREAS, on June 22, 2023, Virginia's State Water Control Board adopted new Virginia Erosion and Stormwater Management Regulations (9VAC25-875) with an effective date of July 1, 2024, to consolidate and clarify program requirements, eliminate redundancies, and correct inconsistencies between the erosion and sediment control and stormwater management program regulations; and

WHEREAS, the intent of this new regulation is to combine and clarify the existing regulatory requirements from the Erosion and Sediment Control (9VAC25-840), the Erosion and Sediment Control and Stormwater Management Certification (9VAC25-850), and the Virginia Stormwater Management Program (9VAC25-870) regulations into one chapter of the Virginia Administrative Code; and

WHEREAS, no substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action; and

WHEREAS, the Town's regulations pertaining to Erosion and Sediment Control and Stormwater Management were previously codified in Articles 4 and 5 of the Town's Zoning Ordinance; and

WHEREAS, the Town Council conducted a work session to review the new regulatory requirements at the March 12, 2024, meeting and directed staff to initiate an updated, separate ordinance; and

WHEREAS, the Town Council held a duly advertised public hearing on June 11, 2024 to review the new regulations and receive public input on the proposed addition of Chapter 21, Erosion and Stormwater Management, to the Code of the Town of Warrenton, which aligns with the Virginia Erosion and Stormwater Management Regulations (9VAC25-875); and

NOW THEREFORE BE IT ORDAINED, by the Town Council of the Town of Warrenton that the Town Code be and is hereby amended to add Chapter 21, Erosion and Stormwater Management, to read in its entirety as follows:

Table of Contents

Chapter 21, Erosion and Stormwater Management

Sec. 21-1 Title, Purpose, and Authority
Sec. 21-2 Definitions
Sec. 21-3 Erosion and Stormwater Management Program Established
Sec. 21-4 Conflicting Contents with other Codes and Ordinances
Sec. 21- 5 Regulated Land Disturbing Activities
Sec. 21-6 Review and Approval of Plans; Prohibitions
Sec. 21-7 Review of a Soil Erosion Control and Stormwater Management Plan (ESM Plan)
Sec. 21-8 Stormwater Permit Requirements: Exemptions
Sec. 21-9 Stormwater Pollution Prevention Plan; Contents of Plans
Sec. 21-10 Stormwater Pollution Prevention Plan; MS4
Sect. 21-11 Stormwater Management Plan; Contents of Plan
Sec. 21-12 Pollution Prevention Plan; Contents of Plans
Sec. 21-13 Erosion and Sediment Control Plan; Contents of Plans
Sec. 21-14 Technical Criteria for Regulated Land Disturbing Activities
Sec. 21-15 Long Term Maintenance of Permanent Stormwater Facilities
Sec. 21-16 Monitoring and Inspections
Sect 21-17 Performance Bonds
Sec. 21-18 Hearings
Sec. 21-19 Appeals
Sect. 21-20 Right of Entry
Sec. 21-21 Enforcement
Sec. 21-22 Fees

CHAPTER 21 – EROSION AND STORMWATER MANAGEMENT ORDINANCE

Section 21-1 Title, Purpose, Authority.

A. The purpose of this Chapter is to ensure the general health, safety, and welfare of the citizens of the Town to 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.

B. This Chapter is authorized by § 62.1-44.15:27 of the Code of Virginia. Pursuant to that statute, this Chapter is adopted as part of an initiative to integrate the Town's stormwater management requirements with the Town's erosion and sediment control, flood plain management, and Chesapeake Bay Preservation Act requirements into a consolidated erosion and stormwater management program. The erosion and stormwater management program is 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 and those responsible for compliance with these programs.

C. All references to provisions of the Code of Virginia, Acts of the General Assembly, or state regulations in this Chapter shall be interpreted to include future amendments to the provisions of the Code, acts of the General Assembly or state regulations.

Section 21-2 Definitions.

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

"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" means the person appointed by the Town Manager to administer this Chapter and any designee or agent appointed by the Administrator for inspections, administration, enforcement, or other action under any provision of this Chapter.

"Agreement in lieu of a plan" means a contract between the Town and the owner or Permittee that specifies methods that shall be implemented to comply with the requirements of the VESMA and this Chapter 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 in lieu of a soil erosion control and stormwater management plan.

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

"Best management practice" or "BMP" 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.).

“Clearing” means any activity that removes 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.

“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 Chapter, 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; synonymous with “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, 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.

"Hundred-year storm" or “100-year storm” means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as an exceedance probability with a 1% chance of being equaled or exceeded in any given year.

"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.

“Illicit discharge” or “Unauthorized Discharge” means any discharge to the storm drainage (storm sewer) system that is not composed of entirely of stormwater, except discharges pursuant to either a Virginia Pollutant Discharge Elimination System (VPDES) permit or discharges resulting from firefighting activities. This definition shall not include discharges listed in Town Code, section 17-218 (a) unless the town identifies such discharges as sources of pollutants to state water.

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

"Incorporated place" means a city or town 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, or the conversion of land from permeable to impermeable surfaces.

"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 any county, city, or town.

"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 human beings.

"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” or “Municipal separate storm sewer system” means a municipal separate storm sewer system as defined in Virginia law.

“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.

"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 such as riprap, concrete, or plastic that will not experience surface wear due to natural forces.

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

"Operator" means the owner or operator of any facility or activity subject to the VESMA and this Chapter. 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 Chapter.

"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 (such as preliminary grading, demolition of existing structures, roads, and utilities), 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.

“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.

The “Regulation” means the Virginia Erosion and Stormwater Management Regulation, Chapter 875 of 9 VAC 25.

"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 Chapter as a prerequisite for engaging in land disturbance.

"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 nonerodible 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 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 Chapter, 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 Chapter 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 Chapter.

"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 Plat" has the meaning given for the term “Plat” in Article 5 of the Town’s Subdivision Ordinance.

"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 the Town of Warrenton.

"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 the Town, acting through the Administrator.

"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.

Section 21-3 Erosion and Stormwater Management Program Established.

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 21 of this Chapter.

Section 21-4 Conflicting Content with other Codes and Ordinances.

Whenever any provisions of any Commonwealth or Federal statue or other provisions of Town Code impose a greater requirement, or higher standard, than is required by these regulations, those provisions shall govern.

Section 21-5 Regulated Land Disturbing Activities.

A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

1. Land-disturbing activity that (i) disturbs 2,000 square feet or more but less than one acre, (ii) is not in a Chesapeake Bay Preservation Area, and (iii) is 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. However:
   a. 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, requires an Agreement in Lieu of a Plan and does not require a soil erosion control or stormwater management plan; and
   b. Land disturbing activity exceeding 10,000 sq. ft, requires a stormwater management plan, subject to criteria defined in Article 3 (9VAC25-875-570 et seq.) of Part V.

2. Land-disturbing activity that (i) disturbs 2,000 square feet or more but less than one acre and (ii) is part of an overall larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

3. Land-disturbing activity that disturbs one acre or more, or which is in a Chesapeake Bay Preservation Area, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

Section 21-6 Review and Approval of Plans (§ 62.1-44.15:34 of the Code of Virginia); Prohibitions.

A. The Administrator shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA), pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.

B. Except as expressly allowed elsewhere in this Chapter, a person shall not conduct any land-disturbing activity in the Town of Warrenton until all of the following steps have been completed:

1. An application that includes a land disturbance Permit application, if applicable, a state Permit registration statement, Stormwater Pollution Prevention Plan, an erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to the Stormwater Administrator; and

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. All required documentation, including proof of purchase of off-site nutrients and wetland credits, copies of wetland permits, and all easements, plats, bonds, or surety contracts have been submitted and approved as applicable; and

4. The Administrator has issued its land-disturbance approval. The land disturbance Permit will be issued by the Administrator once all applicable criteria noted above and the site development plan is approved in its entirety in accordance with Town of Warrenton Zoning Ordinance, Town of Warrenton Subdivision Ordinance, and the Regulation.

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 and sediment control plan and a 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 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 21-7 Review of a Soil Erosion Control and Stormwater Management Plan (ESM Plan).

A. The Administrator shall approve or disapprove an ESM plan according to the following:

1. The Administrator shall determine the completeness of any application within 15 days after receipt and shall act on any application within 60 days after it has been determined by the to be complete.

2. The Administrator shall issue either land-disturbance approval or denial and provide written rationale for any denial.

3. Prior to issuing a land-disturbance approval, the Administrator shall be required to obtain evidence of Permit coverage when such coverage is required.

4. The Administrator also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

Section 21-8 Stormwater Permit Requirement; 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 Chapter and the Regulation.

B. Notwithstanding any other provisions of this Chapter, the following activities are not required to comply with the requirements of this Chapter 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 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.

C. Notwithstanding this Chapter 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 21-9 Stormwater Pollution Prevention Plan; 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 Chapter, and attendant regulations.

C. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

D. In addition to the requirements of subsections A through C of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.

E. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

3. Minimize the amount of soil exposed during construction activity;

4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

7. Minimize soil compaction and, unless infeasible, preserve topsoil;

8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and

9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

F. The 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.

Section 21-10 Stormwater Pollution Prevention Plan; MS4.

A. A Pollution Prevention Plan, when required by the Regulation, 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. 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 21-11 Stormwater Management Plan; Contents of Plan (9VAC25-875-510).

A. Land development requires approval of a site plan pursuant to the Town's Zoning ordinance or a construction/infrastructure plan pursuant of the Town's 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. A stormwater management plan shall be developed and submitted to the Administrator. The stormwater management plan shall be implemented as approved or modified by the 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 Chapter 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.

C. 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;

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 (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) 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 of intensity of rainfall , 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:

    i. All contributing drainage areas;

    ii. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

    iii. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

    iv. Current land use including existing structures, roads, and locations of known utilities and easements;

    v. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

    vi. The limits of clearing and grading, and the proposed drainage patterns on the site;

    vii. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

    viii. 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;

D. 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 if the Town requires payment of a fee with the stormwater management plan submission, the fee, and the required fee form in accordance with Section 21-22 of this Chapter must be submitted.

E. 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 shall delay development until the necessary offsite facilities or improvements are constructed or other arrangements are made which are satisfactory to the Administrator. In such an event, the plats, or plans, otherwise satisfactory, will be approved when the requirements of this Section are satisfied. Alternatively, the Applicant may choose to supply the offsite facilities that are necessary for adequate drainage.

F. If the discharge conditions are not met and the discharge may aggravate an existing drainage concern or contribute to a drainage problem, the Applicant must provide a drainage system satisfactory to Administrator. These improvements will be contained within a suitable drainage easement.

G. 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 21-12 Pollution Prevention Plan; Contents of Plans. (9VAC25-875-520)

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

Section 21-13 Erosion and Sediment Control Plan; Contents of Plans (9VAC25-875-550)

A. An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan shall include:

1. Appropriate maps;

2. An appropriate soil and water plan inventory and management information with needed interpretations; and

3. A record of decisions contributing to conservation treatment to include the following:

   a. Project description briefly describing the nature and the purpose of the land disturbing activities and acreage to be disturbed;

   b. Existing site conditions description of existing topography, land use, cover, and drainage patterns at the site;

   c. 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;

   d. Offsite disturbed areas description of proposed borrow sites, waste, surplus areas, utility extension and erosion controls to be implemented;

   e. 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 seasonal water table as applicable;

   f. Critical areas on the site which many have potentially serious erosion and sediment controls problems, and special considerations required (such as steep slopes, hydric soils, channels, springs, sinkholes, water supply reservoirs, or groundwater recharge).

   g. Proposed erosion and sediment control measures inclusive to the specific erosion and sediment control plan as proposed for the land disturbing activity. Measures must be consistent with the proposed onsite drawings and address general use, installation, limitations, sequencing and maintenance requirements for each control measure;

   h. Stabilization measures required for the site, either temporary or permanent, and during and following construction including temporary and permanent seeding, mulching, paving, stone, soil stabilization blankets and matting, sodding, landscaping, or special stabilization techniques to be utilized at the site; and

   i. Stormwater management considerations for the site, either of temporary or permanent nature,

and strategies, sequences, and measures required for control.

B. The Owner or Operator shall provide the name of an RLD to the Administrator.

C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.

D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

Section 21-14 Technical Criteria for Regulated Land Disturbing Activities.

A. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the Town 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 Chapter, 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 the Town to be equivalent thereto (i) was approved by the 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; and

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 the Town 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; and

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.

Section 21-15 Long-Term Maintenance of Permanent Stormwater Facilities.

A. The Operator shall submit a construction record drawing for permanent stormwater management facilities to the Stormwater 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 termination or earlier as required by the Town and shall at a minimum:

1. Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;

2. Be stated to run with the land;

3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and

5. Be enforceable by all appropriate governmental parties.

C. At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Stormwater Administrator that future maintenance for those facilities will be addressed through an enforceable mechanism at the discretion of Stormwater Administrator.

D. If a recorded instrument is not required pursuant to Subsection C., 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 methods targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator or its duly authorized agent.

Section 21-16 Monitoring and Inspections.

A. The Administrator shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;

2. Compliance with the approved stormwater management plan;

3. Development, updating, and implementation of a pollution prevention plan; and

4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The Administrator shall conduct periodic inspections on all projects during construction. The Administrator shall conduct periodic monitoring inspections on all projects during construction:

1. Pre-construction meeting is required prior to commencement of construction;

2. An initial site inspection shall be made prior to the start of construction to assure that all required initial erosion control 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 commence construction.

3. Conduct inspections during or immediately following initial inspection of erosion 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. Post-construction inspections of stormwater management facilities require by the provisions of this Chapter shall be conducted by the Administrator pursuant to the Town's adopted and State Board approved inspection program, at least once every (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 the Code of Virginia; 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.

2. As part of the established inspection program, BMP inspection reports are required annually by the owner in accordance with their Stormwater Maintenance Agreement.

D. 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 methods targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator ..

E. The Owner shall always have an RLD assigned to the plan or Permit and shall immediately notify the Town if an RLD ceases to serve in that role. Failure to assign an RLD within five days of an RLD ceasing to serve in the role shall require the Owner to cease land-disturbing activities until the Owner assigns a new RLD and notifies the Town of the new RLD's identity and contact information.

Section 21-17 Performance Bond (§ 62.1-44.15:34 of the Code of Virginia)

A. Prior to issuance of any Permit, the Applicant shall submit a 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 the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any.

B. 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 released. 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 demonstrated to the Administrator that the facility functions as specified.

Section 21-18 Hearings.

A. Any Applicant or Permittee, or person subject to the requirements of this Chapter, aggrieved by any action of the Administrator taken without a formal hearing, or by the Administrator's decision not to take action, may demand in writing a formal hearing by the Town Manager, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action or decision not to act is given by the Administrator.

B. The hearings held under this Section shall be conducted by the Town Manager or designee after reasonable notice to the Administrator and petitioner of the time and place of the hearing. The burden shall be on the petitioner to show (a) that it is subject to the requirements of this Chapter and (b) that the Administrator erred.

C. A verbatim record of the proceedings of such hearings shall be taken and filed with the Town Manager. Depositions may be taken and read as in actions at law.

D. The Town Manager 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 Town Manager, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

E. Admission of evidence in any hearing under this section shall be governed by Virginia Code § 62.1-44.27.

Section 21-19 Appeals.

A. Pursuant to 9VAC25-875-160, any Applicant, Permittee, or person subject to the requirements of this chapter aggrieved by the decision of the Town Manager, may within (30) days of such decision or action, as applicable, appeal the decision to the Circuit Court.

B. The circuit court shall conduct such review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals.

Section 21-20 Right of Entry.

A. 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 Chapter.

B. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or other legal arrangement, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the Administrator on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

Section 21-21 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, by delivery at the site of the development activities to the agent or employee supervising such activities, or by any electronic communication means used by the Permittee in communication with the Administrator.

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 § 62.1-44.15:37 of the Code of Virginia 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 Stormwater Administrator may issue an order requiring the owner, Permittee, RLD, 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 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 service. 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 § 62.1-44.15:48 of the Code of Virginia.

B. In addition to any other remedy provided by this Chapter, if the Administrator **or** his designee determines that there is a failure to comply with the provisions of this Chapter, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with State Code, Erosion and Stormwater Regulations, and the local inspection and enforcement policy.

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 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;

   xi. Failure to maintain and provide contact information for an RLD; and

   xii. Discharges not in compliance with the requirements of 9VAC25-880-70.

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

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

4. Any civil penalties assessed by a court as a result of a summons issued by the Town 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 Town and abating environmental pollution therein in such manner as the court may, by order, direct.

D. Notwithstanding any other civil or equitable remedy provided by this Chapter or by law, any person who willfully or negligently violates any provision of this Chapter, 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 21-22. Fees.

A. 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*)
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)	$290	$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.

B. 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 of Warrenton, 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

C. 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. Fees specified in this Subsection go to the Town.

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, 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.

D. 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.

E. Permit and Permit coverage maintenance fees outlined under Section 21-22 may apply to each general Permit holder.

F. 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 Chapter. Permit modifications at the request of the Permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.

2. Permittees whose general Permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

G. 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.

Town of Warrenton Zoning Ordinance
Contents

Article 1 Title, Purpose and Authority
1-1 Title
1-2 Authority
1-3 Purpose
1-4 Legislative Intent
1-5 Applicability
1-6 Validity of Ordinance
1-7 Conflicting Ordinances
1-8 Severability
1-9 Amendments
1-10 Effective Date

Article 2 General Provisions
2-1 Application and Prohibition
2-2 Compliance with Chapter Required
2-3 Exemptions
2-4 Public Facilities Manual
2-5 Zoning of Annexed Territory
2-6 Calculation of Density
2-7 Authorization for Constructing Public Facilities
2-8 Provisions Are Minimum Requirements
2-9 Interpretation of Terms
2-10 Uses Not Permitted are Prohibited
2-11 Adding Unspecified Uses
2-12 Zoning Map and District Boundaries
2-13 Methods of Measuring Lots, Yards and Related Terms
2-14 Lots and Yard Requirements
2-15 Relationship to Private Agreements
2-16 Conditional Zoning
2-17 Condominium Conversion
2-18 Encroachments in Required Yards
2-19 Fences and Walls
2-20 Height Regulations
2-21 Obstruction to Vision at Intersections Prohibited
2-22 Removal of Top Soil [see also Erosion and Sediment Control]
2-23 Districts Established

Article 3 Zoning Districts and Map
3-1 Zoning Districts Established
3-1.1 Base Districts
3-1.2 Overlay Districts
3-2 Zoning Map
3-3 Zoning District Boundaries
3-4 Requirements for Base Zoning Districts
3-4.1 R-15 Residential District
3-4.2 R-10 Residential District
3-4.3 R-6 Residential District

3-4.4 RT Residential Townhouse District
3-4.5 RMF Residential Multifamily District
3-4.6 R-40 Residential District
3-4.7 R-E Residential District
3-4.8 RO Residential Office District
3-4.9 PSP Public Semi Public Institutional District
3-4.10 C Commercial District
3-4.11 CBD Central Business District
3-4.12 I Industrial District
3-5 Requirements for Overlay Zoning Districts
3-5.1 FPD - Floodplain District
3-5.2 PUD - Planned Unit Development District
3-5.3 HD - Historic District

Article 4 ~~Site Conservation Manual [Erosion and Sediment Control]~~ REMOVED (XXXX 2024)
~~4-1 Title and Purpose~~
~~4-1.1 Title~~
~~4-1.2 Authority~~
~~4-1.3 Intent~~
~~4-1.4 Purpose~~
~~4-1.5 Conflicting Content with other Codes and Ordinances~~
~~4-1.6 Certain State Erosion and Sediment Control Provisions Adopted~~
~~4-2 Recordation of Riparian Setback Areas~~
~~4-3 Application Procedure~~
~~4-3.1 Applicant~~
~~4-3.2 Agreement in Lieu of SCP~~
~~4-3.3 SCP Authority~~
~~4-3.4 Erosion and Sediment Control Plan Approving Authority~~
~~4-3.5 Responsible Land Disturber~~
~~4-4 Definitions~~
~~4-5 Exceptions~~
~~4-5.1 Erosion and Sediment Control Exemptions~~
~~4-5.2 Riparian Buffer and Setback Exceptions~~
~~4-6 Riparian Buffer and Setback Area~~
~~4-6.1 Riparian Buffers~~
~~4-6.2 Riparian Setback Area~~
~~4-6.3 Riparian Areas of Special Concern~~
~~4-7 Permits~~
~~4-7.1 Land Disturbance Permit~~
~~4-7.2 Building Permit~~
~~4-8 Program Standards/Procedures~~
~~4-8.1 Plan Contents~~
~~4-8.2 Operation and Maintenance of Storm Water Management Facilities~~
~~4-8.3 Approval Process~~
~~4-8.4 Bond Requirements~~
~~4-8.5 Multi-jurisdiction Requirements~~
~~4-8.6 Erosion Impact Areas~~
~~4-8.7 Preconstruction Meeting~~
~~4-8.8 Inspection Process~~
~~4-9 Fees~~

~~4-10 Variances~~
~~4-11 Violations, Remedies, Public Notice~~
~~4-11.1 Informal Contact/Verbal Warning~~
~~4-11.1.2 Notice to Comply~~
~~4-11.1.3 Stop Work Order~~
~~4-12 Criminal and Civil Penalties~~
~~4-13 Appellate Process~~
~~4-13.1 Appeals of items regulated by the Zoning Ordinance~~
~~4-13.2 Appeals to the Virginia Erosion and Sediment Laws~~
~~4-13.3 Appeal of a Stop Work Order~~
~~4-14 Duration of Approval~~

Article 5 ~~Stormwater Management~~ REMOVED (XXXX 2024)
~~5-1 Purpose and Authority (Section 9VAC25-870-20, 9VAC25-870-40)~~
~~5-2 Definitions (9VAC25-870-10)~~
~~5-3 Stormwater Permit Requirement; Exemptions~~
~~5-4 Stormwater Management Program Established; Submission and Approval of Plans; Prohibitions~~
~~5-5 Stormwater Pollution Prevention Plan; Contents of Plans~~
~~5-6 Stormwater Management Plan; Contents of Plan~~
~~5-7 Pollution Prevention Plan; Contents of Plans~~
~~5-8 Review of Stormwater Management Plan~~
~~5-9 Technical Criteria for Regulated Land Disturbing Activities~~
~~5-10 Adequate Drainage~~
~~5-10.1 Minimum Requirements~~
~~5-11 Long-Term Maintenance of Permanent Stormwater Facilities~~
~~5-12 Monitoring and Inspections~~
~~5-13 Hearings~~
~~5-14 Appeals~~
~~5-15 Enforcement~~
~~5-16 Fees~~
~~Table 1: Fees for permit issuance~~
~~Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities~~
~~Table 3: Permit Maintenance Fees~~
~~5-17 Performance Bond (9VAC25-870-104.D and Code § 603.8(A))~~
~~5-18 Adoption, Amendments, and Repeal~~

Article 6 Sign Regulations
6-1 General Provisions
6-1.1 Legislative Intent
6-1.2 Applicability
6-1.3 Sign Permit Required
6-1.4 Signs for Which a Permit is Not Required
6-1.5 Signs Permitted in All Districts
6-1.6 Signs Prohibited in All Districts
6-1.7 Measurement of Signs
6-1.8 Illumination
6-1.9 Setback
6-1.10 Obstruction of Vision
6-1.11 Landscaping and Lighting [see Articles 8 and 9]
6-2 Sign Regulations By Use, Sign Type And District

6-2.1 General Regulations for All Signs in Any District
6-2.2 Summary of Sign Regulations
6-2.3 Sign Regulations for the R 40, R-E, R 15, R 10, R 6 Residential Districts
6-2.4 Signs Regulations for the RT, RMF, and PUD Districts
6-2.5 Signs Regulations for the RO, PSP and CBD Districts
6-2.6 Signs Regulations for the C District
6-2.7 Signs Regulations for the I District
6-2.8 Signs Regulations for the HD District
6-2.9 Signs Regulations for the FPD District
6-3 Administrative Provisions
6-3.1 Sign Permits and Application Process
6-3.2 Construction, Maintenance and Removal
6-3.3 Nonconforming Signs

Article 7 Off-Street Parking and Loading
7-1 Legislative Intent
7-2 General Standards
7-3 Standards for Residential Uses
7-4 Standards for Institutional and Community Service Uses
7-5 Standards for Recreational Uses
7-6 Standards for Commercial Uses
7-7 Standards for Industrial, Trade, Warehouse, and Utility Uses
7-8 Uses Not Specifically Covered By This Schedule
7-9 Special Parking Considerations for the CBD District
7-10 Space on Same Lot
7-11 Alternate Location by Special Use Permit
7-12 Cooperative Parking
7-13 Proximity to Municipal Parking Lots
7-14 Safe and Convenient Access
7-15 Design Requirements for Residential Parking Lots
7-16 Design Requirements for Industrial and Commercial Parking Lots
7-17 Parking Space Size
7-18 Required Off Street Loading and Unloading Space
7-19 Handicapped Parking
7-20 Minimum Stacking Space Requirements

Article 8 Landscaping Requirements
8-1 Legislative Intent
8-2 Applicability
8-2.1 Site Development Plans
8-2.2 Parking Lots and Streets
8-3 Review Procedures
8-4 Landscape Plan Requirements
8-4.1 Landscape Plan Required
8-4.2. Information Required on Landscape Plan
8-5 Street Tree Planting
8-5.1 Street Tree Planting Required
8-5.2 Responsibility for Planting and Maintenance
8-5.3 Location of Street Trees
8-5.4 Where Parking Lots abut public street rights of way
8-5.5 Street Tree Standards

8-5.6 Street Tree Specifications
8-5.7 Planting Space Requirements
8-6 Parking Lot Landscaping
8-6.1 Perimeter Parking Lot Landscaping
8-6.2 Interior Parking Lot Landscaping
8-6.3 Parking Lot Planting Specifications
8-7 Tree Species
8-7.1 Acceptable Tree Species
8-7.2 Unacceptable Species
8-7.3 Plantings within Stormwater Facilities and Drainage Structures
8-7.4 Noxious and Invasive Species
8-8 Screening and Buffer Yards
8-8.1 Application
8-8.2 Visual Screening
8-8.3 Buffer Yards, General Requirements
8-8.4 Uses Requiring Buffer Yards
8-8.5 Screening and Buffer Yard Specifications [table]
8-9 Conservation of Heritage and Specimen Trees
8-9.1 Registry of Heritage and Specimen Trees
8-9.2 Exemptions
8-9.3 Removal of Heritage and Specimen Trees
8-10 Retention and Replacement of Trees
8-10.1 Exemptions
8-10.2 Retention of Existing Trees
8-10.3 Tree Replacement Requirements
8-10.4 Tree Protection Zones
8-10.5 Trees Permitted to be Removed are not Considered as Existing Trees
8-10.6 Site Development Procedures
8-11 Planting Procedures
8-12 Maintenance Responsibilities
8-13 Penalties for Unauthorized Removal

Article 9 Supplemental Use Regulations
9-1 Accessory Structures and Uses; Parcel Limitations
9-2 Additional Regulations Where a Grouping or More than One Use is Planned for a Tract
9-3 Affordable Dwelling Unit Provisions
9-4 Apartment Buildings, Special Regulations
9-5 Bed and Breakfast Facilities
9-6 Cluster Development Provisions
9-7 Home Occupations and Home Businesses
9-8 Lighting
9-9 Manufacturing Buildings, Special Regulations
9-10 Mobile Homes (Manufactured Homes)
9-11 Office and Other Business Buildings, Special Regulations
9-12 Open Space
9-13 Outdoor Display
9-14 Performance Standards for All Non-Residential Uses
9-15 Recycling Facilities
9-16 Residential Use Limitations
9-17 Steep Slopes
9-18 Telecommunications Facilities

9-19 Temporary Uses
9-20 Traditional Neighborhood Development Option (TND)
9-21 Utility Lots
9-22 Yard and Garage Sales
9-23 Massage Therapy, Establishment of Provisions for Therapists and Businesses
9-24 Mobile Food Vendors

Article 10 Site Development Plans
10-1 Purposes and Intent
10-2 Development or Land Use Requiring a Site Development Plan
10-3 Presubmission Meeting Required
10-4 Site Development Plan - Information Required
10-5 Site Development Plan - Preparation Procedure and Specific Items to be Shown
10-6 Minimum Standards and Improvements Required
10-7 Administration and Procedures for Processing Site Development Plans
10-8 Required Bonds and Surety
10-9 As-Built Site Plans Required

Article 11 Administration, Procedures and Enforcement
11-1 Administration
11-2 Board of Zoning Appeals
11-2.1 General Provisions (Purpose, Authority and Membership)
11-2.2 Rules and Regulations
11-2.3 Powers and Duties
11-3 Procedures for Application Review and Approval
11-3.1 Types of Permit Applications
11-3.2 Public Hearing Procedures
11-3.3 Land Disturbance Permit
11-3.4 Zoning Permits
11-3.5 Building Permits
11-3.6 Occupancy Permit
11-3.7 Site Development Plan
11-3.8 Commission Permit ("2232 Review")
11-3.9 Zoning Amendments
11-3.10 Special Use Permits
11-3.11 Variances
11-3.12 Appeal to the Board of Zoning Appeals
11-4 Non-Conforming Uses and Structures
11-5 Enforcement and Penalties

Article 12 Definitions

Article 2 General Provisions

Amended by Town Council: December 9, 2014
December 11, 2018
April 9, 2019
December 10, 2019
April 12, 2022
XXXX, 2024

Table of Contents

2-1 Application and Prohibition
2-2 Compliance with Chapter Required
2-3 Exemptions
2-4 Public Facilities Manual
2-5 Zoning of Annexed Territory
2-6 Calculation of Density
2-7 Authorization for Constructing Public Facilities
2-8 Provisions Are Minimum Requirements
2-9 Interpretation of Terms
2-10 Uses Not Permitted are Prohibited
2-11 Adding Unspecified Uses
2-12 Zoning Map and District Boundaries
2-13 Methods of Measuring Lots, Yards and Related Terms
2-14 Lots and Yard Requirements
2-15 Relationship to Private Agreements
2-16 Conditional Zoning
2-17 Condominium Conversion
2-18 Encroachments in Required Yards
2-19 Fences and Walls
2-20 Height Regulations
2-21 Obstruction to Vision at Intersections Prohibited
2-22 Removal of Top Soil [see also Articles 4 and 5]
2-23 Districts Established

Article 2 General Provisions

2-1 Application and Prohibition

2-1.1 General Application

All buildings and structures erected hereafter, all uses of land, water or buildings established hereafter, all structural alterations or relocations of existing buildings occurring hereafter, and all enlargements of, additions to, changes in and relocations of existing uses occurring hereafter shall be subject to all regulations of this Ordinance which are applicable to the zoning districts in which such buildings, structures, uses or land are located. Existing buildings, structures and uses which comply with the regulations of this Ordinance shall likewise be subject to all regulations of this Ordinance.

Existing lawful buildings, structures and uses which do not comply with regulations herein shall be subject to Section 11-4 of this Ordinance relating to nonconformities.

2-1.2 General Prohibition

No building or structure, no use of any building, structure or land, and no lot of record now or hereafter existing shall hereafter be established, altered, moved, diminished, divided, eliminated or maintained in any manner except in conformity with the provisions of this Ordinance.

2-2 Compliance with Chapter Required

2-2.1 Compliance with chapter generally

1 No building, structure or land shall be used or occupied, and no building or structure or part thereof shall be constructed, except in conformity with all of the regulations specified in this Ordinance for the district in which it is located.

2 No building or other structure shall be erected or altered:

1) To exceed the height or bulk specified in this Ordinance.
2) To accommodate or house a greater number of families than permitted by this Ordinance.
3) To occupy a greater percentage of lot area than specified in this Ordinance.
4) To have narrower or smaller rear yards, front yards, side yards, or other open space than required by this Ordinance.
5) In any other manner contrary to the provisions of this Ordinance.

2-2.2 Compliance with Ordinance in issuance of permits and licenses

All departments, officials and public employees of the Town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits or licenses for uses, buildings or purposes only when they are in harmony with the provisions of this Ordinance. Any such permit or license, if issued in conflict with the provisions of this Ordinance, shall be null and void.

2-3 Exemptions

The following are exempt from this Ordinance:

2-3.1 Electrical transmission lines of 150 kV or more, approved by the State Corporation Commission.

2-3.2 Poles, wires, cables, conduits, vaults, laterals, pipes, valves, meters or any other similar equipment when used for the purpose of distributing service to individual customers within an approved or established service area, but not including telecommunications towers, plants or substations.

2-3.3 The height limitations of this Ordinance shall not apply to cupolas, barns, silos, farm buildings, chimneys, flag poles, water tanks, and monuments and necessary mechanical appurtenances not exceeding in height the distance therefrom to the nearest lot line.

2-3.4 Federal projects as applicable under 40 U.S.C. §3312.

2-3.4 State-owned lands and buildings, as applicable under Virginia Code § 15.2-2293.

2-4 Public Facilities Manual

2-5.1 The Town of Warrenton Public Facilities Manual**,** as amended by Town Council of the Town of Warrenton, is hereby incorporated herein by reference in the Zoning and Subdivision Ordinances as though set out in full herein.

2-5.2 All utility systems shall be designed and constructed in accord with the Town of Warrenton Public Facilities Manual.

2-5 Zoning of Annexed Territory

2-5.1 Any property annexed or boundary adjusted into the corporate limits, hereinafter referred to as the "annexed property", which was zoned in Fauquier County for a density more intense than one (1) dwelling unit per acre, after the effective date of the Zoning Ordinance shall immediately upon the effective date of such annexation or boundary

adjustment be reclassified to the R-15 Zoning District pursuant to Article 3 of the Zoning Ordinance.

2-5.2 Notwithstanding the foregoing, if the annexed property was zoned in Fauquier County with a density equal to or less intense than one (1) dwelling unit per acre, the annexed property shall immediately upon the effective date of such annexation or boundary adjustment be reclassified to the R-E Zoning District, pursuant to Article 3 of this Zoning Ordinance.

2-5.3 Notwithstanding the provisions of paragraph 2-5.1 and 2-5.2, if the annexed property was zoned in Fauquier County to a commercial district, the annexed property shall immediately upon the effective date of such annexation or boundary adjustment be reclassified to the C Zoning District pursuant to Article 3 of the Zoning Ordinance.

2-5.4 The Planning Commission shall prepare and present a recommended zoning classification of any annexed property to the Town Council within twelve (12) months of the effective date of such annexation or boundary adjustment.

2-6 Calculation of Density

2-6.1 Maximum Density. The maximum density specified in this Ordinance for a given zoning district shall not be exceeded. Calculations of development density, including lot, lot area, parent tract, net and gross density for residential development and other such terms, shall be made in accord with the formulas provided within the definitions of those terms in Article 12 of this Ordinance.

2-7 Authorization for Constructing Public Facilities

No public facility shall be constructed, established or authorized unless and until it has been reviewed and approved by the Planning Commission as provided by Section 15.2-2232 of the Virginia Code, as being in substantial accord with the Town's adopted Comprehensive Plan.

Repair, reconstruction, improvement and normal, minor service extensions of public facilities or public corporation facilities, unless involving a change in the location or extent of a street or public area shall be deemed to be in accordance with Section 15.2-2232 of the Virginia Code. For purposes of this section, widening, extension, enlargement or change of use of public streets, public facilities or public areas shall not be excepted from the requirement of review for Comprehensive Plan conformity.

2-8 Provisions Are Minimum Requirements

The provisions of this Ordinance shall be the minimum requirements to promote and the public health, safety and general welfare.

2-9 Interpretation of Terms

For the purpose of this Ordinance, certain words and terms are to be interpreted as defined in Article 12.

In case of any dispute over the meaning of a word, phrase or sentence, whether defined in this Ordinance or not, the Zoning Administrator is hereby authorized to make a definitive determination thereof, being guided in such determination by the purposes and intent of this Ordinance, as set forth in Article 1; provided, that an appeal may be taken from any such determination as provided in Article 11 of this Ordinance.

2-10 Uses Not Permitted are Prohibited

For the purpose of this Ordinance, permitted uses are listed for the various districts. Unless it is otherwise clear from the context of the lists or other regulations of this Ordinance, uses not specifically listed are prohibited.

In case of any dispute as to whether a use is permitted in any district, the Zoning Administrator is hereby authorized to make a definitive determination thereof, being guided in such determination by the purposes and intent of this chapter, as set forth in Article 10 and by the purposes and intent of the particular district, provided that an appeal may be taken from any such determination as provided in Article 11 of this Ordinance.

2-11 Adding Unspecified Uses

Uses other than those allowed in the applicable district may be added to a district only upon adoption of a text amendment approved by the Town Council, pursuant to the amendment procedures set forth in Article 11 of this Ordinance.

2-12 Zoning Map and District Boundaries

2-12.1 The Town is divided into the Zoning Districts set forth in Article 2, and defined in Articles 3 of this Ordinance, and as shown on the map entitled "Zoning Map, Town of Warrenton, Virginia", together with all explanatory matters thereon.

2-12.2 The Zoning Map shall be located in the office of the Zoning Administrator and shall be the final authority as to the current zoning classification of land and water areas, buildings and other structures in the Town except for subsequent amendments enacted by the Town Council and not yet officially recorded on said map.

2-12.3 No changes of any kind shall be made to the Zoning Map except in conformity with the procedures and requirements of this Ordinance.

2-12.4 Determination of district boundaries

Unless district boundary lines are fixed by dimensions or otherwise clearly shown or described, and where uncertainty exists with respect to the boundaries of any of the districts as shown on the zoning map, the following rules shall apply:

2-12.4.1 Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys or railroad main tracks, such center line of the right-of-way or prescriptive easement or lines at right angles to such center lines shall be construed to be such boundaries, as the case may be.

2-12.4.2 Where a district boundary is indicated to follow the shoreline of a river, creek, branch, pond, lake or other body of water, such boundary shall be construed to follow the shoreline at low water or at the limit of the jurisdiction, and if there is a change in the shoreline, such boundary shall be construed as moving with the actual shoreline. Where a district boundary is indicated to follow the centerline of a river, creek, branch or other body of water, such boundary shall be construed to follow the centerline at low water or at the limit of the jurisdiction, and if there is a change in the shoreline, such boundary shall be construed as moving with the actual shoreline.

2-12.4.3 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

2-12.4.4 If no distance, angle, curvature description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the zoning district shall be determined by the use of the scale shown on the zoning map.

2-12.4.5 If uncertainties continue to exist after the other provisions of this section are exhausted, the question of the property's zoning district shall be presented to the Zoning Administrator for interpretation and be so noted on the Map. In case of subsequent dispute, the matter may be appealed to the Board of Zoning Appeals in accord with the procedures set forth in Article 11.

2-13 Methods of Measuring Lots, Yards and Related Terms

2-13.1 Regular lots, width measurements

The width of a regular lot shall be determined by measurement across the lot at the depth of the required front yard or building setback line. The distance between side lot lines at

the points where they intersect with a street line (front lot line) shall be not less than eighty percent of the required width of the lot.

However, in cases where lots front on curved or circular (cul-de-sac) streets, the radii of which do not exceed ninety feet, the distances between side lot lines where they intersect with the street line (front lot line) may be reduced to sixty percent of the required lot width, measured in a straight line between the points where side lot lines extended intersect the street line.

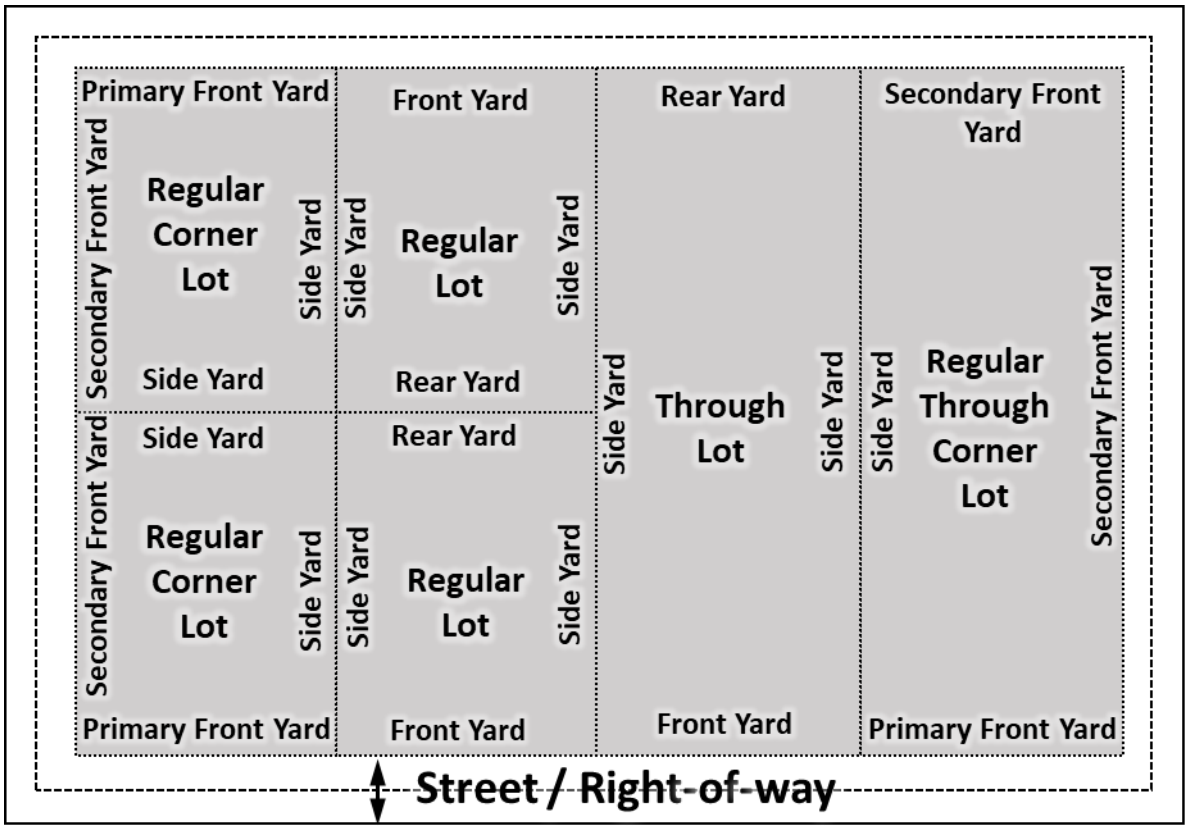
2-13.2 Regular lots, determination of front yard

2-13.2.1 On regular interior lots, the front shall be construed to be the portion nearest the street or access road.

2-13.2.2 On regular corner lots, all sides along streets shall be considered front yards. The primary front yard shall be construed to be the shortest boundary fronting on a street, providing lot width requirements are met. If the lot has equal frontage on two or more streets, the primary front lot shall be determined and shown on the subdivision plat or site plan. The secondary front yard begins at the point where it intersects with the primary front yard and extends to the side yard.

2-13.2.3 On regular through corner lots, all sides along streets shall be considered front yards. The primary front yard shall be construed to be the shorter boundary fronting the street, provided that if the shortest boundary fronting on a street is eighty percent or more of the length of the longest boundary fronting on a street, the applicant may select either frontage providing the lot width requirements are met. The remaining yards fronting on a street shall be considered secondary front yards, beginning at the point where they intersect with the primary front yard and extend to the side yard.

2-13.2.4 On regular through lots, the front shall be construed to be the shorter boundary fronting on a street. If the lot has equal frontage on two streets, the front of the lot shall be determined and shown on all subdivision plats and site plans by the prevailing building pattern, or the prevailing lot pattern if a building pattern has not been established.



2-13.3 Regular lots, yards adjacent to street

2-13.3.1 Front yards of at least the depth required by setback requirements in the district shall be provided across the entire frontage of a regular lot.

2-13.3.2 Other yards adjacent to streets shall be provided across or along the entire portion of the lot adjacent to the street.

2-13.3.3 Rear yards on interior regular lots

Rear yards on interior regular lots shall be provided of at least the depth required for the district, and shall run across the full width of the lot at the rear. Depth of a required rear yard shall be measured in such a manner that the yard is a strip of land with minimum depth required by district regulations with its inner edge parallel with its outer edge.

2-13.3.4 Side yards on regular lots

Side yards on regular lots are defined as extending from the required front yard line (setback line) to the required rear yard line. On regular through lots the required side yard shall run from the required front yard line to the second required front yard line. On corner lots the required side yards shall

run from the point where side yard lines intersect, to the required front yard lines.

2-13.4 Irregular lots, dimensional requirements

An irregular lot, as defined herein, shall be required to meet the dimensional requirements of the district.

2-13.5 Irregular lots, yard requirements

All yards shall meet the yard requirements of the district.

2-13.6 Setback Measurement from streets

All setbacks from public streets shall be measured from the front property line, which is the same as the street line or the front right-of-way.

2-13.7 The depth of required yards adjacent to streets shall be measured perpendicular or radially to such street lines, and the inner line of such required yards shall be parallel to the outer line.

2-13.8 If no dedicated right-of-way exists, if no construction plans are approved for the road, or if less than the minimum right-of-way exists, the right-of way shall be assumed to be the edge of the existing travel way.

2-13.9 For corner lots, the primary front lot line shall be deemed to be the shortest of the two (2) sides fronting on streets.

2-13.10 For corner lots, the secondary front yard setback adjacent to the side street shall be not less than the average of the side and front setbacks required for the lot.

2-13.11 For corner lots, the lot width along the side street shall be in conformity with the minimum lot width requirements for the respective use.

2-14 Lots and Yard Requirements

2-14.1 Frontage Regulations

Except as provided elsewhere in this Ordinance with respect to townhouses, cluster developments, and Planned Unit Developments, no lot shall be used in whole or in part unless such lot abuts upon a public street in accord with the minimum frontage regulations of this Ordinance. No lot or parcel of land abutting the terminus of a public street shall be deemed to comply with the frontage regulations unless such lot abuts on an approved permanent cul-de-sac.

2-14.2 Location on a Lot Required

Every building hereafter erected, reconstructed, converted, moved, or altered, other than accessory buildings as defined and other than townhouses, cluster developments, and Planned Unit Developments, shall be located on a lot of record and in no case shall there be more than one principal building on one lot unless otherwise provided for in this Ordinance. Uses otherwise provided for include multiple-family housing, commercial and office centers and complexes, industrial uses, and institutional complexes.

2-14.3 Lot Access Requirements

All structures requiring a building permit shall be erected on lots which have frontage on a public road, unless otherwise specified or provided for herein, or in the Subdivision Ordinance.

2-14.4. Definitions of Lots and Yards

All types of lots and yards shall be defined as provided in Articles 3 and 12 herein.

2-14.5. Principal Use

Only one principal use or structure shall be permitted on a lot unless otherwise specifically provided for herein. Additional buildings may be permitted, but shall be designated as secondary or subordinate to the principal use.

2-14.6 Required yards and other areas

No part of a yard or other open space, area, or off-street parking or loading space, required in connection with any building or use for the purpose of complying with this Ordinance shall be included as part of a yard, open space area or off-street parking or loading space similarly required for any other building or use, unless otherwise specifically provided for in this Ordinance.

2-14.7. Reductions below minimum requirements of chapter

No lot, area, or yard existing prior to the adoption of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth in this Ordinance. Any lot, area, or yard created after the adoption of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

2-15 Relationship to Private Agreements

This Ordinance is not intended to abrogate, annul or otherwise interfere with any easement, covenant or other private agreement or legal relationship, provided, however, that where the regulations of this Ordinance are more restrictive or impose higher standards or requirements than such private agreements or legal relationships, the regulations of this Ordinance shall govern. The Town bears no responsibility for enforcing any private easements, covenants or other such agreements to which the Town is not a party.

2-16 Conditional Zoning

As part of a petition to rezone property and amend the official zoning maps, the property owner may include voluntary proffers in writing placing certain conditions and restrictions on the use and development of such property. If a petition to rezone is approved, the Zoning Administrator is vested with all necessary authority to administer and enforce such conditions and restrictions, all in accordance with Sections 15.2-2296 et seq., of the Code of Virginia, and such sections are incorporated herein as a part hereof to the same extent and purpose as though such sections were herein fully set out at length.

2-17 Condominium Conversion

In all zoning districts, a structure or use may convert to condominium ownership only if all requirements of this Ordinance, the Subdivision Ordinance, the comprehensive plan, and all other applicable ordinances are met.

2-18 Encroachments in Required Yards

The following features, and no others, may extend into required minimum yard areas, but only as qualified below.

2-18.1 Cornices, canopies, awnings, eaves, or other such similar feature, all of which are at least ten (10) feet above grade, may extend three (3) feet into any required setback but not nearer to any lot line than a distance of two (2) feet. This provision shall not apply to permanent canopies over gasoline pump islands which have supports located on the pump island. Such canopies may extend into minimum required front yards, providing they do not overhang travel lanes or, if no travel lanes exist, they shall not be located closer than twenty-two (22) feet from the right-of-way line.

2-18.2 Sills, headers, belt courses, and similar ornamental features may extend twelve (12) inches into any required setback.

2-18.3 Bay windows, oriels, balconies, and chimneys not more than ten (10) feet in width may extend three (3) feet into any required front or side setback, ten (10) feet into any required rear setback, but not nearer to any lot line than a distance of five (5) feet.

2-18.4 An outside stairway, unenclosed above and below its steps, may extend four (4) feet into any required side or rear setback, but not nearer to any side lot line than a distance of six (6) feet.

2-18.5 Decks may not project into any required front yard or side yard, but may project into rear yards by not more than one-half of the required rear yard setback, provided that no deck extends closer than 10 feet to any rear property line. Decks built within such encroachments may not be covered or enclosed. Decks or patios of a height of 18 inches or less as measured from the point of lowest grade are not subject to any setbacks.

2-18.6 Open fire escapes of noncombustible material may project into side or rear yards by not more than four (4) feet and no closer to any property line than five (5) feet.

2-18.7 Front porches may project into any required front yard by not more than six feet into the required yard setback, not more than three feet into required side yard setback and into not more than ten feet into the required rear yard setback.

2-18.8 Heating, Ventilation, and Air Condenser Units (HVAC) may project into rear and side yard setbacks provided that no HVAC extends closer than five (5) feet to any rear or side property line.

2-19 Fences and Walls

2-19.1 Fences and walls may be erected up to a height of six (6) feet in all zoning districts, except for fences or walls that extend within the required front setback, unless otherwise restricted by the ARB within the Historic District. Within the area bounded by the front setback and the side lot lines, fences and walls shall not exceed four (4) feet in height, unless otherwise restricted by the provisions of this Ordinance. Excluded are walls or fences encompassing swimming pools or other uses which are required by law.

2-19.2 Fences along the secondary front yard of a corner lot shall meet the side yard setback requirements within the front setback if they exceed four (4) feet in height.

2-19.3 In residential developments of five (5) or more dwelling units, fencing should be uniform throughout the development and shall be in accord with Article 8 of this Ordinance.

2-19.4 Retaining Walls shall not exceed a height of six (6) feet in any zoning district unless approved by the Planning Director. Any wall exceeding that height that is accessible to residential or pedestrian areas must have a safety railing along the top of the wall.

2-19.5 Fences exceeding 6 feet in height may be approved in conjunction with a Special Use Permit for a Permissible Use listed within Article 3.

2-20 Height Regulations

Buildings may be erected up to the maximum height as allowed in the Zoning District within which it is located, except that:

- The height limit for dwellings may be increased up to forty-five (45) feet and up to three (3) stories provided that front, side, and rear yard setbacks increase one (1) foot for each additional foot of building height over thirty-five (35) feet.

- A public or semi-public building such as a school, church, or library may be erected to a height of sixty (60) feet from grade provided that required front, side, and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

- Church spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, and television antennae are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.

- No accessory building which is within twenty (20) feet of any party lot line shall be more than fifteen (15) feet high. All accessory buildings shall be less than the main building in height.

- No signs, nameplate, or advertising device of any kind shall be installed upon or attached to any chimney, tower, tank, or structure of like kind which is permitted to extend above the height limits of the district in which it is located.

2-21 Obstruction to Vision at Intersections Prohibited

No shrubbery, sign, fence or other similar obstruction to vision between the heights of two and one half (2.5) and ten (10) feet from the ground level shall be permitted within the distance required to provide adequate sight distance to meet Virginia Department of Transportation requirements and included in Article 6.

2-22 ~~Removal of Top Soil [see also Articles 4 and 5]~~ Removed (XXXX 2024)

~~The retention of adequate top soil on the land within the Town is considered necessary for the general welfare of the Town. The permanent removal of topsoil from the land within the Town shall be regulated, as set forth in the Town's Erosion and Sediment Control Ordinance and Site Conservation Manual, incorporated as Article 4 of the Zoning Ordinance. Urban Best Management Practices shall be utilized to stabilize disturbed areas and reduce runoff volumes and sedimentation.~~

~~A land disturbance permit is required when disturbing or clearing an area in excess of 2,000 square feet for any purpose, including, but not limited to, structures, borrow pits, ponds, and~~

~~driveways, except as exempted in Articles 4 and 5 of this ordinance.~~

~~These activities are regulated in accordance with Virginia Erosion and Sediment Control Laws §§ 62.1-44.2 through 62.1-44.34:28; Virginia Water Quality Management Planning Regulations 9VAC25-720, and Virginia Erosion and Sediment Control Regulations 9VAC25-840, as adopted by the Virginia Water Control Board and administered by the Virginia Department of Environmental Quality (DEQ). All of these laws and regulations and any future updates of the aforementioned sections are also adopted as a part of this Ordinance.~~

2-23 Districts Established

For the purposes of this chapter, the Town is hereby divided into the following districts:

Regular (Base) Districts:

R-15 Residential District
R-10 Residential District
R-6 Residential District
RT Residential Townhouse District
RMF Residential Multifamily District
R-40 Residential District
R-E Residential District
RO Residential Office District
PSP Public-Semi-Public Institutional District
C Commercial District
CBD Central Business District
I Industrial District

Overlay and Special Districts:

FPD Flood Plain District
PUD Planned Unit Development District
HD Historic District

Article 4 ~~Site Conservation Manual~~ Removed (XXXX 2024)

~~Amended April 9, 2019~~

~~December 10, 2019~~

REFER TO: Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance

~~Table of Contents~~

~~4.1 Title and Purpose~~

~~4.1.1 Title~~

~~4.1.2 Authority~~

~~4.1.3 Intent~~

~~4.1.4 Purpose~~

~~4.1.5 Conflicting Content with other Codes and Ordinances~~

~~4.1.6 Certain State Erosion and Sediment Control Provisions Adopted~~

~~4.1.7 Severability~~

~~4.2 Recordation of Riparian Setback Areas~~

~~4.3 Application Procedure~~

~~4.3.1 Applicant~~

~~4.3.2 Agreement in Lieu of SCP~~

~~4.3.3 SCP Authority~~

~~4.3.4 Erosion and Sediment Control Plan Approving Authority~~

~~4.3.5 Responsible Land Disturber~~

~~4.4 Definitions~~

~~4.5 Exceptions~~

~~4.5.1 Erosion and Sediment Control Exemptions~~

~~4.5.2 Riparian Buffer and Setback Exceptions~~

~~4.6 Riparian Buffer and Setback Area~~

~~4.6.1 Riparian Buffers~~

~~4.6.2 Riparian Setback Area~~

~~4.6.3 Riparian Areas of Special Concern~~

~~4.7 Permits~~

~~4.7.1 Land Disturbance Permit~~

~~4.7.2 Building Permit~~

~~4.8 Program Standards/Procedures~~

~~4.8.1 Plan Contents~~

~~4.8.2 Operation and Maintenance of Storm Water Management Facilities~~

~~4.8.3 Approval Process~~

~~4.8.4 Bond Requirements~~

~~4.8.5 Multi-jurisdiction Requirements~~

~~4.8.6 Erosion Impact Areas~~

~~4.8.7 Preconstruction Meeting~~

4.8.8 Inspection Process
4.9 Fees
4.10 Variances
4.11 Violations, Remedies, and Public Notice
4.11.1 Informal Contact/Verbal Warning
4.11.2 Notice to Comply
4.11.3 Stop Work Order
4.12 Criminal and Civil Penalties
4.13 Appellate Process
4.13.1 Appeals of items regulated by the Zoning Ordinance
4.13.2 Appeals to the Virginia Erosion and Sediment Laws
4.13.3 Appeal of a Stop Work Order
4.14 Duration of Approval

~~Article 4 Site Conservation Manual~~

~~4.1 Title and Purpose~~

~~4.1.1 Title~~

~~The Article contained herein shall hereafter be known as, referred to, and entitled: "The Town of Warrenton Site Conservation Manual."~~

~~4.1.2 Authority~~

~~This Site Conservation Manual is authorized under Section 15.2-2280 of the Code of Virginia, 9VAC25-840, Virginia Erosion and Sediment Control Law, and any other applicable titles and sections of the Code, as amended. The Site Conservation Manual is hereby incorporated into and made a part of the Zoning Ordinance of the Town of Warrenton, Virginia.~~

~~4.1.3 Intent~~

~~The intent of the Site Conservation Manual is to promote responsible land development and the preservation of the Town's natural landscape through the application of protective measures on and around site development both during and following development. The Town's natural landscape shall include, but is not limited to, natural resources such as trees and woodlands, fresh water bodies, wetlands, riparian areas, other natural areas and natural soils.~~

~~4.1.4 Purpose~~

- ~~To promote the preservation of the natural landscape on public and private lands and to encourage responsible development, this manual shall require the owner of each development area to be responsible for developing a comprehensive Site Conservation Plan (SCP). This plan will address preservation of our natural landscape through tree preservation, riparian setbacks, erosion and sediment control, stormwater management, and design.~~

- ~~The Site Conservation Plan will assure all land disturbance activities are in accordance with the requirements of the Virginia Stormwater Management Program (VSMP) Regulations and permit, 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 the Commonwealth of Virginia Erosion and Sediment Control Law.~~

- ~~The Construction Site Conservation Manual (CSCM) shall establish procedures for the~~

administration and enforcement of such controls. The CSCM will include the preparation of a Stormwater Pollution Prevention Plan (SWPPP) to be maintained on site during construction and that will clearly identify to conversion of temporary E&S measures to final SWM/BMP measures and to protect the integrity of those permanent facilities after construction is completed.

- The preparation of a VPDES (VSMP) Permit Registration Statement, submittal to the Town of Warrenton, along with required permit fees, for processing through the Department of Environmental Quality (DEQ), is hereby required, in accordance with the Authority set forth in section 4-1.2.

4.1.5 Conflicting Content with other Codes and Ordinances

Whenever any provisions of any Commonwealth or Federal statue 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.

4.1.6 Certain State Erosion and Sediment Control Provisions Adopted

Chapter Three of the Virginia Erosion and Sediment Control Handbook and the Virginia Erosion and Sediment Control Regulations (9VAC25-840) amended by the State Water Control Board, October 2013, or the most current edition of such regulations, is hereby adopted in its entirety and incorporated herein by reference in this manual as set out in full herein. The text of these regulations is on file in the Community Development Department.

Except as otherwise provided for in Section 4-5 Exceptions of this manual, no person shall engage in any kind of land disturbing activity within the Town of Warrenton until they have first acquired a Land Disturbance Permit.

4.1.7 Severability

Should any section or provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity or application of the remainder of the Ordinance as a whole or any part thereof.

4.2 Recordation of Riparian Setback Areas

Prior to final approval of a subdivision, site plan, or other development, as applicable, the Riparian Setback Area shall be permanently recorded on the plat records for all parcels associated with the site. Recordation shall be in accordance with the requirements of the Town of Warrenton Subdivision Ordinance Section 3-10 Final Plat Requirements.

4.3 Application Procedure

The Site Conservation Plan shall be submitted as part of the acceptance of the preliminary plat (or in the absence of a requirement for preliminary plats, then as part of the final plat, as applicable) and/or a site development plan required for development within the Town of Warrenton and shall follow the requirements outlined in Article 10, Site Development Plans, of the Town Zoning Ordinance.

4.3.1 Applicant

For the purposes of this Manual, the preparation, submission, and approval of the SCP shall be the responsibility of the property owner. In addition, the requirements of Section 4.8.4, Bond Requirements, of this Manual concerning a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement that is acceptable under the provisions of Section 4.8.4, Bond Requirements, shall be met.

4.3.2 Agreement in Lieu of SCP

Pertaining to development sites exempt from the site review process as per Section 10-2 of the Town Zoning Ordinance, the Town of Warrenton and the land owner may enter into an Agreement in Lieu of the SCP. This agreement must specify the BMPs that the property owner will put into effect to assure the preservation of the Natural Landscape on site and on the adjacent sites in the best manner available. With this agreement the designation of a responsible land disturber who holds a certificate of competence is required per Section 62.1-44.15:53, Virginia Erosion and Sediment Control Law. If a violation occurs during the land disturbing activities the person designated as the responsible land disturber shall be responsible for correcting such violation. Failure to provide the name and contact information, including phone number, of an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approved plan and the person responsible for carrying out the plan shall be subject to the penalties referenced in Section 4-12, Criminal and Civil Penalties, of this Manual.

4.3.3 SCP Authority

The Zoning Administrator, or the Administrator's designated representative, shall be responsible for the verification and assurance that all applicable requirements are met prior to the issuance of any permits for land development. The Zoning Administrator shall work with the Erosion and Sediment Control Administrator, Town Arborist and/or any other department or agency of interest to assure that a complete Site Conservation Plan has been approved prior to issuance of any permits for land development.

4.3.4 Erosion and Sediment Control Plan Approving Authority

The Town of Warrenton's Erosion and Sediment Control Administrator shall be responsible for determining the adequacy of the Erosion & Sediment Control Plan submitted for land-disturbing activities, for the approval of such plans, and that such plan will be complied with throughout the

development process.

4.3.5 Responsible Land Disturber

As a prerequisite to engaging in land-disturbing activities shown on the approved SCP the person responsible for the plan shall provide all contact information, including phone numbers, of the individual holding a certificate of competence to the Town. This person will be held as the contact person to be notified if violations occur. This information shall be supplied directly onto the first page of the SCP. Failure to provide the name and contact information, including phone number, of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approved plan and the person responsible for carrying out the plan shall be subject to the penalties referenced in Section 4-12, Criminal and Civil Penalties, of this manual.

4.4 Definitions

See Article 12, the Virginia Erosion and Sediment Control Handbook (VESCH), 9VAC25-840, and any other applicable titles and sections of the Code, as amended.

4.5 Exceptions

4.5.1 Erosion and Sediment Control Exemptions

Minor land disturbing activities such as home gardens and individual home landscaping, repairs, maintenance work.

Individual service connections.

Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land disturbing activity is confined to the area of the road, street, or sidewalk, which is hard surfaced.

Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system.

Surface or deep mining.

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

Tilling, planting, or harvesting or agricultural, livestock feedlot operations, horticultural, or forest crops or livestock feedlot operations; including agricultural engineering as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation. However, this exception shall not apply to harvesting of forest crops unless the area on which the 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.

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

Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, silt basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Article 2 (§ 10.1-1100 et seq.) Chapter 6 of this title, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.

Disturbed land area of less than two thousand (2,000) square feet in size.

Installation of fence and sign posts or telephone and electric pole and other kinds of posts or poles.

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

4.5.2 Riparian Buffer and Setback Exceptions

Grassy swales and other ephemeral streams

Roadside ditches

Drainage ditches whose purpose is to convey storm water to the public system

Tile drainage systems

Stream Culverts

4.6 Riparian Buffer and Setback Area

4.6.1 Riparian Buffers

Riparian buffers shall be composed of a 25-foot area extending from streamside and the existing natural landscape of the stream including trees and underbrush. If the natural landscape has been removed, the buffer area is required to be landscaped with a mixture of deciduous and coniferous trees with the majority being deciduous canopy or ornamental trees of species specified in Section 8-7 of the Zoning Ordinance. The riparian buffer shall be included as any buffer or part of any buffer area required in Article 8 of the Zoning Ordinance.

4.6.2 Riparian Setback Area

Riparian Setbacks, unless as specified as a riparian area of special concern referenced in Section 4-6.3, shall be 50 feet from streamside and will include the riparian buffer area.

4.6.3 Riparian Areas of Special Concern

4.6.3.1 Delineated Floodplain Areas

Where the 100-year floodplain is wider than the Riparian Setback on either or both sides of a stream, the Riparian Setback shall be extended to the outer edge of the 100-year floodplain as defined by FEMA.

4.6.3.2 Steep Slopes

In areas where the gradient of the riparian corridor significantly impacts the stream the following adjustments to the Riparian Setback shall be made:

Average Percentage of Slope	Adjustment to Riparian Setback
15% 20%	Add 25 feet
21% - 25%	Add 50 feet
>25%	Add 100 feet*

*See Article 9-17 of the Zoning Ordinance

4.6.3.3 Wetland Areas

Where potential wetlands are shown on the US Fish and Wildlife Service National Wetlands Inventory (NWI), a Jurisdictional Determination (JD) issued by the US Army Corps of Engineers shall be required with any application for a land disturbance permit. Riparian Setbacks shall include the full extent of wetlands protected by federal or state law.

4.7 Permits

Development in The Town of Warrenton shall require a two-tier permit system. This system will be required for all construction activities within the Town except for those exemptions outlined in Section 10-2 of the Town Zoning Ordinance and Section 4-5, Exceptions, specified in this manual. Permits will be issued once the site review process has been completed and proper bonding is in place. The two required permits are the Land Disturbance Permit and the Building Permit.

4.7.1 Land Disturbance Permit

The "LAND DISTURBANCE PERMIT" (LDP) shall be issued for the implementation of grading

which is composed of riparian protection, tree removal and those requirements set by the erosion and sediment control plan. No additional construction will be performed and no additional building materials shall be allowed on site until the Zoning Administrator has verified that all requirements of this permit have been met. No Land Disturbance Permit shall be issued without a plat survey showing all riparian setback areas and a tree survey and replacement schedule approved by the Town Arborist or Zoning Administrator.

The issuance of the Land Disturbance Permit shall be conditioned on an approved SCP which shall be presented at the time of application.

The ESC Administrator may allow the stockpiling of additional construction materials, or the temporary storage of equipment, on the site prior to the issuance of the second permit if a suitable location can be identified. Proper Erosion and Sediment Control, approved by the Erosion and Sediment Control Administrator, must be maintained on the stockpile area prior, during, and after the area is used for stockpiling.

4.7.2 Building Permit

The "BUILDING PERMIT" will be issued once the Zoning Administrator certifies that the requirements set forth in this manual and required by the Land Disturbance Permit, have been properly installed. This permit will set forth the commencement of the final construction phase and requires review and approval of the Site Development Plan and of any and all building plans.

4.8 Program Standards/Procedures

4.8.1 Plan Contents

The preservation of our natural landscapes requires that developers work to contain the natural features of the land in their development practices. The contents of the SCP will demonstrate the developer's intent toward preservation and shall include the following requirements based on the Chesapeake Bay Watershed Manual Section VI and Article 8 Sections 7, 9 and 10 of the Town Zoning Ordinance:

4.8.1.1 Riparian Protection Plan

Riparian Protection Plan showing riparian setback and buffer areas and those methods of either retaining the natural forested areas or plantings designed to protect the buffered area.

4.8.1.2 Tree Survey

A tree survey of existing trees as required by Section 10-4-2-15 of the Zoning Ordinance on sites proposed for development, which includes a listing of all heritage and specimen trees to be preserved and the location of all trees on the site with a caliper of six (6) inches or greater. Such trees shall be also identified in a table listing their species, caliper, and canopy

~~size.~~

4.8.1.3 ~~Tree Protection Plan~~

~~Tree Protection Plan as required by Section 10-6-12 of the Zoning Ordinance that indicates the location of trunks and drip lines for trees or wooded areas that are to be retained. In the case of wooded areas, the trunks and drip lines of perimeter trees shall be sufficient indication of location.~~

4.8.1.4 ~~Tree Replacement Schedule~~

~~A replacement schedule of all trees required to be replaced in Section 8-10 of the Zoning Ordinance. Replacement trees shall be replaced by trees indigenous to the Warrenton region. Deciduous trees shall replace deciduous trees and nondeciduous trees shall replace nondeciduous trees.~~

4.8.1.5 ~~Erosion and Sediment Control Plan~~

~~An erosion and sediment control plan containing a description of the controls appropriate for the best management of each construction operation as outlined in the Virginia Erosion and Sediment Control Law. The plan must make use of the practices that preserve the existing natural conditions to the maximum extent possible. Clear-cutting, as defined in Article 12, shall not be authorized.~~

~~For subdivisions of two lots or greater, and site plans comprising one or more acres of land, the plan shall be designed after a Phase I investigation that identifies all potentially historically significant and environmentally sensitive areas on the property. These include, but are not limited to, structures, wetlands, floodplain, steep slopes, endangered habitats, and unstable soils. Buildings and lot locations shall be laid out to preserve, to the maximum extent possible, the conditions identified in the Phase I investigation.~~

~~Development of the plan shall be accomplished through the use of phased development practices per the following schedule that follows the normal progression of land development:~~

- ~~Phase 1: Streets, parking areas, and utilities, including temporary and permanent erosion and sediment control and stormwater installations~~
- ~~Phase 2: Open space and amenity areas, where provided.~~
- ~~Phase 3: Lots for buildings and structures. Lots shall not be cleared until a land disturbance permit in conjunction with a building permit has issued.~~

4.8.1.6 ~~Methods of protection~~

~~Methods of protection shall be clearly indicated on site plan with a legend of symbol included on each sheet.~~

4.8.1.7 ~~Responsible Party~~

~~Protected natural areas including riparian areas and all storm water management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan. Contact information, including phone numbers, shall be located on the first page of the SCP.~~

~~4.8.2 Operation and Maintenance of Storm Water Management Facilities~~

~~An approved plan for the maintenance of all storm water management facilities is required by Article 5 of the Zoning Ordinance. The responsibility for the operation and maintenance of storm water management facilities, unless assumed by the Town of Warrenton, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall be designated for each property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.~~

~~4.8.3 Approval Process~~

4.8.3.1 ~~Approval~~

~~The Town of Warrenton Erosion and Sediment Control Administrator and the Zoning Administrator shall review any and all SCPs and grant written approval within sixty (60) days of the receipt of the plan if it determines that the plan meets the requirements of the Town's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of the SCP Manual. The approval process follows after a site development plan (SDP) has been approved in accordance with Article 10 of the Zoning Ordinance. The land disturbance permit will be issued after the site plan is approved in its entirety and all required documentation, including proof of the purchase of off-site nutrient or wetland credits, copies of required wetlands permits or Jurisdictional Determinations from the US Army Corps of Engineers, and all easements, plats, bonds or surety contracts and documents have been submitted and approved, as applicable.~~

4.8.3.2 ~~Denials~~

~~When an SCP is determined to be inadequate, written notice of denial stating the specific reasons for the denial shall be communicated to the applicant within sixty (60) days. The notice shall specify the modifications, terms and conditions that will permit approval of the~~

plan. If no action is taken by the Town of Warrenton within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

4.8.3.3 Plan Alterations

An approved SCP may be changed in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulation;

2. Where the person responsible for carrying out the approved SCP finds that because of changed circumstances, or for other reasons, the approved plan cannot be effectively carried out; and

3. Proposed amendments to the SCP, consistent with the requirements of this manual, are agreed to by the Erosion and Sediment Control Administrator, and Zoning Administrator, and the person responsible for carrying out the plan.

4.8.4 Bond Requirements

Upon approval of the cost estimates required by Section 10-8 of the Zoning Ordinance and Section 3-12.3 of the Subdivision Ordinance, the owner or developer is required to submit:

1. A certificate certifying that the construction costs have been paid to the person constructing such improvements covered by the cost estimates; or

2. A cash escrow, certified check, or performance and payment bond surety with escalation clause for the cost of improvements to insure completion; or

3. A bank or savings institution's letter of credit, on certain designated funds satisfactory to the Planning Director as to the institution, the amount and the form.

4.8.5 Multi-jurisdiction Requirements

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

4.8.6 Erosion Impact Areas

The Town may designate areas in the town which shall be classified as Erosion Impact Areas as defined in Article 12. Any such designation and classification shall be deemed to be a component of the local control program. Consistent with this Manual, and in order to prevent further erosion, the Erosion and Sediment Control Administrator may require the approval of a conservation plan for any

~~Erosion Impact Area. Such plan shall be subject to all review, bonding, inspections and enforcement provisions of this Manual which apply to Land Disturbance Permits. The plan must be submitted by the property owner.~~

~~4.8.7 Preconstruction Meeting~~

~~Pre-Construction meeting shall be held prior to the initiation of any site work. Attendees include, but are not limited to, Planning Director, Erosion and Sediment Control Inspector/Administrator, Town Arborist, Town Engineer, Town Zoning Administrator, and the Responsible Land Disturber or his representatives.~~

~~4.8.8 Inspection Process~~

~~During the development process, all land disturbing activities within the Town of Warrenton shall be inspected by the Town's Erosion and Sediment Control Administrator and when applicable, The Town Erosion and Sediment Control Inspector, the Town Arborist, or a qualified Town representative. The inspection process includes the following:~~

> ~~An initial site inspection shall be made prior to the start of construction to assure that all relative onsite protective measures are in place and that all affected offsite waterways and environmental impact areas are protected. The E&S Administrator shall give written notice to Responsible Land Disturber that the inspection is complete and that construction can start. If the inspection finds that these protective measures are not in place, corrective action shall be recorded and given to the Responsible Land Disturber either directly onsite or via first class mail. Construction shall not begin until the relative onsite and offsite protective measures are in place.~~
>
> ~~Each site in which land disturbing activities are being conducted shall be inspected at least once every two weeks and within twenty four (24) hours of a runoff producing event and at the completion of the project prior to the release of any performance bonds.~~

~~Town of Warrenton Standard Operating Procedure for Erosion and Sediment Control Inspection further outlines the inspection process.~~

~~4.9 Fees~~

~~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 accord with the Site Plan Review fee schedule as adopted by the Town Council and relative permits such as the Land Disturbance Permit.~~

~~4.10 Variances~~

~~The ESC Administrator may waive or modify any regulations that are deemed inappropriate or too~~

restrictive for site conditions, by granting a variance. The ESC Administrator shall follow the process as outlined in section 9VAC25-840 of the Virginia Erosion and Sediment Control Regulations. For ESC variance denials, the applicant may resubmit a variance request with additional documentation to the State Water Control Board.

- During construction, the person responsible for implementing the approved ESC plan may request a variance in writing from the Erosion and Sediment Control Administrator. The Erosion and Sediment Control Administrator shall respond in writing either approving or disapproving such a request.

- If variances submitted during construction are not approved within ten (10) days of receipt of the variance request, the request shall be considered to be disapproved.

4.11 Violations, Remedies, and Public Notice

Violations include, but are not limited to, failure to comply with an approved plan or undertaking a land disturbing activity without an approved plan, and the destruction of adjacent property including adjacent tree damage or damage to any tree save areas. When a violation is noted, the ESC Administrator shall take the following steps to secure compliance:

4.11.1 Informal Contact/Verbal Warning

The Inspector shall complete a standard inspection report form detailing the observed violation and circumstances pertaining to it. The report shall specify the measures needed for compliance and a time frame for completion. The on-site job superintendent shall be notified verbally, if possible, and asked to sign the inspection report to verify that verbal notification has been given. Copies of the inspection report shall be given or sent to the permit holder and other concerned parties.

4.11.2 Notice to Comply

If the informal contact is unsuccessful, the Erosion and Sediment Control Administrator shall issue a "Notice to Comply". This notice shall specify the measures required for compliance and the deadline for completion. The notice must be sent to the permit holder by registered or certified mail to the address specified by the permit holder in his application or the notice can be delivered to the person supervising the activity.

4.11.3 Stop Work Order

If the Notice to Comply is not acted upon by the land developer the Zoning Official or ESC Administrator shall issue a stop work order requiring that all or part of a land-disturbing activities on the site be stopped until the specified corrective measures have been taken.

Where the alleged noncompliance is causing, or is in imminent danger of causing, harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, tree removal is

taken place without notification to the Zoning Administrator, and/or land disturbance activity has commenced without a an approved plan or land disturbance permit, per Section 11-3.3.11 of the Zoning Ordinance, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified above. Under these circumstances, a stop work order may be issued on site to the responsible party or their agent.

Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The stop work order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. Upon failure to comply within the time specified, the land disturbance permit or construction permit may be revoked and the permit holder or person responsible for carrying out the plan shall be deemed to be in violation of the requirements of this manual and shall be subject penalties set forth in Section 4-12 Criminal and Civil Penalties.

4.11.3.1 The order shall remain in effect for seven days from the date of service; pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of Fauquier County. If the alleged violator has not obtained an approved site plan or any required permits within seven days from the date of service of the order, the Zoning Administrator and/or ESC Administrator or his designee may issue an order to the owner requiring that all construction and other work on the site be stopped until the appropriate corrective measures have been taken.

4.11.3.2 The owner may appeal the issuance of an order to the circuit court of Fauquier County. Any person violating, neglecting, or refusing to obey an order issued by the Town may be compelled in a proceeding instituted in the court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits the order shall immediately be lifted.

4.12 Criminal and Civil Penalties

Violators shall be guilty of a Class 1 misdemeanor and shall be subject to fines not to exceed $2,500 and/or twelve months imprisonment in jail.

Every violation not remedied in the notice to comply letter shall carry a $100.00 fine per day with a total of $3,000.00 per violation and $1,000.00 per day for any land disturbing activity commenced without an approved plan for a total of $10,000 per violation.

In addition to any criminal or civil penalties provided this section, any person who violates any provision of this chapter may be liable to the Virginia State Water Control Board per § 62.1-44.15 of the Code of Virginia.

4.13 Appellate Process

4.13.1 Appeals of items regulated by the Zoning Ordinance

Appeal of a formal decision of the Zoning Administrator shall be subject to the requirement of Section 11-3.12 of the Zoning Ordinance of the Town of Warrenton. Appeals shall be in writing and shall be filed with the Board of Zoning Appeals in care of the Zoning Administrator. Such appeal shall be taken within thirty (30) days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities. The application for appeal shall be filed with the Zoning Administrator and shall specify the grounds for the appeal.

4.13.2 Appeals to the Virginia Erosion and Sediment Laws

Any appeals concerning the ESC portion of this document shall be taken to the Virginia State Water Control Board and shall be subject to review by the circuit court provided that an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

4.13.3 Appeal of a Stop Work Order

The owner may appeal the issuance of an order to the circuit court of Fauquier County. Any person violating or failing, neglecting, or refusing to obey the stop work order may be compelled in a proceeding instituted in the circuit court of Fauquier County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

4.14 Duration of Approval

Approval of the SCP is conditioned to the Site Plan Approval process and all time limits associated with it. Although, the Town reserves the right to adjust requirements of this SCP if field conditions warrant such adjustments.

~~Article 5 Stormwater Management~~ Removed (XXXX 2024)

~~Amended April 9, 2019~~

~~December 10, 2019~~

REFER TO: Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance

~~Table of Contents~~

~~5-1 PURPOSE AND AUTHORITY (Section 9VAC25-870-20, 9VAC25-870-40)~~

~~5-2 DEFINITIONS (9VAC25-870-10)~~

~~5-3 STORMWATER PERMIT REQUIREMENT; EXEMPTIONS~~

~~5-4 STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS~~

~~5-5 STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS~~

~~5-6 STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN~~

~~5-7 POLLUTION PREVENTION PLAN; CONTENTS OF PLANS~~

~~5-8 REVIEW OF STORMWATER MANAGEMENT PLAN~~

~~5-9 TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES~~

~~5-10 ADEQUATE DRAINAGE~~

~~5-11 LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES~~

~~5-12 MONITORING AND INSPECTIONS~~

~~5-13 HEARINGS~~

~~5-14 APPEALS~~

~~5-15 ENFORCEMENT~~

~~5-16 FEES~~

~~5-17 PERFORMANCE BOND (9VAC25-870-104.D AND CODE § 603.8(A))~~

~~5-18 ADOPTION, AMENDMENTS, AND REPEAL~~

Article 5 Stormwater Management

Pursuant to Code § 62.1-44.15:27, this ordinance is adopted as part of an initiative to coordinate the Town of Warrenton stormwater management requirements with the Town's erosion and sediment control, flood insurance, and flood plain management requirements into a unified program within the Town's Zoning Ordinance, in accordance with the provisions of the Virginia Stormwater Management Act. It is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the Town and those responsible for compliance with these programs.

5-1 PURPOSE AND AUTHORITY (Section 9VAC25-870-20, 9VAC25-870-40)

(a) The purpose of this Ordinance is to ensure the health, safety, and welfare of the citizens of the Town of Warrenton, to protect private and public properties, and to protect the quality and quantity of state waters from unmanaged stormwater runoff through land disturbing activities that may cause unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby legal requirements related to water quality and quantity shall be administered and enforced.

(b) This ordinance is adopted pursuant to Article 1.1 (§ 62.1-44.15:25 et seq.) of Chapter 6 of Title 62.1 of the Code of Virginia.

5-2 DEFINITIONS (9VAC25-870-10)

See Article 12.

5-3 STORMWATER PERMIT REQUIREMENT; EXEMPTIONS

(a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this Ordinance.

(b) Notwithstanding any other provisions of this Ordinance, the following activities are exempt from permitting under this Article, unless otherwise required by law:

(1) Permitted surface or deep mining operations and projects, or oil and gas extraction operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;

(2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the

provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;

(3) Single-family residences separately built and disturbing less than 10,000 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. However, these will require an Agreement-in-Lieu for Erosion and Sediment Control, and may require other permits such as Floodplain, Zoning, etc.

(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, for which an approved SWM Plan has already been implemented covering that proposed disturbance, and a VSMP Permit is currently in effect for that common plan of development. Discharges to a sanitary sewer or combined sewer system; although these discharges are prohibited in the Town Code.

(5) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

(6) 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

(7) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the 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.

(c) In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff from Chesapeake Bay Preservation Act land-disturbing activities shall be controlled unless otherwise exempt. Chesapeake Bay Act land disturbing activities do not require completion of a registration statement or coverage under the General Permit but shall be subject to the following technical criteria and program administrative requirements in this ordinance and 9VAC25-870-51:

(1) Erosion and Sediment Control Plan;

(2) Stormwater Management Plan;

(3) Exemptions may be requested;

(4) Long-term maintenance of stormwater management facilities;

(5) Water quality design criteria;

(6) Water quality compliance;

(7) Channel protection and flood protection;

(8) Offsite compliance options available;

(9) Subject to design storm and hydrologic methods, linear development controls, and criteria associated with stormwater impoundment structures or facilities.

5-4 STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS

(a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the Town hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 5-1 of this Ordinance. The Town hereby designates the Community Development Director as the Administrator of the Town of Warrenton VSMP stormwater management program.

(b) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:

(1) A permit application that includes a general permit registration statement, if such statement is required;

(2) An erosion and sediment control plan approved in accordance with Article 4, Erosion and Sediment Control, of the Town Zoning Ordinance; and

(3) A stormwater management plan that meets the requirements of Section 5-6 of this Ordinance or an executed agreement in lieu of a stormwater management plan.

(c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.

(d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 5-15, are received and a reasonable performance bond required pursuant to Section 5-16 of this Ordinance has been submitted.

(e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing,

~~construction, disturbance, land development and drainage will be done according to the approved permit.~~

~~(f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.~~

5-5 ~~STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS~~

~~(a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit. The SWPPP must include:~~

~~(1) Approved erosion and sediment control plan;~~

~~(2) Approved stormwater management plan;~~

~~(3) Pollution Prevention Plan for regulated land disturbing activities; and~~

~~(4) Description of any additional control measures necessary to address a TMDL.~~

~~(b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.~~

~~(c) The SWPPP must be maintained by the operator 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. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.~~

~~(d) 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.~~

5-6 ~~STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN~~

~~(a) The Stormwater Management Plan, required in Section 5-4 of this Ordinance, must apply the stormwater management technical criteria set forth in Section 5-9 of this Ordinance to the entire land-disturbing activity. Individual lots in new residential, commercial or industrial developments shall not be considered separate land-disturbing activities but shall be considered under a Common Plan of Development. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:~~

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

~~(2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected, and a Responsible Land Disturber certification;~~

~~(3) A narrative that includes a description of current site conditions and final site conditions;~~

~~(4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;~~

~~(5) Information on the proposed stormwater management facilities, including:~~

~~(i) The type of facilities;~~

~~(ii) Location, including geographic coordinates;~~

~~(iii) Acres treated; and~~

~~(iv) The surface waters or karst features, if present, into which the facility will discharge.~~

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

~~(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 5-9 of this Ordinance.~~

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

~~(i) All contributing drainage areas;~~

~~(ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;~~

~~(iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;~~

~~(iv) Current land use including existing structures, roads, and locations of known utilities and easements;~~

~~*(v)* Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;~~

~~(vi) The limits of clearing and grading, and the proposed drainage patterns on the site;~~

(vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

(b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 5-9 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:345 of the Code of Virginia. A VSMP authority shall allow offsite options when:

(1) Less than five acres of land will be disturbed;

(2) The post-construction phosphorous control requirement is less than 10 pounds per year; or

(3) The applicant demonstrates to the satisfaction of the VSMP authority that:

(i) Alternative site designs have been considered that may accommodate onsite best management practices; and

(ii) Onsite best management practices have been considered in alternative designs to the maximum extent practicable; and

(iii) Appropriate onsite best management practices will be implemented; and

(iv) Full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met onsite. The applicant must demonstrate onsite control of at least 75 percent (75%) of the required phosphorous nutrient reductions. If the applicant is unable to provide 75% onsite control, a waiver may be granted by the VSMP authority subject to review of the applicant's justification to allow the use of offsite credit purchase to exceed 25%.

(c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

(d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying

that the stormwater management facilities have been constructed in accordance with the approved plan. Construction record drawings are not required for stormwater management facilities for which maintenance agreements are not required pursuant to Section 5-10(b).

(e) Approved stormwater management plans for residential, commercial and industrial subdivisions govern the development of individual parcels within that plan, throughout the development life of the property even if ownership changes.

5-7 POLLUTION PREVENTION PLAN; CONTENTS OF PLANS

(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 minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

5-8 REVIEW OF STORMWATER MANAGEMENT PLAN

~~(a) The Administrator or the Public Works Director as the duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:~~

~~(1) The Administrator shall determine the completeness of a plan in accordance with Section 5-6 of 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 an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.~~

~~(3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.~~

~~(4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this 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 stormwater plans may be modified as follows:~~

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

~~(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.~~

(c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 5-10 (b).

5-9 TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES

(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the Town of Warrenton hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations 9VAC25-870(62-99), as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [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 considered grandfathered by the VSMP authority shall be subject to the Part II C (9VAC25-870 (93-99) technical criteria of the VSMP Regulation provided:

(1) A proffered or conditional zoning plan, zoning with the a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of the VSMP Regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

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

(1) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 2, 2012; and

(2) A state permit has not been issued prior to July 1, 2014, and

(3) Land disturbance did not commence prior to July 1, 2014.

(d) Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the Part II C technical criteria of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

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

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

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

(h) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

5-10 **ADEQUATE DRAINAGE**

(a) 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.

(b) 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):

(1) natural watercourse, i.e., a stream with incised channel (bed and banks).

(2) 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

(3) adequate channel as defined in Section 5-2 of these regulations.

5-10.1 Minimum Requirements

(a) The drainage system must have the hydraulic characteristics to accommodate the maximum expected flow of surface waters for a given watershed, or portion thereof, for the duration and intensity of rainfall, as specified in the Town's Public Facilities Manual (PFM).

(b) Determination of the size and capacity of the drainage system shall be based on the planned development, existing zoning or existing development, whichever is greater, within the watershed.

(c) The drainage system shall be designed:

(1) To honor natural drainage divides,

(2) To account for both off site and on site surface waters,

(3) 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

(4) To discharge the surface waters into a natural watercourse at the natural elevation, or into an existing facility of adequate capacity.

(d) The drainage system shall 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 increased flooding.

(e) 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.

(f) The owner or applicant/development may continue to discharge storm water which has not been concentrated into a lower lying property if the following three conditions are met:

(1) The peak runoff rate after development does not exceed the predevelopment peak runoff rate for the 1-year storm and 10-year storm.

(2) The increase in runoff volume caused by the development will not have an adverse impact, such as erosion or flooding, on the lower lying property. Any increase in runoff volume will be analyzed and meet the requirement of the Energy Balance

Equation as defined by the Channel Protection criterion of Part IIB of the new SWM Regulations (9VAC25-870-66 Water Quantity). Sheet flow is to be analyzed in accordance with 9VAC25-870-66.D.

(g) If the discharge conditions are not met and the discharge may aggravate an existing drainage problem or cause a drainage problem, the applicant/developer must provide a drainage system satisfactory to the Director to preclude an adverse impact upon the adjacent or downstream property. These improvements will be contained within a suitable Drainage Easement.

(h) 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 and individual building lot or lots, but shall be within commonly-owned area, and shall be located so as to be easily accessed for maintenance purposes.

(i) If the outfall is into a natural and well defined, stabilized watercourse, the two-year peak flow from the development of the watershed must be at a flow rate and velocity which the watercourse can accept without causing erosion in the streambed or over-bank flooding. Alternatively, if he applicant/developer chooses, the downstream watercourse may be modified so that it can handle the two-year post-development flow, provided, however, that if the applicant/developer choose to install a storm drainage system, the system shall be designed in accordance with these regulations for such systems.

(j) If off site 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.

(k) Storm sewers shall be discharged into the area least likely to erode. The following should be considered:

(1) Generally, it is preferred to discharge at the flood plain limit into an adequate watercourse channel leading to the main stream bed, rather than disturb the flood plain by extending the storm sewer.

(2) If an adequate watercourse channel does not exist, the only alternative is to discharge into the main stream bed.

(3) In either case, energy dissipation devices are required.

(l) The requirements of Town of Warrenton relating to Erosion and Sedimentation Control, and the further requirements for protection of stream beds by detention of surface waters,

set forth in these regulations must be satisfied. Additionally, the Stormwater Management Regulations requirements to protect water quality must be met, if applicable.

(m) All drainage ways, including overland relief pathways, must be separated from buildings. No building or other permanent structure may be built on or in a storm drainage system, or easement.

(n) Consideration must be given in the preparation of the plans to preclude adverse impacts resulting from higher rates and volumes of flow that might occur during construction.

(o) In cases where the drainage plans of a proposed development do not satisfy these minimum requirements because necessary off site facilities or improvements are lacking, the applicant/developer shall delay development until the necessary off site facilities or improvements are constructed or other arrangements are made which are suitable to the Director of Public Works. In such event, the plat 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.

(p) The downstream extent of this review shall be to the point at which the total drainage area is at least 100 times greater than the area of the development site in question.

5-11 LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES

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

(1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;

(2) Be stated to run with the land;

(3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and

(5) Be enforceable by all appropriate governmental parties.

(b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the

satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

(c) If a recorded instrument is not required pursuant to Subsection 5-10 (b), the Administrator, or any duly authorized agent of 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.

5-12 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, if applicable.

(b) 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.

(c) 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.

(d) 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.

(e) 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 except as may otherwise be provided for in Section 5-10.

5-13 HEARINGS

(a) Any permit applicant or permittee, or person subject to Ordinance requirements, 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, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

5-14 APPEALS

See Section 5-13 HEARINGS above and Article 11-3.3.10 Appeals of the Town Zoning Ordinance.

5-15 ENFORCEMENT

(a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.

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

Such orders shall be issued in accordance with 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 5-13 (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 Circuit Court by the Town to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(d) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed $32,500 for each violation within the discretion of the court. Each day of violation of each requirement may constitute a separate offense.

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

(i) No state permit registration;

(ii) No SWPPP;

(iii) Incomplete SWPPP;

(iv) SWPPP not available for review;

(v) No approved erosion and sediment control plan;

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

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

(viii) Operational deficiencies;

(ix) Failure to conduct required inspections;

(x) Incomplete, improper, or missed inspections; and

(xi) Discharges not in compliance with the requirements of Section 4VAC 50-60-1170 of the general permit.

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

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

(4) Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the Town of Warrenton 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 Section 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.

5-16 FEES

(a) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with 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 VSMP 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. (Areas with common plans of development or sale with land disturbance acreage less than one acre, except for single-family detached residential structures).	$290	$81
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 (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.

(b) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with 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

(c) 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

Type of Permit	Fee Amount
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, 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.

(d) The fees set forth in Subsections (a) through (c) above, shall apply to:

(1) All persons seeking coverage under the general permit.

(2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.

(3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Stormwater from Construction Activities.

(4) Permit and permit coverage maintenance fees outlined under Section 5-15 (c) may apply to each general permit holder.

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

(1) Permittees who request minor modifications to general permits as defined in Section 5-2 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.

(2) Permittees whose general permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

(f) All incomplete payments will be deemed as 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.

5-17 ~~PERFORMANCE BOND (9VAC25-870-104.D AND CODE § 603.8(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, to ensure that measures could be taken by the Town 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 Locality may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, 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.~~

5-18 ~~ADOPTION, AMENDMENTS, AND REPEAL~~

~~This guidance document shall remain in effect until rescinded, amended or superseded.~~

Article 10 Site Development Plans

Amended by Town Council: February 12, 2016
April 9, 2019
December 10, 2019
XXXX, 2024

Table of Contents

10-1 Purposes and Intent
10-2 Development or Land Use Requiring a Site Development Plan
10-3 Presubmission Meeting Required
10-4 Site Development Plan - Information Required
10-5 Site Development Plan - Preparation Procedure and Specific Items to be Shown
10-6 Minimum Standards and Improvements Required
10-7 Administration and Procedures for Processing Site Development Plans
10-8 Required Bonds and Surety
10-9 As-Built Site Plans Required

Article 10 Site Development Plans

10-1 Purposes and Intent

The purpose of this Article is to set out procedures and requirements for site plans and improvements to assure compliance with the Zoning Ordinance and all other applicable ordinances and statutes, to encourage innovative and creative design and facilitate use of the most advantageous techniques in the development of land within the Town of Warrenton, and to ensure the efficient use of the land to promote high standards in the layout design, landscaping, and construction of development.

10-2 Development or Land Use Requiring a Site Development Plan

10-2.1 A site development plan is required and shall be submitted for the following:

1. Any new or improved parking lot containing more than five (5) spaces, any commercial parking lot, or any development in which automobile parking space is to be used by more than one (1) establishment. However, where the existing and proposed uses are permitted by-right, and no other requirements under this Article would apply, different parking requirements for the uses that comprise an increase in the required parking of less than 25% shall not trigger the requirement for a site development plan.

2. Except as exempted in this section, any change from one category of use to a different category of use, any special use permit use, or any development in all Zoning Districts except single-family detached dwelling units. However, a site plan in sufficient detail to determine compliance with the applicable standards and specifications of the Town of Warrenton may be required for the construction of single-family detached dwellings if more than two (2) dwelling units are proposed to be constructed, or where any of the following conditions exist:

   - Where natural and storm water courses are located on the proposed site or where a proposed driveway or entrance intersects existing natural or storm water courses.
   - Where a cluster alternate design is proposed.
   - When a change is proposed in a previously approved site development plan.
   - When an existing residential use is proposed for change to a commercial, industrial, or multifamily residential use.

3. All public and/or semi-public buildings and other uses involving a structure required to be reviewed by the Planning Commission under §15.2-2232 of the Code of Virginia as amended.

4. For enlargements of existing structures equal to or greater than 25% of the structure's gross floor area, required parking must equal the sum of those spaces prior to the enlargement plus the number of spaces required by these regulations for any additional use area, unless waived by Town Council. Where the enlargement is less than 25% of the use or structure's gross floor area, and less than 25% additional parking is required, the additional parking may be waived by the Planning Director and a site development plan may not be required unless other requirements of this Ordinance apply. For a change of use within an existing structure where there is no enlargement of the existing structure, no additional parking is required unless the proposed change of use involves an increase of more than 25% over the required parking for the current use, according to Article 7.

5. Notwithstanding the requirement for a site development plan, nothing in this section shall prevent or preclude all other applicable zoning ordinance and subdivision ordinance requirements, including Article 8, Landscaping, Article 9, Supplemental Regulations, and Chapter 21 of the Town Code, Erosion and Stormwater Management, ~~Article 4, Site Conservation Manual, and Article 5, Stormwater Management,~~ from being applied where a change of use, expansion, or enlargement of a structure or parking lot occurs on a property subject to these requirements that is nonconforming or in violation. In these cases, amendments an existing approved site development plan may be approved where appropriate.

10-2.2 Exceptions. No formal site plan shall be required for any special use conducted on a temporary basis, not to exceed two (2) years duration, as approved by the Board of Zoning Appeals or Town Council pursuant to Article 11 of the Zoning Ordinance.

10-2.3 Waivers. The Planning Director may waive the site plan approval requirement when all of the following determinations are made:

1. No improvement would be required for the proposed use which might involve surety bonding under this ordinance.
2. Applicant agrees in writing to make other improvements required under the Ordinance.
3. The proposal will not involve an increase in the intensity over the existing use with respect to entrances, travelways, parking or impact on neighboring lands.
4. The proposal will result in not more than a twenty-five percent (25%) increase in either the gross floor area of the structure housing the use or in the outdoor area used.
5. The requirement of a final site plan would not forward the purposes of this ordinance or otherwise serve the public interest.

10-3 Presubmission Meeting Required

A presubmission conference with the Planning Director is required prior to sub-mission of a site development plan. The intent of the conference is to clarify the requirements of this Ordinance,

and other ordinances of the Town that may be applicable, in order that the site development plan can be prepared in an efficient manner, and to facilitate plan review by the Planning Director.

10-4 Site Development Plan - Information Required

10-4.1 Every site development plan, as hereafter provided shall contain the following information:

1. A boundary survey of the tract or site plan limit with an error of closure within the nearest second related to the true meridian, and showing the location and type of boundary evidence except where a tract or site is a part of a subdivision of record.
2. All horizontal dimensions shown on the site development plan shall be in feet and decimals of a foot to the closest one hundredth of a foot; and all bearings in degrees, minutes and seconds to the nearest second.
3. A certificate signed by the engineer or surveyor setting forth the source and title of the owner of the tract and the place of record of the last instrument in the chain of title.
4. The name, phone number, and mailing address of the owner, or their authorized agent, of the subject parcel to whom which all correspondence regarding review of the site plan will be addressed.

10-4.2 Site development plans shall also contain the following information as determined appropriate by the Planning Director:

1. Existing and proposed streets and easements, their names, numbers, and widths; existing and proposed property lines; existing and proposed utilities of all types; water courses and their names; flood plain limits; owners, zoning, and present use of adjoining tracts; and the present zoning of the subject parcel.
2. Location, type, and size of ingress and egress to the site, including the projected number of vehicle trips per day generated by the proposed development.
3. Location, type, size, and height of all fencing, screening and retaining walls where required under the provisions of applicable ordinances.
4. All off-street parking and parking bays, loading spaces, and walkways indicating type of surfacing, size, angle of stalls, width of aisles, and a specific schedule showing the number of parking spaces provided and the number required in accordance with the Zoning Ordinance of the Town of Warrenton.
5. Number of floors, floor area, height, and location of each building, including building setback lines, and proposed general use for each building B if a multifamily residential building, townhouse, or patio house, the number, size, and type of dwelling units shall be known.
6. Front elevations shall be shown on all commercial, industrial, and multifamily developments, regardless of height.
7. Existing and proposed water and sanitary sewer facilities indicating all pipe sizes, types, and grades and where connection is to be made to an existing or a proposed

central water and sewer system.

8. Provisions for the adequate disposition of natural and storm water in accordance with the Town of Warrenton Public Facilities Manual and the standards of the Virginia Stormwater Management Program, indicating location, sizes, types, and grades of ditches, catch basins, and pipes, and connection to the existing drainage system, and showing that all requirements of ~~Article 5, Stormwater Management~~ Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance, and, where applicable, Article 3-5.1, Floodplain District Overlay, shall be met.
9. Provisions and schedules for the adequate control of erosion and sedimentation, indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction, in accordance with the Virginia Erosion and Sediment Control Handbook and the State law, and showing that all requirements of ~~Article 4, Erosion and Sediment Control Site Conservation~~ Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance, have been met.
10. Existing topography accurately shown with a maximum of two (2) foot contour intervals at a scale of not less than fifty (50) feet to the inch. The requirement for a contour map may be waived where existing grades are less than three (3) percent and spot elevations are provided.
11. Proposed finished grading by contour supplemented where necessary by spot elevations.
12. A landscape design plan based upon accepted professional design layouts and principles as required by Article 8 of the Zoning Ordinance shall be submitted.
13. The proposed location of all outside trash receptacles and dumpsters and proposed methods of screening. Refuse containers or refuse storage areas shall be located in a paved area and hidden from general public view, either from within or outside the lot, by means of fences, walls, or landscape planting.
14. The location and method of lighting for parking lots, pedestrian walkways, public spaces, and common areas designed or intended for use during evening hours.
15. The location of all trees on the site with a caliper of six (6) inches or greater shall be indicated, and shall meet the requirements of ~~Article 4-8.1.2, Tree Survey,~~ Article 8-7.4, Noxious and Invasive Species, and Article 8-10, Retention and Replacement of Trees. Existing trees shall be identified in a table listing their species, caliper, and canopy size. Wooded areas shall be designated by symbols that indicate the perimeter of the area covered by the canopy of the trees. Invasive species and other trees proposed to be removed shall be indicated clearly. Trees and/or wooded areas to be retained, and methods to be used to assure adequate protection for trees adjacent to disturbed areas, shall be indicated. Such methods shall conform to Section 3.38, Tree Preservation and Protection of the Virginia Erosion and Sediment Control Handbook and Article 8-10.4, Tree Protection Zones.

10-5 Site Development Plan - Preparation Procedure and Specific Items to be Shown

10-5.1 Site development plans, or any portion thereof, involving engineering, architecture, city

planning, urban design, landscape architecture, or land surveying, will be prepared by persons qualified to do such work. Final site plans shall be certified by an architect or by an engineer or by a land surveyor within the limits of their respective licenses authorized to practice by the State of Virginia.

10-5.2 The Planning Director may waive the requirement for the certification of the site development plan or portions thereof by these professionals in those cases where no action proposed by the developer falls within their professional purview; however, the person(s) principally responsible for the preparation of the site development plan shall sign said drawings, regardless of professional registration status.

10-5.3 The site plan shall show the name and address of the owner or applicant, city or town, county, state, north point, date, and scale of drawing and number of sheets. In addition it shall reserve a blank space four (4) inches by four (4) inches in size on the plan face for the use of the approving authority.

10-5.4 Site development plans shall be prepared to the scale of one (1) inch equals fifty (50) feet or larger; sheets shall measure eighteen by twenty-four inches (18" X 24") at a minimum and no larger than thirty-six by twenty-four inches (36" X 24").

10-5.5 The site development plan may be prepared on one (1) or more sheets. If prepared on more than one (1) sheet, match lines shall clearly indicate where the several sheets join. All information required under Section 27-3 need not be included on the basic plan but may be submitted on additional sheets which may be of varying sizes.

10-5.6 A minimum of twelve (12) clearly legible blue or black line copies of a site development plan shall be submitted to the Planning Director for the Town of Warrenton, as well as a digital copy in a form suitable to the Planning Director.

10-5.7 Profiles shall be submitted for all sanitary and storm sewers, streets and curbs adjacent thereto, and other utilities, and shall be submitted on standard federal aid plan and profile sheets. Special studies as required may be submitted on standard cross section paper and shall have a scale of one (1) inch equals fifty (50) feet horizontally and one (1) inch equals five (5) feet vertically. No sheet width shall exceed thirty-six by twenty-four inches (36" X 24"). Flood plain limit studies required shall be shown on profile sheets with reference to properties affected and center line of stream.

10-5.8 A minimum of two (2) datum references for elevations used on plans and profiles and correlated, where practical, to U. S. Geological Survey datum. At least one (1) datum reference shall be on-site.

10-5.9 Submitted plans shall include a completed application checklist and payment of review fees, as established by the Town.

10-6 Minimum Standards and Improvements Required

10-6.1 All improvements required by this Article shall be installed at the cost of the owner or applicant. Where cost sharing or reimbursement agreements between the Town of Warrenton and the owner or applicant are requested and deemed appropriate by the Town, the same shall be entered into by formal agreement prior to final site development plan approval, and shall be subject to the Virginia Department of Transportation review and acceptance where appropriate. Where specifications have been established by the Town of Warrenton or by the Virginia Department of Transportation for streets and related facilities, or by this Ordinance for other facilities and utilities, such specifications shall be followed. The owner or applicant's performance bond shall not be released until construction has been inspected and accepted by the authorized engineer or Planning Director for the Town and by the Virginia Department of Transportation where appropriate.

10-6.2 All streets and highway construction standards and geometric design standards shall be in accordance with the Town's Public Facilities Manual and Subdivision Ordinance unless such geometric design standards are specifically modified by the Town Council upon recommendation of the Planning Director. The Town Council may modify street geometric design standards for local, collector, and minor loop streets. Half-streets along the boundary of land proposed for development or subdivision shall not be permitted. All new streets must be platted and constructed to meet the full width required by this Article and such construction is the sole responsibility of the applicant or subdivider. Construction of private streets is not permitted unless permission is granted by Town Council.

10-6.3 Adequate easements shall be provided for drainage and all utilities. Minimum easement width shall be fifteen (15) feet. If two (2) utilities are located within one (1) easement area, the minimum easement width shall be twenty (20) feet. If more than two (2) utilities are located within an easement area, the easement width shall be established by the Warrenton Utilities Director.

10-6.4 Adequate drainage for the disposition of storm and nature waters both on-site and off-site shall be provided. 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, but shall be within commonly-owned area, and shall be located so as to be easily accessed for maintenance purposes. The extent and nature of both on-site and off-site treatment is to be in accordance with the Town of Warrenton Public Facilities Manual, the Town's Virginia Stormwater Management Permit (VSMP), and the standards and requirements of the Virginia Department of Environmental Quality.

10-6.5 Provisions shall be made for all necessary temporary and permanent erosion and sedimentation control measures, both on-site and off-site. The extent of the control

measures, both on-site and off-site, are to be in accordance with ~~the Virginia Erosion and Sediment Control Handbook adopted by the Town (see the Town's Erosion and Sediment Control Ordinance)~~Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance. Slopes of twenty-five (25) percent or greater may be unsuitable for development and shall be reviewed in accordance with Section 9-17 of the Zoning Ordinance, for grading or development. Urban Best Management Practices shall be used to reduce storm water volumes and transport of sediment off-site.

10-6.6 Adequate provision shall be made by the owner or applicant to construct all utilities, required to service the development, both on-site and off-site. Design requirements shall follow the provisions of the Town of Warrenton Public Facilities Manual.

10-6.7 Percolation tests and/or other methods of soil evaluation deemed necessary by the Administrator for the Town shall be the responsibility of the owner or applicant.

10-6.8 When central water and/or sewer systems having sufficient capacity either exist or are proposed within a reasonable distance of the area of the site development plan, provisions shall be made to connect to the system as provided in the Code of the Town of Warrenton.

10-6.9 Landscape planting, screening, fences, walks, curbs, gutters, and other physical improvements as required by this Ordinance or other ordinances of the Town of Warrenton, Virginia, and the regulations of the Virginia Department of Transportation shall be provided by the owner or applicant.

10-6.10 Where required on site development plans, sidewalks and curb and gutter shall be provided along both sides of all public streets, private streets, and public access areas; however, these requirements may be waived for sites with a density of less than four (4) dwelling units per acre. A written request for such waiver is required for Town Council consideration and action after a recommendation by the Planning Commission and public hearings, in accordance with the procedures established in Article 11-3.10.

10-6.11 Lighting will be provided by the developer along all newly constructed public roads, private roads, within parking lots, along pedestrian walkways, and within public common areas, designed to ensure the safe and convenient movement of vehicles and pedestrians during evening and nighttime hours.

10-6.12 A Tree Protection Plan that indicates the location of trunks and driplines for trees or wooded areas that are to be retained. In the case of wooded areas, the trunks and driplines of perimeter trees shall be sufficient indication of location. Methods of protection shall be clearly indicated, including details of all retaining walls, tree guards, tree wells, indications that grading changes will not alter surface water movement to or from trees to be retained, and methods to mark trees and wooded areas to be preserved

during grading and construction activities.

10-6.13 One (1) set of approved plans, profiles, and specifications shall be at the job site at all times when work is being performed.

10-7 Administration and Procedures for Processing Site Development Plans

10-7.1 The Planning Director shall be responsible for the receipt, review, processing, and approval of site development plans.

10-7.2 The Planning Director may request opinions and/or decisions, from other departments, divisions, agencies, or authorities of the Town and County government; from officials, departments, or agencies of the Commonwealth of Virginia; or from other qualified persons as may from time to time be retained.

10-7.3 The Planning Director, subject to the approval of the Town Council, may from time to time establish reasonable procedures for the administration of this Article.

10-7.4 Site development plans, including any modifications which conform to the standards and requirements in this Article shall be approved by the Planning Director.

10-7.5 Approval, approval with modifications, or disapproval of a site development plan by the Planning Director shall occur within sixty (60) days of official acceptance. If disapproved, written notification shall be provided to the applicant stating the deficiencies in the plan that cause the disapproval by reference to specific adopted ordinances, regulations, or policies and identifying the modifications or corrections that would permit approval of the plan. Approval, approval subject to modifications, or disapproval of a revised and resubmitted site development plan shall occur within forty-five (45) days of official acceptance.

10-7.6 Any person aggrieved of any decision of the Planning Director pursuant to this Article may, within thirty (30) days of such decision, file an appeal to the Board of Zoning Appeals specifying the grounds upon which aggrieved. Appeals shall be in writing and shall be filed in the Office of the Zoning Administrator, and shall be in accord with §15.2-2211 of the Code of Virginia as amended and Article 11 of the Zoning Ordinance.

10-7.7 No public easement, right-of-way, or public dedication shown on any site development plan shall be accepted for dedication for public use until such proposed dedication shall first be approved by the Town Council and evidence of such approval is shown on the instrument to be recorded.

10-7.8 Approval of a site development plan pursuant to this Article shall expire five (5) years after the date of approval or the established period of validity per § 15.2-2261 and 15.2-2209.1 of the Code of Virginia as amended. Extensions may be granted upon written

request by the applicant to the Planning Director, forty-five (45) days prior to lapse of approval, and extension of all bond and surety agreement. A six (6) month extension may be granted at the discretion of the Planning Director. Further extensions may be authorized only by Town Council approval upon showing a good cause. Modifications to an approved site plan during the period of validity shall be in accordance with § 15.2-2261 C and D of the Code of Virginia, as amended.

10-7.9 No permit shall be issued by any administrative officer or agent of Warrenton for the construction of any building or improvement requiring a permit in any area covered by the site development plan except to the provisions of this Article and the duly approved site development plan.

10-7.10 The Town and State agencies responsible for the supervision and enforcement of this Article shall periodically inspect the site during the period of construction.

10-7.11 Upon compliance with the terms of this Article and the satisfactory completion of construction, as determined by an on-site inspection by Town staff, the Planning Director for the Town of Warrenton shall furnish a certificate of approval. Certificates of approval, upon ratification by the Governing Body, shall release all of the bonds which may have been furnished.

10-7.12 Any requirement of this Article may be waived by the Town Council where the applicant establishes that an undue hardship would be created by the strict enforcement of this Article, providing such a waiver, as requested, shall not be adverse to the purpose of this Article.

10-7.13 No change, revision, or erasure shall be made on any pending or final site development plan or on any accompanying data sheet where approval has been endorsed on the plat or sheets unless authorization for such changes is granted in writing by the approving body or the Planning Director.

10-7.14 Any approved site development plan may be revised, provided request for revision shall be filed and processed in the same manner as the original site development plan. Approval, approval subject to modifications, or disapproval of revisions to a site development plan shall occur within sixty (60) days of their official acceptance. If disapproved, written notification shall be provided to the applicant or the applicant's designated agent stating the deficiencies in the plan that cause the disapproval by reference to specific adopted ordinances, regulations, or policies and identifying the modifications or corrections that would permit approval of the plan.

10-7.15 The fee for processing a site development plan, and revisions to an approved site plan, shall be as prescribed by Town Council by resolution.

10-8 Required Bonds and Surety

10-8.1 All site plans and subdivision plats must be accompanied, at the time of submission, by a detailed estimate of the costs for installation of on-site and off-site improvements intended or designed to be dedicated for public use, and maintained by the Town of Warrenton, the Commonwealth, or other public agency, when such improvements are to be financed in whole or in part by private funds, including:

1. the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system, or other improvement dedicated for public use; and
2. site-related improvements required by this Ordinance for vehicular ingress and egress, for public access streets, including traffic signalization and control, for structures necessary to ensure stability of critical slopes, and for storm water management facilities.

10-8.2 The estimated cost of construction shall be based on unit prices for new public or private sector construction in the Warrenton region, and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed twenty-five percent of the estimated construction costs. An estimated time frame for phasing and completion of all improvements will be submitted for review and approval by the Planning Director.

10-8.3 Cost estimates will be reviewed and approved, approved with revisions, or disapproved by the Director of Planning and Community Development with notice provided in writing and addressed to the owner, or their designated agent, as identified on the site plan documents.

10-8.4 Upon approval of the aforesaid cost estimates, the owner or developer shall (i) certify to the Council that the construction costs have been paid to the person constructing such facilities; (ii) furnish to the Council a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to Planning Director in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned; or (iii) furnish to the Council a bank or savings institution's letter of credit on certain designated funds satisfactory to Planning Director as to the bank or savings institution, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated costs and an administrative fee as provided herein. All instruments affecting the bonding of a project shall be in a form satisfactory to the Town of Warrenton, and approved by the Town Attorney.

10-8.5 The Town shall grant periodic partial releases of any bond, escrow, letter of credit, or other performance guarantee required for the completion of improvements which are to be bonded, under the following provisions:

1. Upon written request by the subdivider or developer, the Council shall make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than ninety percent of the original amount for which the bond, escrow, letter of credit, or other performance guarantee was taken, and may make partial releases of such lower amounts as may be authorized by the Council based upon the percentage of facilities completed and approved by the Council, or the state agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty percent of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee.
2. The Director of Planning and Community Development shall not be required to execute more than three periodic partial releases in any twelve-month period. Upon final completion and acceptance of said facilities, the Planning Director shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer, provided that the Director may require a maintenance bond in an amount determined reasonable by the Director not to exceed fifteen per cent (15%) of the originally posted bond amount, as a maintenance bond to ensure all facilities were constructed properly. For the purpose of final release, the term "acceptance" is deemed to mean: when said public facility is accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority which is responsible for maintaining and for operating such facility upon acceptance.
3. Releases shall be made within thirty days after receipt of written notice by the subdivider or developer of completion of part or all of any facilities required to be constructed hereunder, unless the Planning Director notifies said subdivider or developer in writing of non-receipt of approval by applicable state agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty-day period.
4. If no such action is taken by the Planning Director within the time specified above, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such thirty-day period and there is an additional request in writing sent by certified mail return receipt to Town Manager. The Town Manager or the Planning Director shall act within ten working days of receipt of the request; then if no action is taken, the request shall be deemed approved and final release granted to the subdivider or developer.
5. After receipt of the written notices required above, if the Planning Director takes no action within the times specified above and the subdivider or developer files suit in the local circuit court to obtain partial or final release of a bond, escrow, letter of

credit, or other performance guarantee, as the case may be, the circuit court, upon finding the governing body or its administrative agency was without good cause in failing to act, shall award such subdivider or developer his reasonable costs and attorneys' fees.

6. Neither the Council nor any administrative officer of the Town shall refuse to make a periodic partial or final release of a bond, escrow, letter of credit, or other performance guarantee for any reason not directly related to the specified defects or deficiencies in construction of the facilities covered by said bond, escrow, letter of credit or other performance guarantee.
7. For the purposes of this ordinance, a certificate of partial or final completion of such facilities from either a duly licensed professional engineer or land surveyor, as defined in and limited to Va. Code Ann. 54.1-400 or from a department or agency designated by the Council, may be accepted without requiring further inspection of such facilities.

10-9 As-Built Site Plans Required

Upon completion of all required improvements shown on the approved site development plan, the owner or applicant shall submit to the Planning Director for the Town of Warrenton a vellum or sepia transparency plus three (3) copies of the completed as-built site plan, or building location plat certified by an engineer, architect, or surveyor. The "as-built site plan" shall be submitted within a year of issuance of occupancy permits for the review and approval by the Public Utilities Director and Planning Director for conformity with the approved site plan and the ordinances and regulations of the Town of Warrenton and state agencies. Final approval of as-built plans shall be required before the final release of applicable bonds.

Article 11 Administration, Procedures and Enforcement

Amended by Town Council: **February 12, 2013**
December 11, 2018
December 10, 2019
March 10, 2020
April 12, 2022
XXXX, 2024

Table of Contents

11-1 Administration
11-2 Board of Zoning Appeals
11-2.1 General Provisions (Purpose, Authority and Membership)
11-2.2 Rules and Regulations
11-2.3 Powers and Duties
11-3 Procedures for Application Review and Approval
11-3.1 Types of Permit Applications
11-3.2 Public Hearing Procedures
11-3.3 Land Disturbance Permit
11-3.4 Zoning Permits
11-3.5 Building Permits
11-3.6 Occupancy Permit
11-3.7 Site Development Plan
11-3.8 Commission Permit ("2232 Review")
11-3.9 Zoning Amendments
11-3.10 Special Use Permits and Waivers
11-3.11 Variances
11-3.12 Appeal to the Board of Zoning Appeals
11-3.13 Sign Review
11-4 Non-Conforming Uses and Structures
11-5 Enforcement and Penalties

Article 11 Administration, Procedures and Enforcement

11-1 Administration

11-1.1 Zoning Administrator.

The provisions of this Ordinance shall be enforced by the designated agent of the Town of Warrenton, who shall be known as the Zoning Administrator. The Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce the Zoning Ordinance. His authority shall include:

1. ordering in writing the remedying of any condition found in violation of this Ordinance;
2. insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311 of the Code of Virginia and Article 11 of this Ordinance; and
3. in specific cases, making findings of fact and, with concurrence of the Town attorney, conclusions of law regarding determinations of rights accruing under § 15.2-2307 of the Code of Virginia.
4. granting a variance from any building setback requirement contained in the Zoning Ordinance in accord with Article 11 of this Ordinance and § 15.2-2286 of the Code of Virginia.
5. The Zoning Administrator shall respond within ninety (90) days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.
6. In addition to the regulations and requirements herein contained concerning the administration of this Ordinance, the Zoning Administrator may establish reasonable additional administrative forms and procedures deemed necessary for the proper administration of this Ordinance.
7. Such other powers as may be granted in the Code of Virginia.

11-1.2 Certified Copy.

A certified copy of the Zoning Ordinance, as adopted and including any amendments, shall be filed in the office of the Zoning Administrator of Warrenton and in the office of the Clerk of the Circuit Court of Fauquier County, Virginia.

11-1.3 Processing Fees.

It is the intent of the Town that at least part of the cost of administering this Ordinance be borne by those responsible for development; therefore, a fee schedule, as prescribed by the Town Council and modified from time to time, shall apply to all permits, reviews, and

processing as required by this Ordinance.

11-1.4 Payment of Delinquent Taxes Prior to Filing a Land Use Application. Prior to the filing of an application for a special use permit, special exception, variance, rezoning, site plan, subdivision plat, land disturbance permit, or other land use permit, the applicant shall produce evidence that any delinquent Town real estate taxes properly assessed against the subject property have been paid in full, in accord with § 15.2-2286 (E) of the Code of Virginia, as amended.

11-2 Board of Zoning Appeals

11-2.1 General Provisions (Purpose, Authority and Membership)

11-2.1.1 The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance.

11-2.1.2 The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary to carry out its authorized business.

11-2.1.3 The Board shall consist of five (5) members and shall be appointed by the Circuit Court of Fauquier County. Members shall be residents of the Town of Warrenton. The Board shall receive compensation for traveling expenses and may receive other such compensation as may be authorized by the Town Council. Appointments to fill vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

11-2.1.4 The term of office shall be for five (5) years. One of the five (5) appointed members may be an active member of the Planning Commission.

11-2.1.5 Any member of the Board may be removed, for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Circuit Court, after a hearing held after at least fifteen (15) days written notice.

11-2.1.6 Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.

11-2.1.7 The Board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.

11-2.1.8 The Town Manager shall appoint a staff member to serve as secretary to the Board of Zoning Appeals, without vote and shall prepare minutes of meetings, keep all records and conduct official correspondence of the Board. In the

absence of the secretary at any meeting, the Board shall appoint some other person, who may or may not be a member of the Board, to prepare the minutes thereof.

11-2.2 Rules and Regulations

11-2.2.1 The meeting of the Board shall be held at the call of its chairman or, in his absence, the acting chairman, or at such times as a quorum of the Board may determine.

11-2.2.2 The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.

11-2.2.3 The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

11-2.2.4 All meetings of the Board shall be open to the public. A favorable vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass.

11-2.2.5 For the conduct of any hearing and the taking of any action or transaction of official business, a quorum shall be required of not less than three (3) members of the Board.

11-2.2.6 In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.

11-2.3 Powers and Duties

The Board of Zoning Appeals shall have the following powers and duties:

11-2.3.1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this Ordinance or of any ordinance adopted pursuant thereto, in

accord with Section 11-3.13 of this Ordinance, including decisions of the Zoning Administrator. The decision on such appeals shall be based on the Board's judgment of whether the administrative officer was correct. The Board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision. In the case of interpreting the zoning map, the board shall interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The Board shall not have the power to change the locations of district boundaries as established by Ordinance.

11-2.3.2. To authorize upon appeal or original application in specific cases a variance as defined in § 15.2-2201of the Code of Virginia, from the terms of this Ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done and the requirements in Section 11-3.12.

11-2.3.3. No provision of this section shall be construed as granting any Board the power to rezone property or to base Board decisions on the merits of the purpose and intent of any ordinances duly adopted by the Town Council.

11-2.3.4. When giving any required notice to owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.

11-2.3.5. Records

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep full records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.

11-2.3.6. Periodic Reports

The Board shall submit a report of its activities to the Town Council at least once each year.

11-2.3.7. Limitation

All provisions of this Ordinance relating to the Board shall be strictly construed. The Board, as a body of limited jurisdiction, shall act in full

conformity with all provisions and definitions in this Ordinance and in strict compliance with all limitations contained therein.

11-2.3.8. Decisions Subject to Judicial Review

In accord with § 15.2-2314 of the Code of Virginia, as amended, all decisions and findings of the Board shall be final decisions, and shall be subject to judicial review in the following manner:

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the Town, may present to the Circuit Court of Fauquier County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals.
2. Upon the presentation of such petition, the court shall allow a Writ of Certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board of Zoning Appeals and on due cause shown, grant a restraining order.
3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with the commissioner's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the Board of Zoning Appeals, unless it shall appear to the court that the Board acted in bad faith or with malice in making the decision appealed from. In the event the decision of the Board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the Writ of Certiorari.

11-3 Procedures for Application Review and Approval

11-3.1 Types of Permit Applications

This Ordinance provides for the following types of permit applications for land use and development:

1. *Land Disturbance Permit* - subject to review and approval by the Planning Director.
2. *Zoning Permit* - subject to review and approval by the Zoning Administrator.
3. *Building Permit* - subject to review and approval by the Building Official.
4. *Occupancy Permit* - subject to review and approval by the Zoning Administrator.
5. *Site Development Plan* - in accordance with the Zoning Ordinance of the Town of Warrenton and subject to review and approval by the Planning Director.
6. *Subdivision Plat* - in accordance with the Subdivision Ordinance of the Town of Warrenton and subject to review and approval by the Planning Director.
7. *Commission Permit ("2232 Review")* - subject to public review and approval by the Planning Commission.
8. *Zoning Amendment (including Conditional Zoning Procedures)* - subject to review and approval by the Town Council.
9. *Special Use Permit* - subject to review and approval by the Town Council.
10. *Variances* - subject to review and approval by the Board of Zoning Appeals and, for certain cases as provided for herein, subject to review and approval by the Zoning Administrator.
11. *Appeals* - subject to review and approval by the Board of Zoning Appeals.
12. *Additional Governmental Approval.* All departments, officials and public employees of the Town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits or licenses for uses, buildings or purposes only when they are in conformance with the provisions of this Ordinance. Any such permit or license, if issued in conflict with the provisions of this Ordinance, shall be null and void.

11-3.2 Public Hearing Procedures

11-3.2.1 Advertisement and Notice is Required.

Prior to each public hearing involving planning and zoning matters before the Planning Commission, the Town Council or the Board of Zoning Appeals, the Town shall provide advertisement and written notice as may be required by §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

11-3.2.2 Notice by Town.

Notwithstanding any other provisions of this section, whenever the notices required under this Section are sent on behalf of an agency, department or division of the Town, such notice shall be sent by the Zoning Administrator and may be sent by first class mail; however, the Zoning Administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the pertinent application or case.

11-3.2.3 Notice and Certification by Applicant.

For any application for amendment or development approval for which a public hearing is required before the Planning Commission and the Council and which is initiated by an applicant, the applicant shall be responsible for providing notice in accord with § 15.2-2204 of the Code of Virginia. A certification of notice and a listing of the persons to whom notice has been sent shall be filed with the Zoning Administrator by the applicant at least five days prior to the first public hearing of the Commission. A counterpart of such affidavit shall be presented to the Planning Commission or the Council at the beginning of its public hearing. The applicant may rely upon records of the local real estate assessor's office or the applicable website, if available, to ascertain the names of persons entitled to notice.

11-3.2.4 Condominium Ownership.

In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.

11-3.2.5 Additional Notice Required for Deferrals

If an item is not heard at a public hearing for which it was noticed, but is deferred to a specific date, no additional notice at a public hearing is required by this Section.

11-3.2.6 Additional Notice Required for Recessed Public Hearings.

If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.

11-3.2.7 Speakers at Public Hearings.

All witnesses and speakers presenting facts, evidence or opinion at any public hearing shall provide their name, address and affiliation, if any, for the record.

Witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements. At the discretion of the person presiding over the hearing, speakers may be limited as to the time they are allowed to speak.

11-3.3 Land Disturbance Permit

11-3.3.1 Permit Required

No person shall engage in any kind of land disturbing activity, as defined in Article 11, within the Town of Warrenton until they have acquired a Land Disturbance Permit.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of the required erosion and sediment control plan and receipt of a land disturbance permit shall be the responsibility of the owner of the land.

11-3.3.2 Plan Submission

If filed separately from a site development plan, three (3) copies of the erosion and sediment control plan shall be submitted to the Administrator. Is submitted with the site development plan, the erosion and sediment control plan shall accompany each copy of the site plan submission.

11-3.3.3 Approved Plan.

An approved plan is required before the issuing of any other building or development permits.

11-3.3.4 Plan, Action.

Any erosion and sedimentation plan submitted under the provisions of this Article and ~~the Town's Erosion and Sediment Control Ordinance~~ Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance, will be acted on within forty-five (45) days from receipt by either approving or disapproving in writing and, if disapproved, giving specific reasons for such disapproval. If no formal action has been taken by the plan approving authority within forty-five (45) days after receipt of a plan, the plan shall be deemed approved.

11-3.3.5 Plan Amendments.

An approved plan may be changed by the plan approving authority in the

following cases:

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

11-3.3.6 Bonding.

Prior to the issuance of any permit, the Administrator shall also require an applicant 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 Attorney for the Town of Warrenton, to ensure that measures could be taken by the Town, at the applicant's expense, should they fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of them by the approved plan as a result of their land disturbing activity. This cash escrow, letter of credit, or other acceptable legal arrangement will provide for a right-of-entry by representatives of the Town, for purposes of inspection, reinstallation, maintenance, or any conservation practices as may be necessary.

1. If the Town takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
2. Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, the 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.
3. These requirements are in addition to all other provisions of this Article relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

11-3.3.7 Inspections and Enforcement, Generally.

Inspections shall be performed by the Town's Construction Inspector or Building Official and enforcement shall be performed by the Zoning Administrator.

11-3.3.8 Monitoring, Reports, and Inspections.

The Construction Inspector or Building Official, through the Administrator shall: (i) provide for periodic inspections of the land disturbing activity, and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, permittee or person responsible for carrying out the plan, or operator shall be given notice of the inspection. If the plan approving authority through the Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the mail to the plan certification, or by delivery at the site of the land disturbing activity to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed in violation of this Article and upon conviction shall be subject to the penalties provided in Section 11-5 herein.

With respect to approved plans for erosion and sediment control in connection with all regulated land disturbing activities which require a permit, the Administrator may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections, after notice to that person, as are deemed necessary to determine whether the soil erosion and sediment control is performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. Such person shall have the opportunity to accompany the inspector on any on-site inspection.

After land clearing operations have begun, no area shall be denuded for more than thirty (3) days unless authorized by the Administrator. All trenches for storm, sewer, water, and gas lines are to be backfilled, compacted, seeded, and mulched within seven (7) days of backfill.

11-3.3.9 Acceptance of Performance.

Upon completion of an approved erosion and sedimentation control plan, the permittee shall notify the Administrator of such completion. The Town Construction Inspector or Building Official shall then inspect the work and plantings, and upon their determination that they are in compliance with the approved plan, they shall notify the Administrator, who shall issue a letter of

preliminary acceptance. A condition of any such preliminary acceptance shall be that the applicant or permittee guarantee all erosion and sedimentation control work for a period of one (1) year from the date of its preliminary acceptance, or for a period of one (1) year from repair or replanting ordered by the Administrator, until such time that all control structures and a minimum of ninety (90) percent of all plantings shall have survived for a year without need of further replanting or repair. The Administrator may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan and guarantee at any time during the one (1) year period. Such an order shall serve to revoke the preliminary acceptance and shall cause the applicant to renew the guarantee for an additional one (1) year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one (1) year, or when all control structures and a minimum of ninety (90) percent of all plants have survived for a period of one (1) year without need of further replanting or repair. For the purposes of this Article, normal cleaning of silt basins alone shall not be construed to be repair work.

11-3.3.10 Appeals.

Final decisions of the Administrator under this Article shall be subject to review by the Board of Zoning Appeals, provided, that an appeal is filed within thirty days from the date of any written decision by the Administrator.

Final decisions of the Administrator or Board of Zoning Appeals under the Article shall be subject to review by the Fauquier County circuit court, provided, that an appeal is filed within thirty (30) days from the date of the final written decision of the Board.

11-3.3.11 Violations; Remedies; Civil Penalties; Notice.

1. Stop Work Order.

Upon receipt of a sworn complaint of a violation of this Article from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order requiring that all or part of a land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged

noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply a specified in subsection A above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the chief administrative officer or his designee may issue an order to the owner requiring that all construction and other work on the site other than corrective measures be stopped until an approved plan or any required permit have been obtained.

Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting, or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

2. Civil Penalties, generally.

Except as set out immediately herein below, any person who violates this Article may be liable to the Town in a civil action for civil penalties of One Hundred Dollars ($100.00) for any one violation. Each day during which the violation is found to have existed shall constitute a separate offense. The total civil penalties for a series of specified violations arising from the same operative set of facts shall not exceed Three Thousand Dollars ($3,000.00). Notwithstanding the foregoing, the civil penalty for commencement of land-disturbing activities without an

approved permit as provided in ~~Section 4-5 of this ordinance~~ Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance, shall be One Thousand Dollars ($1,000.00), except that civil penalties for a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not exceed a total of Ten Thousand Dollars ($10,000.00).

3. Injunctions and Other Relief.

   Notwithstanding any other relief or remedy available under this Article, the Administrator may apply to the Circuit Court of Fauquier County for injunctive or such other equitable relief as might be appropriate in the case of a violation or threatened violation of any of the provisions of the Article, without the necessity of showing that there does not exist an adequate remedy at law.

4. Notice of Violation.

   In no case shall the Administrator begin legal action to enforce the provisions of this Article unless and until they have first given, or made diligent effort to give, specific notice to the applicant or permittee, as the case may be, of any violation of this Article for which such legal or equitable relief is to be sought. Such notice shall give the applicant or permittee a reasonable opportunity under the particular circumstances to correct the situation before the enforcement action is brought.

5. Civil Penalties.

   Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this Article shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation.

6. Cumulative Remedies.

   The remedies provided for in this Article shall be cumulative in the sense that the imposition of, or attempt to impose, one (1) remedy shall not act as a restriction of any right to impose or attempt to impose, any other remedy authorized by this Article.

7. Administrative Fines.

   With the consent of any person who has violated or failed, neglected or

refused to obey any regulation or order of the Administrator, or any condition of a permit or any provision of this Article, the Town Council, or the Administrator may provide, in an order issued by the Town Council or the Administrator against such person, for payment of civil charges for violations in specific sums, not to exceed Two Thousand Dollars ($2,000) for each violation. Such civil charges shall be instead of any appropriate civil penalties which could be imposed as outlined in Section 11-5.

11-3.3.12 Criminal Penalties - Misdemeanor.

Violators of this Article shall be guilty of a Class One misdemeanor and subject to a fine not exceeding $2,500, or twelve months imprisonment in jail, or both, for each violation.

11-3.4 Zoning Permits

11-3.4.1 Zoning Permit Required

No permitted principal or accessory building, structure or use, or building, structure or use permissible by special exception, shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a zoning permit issued by the Zoning Administrator. A zoning permit is required in all cases where a building permit is required.

Failure to obtain a zoning permit shall be a violation of this chapter and punishable under Section 11-5.

The Zoning Administrator shall maintain a record of all zoning permits and a copy shall be furnished, upon request, to any person.

11-3.4.2 Application for Zoning Permit

An application for a Zoning Permit shall be made to the Zoning Administrator, who shall require and be furnished by the applicant with all plans and documents as may be determined to be necessary to evaluate whether the proposed structure and facilities will be in compliance with the provisions of this Ordinance.

In order for an application for a zoning permit to be deemed complete, each such application shall be accompanied by the following items, unless waived by the Zoning Administrator as not pertinent. The Zoning Administrator may also require additional information necessary in order to determine if the

application conforms with the provisions of this Ordinance.

1. A statement from the Town Director of Public Works that all applicable regulations and requirements for water and wastewater facilities have been complied with.
2. A complete description of the intended use or uses.
3. If a dwelling, the number of housekeeping units within the structure.
4. A plot plan signed by the applicant drawn to scale showing dimensions of the structure with respect to property lines and public highways; provided, no part of which is to be located less than the required setback distance from any property line or right-of-way of any public highway.
5. Number, size, location and lighting of signs, if any.
6. Off-street parking and other facilities.
7. Proposed utilities and their locations.
8. Drainage design and proposal.
9. Topographic map, if determined to be necessary by the zoning administrator.
10. Fee in accord with the fee schedule adopted by the Town Council.

11-3.4.3 Standards for Issuance

Zoning permits issued on the basis of plans and applications approved by the zoning administrator authorize only the use, arrangement and construction set forth in the approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Section 11-5.

No zoning permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a zoning permit shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If it appears that the proposed structure and use of land or structure is in conformity with the provisions of this chapter, a zoning permit shall be issued to the applicant by the zoning administrator. If an intended use is found to be in compliance with this Ordinance, before proceeding, the applicant is still required to ensure compliance with the Virginia Uniform Statewide Building Code, and all other applicable laws, ordinances and regulations.

Approval or denial of a zoning permit shall be made within ten (10) working

days of the time at which the Zoning Administrator has deemed that the zoning permit application is complete.

11-3.4.4 Duration of Valid Zoning Permit

Any zoning permit issued shall be valid for one year. If an applicant has not completed construction of the building after one year of receiving the permit, the applicant may re-apply.

11-3.5 Building Permits

11-3.5.1 Building Permit Required

No principal or accessory building, structure or use shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a building permit issued by the Building Official.

Failure to obtain a building permit shall be a violation of this chapter and punishable under Section 11-5 of this Ordinance.

The Building Official shall maintain a record of all building permits and a copy shall be furnished, upon request, to any person.

11-3.5.2 Application for Building Permit

An application for a Building Permit shall be made to the Building Official, who shall require and be furnished with all such plans and documents as may be required to determine whether the proposed structure and facilities will be in compliance with the provisions of this ordinance and with the Virginia Statewide Uniform Building Code.

In order for an application for a Building Permit to be deemed complete, each such application shall be accompanied by the following items, unless an item is deemed not pertinent by the Building Official, and such additional information as the Building Official may require as being necessary in order to determine if the application conforms with the provisions of this Ordinance and the Building Code:

1. The size and shape of the parcel of land on which the proposed building is to be constructed
2. Scale drawings which accurately show the design, construction, dimensions and materials of all proposed buildings and structures
3. The location of such buildings and structures with respect to the property

lines of said parcel of land, and the right-of-way of any street or highway adjoining said parcel of land.

4. Proposed utilities and their location.
5. Drainage scheme.
6. Fee in accord with the fee schedule adopted by the Town Council.

11-3.5.3 Standards for Issuance

Building permits issued on the basis of plans and applications approved by the Building Official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Section 11-5 of this chapter.

No building permit shall be issued before receipt of a zoning permit for the proposed use and structure. Building and zoning permits for the same use and structure may be submitted, reviewed and approved concurrently.

No building permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a building permit, however, shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If the proposed structure is in conformity with the provisions of this Ordinance and the Virginia Uniform Statewide Building Code, a building permit shall be issued to the applicant by the Building Official.

Approval or denial of a building permit shall be made within ten (10) working days of the time at which the Building Official has deemed that the application for permit is complete.

11-3.5.4 Duration of Valid Building Permit

Building permits issued shall be valid for one year.

11-3.6 Occupancy Permit

11-3.6.1 Occupancy Permit Required.

Land may be used, and buildings occupied, structurally altered, erected, or

changed in use for any purpose as permitted in the District in which such land or building is located, only after an occupancy permit has been issued by the Zoning Administrator. Such a permit shall state that the building or the proposed use, or the use of the land, complies with the provisions of this Ordinance. A similar permit shall be issued for the purpose of maintaining, renewing, or changing a nonconforming use. An occupancy permit either for the whole or a part of a building or the use of the land shall be applied for simultaneously with the application for a building permit.

11-3.6.2 Standards for Issuance.

The Occupancy Permit shall be issued within ten (10) days after final approval by the Building Official of the erection or structural alteration of such building or part which has conformed with the provisions of this Ordinance and all previously issued permits and approvals for the site, including building permits, zoning permits and site plans.

No Occupancy Permit shall be granted until all improvements shown on any approved site plan have been completed in accordance therewith.

11-3.7 Site Development Plan

11-3.7.1 Site Development Plan Required

No person shall commence any use or erect any structure, including additions to existing structures, parking areas or other required site plan features, without first obtaining the approval of a site development plan by the Planning Director as set forth in this article. No use shall be carried on, no structure erected or enlarged, and no other improvement or construction undertaken, except as shown upon an approved site development plan.

A site development plan shall be required for the following uses in the enumerated districts:

- Multi-family dwellings, town houses and all other dwellings except single family detached, two-family and accessory dwellings.
- All uses in the RO, PSP, CBD, LI and C Districts
- For all special use permits

11-3.7.2 Exemptions from Site Development Plan Requirement

The following are exempt from having to file a site plan: the lawful

construction, alteration and occupancy of a single or two-family dwelling or accessory unit, with or without a garage. Exemption from the site plan requirements does not authorize violation of any other provision of this Ordinance.

11-3.7.3. Site Development Plan Requirements

Every site plan shall be submitted to the Planning Director in accordance with the applicable standards and regulations for Site Development Plans as provided in the Town of Warrenton Subdivision and Development Ordinance.

11-3.7.4. Review and Approval

Upon receipt of any Site Development Plan, the Zoning Administrator shall review it in accordance with the applicable procedures, standards and regulations for Site Development Plans as provided in this Ordinance.

11-3.7.5. Revisions To, Or Deviation From, Approved Plan.

After a Site Development Plan has been approved by the Zoning Administrator, minor adjustments of the plan, which are in substantial compliance with this article and the other provisions of this Ordinance and which serve the overall purposes of this section, may be approved by the Zoning Administrator. Deviation from an approved site plan without the written approval of the zoning administrator shall void the plan and the Zoning Administrator shall require the applicant to resubmit a new plan for consideration. Any major revision of an approved Site Development Plan shall be made in the same manner as the originally approved plan.

11-3.8 Commission Permit ("2232 Review")

11-3.8.1 Permit Required

In accord with the Code of Virginia, §15.2-2232, no street, park or other public area or public structure, public utility, public building or public service corporation facility other than railroads, whether publicly or privately owned, shall be constructed, established or authorized unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted comprehensive plan or part thereof.

Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving,

repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval, unless involving a change in location or extent of a street or public area.

11-3.8.2 Application

An application for a commission permit shall be filed with the Zoning Administrator and shall meet the minimum submission requirements as prescribed for a zoning permit in Section 11-3.4.2. and in addition shall include a written statement of justification from the applicant as to why the proposed improvement should be deemed to be in accord with the Comprehensive Plan.

An application is not necessary for features already specifically shown on the Comprehensive Plan, as determined by the Planning Director.

11-3.8.3 Planning Commission Action

In connection with any such determination, the Planning Commission may, and at the direction of the Town Council shall, hold a public hearing, after notice as required by §15.2-2204 of the Code of Virginia.

The Planning Commission shall communicate its findings pursuant to this section to the Town Council, indicating its approval or disapproval, along with written reasons therefore. Failure of the commission to act within sixty (60) days of submission of an application, unless such time is extended by the Council, shall be deemed approval.

11-3.8.4 Issuance of Permit; Town Council Review

The Zoning Administrator, on behalf of the Planning Commission, shall issue a Commission Permit following approval by the Planning Commission pursuant to this section. The Council may overrule the action of the Commission by a vote of a majority of its membership.

11-3.8.5 Appeal of Denial of Permit

The owners or their agents may appeal the decision of the Planning Commission to the Council within ten (10) days after the decision of the Commission. The appeal shall be by written petition to the Council setting forth the complete reasons for the appeal. The appeal shall be heard by the Council within sixty (60) days of its submission. A majority vote of the Council shall overrule the Commission.

11-3.9 Zoning Amendments

11-3.9.1 Authority for Change.

Whenever the public necessity, convenience, general welfare, or good zoning practice require, the Town Council may, by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated by resolution of the Town Council, or by motion of the Planning Commission, or by petition of any property owner, addressed to the Town Council, in accord with the procedures and requirements of this Ordinance.

The regulations, restrictions and boundaries established in this Ordinance may, from time to time, be amended, supplemented, changed, modified or repealed, by ordinance, by a majority vote of the Town Council after recommendation by the Planning Commission, provided that a public hearing shall be held in relation thereto at which parties in interest and citizens shall have an opportunity to be heard; and that notice shall be given of the time and place of such hearing as provided for in §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

11-3.9.2 Initiation of Amendment

Either a zoning map or text amendment may be proposed by resolution of the Town Council, by motion of the Planning Commission, or by application by the owner, contract purchaser with the owner's written consent, or the owner's agent therefore, of the property which is the subject of the proposed amendment.

11-3.9.3 Submission of Application for Amendment.

Every application for amendment of the Zoning Ordinance shall contain the following items, as applicable. Applicability shall be determined by the Planning Director who may waive or modify any of the designated submission items if appropriate given the nature of the application and so as to facilitate review by the Town and the public. Five (5) copies of the complete application shall be submitted.

1. The applicant's name, address, phone number and email address, and signature.
2. The applicant's authorized representative’s name, address, phone number and email address.

3. The property owner's name, address, phone number and email address and signature.
4. A summary of existing data and conditions of the property, including:

    - Existing zoning classification
    - Tax Map and parcel numbers
    - Address of the property
    - Total acreage

5. A plan of the property, at a scale of 1"=200', showing the extent of the area to be rezoned, streets bounding and intersecting the area, the land use and zone classification of abutting districts, and photographs of the area to be rezoned and abutting areas.
6. A plan to a scale of 1" = 200', unless an alternative scale is requested and approved by the Planning Director, indicating the locations of existing and proposed topography, vegetation, floodplain, wetlands, structures, uses, streets, and areas for off-street parking and loading.
7. A boundary survey of the property to be rezoned
8. Information at the time of submission, on all parcels contiguous to the subject property and any property within 100 feet of the boundary, including:

    - Existing zoning
    - Existing land use
    - Proposed land use
    - Historic buildings or structures

9. A statement of justification that explains the circumstances in the proposed district and the abutting districts and any other factors on which the applicant relied as reasons for supporting the proposed zoning amendment, including the degree of compliance of the proposed request and subsequent development plans with the provisions of the Comprehensive Plan.
10. The approximate time schedule for the beginning and completion of development in the area and any proposed phasing of the development.
11. A Concept Development Plan for the property, showing the proposed uses and their general relationships within the site and external to the site, including proposed structures, uses, streets, parking areas, open space areas, vegetation, sidewalks and trails and means of access to the existing road system
12. A Traffic Study that shows the projections for trip generation, traffic volume and levels of service on site and on the adjacent road system,

including provisions for safely accommodating both vehicular and pedestrian traffic.

13. Information about the market area to be served by the proposed development if a commercial use, including population, effective demand for proposed business facilities, and any other information describing the relationship of the proposed development to the needs of the market area.
14. A statement of Impact Mitigation describing and analyzing the various impacts of the proposed rezoning, including fiscal, environmental conditions, and public facilities and utilities impacts, and the proposed methods for mitigating any anticipated impacts.
15. Any development conditions or proffers
16. Disclosure of Real Parties in Interest
17. Certificate of Payment of Taxes, verifying that real estate taxes have been paid for all property included in the application.
18. Record of Pre-Application Conference
19. Fees, in accord with the fee schedule adopted by the Town Council
20. A statement describing in detail the existing character of the area.

11-3.9.4 Staff Review of Application

1. Pre-Application Conference.

   Prior to filing an application, an applicant shall meet with the Planning Director and discuss the proposed application and land uses and questions regarding the procedures or substantive requirements of this Ordinance. In connection with all such conferences, the Zoning Administrator shall be consulted as appropriate. A request for a pre-application conference shall be made to the Planning Director and shall be accompanied by a sketch map of the site, a description of the proposed project or use, and a list of the issues to be discussed at the conference. The Planning Director shall respond to each written request for a pre-application conference within fifteen (15) calendar days of receipt.

2. Review of Application for Completeness.

   No application shall be accepted and reviewed unless determined by the Planning Director to be complete. A complete application is one which meets the minimum submission requirements established herein. Each application shall be reviewed to determine if it includes the minimum submission requirements. The Planning Director shall maintain a current log of all pending complete applications.

3. Acceptance of Complete Application.

Within fifteen (15) calendar days of submission of the application, the Planning Director shall either officially accept the application as complete and forward to the applicant a notice of acceptance, or reject the application if it is incomplete and forward to the applicant a notice of incompleteness specifying those areas of additional information necessary for acceptance and review.

If a notice of incompleteness is issued, the applicant may resubmit the application with the additional data required. Upon resubmission, the Planning Director will review the resubmitted application in the manner provided in this section for the original application.

If the application is not resubmitted within sixty (60) days of being determined incomplete, the Planning Director shall notify the applicant that the original application has been rejected as incomplete.

4. Referrals. Upon official acceptance of the application for zoning amendment, the Planning Director shall forward a copy of the application to all town departments and county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application.

5. Referral responsibilities. Each reviewing agency shall prepare a staff report of referral comments which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the Director of Planning.

6. Review of Referrals. All referral comments shall be provided to and reviewed by the Director of Planning within thirty (30) calendar days after an application has been officially accepted. The Planning Director shall forward to the applicant a written review of the issues raised by the application.

7. Applicant Response. Upon receipt of the written report from the Planning Director, an applicant may submit a written request for a meeting with the Planning Director to discuss the matters contained in the report and the application. Such request shall include a response to the matters raised in the Director's written report.

8. Required Action by Other Entities. In the event that this Ordinance requires that an application not be granted until acted upon by some government board or agency other than the Town Planning Commission

and Council, the Planning Director shall forward the application for amendment to such board or agency for appropriate action prior to notification to an applicant that an application is ready to be presented to the Planning Commission or Town Council. The Planning Commission may make its recommendations on an application contingent on required action by the other boards or agencies.

9. Report and Notice to Applicant. The Planning Director shall compile the referrals and other information pertinent to the application, prepare a written staff report with proposed findings and recommendations as to the application, and notify the applicant that the report is complete and the application is ready to be presented to the Planning Commission and Town Council for public hearing.

10. Submission to Planning Commission. Within sixty (60) days of formal acceptance of the application, the Planning Director shall forward the application and staff report to the Planning Commission for its review.

11-3.9.5 Amendment to Application

An application may be amended by the submission of additional information or proposed changes to the application after it has been officially accepted. If the additional information or proposed changes submitted are to conform with recommendations made by Town staff, commissions or boards, then it shall not be deemed an amendment and the application shall continue to be processed on its original time line.

However, if the additional information or proposed changes submitted by the applicant are at the applicant's request, then the Planning Director shall review the information within fifteen (15) calendar days of receipt and render a finding as to whether the submitted information necessitates repeating any portion of the review process including public hearings. If any portion must be repeated, the Director shall notify the applicant in writing within the fifteen (15) calendar day period that the additional information or proposed changes must be withdrawn, submitted as a new application, or will require the applicant to approve an extension of the time limits prescribed in this Section and such notice shall specify the required extension. The applicant will then have fifteen (15) calendar days to provide the Director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

11-3.9.6 Withdrawal of Application

An application for rezoning may be withdrawn at any time upon written request by the applicant and with the consent of either the Planning Commission or the Town Council, whichever body has advertised the hearing; There shall be no refund of rezoning fees in the case of withdrawal either before or after advertising. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action.

11-3.9.7 Planning Commission Review.

Within sixty (60) calendar days after a zoning amendment application has been submitted to the Planning Commission from the Planning Director, and generally within one hundred twenty (120) days after official acceptance of the application by the Town, the Planning Commission shall hold a public hearing on the application after notice as required by § 15.2-2204 of the Code of Virginia.

11-3.9.8 Report by Planning Commission

The Planning Commission shall report to the Town Council its recommendation with respect to the proposed amendment. Failure of the Planning Commission to report to the Town Council within one hundred (100) days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, shall be deemed a recommendation for approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period

If the proposed amendment consists of a change in the text of this Ordinance, the Commission may recommend revisions to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may recommend that the land be rezoned to a different zoning district classification than that requested if the Commission is of the opinion that such revision is in accord with sound zoning practice and the adopted Comprehensive Plan, is in furtherance of the purposes of this Ordinance and is not more intensive than the advertised/noticed proposed use. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the Commission shall hold an additional duly noticed public hearing on the matter.

In recommending the approval or denial of any proposed amendment to this Ordinance, the Planning Commission should state its reasons for such

recommendation.

Tabling or deferring an application for rezoning on the grounds of inadequate data may be requested by the applicant for a period of no longer than ninety (90) days, after which the application shall be considered to be automatically withdrawn. All costs involved in re-applying and re-advertising shall be paid by the applicant.

11-3.9.9 Town Council Review and Action.

After receiving the report of the Planning Commission, or after the lapse of one hundred (100) days past the initial meeting of the Planning Commission on the application without Commission recommendation, the Town Council shall hold its own public hearing after notice and advertising required by § 15.2-2204 of the Code of Virginia. The Council may approve the zoning amendment as requested by the applicant, it may deny the amendment, or it may approve a zoning classification of less intensity than that requested, if available in the Ordinance, without holding a new hearing. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing. The Town Council must act on the proposed zoning amendment within one year of official acceptance of the application.

11-3.9.10 Evidentiary Matters Before the Town Council

All information, testimony or other evidence presented by an applicant for a zoning amendment shall be presented to the Planning Commission in conjunction with its review and hearing on the application. If the Town Council determines that an applicant is presenting evidence which is substantially or materially different from that presented to the Commission, the Council may refer the application back to the Commission for such additional consideration and action as the Council may deem appropriate. All costs in re-advertising shall be paid by the applicant.

11-3. 9.11 Contesting a Decision of the Town Council

Every action contesting a decision of the Town Council for granting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception or special use permit, shall be filed within thirty (30) days of such decision with the Fauquier County Circuit Court.

11-3.9.12 Criteria for Consideration of Zoning Map Amendments.

In considering requests for zoning map amendments, the Planning Commission and Town Council should consider, among other issues, the following factors:

1. whether the rezoning request, if granted, would further the public interest, and whether it conforms with the goals, objectives, and policies of the Comprehensive Plan;
2. whether the rezoning is consistent with the town's Future Land Use Plan, as identified in the Comprehensive Plan, and established character of the area and land use patterns;
3. whether the rezoning is justified by changed or changing conditions;
4. whether the rezoning, if granted, would create an isolated district unrelated to adjacent districts;
5. whether utility, sewer and water, transportation, school, recreation, stormwater management and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned;
6. whether the rezoning will be compatible with properties and uses in the vicinity and not have an adverse impact on these properties or their values;
7. whether there are adequate sites available elsewhere in the Town for the proposed use, or uses, in districts where such uses are already allowed;
8. whether the impact that the uses that would be permitted if the property were rezoned will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity and whether the proposed rezoning provides sufficient measures to mitigate such impacts;
9. whether a reasonable and viable economic use of the subject property exists under the current zoning;
10. whether the effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality is compatible with the Town's Comprehensive Plan;
11. whether the proposed rezoning encourages economic development activities in areas designated by the Comprehensive Plan and provides desirable employment and enlarges the tax base;
12. whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes, including housing and business, as determined by population and economic studies;
13. the effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of the Town; and
14. the effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

11-3.9.13 Criteria for Consideration of Text Amendments.

If the request is for an amendment of the text of this Ordinance, the Planning Commission and Town Council shall consider the following matters, in addition to any relevant matters included in Section 11-3.9.12:

1. Whether the proposed text amendment is consistent with the Comprehensive Plan.
2. Whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.

11-3. 9.14 Joint Public Hearing.

The Town Council and the Planning Commission may hold a joint public hearing following proper public notice under § 15.2-2204 of the Code of Virginia, as amended.

11-3.9.15 Majority Requirement for Change in Ordinance.

An affirmative vote of at least a majority of the members of the Town Council shall be required to adopt, amend, or reenact a zoning ordinance.

11-3.9.16 Timing of Application Consideration and Reconsideration

Proposed amendments shall be considered as soon as feasible, based on the regular schedule of the Planning Commission and the Town Council meetings and the schedule of newspaper publication relative to public notice.

Upon the denial of any application filed to change a zoning district designation, no further application concerning any or all of the same property shall be filed for rezoning to the same use in less than twelve (12) months from the time of denial by the Town Council, unless this requirement is specifically waived by the Town Council.

11-3.9.17 Conditional Zoning

1. Purpose and Authority

As part of a petition to rezone property and amend the official zoning map, the property owner may voluntarily proffer in writing certain conditions and restrictions on the use and development of his property, such conditions being in addition to, or modification of, the regulations provided for a particular zone or zoning district by this Ordinance. The

Zoning Administrator shall be vested with all necessary authority to administer, interpret and enforce such conditions and restrictions, all in accordance with the terms of §15.2-2296 et seq. of the Code of Virginia, as amended..

While the conditions may vary from property to property by reason of the nature of the use and different circumstances at a particular location, it is not the intention of this section to authorize conditions limited to a particular individual or group, owner, or operator, and the provisions of this section shall not be used for the purpose of discrimination in housing.

2. Proffered Conditions.

As a part of an application for rezoning or amendment to the zoning district map, the owner or owners of the property involved may, prior to a public hearing before the Town Council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as he deems appropriate for the particular case to address impacts of the proposed use.

For the purpose of this Ordinance, proffered conditions may include written statements, development plans, profiles, elevations, and/or other demonstrative materials. Materials of whatever nature and intended as proffers shall be annotated with the following statement signed by the owner or owners of the subject property: "I (we) hereby voluntarily proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission unless an amendment thereto is mutually agreed upon by the Town Council, and the undersigned."

3. When Proffers Are Made.

Proffered conditions should be submitted for Staff review as part of the initial application for rezoning..

Proffered conditions made at the Planning Commission meeting shall be forwarded to the Town Council prior to the Council's public hearing.

To be considered by the Planning Commission, proffers must be submitted with the application prior to advertising for public hearing.

4. Contents of Proffer.

   Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the proffers contained therein.

5. Review and Revision of Proffered Conditions.

   Additional conditions may be proffered by the applicant during or subsequent to the public hearing before the Planning Commission, provided however that after proffered conditions are signed and made available for public review and the public hearing before the Town Council has been advertised (whether or not jointly held with the Planning Commission) no change or modification to any proffered condition shall be approved without a second advertised public hearing thereon.

6. Modifications to Proffers.

   After the Town Council's public hearing has been advertised, should additional or modified conditions be proffered by the applicant, which conditions were specifically discussed at the public hearing before the Planning Commission, then a second public hearing need be held only before the Town Council before the application and the modified conditions can be reviewed and acted on by the Council.

7. Additional Conditions.

   Should additional conditions be proffered by the applicant at the time of the public hearing before the Town Council, which conditions were not addressed at the public hearing before the Planning Commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the Planning Commission, the application shall be the subject of a second public hearing before both the Planning Commission and the Town Council, which hearing may be held either separately or jointly.

8. Annotation of Zoning District Map.

   The zoning district map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his office and make available for

public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to the property in question, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

9. Enforcement of Conditions.

   The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer, interpret and enforce conditions attached to a rezoning or amendment to the zoning district map, including: (a) the ordering in writing of the remedy of any noncompliance with such conditions; (b) the bringing of legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and (c) requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

   Upon approval by the Town Council, proffered conditions shall become a part of the zoning regulations applicable to the property, and are enforceable under the same provisions for enforcement as all other provisions in the Ordinance.

10. Substantial Conformance Required.

    Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with the approved zoning and all proffered statements, plans, profiles, elevations, or other demonstrative materials, and no development shall be approved by any Town official in the absence of said substantial conformity.

11. Substantial Conformance Defined.

    For the purpose of this Section, substantial conformity mean that conformity which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented or proffered by the applicant. Determinations of substantial conformance shall be made by the Zoning Administrator.

12. Guarantee for Construction of Improvements.

    A guarantee, satisfactory to the Town Council, may be required in an amount sufficient for and conditioned upon the construction of any public improvements required by a rezoning request and the proffered conditions. This guarantee may be reduced or released by the Council or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part. The guarantee shall be required no later than final site plan or subdivision approval, whichever may occur earlier in time.

13. No Permits Shall Be Issued That Do Not Comply With Proffers.

    Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the Zoning Administrator. In addition to the other penalties appropriate for violations of this Ordinance, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with all proffered conditions.

14. Appeal of Proffer Decision.

    Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Town Council. Such appeal shall be filed within thirty (30) calendar days from

the date of the decision being appealed by filing a notice of appeal with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the complete basis for the appeal. Upon receipt of the appeal notice, the Council shall take such testimony as it deems appropriate and should render its decision within sixty (60) calendar days after receipt of the appeal notice. The Town Council may reverse or affirm wholly or partly or may modify the decision of the Zoning Administrator.

15. Change of Approved Conditions.

Once proffered conditions have been approved, and there is cause for an amendment which would not be in substantial conformity with them, then an application shall be filed for an amendment of the proffered conditions. Applications can be filed by any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1 and Section 1 of this Article. Written notice of such application shall be provided as prescribed in Section H of § 15.2-2204 to any landowner subject to such existing proffered conditions. The approval of such amendment or variation by the Town Council shall not in itself cause the use of any other property to be determined a non-conforming use per Section 11-4.3 of this Ordinance.

If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site development plan set forth in Section 11-3.7 of this Ordinance, except that the Planning Director may waive any submission requirement if such requirement is not necessary for an adequate review of the amendment application. Such amendment shall be the subject of public hearing in accordance with the requirements for a new application. No such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1 and Section 1 of this Article until after public hearings before the Planning Commission and Town Council are advertised pursuant to Article 11-3.2 of this Ordinance. Where a landowner subject to the conditions noted above requests an amendment to such proffered conditions and where such amendment does not affect conditions of use or density, the Town may waive requirements for public hearings.

11-3.10 Special Use Permits and Waivers

11-3.10.1 Authorization.

Uses listed in the district regulations as "permissible uses upon approval by the Town Council" shall be reviewed and acted upon by the Planning Commission and Town Council as provided in Section 11-3.2 of this Ordinance.

Uses listed in the district regulations as "permissible uses upon approval by the Town Council" shall be reviewed and acted upon by the Town Council as provided in Section 11-3.10.10 of this Ordinance.

Special use permits may be granted to establish or construct uses or structures which have the potential for a harmful impact upon the health, safety, and welfare of the public upon finding that the use, with conditions, will not have a deleterious impact, and will reflect the spirit and intent of the Comprehensive Plan as well as this Ordinance.

In acting on a request for a special use permit, the Town Council shall consider the impact of the requested special use.

Only those special use permits that are expressly authorized in a particular zoning district, or elsewhere in this Ordinance may be approved, including waivers where authorized. The Council may approve special use permits or waivers subject to conditions on such permits that shall apply to the property or use, regardless of any change in ownership.

11-3.10.2 Application.

Application for a special use permit shall be filed on the appropriate form therefore as provided by the Zoning Administrator and in accordance with the instructions which accompany the form. Special use permit applications shall contain the same information as required for zoning amendment applications set forth in Section 11-3.9. In addition, unless waived in part by the Zoning Administrator, the applicant shall provide all of the information, data, and studies needed to allow the Planning Commission and Town Council, to reach conclusive evaluations, which shall include, but not be limited to, the following:

1 A Statement of Justification explaining the compatibility of the proposed use with the existing and proposed land uses adjacent to and in the vicinity of the site and any potential impacts on the environment

and on the neighborhood due to the proposed use intensity, number of participants, acreage, hours of operation, traffic, lighting, and access, as well as the matters set forth in section 11.3-11.3.

2 A vicinity map depicting the adjacent and nearby (within 1,000 feet) land uses, streets and other data customarily incidental to a vicinity map.

3 A proposed site development plan indicating the location of the anticipated structures, setback lines, street pattern, parking provisions, a screening plan, and common open space if applicable. Such plans shall be contained on sheets measuring a minimum of 18" X 24" and a maximum of 36" X 24".

4 An analysis of the impact on the Town's transportation network and the ability of adjacent streets and intersections to efficiently and safely move the volume of traffic generated by the development, along with estimates of cost and means of providing improvements required to service the proposed special use.

5 An analysis of the impact on the Town's community facilities including estimates of costs and means of providing the additional community facilities which will be needed to serve the proposed special use. Community facilities include, but shall not be limited to, sewage disposal facilities and systems, solid waste disposal facilities and systems, water supply facilities and systems, storm drainage facilities and systems, and electrical utility facilities and systems.

6 An analysis of the ability of the Town to provide police and fire protection to the proposed special use.

7 The proposed configuration and intensity of lighting facilities to be arranged in such a manner to protect the streets and neighboring properties from direct glare or hazardous interference.

8 Noise impact and abatement studies to determine potential impact on adjoining properties and neighborhoods.

9 The delineation of any necessary screening for any uses or structural features deemed to be incompatible with the objectives of this Article, the remainder of this Zoning Ordinance, or the Comprehensive Plan including walls, fences, plantings, and/or other enclosures. Other landscaping to enhance the effectiveness of the screening and to insure the compatibility of use may also be required.

10 The delineation of screening and buffering of all parking areas will be required in accordance with a landscaping plan. Parking areas forward of the established building setback line will be prohibited.

11 The delineation of major trees on the site. Except to protect the public safety, avoid property loss, or provide for required parking, all major trees forward of the building setback line may be required for

preservation if their removal would diminish the character of the neighborhood.

11-3.10.3. Evaluation Criteria; Issues for Consideration

In considering a Special Use Permit application, the following factors should be considered. The applicant also shall address these factors in its statement of justification:

1. Whether the proposed Special Use Permit is consistent with the Comprehensive Plan.
2. Whether the proposed Special Use Permit will adequately provide for safety from fire hazards and have effective measures of fire control.
3. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
4. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
5. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this Ordinance.
6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
7. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood.
8. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.
9. The timing and phasing of the proposed development and the duration of the proposed use.
10. Whether the proposed Special Use Permit will result in the preservation or destruction, loss or damage of any significant topographic or physical, natural, scenic, archaeological or historic feature.
11. Whether the proposed Special Use Permit at the specified location will contribute to or promote the welfare or convenience of the public.
12. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on and off-site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety, efficient traffic movement and access in case of fire or catastrophe.
13. Whether the proposed use will facilitate orderly and safe road development and transportation.

14. Whether, in the case of existing structures proposed to be converted to uses requiring a Special Use Permit, the structures meet all code requirements of the Town of Warrenton.
15. Whether the proposed Special Use Permit will be served adequately by essential public facilities, services and utilities.
16. The effect of the proposed Special Use Permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
17. Whether the proposed Special Use Permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.
18. The effect of the proposed Special Use Permit use in enhancing affordable shelter opportunities for residents of the Town, if applicable.
19. The location, character, and size of any outdoor storage.
20. The proposed use of open space.
21. The location of any major floodplain and steep slopes.
22. The location and use of any existing non-conforming uses and structures.
23. The location and type of any fuel and fuel storage.
24. The location and use of any anticipated accessory uses and structures.
25. The area of each proposed use.
26. The proposed days/hours of operation.
27. The location and screening of parking and loading spaces and/or areas.
28. The location and nature of any proposed security features and provisions.
29. The number of employees.
30. The location of any existing and/or proposed adequate on and off-site infrastructure.
31. Any anticipated odors which may be generated by the uses on site.
32. Refuse and service areas.

11-3.10.4. Conditions and Restrictions

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards and restrictions as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to mitigate the impacts of the use and safeguard the interests of the public. The Council may require a

guarantee or bond to ensure that conditions imposed will be complied with. All required conditions shall be set out in the documentation approving the Special Use Permit.

11-3.10.5. Period of Validity

As a condition of approval, a special use permit may be granted for a specific period of time with expiration of the approval to occur at the termination of a stated period. In such case, an extension may be granted prior to expiration by the original approving body, upon written application, without notice or hearing. After expiration, no extension may be granted without complying with the requirements for an initial application for a special use permit unless a qualified application for renewal is actively under consideration by the approving body.

11-3.10.6. Staff Review

Wherever a use or structure is listed either as a permissible use subject to approval of a special use permit, application shall be made to the Planning Director who shall prepare a report and refer such application to the Planning Commission for those uses that are listed as permissible upon approval by the Town Council, and to the Board of Zoning Appeals for those uses listed as permissible upon approval by the Board. Application for a special use permit shall be filed, containing such material and be processed in the same manner as for zoning amendments as provided for in Section 11-3.10. A Special Use Permit may be submitted in conjunction with a zoning map amendment application.

11-3.10.7. For Uses to be Acted Upon by the Town Council, as listed in Article 3

Upon review of the application and supporting data, the Planning Commission shall make its recommendation to the Town Council as to whether the application complies with the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

Before submitting its recommendation to Town Council, the Planning Commission shall hold a public hearing which may be a joint public hearing with the Town Council, after notice as required by § 15.2-2204 of the Code of Virginia, as amended. Following the public hearing, the Commission shall forward its recommendation to the Town Council.

11-3.10.8 Town Council Review and Hearing.

For those uses that are listed as permissible upon approval by the Town Council, the Town Council shall consider the recommendations of the Town Planning Commission before granting or denying approval of a special use permit. Before rendering a decision on a particular special use permit, the Town Council shall hold a public hearing, which may be a joint public hearing with the Planning Commission, after notice as required by § 15.2-2204 of the Code of Virginia, as amended.

11-3.10.9 Modifications to the Application or Conditions.

For those uses that are listed as permissible upon approval by the Town Council, after the Planning Commission has made its recommendation to the Town Council, should the application be modified, or additional conditions be agreed to or offered by the applicant that results in a more intense use or higher density or alters conditions that were intended to mitigate the impact of the development as determined by the Zoning Administrator, then a second public hearing shall be held by the Planning Commission before the modified application can be heard by the Town Council. The applicant shall be responsible for paying any additional advertising fees required for a subsequent public hearings before the Planning Commission and the Town Council. The Town Council may still impose reasonable conditions on the applicant, in accord with § 15.2-2286 of the Code of Virginia, as amended.

However, should additional information or modified conditions be submitted by the applicant after the Planning Commission has made its recommendation to the Town Council, which modifications or conditions were discussed at the public hearing before the Planning Commission, then a second public hearing before the Planning Commission shall not be required.

11-3.10.10 For Uses to be Acted Upon by the Town Council

Upon review of the application and supporting data, and before rendering a decision on a particular special use permit, the town Council shall hold a public hearing after notice as required by § 15.2-2204 of the Code of Virginia, as amended, and subsequently shall determine whether the application complies with the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

11-3.10.11 Construction Already Commenced.

Nothing contained herein shall require any change in the plans or construction of any building or structure subject to a vested right prior to the effective date of this Ordinance.

11-3.11 Variances

11-3.11.1. Variances Determined by the Board of Zoning Appeals

1. Variances Authorized

a) The Board of Zoning Appeals shall grant a variance if the applicant proves, by a preponderance of the evidence, that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to the physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance. For properties located within the Floodplain District, the additional factors and limitations contained in Section 3-5.1.8 of this Ordinance shall also apply.

b) No variance shall be considered except after notice and hearing as required by §15.2-2204 of the Code of Virginia as amended.

c) The concurring vote of the majority of the BZA shall be required to authorize a variance.

2. Standards for Variances

In granting a variance, the BZA may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local Ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the Ordinance. Where the expansion is proposed within an area of the site or part of the structure

for which a variance is required, the approval of an additional variance shall be required. No variance in the strict application of any provision of this Ordinance shall be authorized by the BZA except upon the following findings:

a) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
b) The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area;
c) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance;
d) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
e) The relief or remedy sought by the variance application is not available through a special use permit process that is authorized in the Ordinance or the process for modification to the Zoning Ordinance at the time of the filing of the variance application.

11-3.11.2. Unauthorized Variances

1. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
2. No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.
3. No variance shall be authorized that would relate to nonconforming uses.
4. No variance shall be authorized that would reduce the amount of off-street parking space required by Article 7.
5. No variance shall be authorized that would relate to signs.
6. No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel, which portion has an area or width less than required by the provisions of this Ordinance at the time of such purchase or which portion has unusual physical characteristics, that are

set forth as the basis for the application for a variance, which would not exist if such portion had not been detached by such purchase from the larger parcel of which it was a part.

7. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in a floodplain.
8. No variance shall be authorized merely for the purpose of convenience or economic hardship.

11-3.11.3. Procedures for Variances

1. Application for Variance

Pursuant to provisions of this article and §15.2-2309 of the Code of Virginia, as amended, any person seeking a variance from the application of regulations of this chapter, shall first submit his proposal to the Zoning Administrator on a form to be provided by the Zoning Administrator, including therewith satisfactory evidence that any delinquent real estate taxes owed to the county which have been properly assessed against the subject property have been paid, and all plans and information relating to the application required by the board of zoning appeals pursuant to §15.2-2310 of the Code of Virginia. The application shall be transmitted promptly to the secretary of the Board of Zoning Appeals, who shall place the matter on the docket to be acted upon by the board.

The Zoning Administrator shall also transmit a copy of the application to the local Planning Commission which may send a recommendation to the Board or appear as a party at the hearing.

2. Decision on Variance Application

Upon receipt of an application or appeal, the Board of Zoning Appeals shall fix a reasonable time for a hearing of such application or appeal in conformance with §15.2-2204 of the Code of Virginia.

The proposal shall then be advertised pursuant to provisions of §15.2-2204 of the Code of Virginia prior to public hearing by the Board of Zoning Appeals. The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

The Board of Zoning Appeals shall render a decision on any application submitted to it within sixty (60) days after the date of the

hearing thereon.

3. Burden of Applicant

The applicant for a variance shall bear the burden of producing evidence to support the required findings and to establish that the requested variance satisfies all standards for a Variance.

4. Withdrawal of Application

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant or appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the first public hearing. After such deadline, an application or appeal may be withdrawn only with the permission of the Board of Zoning Appeals. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on its merits.

5. Re-Application

If any application is denied by the Board of Zoning Appeals on its merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the Board within twelve (12) months after the date of such denial.

11-3.12 Appeal to the Board of Zoning Appeals

11-3.12.1 When Appeals May be Taken

1. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the Zoning Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto.
2. Such appeal shall be made within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certified to the Board that by reason of facts stated in the certificate a stay would in his opinion

cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise, than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

11-3.12.2 Appeal Procedure

1. Appeals shall be filed with the Board of Zoning Appeals in care of the Zoning Administrator, who shall provide a copy of the appeal to the secretary of the Board, and a third copy provided to the individual, official, department, or agency concerned, if any.
2. Appeals requiring an advertised public hearing shall be accompanied by cash payments to the Town in accordance with the Fee Schedule as set by Town Council by resolution.
3. Upon receipt of an application or appeal, the Board shall fix a reasonable time for the hearing, give public notice thereof in accord with § 15.2-2204 of the Code of Virginia, as well as due notice to the parties in interest.
4. The Board shall make its decision within ninety days of the filing of the application or appeal.
5. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any variance from the Ordinance.
6. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

11-3.12.3 Withdraw of Appeal

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant/appellant at any time prior to the deadline for cancellation of the newspaper advertisement provided for in this article. After such deadline, an application or appeal may be withdrawn only with the permission of the Board. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on the merits by the Board, either in whole or in part.

11-3.12.4 Court Petition

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.
2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowances of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board, and on due cause shown, grant a restraining order.
3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the Board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.

11-3.13 Sign Permit

Signs permits shall be required in accordance with Article 6. The timing and application type used for the permitting of signs shall be as specified in Article 6-4.

11-4 Non-Conforming Uses and Structures

11-4.1 Purpose

The purpose of this section is to regulate and limit the development and continued existence of uses, structures, and lots legally established prior to the effective date of this Ordinance which do not conform to the requirements of this Ordinance. Many nonconformities may continue, but the provisions of this subsection are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement to a conforming status or elimination in order to preserve the integrity of this Ordinance and the desired character of the Town and to protect the public health and safety.

Any nonconforming use, structure, or lot which lawfully existed as of the effective date of this Ordinance and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this Ordinance or any subsequent reclassification of zoning districts or other amendment to this Ordinance, may be continued or maintained only in accordance with the terms of this section. The limitations of this section shall not apply to structures or lots whose nonconforming features are the subject of a variance that has been granted by the Board of Zoning Appeals or by the Zoning Administrator, or a modification or condition that was approved by the Town Council.

It is the intent of this chapter to abide by the letter and spirit of the provisions of § 15.2-2307 of the Code of Virginia. It is further the intent of this chapter that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved.

11-4.2 Continuation

11-4.2.1 If at any time after the enactment of this Ordinance a lawful use of land and/or structures exists which would not be permitted by this chapter, the use may be continued so long as it remains otherwise lawful. A use of land or use of structure established in violation of contemporary zoning regulations is illegal, not nonconforming**.**

11-4.2.2 If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.

11-4.2.3 If any nonconforming use (structure or activity) is discontinued for a period exceeding two (2) years, after the enactment of this Ordinance, it shall be

deemed abandoned and any subsequent use shall conform to the requirements of this Ordinance.

11-4.2.4 Whenever a nonconforming structure, lot, or activity has been changed to a more restricted nonconforming use, such existing use may only be changed to a use of the same or less restricted category or to a less non-conforming activity as identified in the zoning district within which it is located.

11-4.3 Non-Conforming Uses

11-4.3.1 Expansion

No nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied on the effective date of this provision to the Ordinance, unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

11-4.3.2 Discontinuance

If any nonconforming use of land and/or structure ceases for any reason for a period of more than two (2) years, any subsequent use of such land and/or structure shall conform to the regulations specified by this chapter for the district in which such land is located.

11-4.3.3 Superseded

When any nonconforming use, or nonconforming structure and use in combination, is superseded by a permitted use and/or structure, the use shall thereafter conform to the regulations for the district, and no nonconforming use and/or structure shall thereafter be resumed.

11-4.3.4 Moving

No such nonconforming use and/or structure shall be moved in whole or in part to any portion of the land or parcel other than that occupied by such use and/or structure at the effective date or amendment of this ordinance, unless such move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.

11-4.3.5 Additional Uses

No additional uses which would be prohibited in the district involved shall be allowed.

11-4.3.6 Special Use Permits

Any lawful existing use which is permissible as a special permit use in a district under the terms of this Ordinance shall not be deemed a nonconforming use in such district, but shall, with written notification and proof to the Zoning Administrator, be considered a lawful conforming use in that district.

11-4.4 Non-Conforming Structures and Buildings

11-4.4.1 Repairs and Maintenance

On any building or structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent-not exceeding twenty (20) percent of the current replacement value of the structure provided that the cubic content of the structure as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

11-4.4.2 Expansion or Enlargement

A nonconforming structure to be extended or enlarged shall conform with the provisions of this Ordinance, except as provided for herein. No nonconforming use and/or structure shall be enlarged, increased or extended to occupy a greater area of land than twenty-five percent (25%) more than was occupied on the date of adoption or amendment of this ordinance unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

11-4.4.2 Restoration or Replacement

1. If a nonconforming use or structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five (75) percent of the cost of reconstructing the entire structure, it shall be restored only if it complies with the requirements of this Ordinance.
2. Where a conforming structure devoted to a nonconforming activity, or where a nonconforming structure is damaged less than seventy-five (75) percent of the cost of reconstructing the entire structure, either may be repaired or restored, provided any such repair or restoration is started

within twelve (12) months and completed within eighteen (18) months from the date of partial destruction.

3. Historic structures designated as contributing structures to an Historic District adopted by the Town Council shall be exempt from the limitations of Sections 11-4.4.2.1 and 11-4.4.2.2.
4. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure or activity devoted to a nonconforming use.
5. If a nonconforming structure or portion thereof containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, rebuilt or used, except in conformity with the regulations of the district in which it is located.

11-4.4.3 Pre-existing Setback

Any structure which existed on the date of adoption of this Ordinance which is nonconforming solely due to a setback or yard requirement imposed by this Ordinance may be enlarged, increased, extended, repaired or replaced so long as any such improvements do not result in an increase in the degree of nonconformity.

11-4.4.4 Illegal Structures

No structure that fails to conform with the requirements of this chapter shall be erected.

11-4.5 Non-Conforming Lots

11-4.5.1 Use

Any lot of record at the time of the adoption of this Ordinance which is less in area or width than the minimum required by this Ordinance may be used when the requirements regarding setbacks, side, and rear yards are met.

11-4.5.2 Changes in District Boundaries

Whenever the boundaries of a district are changed by amendment of this Ordinance, any uses of land, legal structures or buildings which become nonconforming as a result of such change shall become subject to the most current provisions of this Ordinance. Such affected use, lot or structure shall be accorded nonconforming use, lot and/or structure status as may be appropriate

under the terms of this Ordinance.

11-4.5.3 Division, Boundary Line Adjustment

No lot or parcel or portion thereof shall be used or sold in a manner reducing compliance with lot width or other requirements established by this chapter, nor shall any division be made which creates a lot with width or area below the requirements stated in this chapter.

Notwithstanding the provisions of the paragraph above, boundary line adjustments may be permitted between nonconforming lots, or between a conforming and a nonconforming lot, provided that the Zoning Administrator determines that the degree of nonconformity for any lot resulting from such boundary line adjustment is not increased due to such adjustment.

11-4.5.4 Condemnation

Any lawfully created lot which, by reason of condemnation for alignment, realignment of a federal or state road, has been reduced in size to any area less than that required by this Ordinance shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section.

11-4.5.5 Violations Are Not Nonconformities

Uses or structures established in violation of zoning regulations are lawful non-conformities. The burden of proof shall be upon the owner of the property to establish the lawful nonconforming status of a claimed non-conforming use.

11-4.5.6 Accessory Uses/Buildings, Signs

A lawful nonconforming use of a structure, a lawful nonconforming use of land or a lawful nonconforming use of a structure and land in combination shall not be continued, extended or enlarged by use or establishment of either an accessory use or building or by attachment on a building or premises of additional signs intended to be seen from off the premises. Non-conforming signs are regulated in Article 6-16 unless otherwise noted.

11-5 Enforcement and Penalties

11-5.1 Conformance to Provision. All departments, officials, and public employees of the Town of Warrenton which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in harmony with the provisions of this Ordinance. Any

such permit, if issued in conflict with the provisions of this Ordinance, shall be null and void.

11-5.2. Zoning Administrator

Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written violation complaint. The Zoning Administrator shall properly record such complaint, investigate it and take appropriate action thereon if warranted.

Upon his becoming aware of any violation of any provision of this chapter, the Zoning Administrator shall serve notice of such violation on the person committing or permitting such violation. If such violation has not ceased within thirty (30) days or such other reasonable time set by the Zoning Administrator and specified in the notice, he shall institute such legal action as may be necessary to remedy and terminate the violation.

The Zoning Administrator shall order the discontinuance of illegal use of land, buildings or structures, removal of illegal building or structures or of illegal additions, alterations or structural changes and discontinuance of any illegal work being done, or shall take any other action authorized by this chapter to ensure compliance with, or to prevent violation of, its provisions.

Notice of a zoning violation or a written order of the Zoning Administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days, and that the decision shall be final and unappealable if not appealed within thirty (30) days.

11-5.3 Violation of Provisions.

Any person, firm, or corporation, whether as principal, owner, lessee, agent, employee or otherwise, who violates, causes, or permits the violation of any of the provisions of this Ordinance shall be guilty of a Class 2 misdemeanor. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

11-5.4 Recourse for Unlawful Use.

The Zoning Administrator of the Town of Warrenton may institute any appropriate action of proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, or conversion of any building or structure, or the unlawful use of land; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises. The remedies provided for in this section are cumulative and not exclusive and shall be in

addition to any other remedies provided by law.

Article 12 Definitions

Amended by Town Council: **February 12, 2013**
June 14, 2016
August 9, 2016
December 11, 2018
April 9, 2019
September 10, 2019
December 10, 2019
March 10, 2020
December 13, 2020
August 10, 2021
April 12, 2022
XXXX, 2024

For the purpose of this Ordinance, certain words and terms are used in a limited or special sense as defined herein. Words used in the present tense include the future; the singular number includes plural and the plural singular; the word "structure" includes "building"; the word "used" includes arranges, designed, constructed, altered, converted, rented, leased, or intended to be used; and the word "shall" is mandatory and directory.

Any word, term or phrase used in this ordinance not defined below shall have the meaning ascribed to the word in the most recent edition of Webster's Unabridged Dictionary, unless in the opinion of the Zoning Administrator, established customs or practices of the Town of Warrenton justify a different or additional meaning.

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | R | S | T | U | V | W | Y | Z

Abutting: Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement.

Abandoned Motor Vehicle: A motor vehicle, trailer, or semi-trailer or part of a motor vehicle, trailer, or semi-trailer that is inoperable and is left unattended on public property, other than an interstate highway or primary highway, for more than forty-eight hours.

Accent: Giving prominence to one or more elements of site design.

Accessory building: (see Accessory Structure)

Accessory Dwelling Unit: A subordinate dwelling unit in a main building or accessory building for use as a complete, independent living facility with provision within the accessory dwelling for cooking, eating, sanitation, and sleeping. Such a dwelling is an accessory use to the main dwelling.

Accessory Structure: A subordinate structure customarily incidental to and located upon the same lot occupied by the main use or building, including, but not limited to, private garage, carport, parking space other than for residential, swimming pool, tennis court, storage or utility building, decks, balconies, porticos, porches, temporary healthcare structures, and living quarters for household employees or caretakers. Accessory structures can be attached or detached, depending upon their use and construction.

Accessory Use: A use clearly incidental and subordinate to, and on the same lot as, a principal use. (also see Accessory Dwelling Units; Home Occupation).

Acre: A unit of land measure containing 43,560 square feet.

Acreage: A parcel of land, regardless of area, described by metes and bounds which is not a numbered lot on any recorded subdivision plat.

Active Recreation: (see Recreation, Active)

Active Recreation Area or Facilities: (see Recreation Area or Facilities, Active)

Administrator: The Zoning Administrator for the Town of Warrenton. However, see also ***Administrator, VSMP*** under Stormwater Management, and ***Certified Program Administrator*** under Erosion and Sediment Control. The Zoning Administrator is an Agent of the governing body and its associated boards and commissions and is appointed by the Town Manager or Community Development Director.

Agriculture: The tilling of the soil, the raising of crops, non-intensive livestock, horticulture, and forestry, but not including any agricultural industry or business, such as packing plants, dairies, mills, kennels, commercial stables, intensive agriculture as defined herein, or similar uses.

Agriculture, intensive: The raising, breeding and keeping of animals in concentrated, confined conditions, which may include such operations as swine, veal, sheep; houses and pens for poultry or other fowl; feed lots for beef, dairy cattle, swine, sheep and other animals; livestock markets and pet farms.

Agricultural pen: (see Animal Kennel)

Alley: A permanent service way, with a minimum width of twenty (20) feet, providing a secondary means of vehicular access to an abutting property, and not intended for general traffic circulation.

Alteration: Any change, addition, or modification in the total floor area, use, adaptability, or external appearance of an existing structure.

Amusement Arcade: A building or part of a building in which five or more pinball machines, videogames, or other similar player-operated amusement devices are maintained.

Animal Hospital or Clinic: Establishment where treatment is received and no activity is conducted outside the main building. Kennels are not by definition included.

Animal Kennel: An establishment licensed to operate a facility housing dogs, cats, or other household pets and where grooming, breeding, boarding, training, or selling of animals is conducted as a business.

Animal Kennel, Private: Any building, buildings, or land designed or arranged for the care of more than three dogs or more than three cats belonging to the owner of the principal use, kept for the purposes of show, hunting, or as pets.

Apartment House: A residential building located on a single lot used or intended to be used as the residence of three (3) or more families living independently of each other, typically sharing a common entrance and hallway for access to individual units, not including row or townhouses (also see Dwelling**:** Multifamily).

Apartment: A single dwelling unit typically sharing a common entrance and hallway for access within an Apartment House or within a larger, mostly non-residential structure.

Applicant: Any person submitting an application for a permit or requesting issuance of a permit, of any type, under this Ordinance.

Applicant-Owner: An individual, corporation, proprietor, trust, trustee, joint venture, partnership, or other entity having legal title to any tract of land or parcel of land to be developed, whether or not they have given their power of attorney to one of their group, or another individual or entity to act on their behalf in planning, negotiation, or in representing or executing the requirements of the ordinances of the Town of Warrenton.

Appraiser: A person who earns his livelihood from the appraisal of real property, as contrasted with the selling of property, and who meets the standards for membership in the American Institute of Real Estate Appraisers.

ARB: Architectural Review Board.

Arborist or "urban forester": a person trained in arboriculture, forestry, landscape architecture, horticulture, or related fields and experienced in the conservation and preservation of native and ornamental trees.

Arborist, Certified: An arborist who is certified by the International Society of Arboriculture.

Architect: A person who is recognized by the Commonwealth of Virginia and who is registered with the State Department of Professional and Occupational Regulation, or registered with a like body in another state, as a licensed architect.

Architectural Unit: A visually distinct mass that is part of a larger structure or a collection of structures and is either near the other structures or may be attached by a smaller enclosed structural element such as a gallery, an arcade or other such element.

Area, Gross Leasable: Inside square footage of a building including retail, wholesale, and storage space, exclusive of halls, closets, elevator shafts, toilets, etc., and any outside display.

Assembly Hall: A building or part of a building intended and designed for the conduct of meetings, presentations, and the like.

Assisted Living Facility: A place, establishment, or institution, operated for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, in accord with § 63.2-100 of the Code of Virginia. The level of service provided for these adults shall include at least moderate assistance with the activities of daily living.

Atrium House: A one-story, single-family, attached dwelling shaped to surround or partly surround a private open space called an atrium, it being a type of townhouse unit (also see Townhouse).

Attached Accessory Structure: An attached subordinate structure customarily incidental to and located upon the same lot occupied by the main use or building, including but not limited to a private garage, carport, balcony and deck.

Automobile body shop: A business limited to the repair and reconstruction of the exterior shells of automobiles and light trucks, including sanding, painting, and refinishing; but may also include frame, engine and other mechanical work in the repair of a vehicle.

Automobile Graveyard: Any lot or place which is exposed to the weather upon which more than five inoperable motor vehicles of any kind, are placed.

Automobile Sales: On-site sales, conducted on a regular or ongoing basis as a commercial enterprise, either retail or wholesale, of automobiles and/or light trucks and vans, but not heavy trucks or equipment.

Awning: A structure made of cloth, metal, or other material affixed to a building in such a manner that the structure may be raised or retracted to a flat position against the building, but not including a canopy or marquee.

Banks and Savings and Loan Offices: The retail offices of financial services institutions providing walk-in service to customers. Drive-through facilities are a separately designated and regulated component.

Basement: A story having part but not more than one-half of its height below grade. A basement shall be counted as a story for the purpose of height regulations, if it is used for business purposes, or for dwelling purposes by other than a janitor employed on the premises.

Bed and Breakfast Facility: A private residence, or portion thereof, where short-term lodging is provided for compensation (no longer than 14 consecutive days) and meals may be provided, to guests only. The operator of the facility shall live on the premises or in an adjacent premises on the same lot. Up to four (4) guest rooms without cooking facilities may be provided. [also see Tourist Home; also see Inn]

Bedroom: A room in a dwelling unit planned and intended for sleeping, separable from other rooms by a door.

Berm: A continuous bank of earth designed and placed to block or partially obscure elements of a site (such as a parking area) or of a building (such as a loading dock). Berms typically range in height from two (2) to six (6) feet, with width-to-height ratios of from 2**:**1 to 5**:**1. Berms are often used in combination with shrubbery and trees.

Best Management Practices (BMP): A schedule of activities, prohibitions, or practices, including both structural and nonstructural practices, maintenance procedures, and other management practices; devices, methods, or structures, including erosion and sediment control and stormwater designs, to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities that are put into place during site development to protect Town infrastructure, adjacent properties, water bodies, streams, and the natural landscape during construction. After construction, SWM/BMP(s) are the practices that are integrated into a development that control and mitigate the quality and quantity of stormwater runoff from the site after development is completed. These practices need to be maintained over the life of the development or until it is returned to its natural, undeveloped state.

Block: That land abutting on one side of a street extending to the rear lot lines (or, for parcels of land extending through to another street, to a line midway between the two streets) and lying between the nearest intersecting and intercepting streets and boundary of any railroad right-of-way, park, school ground, or unsubdivided acreage or center line of any drainage channel twenty (20) or more feet in width.

Boardinghouse: A building that is the primary residence of the owner where meals and lodging are provided, for compensation, on a permanent basis for up to ten (10) individuals not related by blood, marriage, or adoption to the owner.

Broadcasting Station: The studios and/or facilities for radio or television broadcasting.

Buffer, Buffer Yard: A landscaped area intended to separate and partially obstruct the view of two (2) adjacent land uses or properties from one another or from the roadway or to block noise or other nuisances; land areas reserved for the purpose of providing screening and separation from adjacent, different land uses.

Building: A structure having one (1) or more stories and a roof, designed primarily for support and shelter of persons, animals, or property of any kind. When a structure is divided into separate parts by fire walls, each having separate plumbing, electrical, heating, drainage, and ventilation, each part so divided shall be deemed a separate structure.

Building Area: The area of the horizontal section of the buildings taken at their greatest outside dimensions on the ground floor including all attached structures and covered porches.

Building, Governmental: Any building owned by, operated by and/or leased to a government agency, except utilities, which are defined separately.

Building, Height of: The vertical distance measured from the level of the curb or the established curb grade opposite the middle of the front of the structure to the highest point of the roof if a flat roof; to the deck line of a mansard roof; or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof. For buildings set back more than ten (10) feet from the street line, the height shall be measured from the average elevation of the ground surface along the front of the building.

Building Line: The line which establishes the distance of a structure from any lot boundary line.

Building, Main: The principal structure or one of the principal buildings on a lot, or the building or one of the principal buildings housing the principal use on the lot.

Building Official: The official appointed by the Town Manager to administer and enforce the Building Code.

Building, Public: (see Building, Governmental)

Business and Professional Office: A building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations.

Business and office supply establishments: Retail or wholesale distribution of office materials, goods and small equipment.

C – District (Commercial District): Any zoning district beginning with "C", and predominantly providing for commercial uses.

Cabinet, upholstery, and furniture shops: A business limited to the production, repair or refinishing of cabinets, furniture and related household items.

Cable television facilities: Offices, studios and other facilities of a cable television business.

Cafeteria: A commercial eating facility in which patrons choose food items along a self-service line rather than through table service.

Cafeteria Truck: a vehicle or cart primarily offering delivery and/or self-service of pre-packaged or prepared foods, not cooked to order or prepared on-site. This type of vendor must obtain an itinerant merchant license from the Town Manager.

Caliper: A measurement of the diameter of a tree trunk taken at four and one-half feet above the soil line. Also known as diameter at breast height (DBH).

Canopy: A structure, other than an awning, made of cloth, metal, or other material which may be a standalone structure or totally or partially attached to a building for the purpose of providing shelter to patrons or automobiles, or as a decorative feature on a building wall. A canopy is not a completely enclosed structure and cannot be raised or retracted.

Capital Improvement Plan: A plan outlining the nature, location, costs, funding, and timing of future capital expenditures for community facilities such as streets, sidewalks, drainage facilities, water and wastewater lines and treatment facilities, parks, public buildings, and required property.

Car Port: A structure attached to a dwelling unit, open on at least one (1) side, designed for the parking and storage of vehicles by the residents of the dwelling and their guests.

Car Wash: A building or area of land that provides facilities for washing and cleaning motor vehicles, which may use production line methods with a conveyor, blower, or other mechanical devices, and which may employ some hand labor.

Car wash, Self-service: A building or area of land that provides facilities for patrons to wash and cleaning their motor vehicles by hand and/or with light equipment such as hoses and vacuums.

Caregiver: An adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

Carnival: An amusement show, usually traveling from place to place, containing rides, side shows, and other forms of entertainment.

Cellar: A story having more than one-half of the height below grade.

Cemetery: A place where lots are sold for the burial of the dead.

Centerline: The midpoint of the width of a highway or right-of-way.

Channel Letters: A sign that consists of custom-made metal or plastic that are covered in a translucent plastic material, often internally illuminated. The space between the letters is not part of the sign structure but rather the building façade though the space may count toward the sign area depending on how the letters are grouped and calculated in accordance with Section Error! Reference source not found..

Chesapeake Bay Preservation Act land-disturbing activity: A land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, *Code of Virginia*, § 62.1-44.15:67, et seq. Required for localities within Tidewater Virginia.

Child: Any person under eighteen (18) years of age.

Child Care Center: A facility operated for the purpose of providing care, protection, and guidance to a group of four (4) or more children separated from their parents or guardians during part of the day only, and meeting the licensing requirements for child care centers of Section 63.1-196 of the Code of Virginia, 1950, as amended.

Church (or place of religious worship): A building or structure, or group of buildings or structures, which by design and construction are primarily intended for activities that people regularly attend to participate in or hold religious services, meetings, and other activities. The term "church" shall not carry a secular connotation and shall include buildings in which religious services of any denomination are held.

Civic Group: A non-profit group or organization which meets regularly in the Town or which has "Warrenton" or a Town location in its name, and which has demonstrated service to the Town, in the determination of the Zoning Administrator. (also see “non-profit organization”)

Cleaning and Pressing Shop: (see Laundry)

Clean Water Act (CWA): The federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

Clear-cutting or Clearing: 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.

Clerk: The Clerk of the Circuit Court of Fauquier County having jurisdiction in the Town of Warrenton.

Clinic: A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities. This definition includes a group practice in which several licensed medical, dental or health care professionals work cooperatively.

Club: Buildings and/or facilities owned and operated by a corporation, association, or persons, which serves as a gathering place for a group of individuals organized for a common purpose to pursue common goals, interests, or activities and characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

Club, Swim or Tennis: A private club with swimming and/or tennis facilities, indoor or outdoor.

Cluster Development: A residential development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive areas or historic and cultural resources.

COA: Certificate of Appropriateness.

Coherence: Logically consistent arrangement of interdependent elements of a site plan or architectural design.

Commercial Nurseries and Greenhouses: An area or establishment for the propagation, growing, or selling of nursery stock for gardens, grounds, and yards. Such stock may include trees, plants, shrubs, and vines. Landscape contracting of nursery stock shall be permitted as a use.

Commercial Recreation, Indoor: Any enclosed or semi-enclosed establishment operated as a commercial enterprise (open to the public for a fee) for the following activities**:** games and athletics, bowling, billiards or pool, darts, bingo, slot cars, hard and soft courts, miniature golf, golf driving nets, cultural activities, martial arts, archery, roller or ice skating, skateboarding, swimming, and activities incidental to the foregoing.

Commercial Recreation, Outdoor: Any outdoor establishment operated as a commercial enterprise (open to the public for a fee) for the following activities**:** games and athletics, batting and pitching cages, darts, hard and soft courts, miniature golf, radio-controlled vehicles and airplanes, pony rides, waterslides, cultural activities, martial arts, archery, camping, roller or ice skating rinks, skateboarding, picnicking, boating, fishing, swimming, golf driving ranges, and activities incidental to the foregoing, but not including amusement rides, amusement parks, theme parks or motor vehicle race tracks.

Commercial Use: An occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

Commission, the: The Planning Commission of Warrenton, Virginia.

Common plan of development or sale: A contiguous area where separate and distinct construction activities may be taking place at the same or different times or on difference schedules, or are connected through common ownership or interests, rights-of-way, or development pattern.

Communications Towers: (see Transmission and Receiving Towers)

Community Building: A building and associated facilities and area, usually owned by a public nonprofit group or agency, used for and providing fraternal, social, and/or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community.

Comprehensive Plan: Maps, charts, and descriptive matter officially adopted by the Warrenton Town Council showing, among other things, recommendations for the most appropriate use of land; for the most desirable density of population; for a system of thoroughfares, parkways and recreation areas; for the general location and extent of facilities for water and sewer; and for the general location, character and extent of community facilities.

Complex: A grouping of buildings or architectural elements on a single site or tract.

Condominium: A building or group of buildings in which units are owned individually and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis.

Conference Center: A facility designed for conducting large or small group meetings. Such facilities may include overnight accommodations or short term lodging (not longer than fourteen (14) consecutive days), food preparation and service, entertainment, social or charitable events, and recreational facilities.

Conservation Easement: 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 condition, or 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 preservation of historic, architectural, or cultural resources, or for other local, environmental, cultural, or historic reasons that further the objectives of the Comprehensive Plan, the Zoning Ordinance, or the Town Code.

Construction Standards: Specifications and standards as adopted by or applicable in the Town of Warrenton relating to the construction of all physical improvements, including but not limited to development, structures, or the installation of utilities.

Convalescent Home: (see Nursing Home).

Convenience Retail: Any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with the same and having a gross floor area of less than five thousand (5,000) square feet.

Convenience store: (see Convenience Retail)

Council: The Town Council of Warrenton, Virginia.

Covenant: A formal agreement of legal validity between two (2) or more parties outlining restrictions, rights, or responsibilities concerning the use of property or structures.

Crematory: A building containing a furnace for reducing dead bodies, either animal or human, to ashes by burning.

Critical Root Zone (CRZ): An area which must be preserved in order to ensure protection and survival of a tree; a minimum of one foot per inch of caliper (defined herein as the diameter at breast height).

Cul-de-sac: A street with only one (1) outlet having an appropriate turn-around area for a safe and convenient reverse of traffic movement.

Dairy: A commercial establishment for the manufacture and sale of dairy products.

Data Center: A facility containing one or more large-scale computer systems used for data storage and processing for off-site users. Typical supporting equipment includes back-up batteries and power generators, electric substations, cooling units, fire suppression systems, and enhanced security features.

Day Care Center: (see Child Care Center and Family Day Care Home).

Deciduous: Any tree or shrub that loses its leaves during the winter season.

Deck: An exterior, roofless, floor system supported on at least two opposing sides by an adjoining dwelling/structure and/or posts, piers or other independent supports.

Density: The number of dwelling units per acre of land.

Density Bonus: An additional increment of density allowable on a site in return for a specified public good, as provided in this ordinance.

Density, Gross: The number of dwelling units per gross acre of land on the site or lot.

Density, Net: The number of dwelling units per net acre of land (gross site or lot area less floodplain, steep slopes and other unbuildable areas).

Detention Facility: A facility which serves the purpose of collecting and retaining rainfall falling on a site for controlled release to primary storm water management facilities as a result of land alteration activities.

Developer or Subdivider: An individual, corporation, proprietor, trust, trustee, joint venture, partnership, or other entity having legal title to any tract of land or parcel of land to be developed, whether or not they have given their power of attorney to one of their group, or another individual or entity to act on their behalf in planning, negotiation, or in representing or executing the requirements of the ordinances of the Town of Warrenton.

Development (noun): Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of mobile homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operations.

Development (verb): Land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures. Development potentially changes the runoff characteristics of the land.

District: A section of the Town of Warrenton within which the zoning regulations are uniform; Zoning District.

District, Base: A type of Zoning District established in this ordinance that specifies allowable land uses and development intensities and requires a generally uniform group of land uses and lot requirements and does not require a concept development plan in advance of zoning approval.

District, Regular: (see Base District)

District, Overlay: A type of Zoning District established in this ordinance that may be mapped for a particular land area and functions as an additional set of zoning requirements in addition to the zoning requirements of the underlying base district that applies to the tract.

District, Special: (see District, Overlay)

Drive-In Facility (same as "Drive-Through"): Any portion of a building or structure from which customers can receive a service or obtain a product while in their motor vehicle.

Driveway or Accessway: That space specifically designated and reserved on the site for movement of vehicles from one location to another on site or from the site to a public street.

Drug Store: A retail establishment offering a variety of consumer goods with a licensed pharmacist on staff for the purpose of dispensing prescription drugs.

Dustless Surface: A surface adequately covered in accordance with good construction practice, with a minimum of either two (2) applications of bituminous surface treatment concrete, or bituminous concrete approved by the Town, and to be maintained in good condition at all times.

Dwelling: Any structure, or portion thereof, which is designed for generally permanent residential purposes, not including hotels, boardinghouses, lodging houses, tourist cabins, or automobile trailers (also see "dwelling unit").

Dwelling, Accessory: (see Accessory Dwelling Unit).

Dwelling, Duplex (two-family): Two (2) single-family attached dwellings.

Dwelling, Elderly and Handicapped: A building or portion thereof containing at least ten (10) dwelling units and within which at least ninety (90) percent of all dwelling units are occupied by or designed for occupancy by**:**

(a) Families of two or more persons the head of which (or his or her spouse) is 55 years of age or over or is handicapped; or
(b) The surviving member or members of any family described in paragraph (a) living in a unit within the building with the deceased member of the family at the time of his or her death; or
(c) A single person who is 55 years of age or over, or a non-elderly handicapped person between the ages of 18 and 55; or
(d) Two (2) or more elderly or handicapped persons living together, or one or more such persons living with another person who is determined by a licensed physician's certification to be essential to their care or well-being.

For the purpose of this definition Handicapped Person means any adult having an impairment which is expected to be of an indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person also shall be considered handicapped if he or she is developmentally disabled, i.e., if he or she has a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which constitutes a substantial handicap to such individual.

Dwelling, Four-Family: A residential structure, occupying one lot, arranged or designed to be occupied by four (4) families living independently of each other, generally with separate entrances for each dwelling unit and common open space surrounding the structure.

Dwelling, Live-Work Unit: A residential structure, occupying one lot, with home business quarters on the ground floor and occupant residential quarters on the upper floor or floors.

Dwelling, Mixed Commercial Use: A dwelling unit in a structure that is also designed and used for commercial purposes. Access to the dwelling unit is separate from access to areas used for commercial purposes and the unit is typically located in basements or upper stories with commercial uses occurring at the street level of the structure.

Dwelling, Mobile Home:

Manufactured homes are also commonly referred to as “mobile homes” and differ from Modular Homes as defined herein, in that they do not necessarily comply with BOCA or Virginia Uniform Statewide Building Code standards. Three types are defined herein as follows**:**

Mobile (Manufactured) Home, Type A: A multi-sectional manufactured home (“doublewide”) constructed after July 1, 1976, that meets or exceeds the Manufactured Home Construction and Safety Standards, promulgated by the U.S. Department of Housing and Urban Development.

Mobile (Manufactured) Home, Type B: A traditional single manufactured home ("singlewide") constructed after July 1, 1976, that meets or exceeds the Manufactured Home Construction and Safety Standards, promulgated by the U.S. Department of Housing and Urban Development.

Mobile (Manufactured) Home, Type C: Any manufactured home ("mobile home") constructed before July 1, 1976 and which consequently does not meet the criteria of a Type A or Type B manufactured home as defined herein.

Dwelling, Modular: A dwelling unit constructed through use of large, prefabricated, mass-produced, partially pre-assembled sections or modules which are subsequently put together on-site on a permanent foundation, and which meets the BOCA and Virginia Uniform Statewide Building Code standards.

Dwelling, Multifamily: A residential structure arranged or designed to be occupied by more than one (1) family living independently of each other, the structure having more than two (2) dwelling units and generally 5+having a common entrance or hallway providing access to dwelling units.

Dwelling, Single-Family, Attached: One (1) of two (2) or more residential buildings having a common party wall separating dwelling units, each dwelling unit occupying a separate lot.

Dwelling, Single-Family, Detached: A structure arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

Dwelling, Three-Family: A residential structure, occupying one (1) lot, arranged or designed to be occupied by three (3) families living independently of each other, generally with separate entrances for each dwelling unit and common open space surrounding the structure.

Dwelling, Triplex: A group of three (3) townhouse units.

Dwelling, Townhouse: A dwelling unit, occupying one(1) lot, attached by means of a common vertical wall or walls, extending from the floor of the basement to the roof, to a series of similar dwelling units, each of which has individual access from the outdoors and each of which normally consists of two (2) or three (3) stories, situated on one (1) lot. The term "townhouse" is inclusive of the terms "atrium house" and "patio house."

Dwelling, Two-Family: A single structure arranged or designed to be occupied by two (2) families living independently of each other, with separate entrances for each dwelling unit and common open space surrounding the structure.

Dwelling, Quadriplex: A group of four (4) townhouse units.

Dwelling Unit: One (1) or more rooms connected together in a structure designed for occupancy as a separate living quarters, for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping, and sanitary facilities within the unit.

Easement: A grant of one (1) or more of the property rights by the owner to, or for the use by, the public, a corporation, or another person or entity.

Emergency Housing: The housing is designated to provide emergency housing for a maximum of six (6) months. Emergency housing and related counseling services shall be provided by a Fauquier County/Town of Warrenton recognized human service organization. A house coordinator must reside on the premises,

and a substitute house coordinator shall be on the premises if the house coordinator is away from the residence for more than one day.

Employment service or agency: A public, non-profit or for-profit agency or business that provides assistance in matching prospective employees with employers.

Engineer: A person who is recognized by the Commonwealth of Virginia and who is registered with the State Department of Professional and Occupational Regulation, or registered with a like body in another state, as a "professional engineer."

Erosion: The disintegration, detachment, carrying away, or wearing away of land surface by running water, wind, and/or other natural agents. REFER TO: Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance

Erosion and Sediment Control: REMOVED (XXXX 2024). REFER TO: Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance. ~~Under the Articles, Manuals, Forms, and Regulations set forth for the purposes of Erosion and Sediment Control, in addition to the definitions set forth in in 9VAC25-720-10 of the Virginia Water Quality Management Planning Regulations and 9VAC25-80 of the Virginia Erosion and Sediment Control Regulations, as amended, which are expressly adopted and incorporated herein by reference, the words and terms used in this Ordinance have the following meanings unless otherwise specified in this Ordinance.~~

> ~~*Agreement in Lieu*: An application for a Land Disturbance Permit (LDP) wherein the applicant agrees to certain specific and general best management practices and methods as appropriate for the location, scope and type of development proposed, which may be substituted for an erosion and sediment control plan. This may be acceptable where the land disturbing activity results from the construction of a single family residence, or wholly comprises an area of less than 2,000 square feet, if executed by the Erosion and Sediment Control Administrator in accordance with the requirements of this Ordinance. An Agreement in Lieu may constitute the Site Conservation Plan (SCP) for the project. This differs from an Agreement in lieu of a stormwater management plan (see Stormwater Management).~~
>
> ~~*Approved Plan*: That plan approved by the Erosion and Sediment Control Administrator, by the issuance of a Land Disturbance Permit (LDP), which carries the permittee's proposed methodology for controlling erosion, sedimentation, and storm water runoff resulting from proposed land disturbing activity. Changes approved in the field by an Inspector must be shown on the Approved Plan and signed off by the ESC Administrator.~~
>
> ~~*Certified Program Administrator*: The Town of Warrenton's designated Erosion and Sediment Control Administrator.~~
>
> ~~*Certified Inspector*: Employee of the Town of Warrenton charged with on-site inspection of erosion and sediment control devices employed via this Article and who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.~~
>
> ~~*Erosion and Sediment Control Administrator*: Town of Warrenton designated personnel certified by the Virginia Department of Environmental Quality that are responsible for administering the adopted Erosion and Sediment Control requirements.~~

~~*Erosion and Sediment Control Plan*: The 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 all decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all units of land will be so treated to achieve the conservation objective.~~

~~*Erosion Impact Area*: An area of land not associated with current land disturbing activity, but subject to persistent soil erosion resulting in the delivery of detriment onto neighboring properties or into natural waterways.~~

~~*Land Disturbance Activity Level*: Development projects disturbing more than 2,000 square feet of land area in the Town of Warrenton must comply with the regulations of the Site Conservation Manual (Article 4 of the Zoning Ordinance).~~

~~*Local Erosion and Sediment Control Program (Local Control Program)*: An outline of the various methods employed by a district or locality to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.~~

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

~~*Natural Landscape*: The Town's natural landscape shall include, but is not limited to, natural resources such as trees and woodlands, fresh water bodies, wetlands, riparian areas, steep slopes, other natural areas and natural soils.~~
~~*Plan Approving Authority*: The State Water Control Board, the Department of Environmental Quality, the Town of Warrenton, or the Zoning Administrator of the Town of Warrenton responsible for determining the adequacy of a conservation plan or erosion and sediment control plan submitted for land-disturbing activities on a unit(s) of land and for approving plans.~~

~~*Responsible Land Disturber*: The property owner or his designated representative.~~

~~*Riparian Area*: A transitional zone, adjacent to a water body, between water and terrestrial ecosystems. Such area is at least periodically influenced by flooding and includes perennial and intermittent streams and lakes.~~

~~*Riparian Buffer*: A riparian area composed of natural vegetation whose purpose is to provide stabilization of stream banks, limit erosion, reduce flood size flows, and filter and settle out runoff pollutants.~~

~~*Riparian Setback*: The area set back along the stream to protect the riparian area and water body from impacts of development and abutting properties from the impact of flooding and land loss through erosion.~~

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

~~*Site Conservation Plan (SCP)*: That Plan, which may be a portion of the required Site Development Plan (SDP), Erosion and Sediment Control Plan, and/or Stormwater Plan that includes the design to preserve the natural landscape of the Town of Warrenton per the preservation of trees and woodlands, natural waterways and sediment through the best management of each construction operation. The plans must make use of the practices that preserve the existing natural condition to the maximum extent practicable.~~

~~*Virginia Soil and Water Conservation Board*: Board established by the General Assembly to help guide the delivery of soil and water conservation services to citizens of the Commonwealth.~~

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

~~*Water Quality Volume*: The volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.~~

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

External Relationships: Those associations pertaining to off-site considerations. (also see Internal Relationships)

Evergreen: A coniferous or other plant that retains it leaves or needles in all seasons.

Facilities: Something designed, built, installed, etc., to serve a specific function affording a convenience, use or service to the users.

Fair: a temporary, mainly outdoor, public celebratory event, including festivals, which may include musical or theatrical entertainment, display and/or sale of crafts, food and the like.

Fairgrounds, showgrounds, or exhibition center: A site which is used for temporary, regular exhibitions, displays, contests and the like.

Family: One (1) or more persons occupying a dwelling unit and living and cooking together as a single, nonprofit, housekeeping unit, provided that not more than four (4) persons not related by blood, marriage, adoption, or guardianship shall constitute a family unless such group is composed of handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 and all subsequent amendments. Such unrelated handicapped individuals shall have the right to occupy a dwelling unit in the same manner and extent as any family unit established through kinship as defined above.

Family Care Home: A private single-family home in which more than three (3) children, but no more than six (6) children, are received for care, protection, and guidance during only part of the day, except children who are related by blood or marriage to the person who maintains the home, and meeting applicable licensing requirements for family care homes of § 63.1-196 of the Code of Virginia, 1950, as amended.

Farmer's Market: A place where locally grown produce and goods are sold on a temporary or seasonal basis to the general public, not including wholesale or bulk sales to commercial enterprises or the sale of crafts, household items, or other nonagricultural items.

Farm equipment, motorcycle, boat, and sport trailer sales and service: On-site sales and service, either retail or wholesale, of farm equipment, motorcycle, boat, and sport trailers.

Fence: Any artificially constructed barrier of any material or combination of materials erected to enclose, partition, or screen areas of land.

Filling: Any depositing or stockpiling or earth materials.

Flag: Any fabric or bunting containing distinctive colors, patterns, or design that displays words, letters, figures, designs, symbols, fixtures, logos, colors, that may be mounted to a flag pole or other structure.

Flex Industrial uses: Light industrial activities that occur in buildings of no more than two stories in height, with one or more loading docks, and not more than half of the gross floor area used for offices.

Flood: A general and temporary inundation of normally dry land areas.

Flooding: A flood event. In stormwater management, 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: A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation, or an area subject to the unusual and rapid accumulation or runoff of surface waters from any source. In stormwater management, the floodplain means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency and shown on the adopted Federal Insurance Rate Map (FIRM).

Floodplain Management Definitions (reference Floodplain District):

*Base Flood/One Hundred-Year Flood**:*** A flood that, on the average, is likely to occur once every one hundred (100) years (i.e., that has a one (1) percent chance of occurring each year, although the flood may occur in any year).

*Existing Manufactured Home Park/Subdivision**:*** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the initial effective date of these regulations.

*Expansion to an Existing Manufactured Home Park or Subdivision**:*** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*Flood Fringe**:*** All that land in a floodplain not lying within a delineated floodway and subject to inundation by relatively low velocity flows and shallow water depths.

*Flood Hazard District**:*** The area subject to inundation by waters on the 100-year flood, which is the flood that has a one (1) percent chance of being equaled or exceeded in any given year, as defined by the Federal Emergency Management Agency.

Flood-Prone Area: Any land area susceptible to being inundated by water from any source.

Floodproofing: The protection of structures and public utility systems from damage caused by inundation or seepage of flood waters.

Historic Structure: Any structure that is a) listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; c) individually listed on the Virginia Landmarks Register; or d) individually listed on the local inventory of historic places, provided that the Warrenton preservation program has been certified by the Department of Historic Resources and/or the Secretary of the Interior.

Manufactured Home Park/Subdivision: A parcel, or contiguous parcels, of land divided into two (2) or more lots, for rent or sale, intended for the placement of a manufactured home.

New Construction: For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map (FIRM) or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of this Article and includes any subsequent improvements to such structures.

New Manufactured Home Park/Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the initial effective date of these regulations.

Recreational Vehicle: A vehicle which is a) built on a single chassis; b) four hundred (400) square feet or less when measured at the largest horizontal projection; c) designed to be self-propelled or permanently towable by a light duty truck; and d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

Start of Construction: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to it before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before damage occurred.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either 1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or 2) any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure."

Floodway: The channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved and kept free of encroachment, in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot at any point along the watercourse. This includes, but is not limited to, the floodway designated by the Federal Emergency Management Agency and shown on the adopted Federal Insurance Rate Map (FIRM).

Floor Area, gross: The sum of the total horizontal areas of all floors of a structure on a lot, measured from the interior faces of exterior walls, including basements, elevator shafts, stairwells at each story, enclosed porches or atriums, interior balconies or mezzanines, and attics with headroom of six (6) feet, six (6) inches or greater. This definition does not include floor space not used for human habitation or suitable for temporary storage of merchandise or equipment such as areas designed for heating and ventilating equipment, cellars or outside balconies which do not project more than six (6) feet from the exterior wall, off-street parking structure, rooftop mechanical structures or penthouses, or areas with less than six (6) feet, six (6) inches or more of structural headroom.

The term "floor area" shall include basements, elevator shafts and stairwells at each story, floor space for mechanical equipment with headroom of seven feet or more, attic space, interior balconies and mezzanines.

The term gross floor area shall not include cellars or outside balconies which do not exceed a projection of six feet beyond the exterior walls of the building.

Parking structures and rooftop mechanical structures are excluded from gross floor area.

The gross floor area of structures devoted to bulk storage of materials including, but not limited to, grain elevators and petroleum storage tanks, shall be computed by counting each ten feet of height or fraction thereof as being equal to one floor.

Floor Area, gross leasable: The total area designated for tenant occupancy and exclusive use in a shopping center or commercial building, including storage, retail area, offices, shipping, basements, mezzanines and upper floors, if any, expressed in square feet and measured from the center line of joint partitions and from outside wall faces.

Floor Area, net: The sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls and from the centerline of walls separating two or more buildings. The term "net floor area" shall include outdoor display areas for sale, rental and display of vehicles, equipment and other products, but shall exclude areas designed for permanent uses such as toilets, utility closets, enclosed parking areas, mechanical equipment rooms, public and fire corridors, stairwells, elevators, escalators, and areas under a sloping ceiling where headroom in at least half of such area is less than seven feet.

Footprint, building: (see Floorplate)

Floorplate: The horizontal land area occupied by a building at finished grade including projections and overhangs ("footprint").

Foster Home: A residence of any person in which one (1) or more children, other than a child by birth or adoption of such person, resides as a member of the household.

Front: The edge of a lot or structure that abuts a street or way and ordinarily is regarded as the front of the lot.

Front, to: When a building or structure faces or orients toward the front of a lot.

Frontage: That side of a lot abutting on a street or way and ordinarily regarded as the front of the lot; the distance between the side lines of any lot as measured along a line, at the required setback distance from the front lot line, generally paralleling the street upon which the lot fronts. The minimum width of a lot measured from one side lot line to the other along a straight line on which no point shall be farther away from the street upon which the lot fronts than the building setback line, as defined and required herein. On irregularly shaped lots that make such a measurable line impossible, the frontage shall be measured along the line that can be drawn so as to best meet the intent of the above definition.

Frozen food lockers: Commercial facilities in which frozen foods are stored for wholesale distribution or purposes.

Funeral Home: A building or part thereof used for human funeral services. Such building may contain space and facilities for the following**:** embalming and the performance of other services used in the preparation of the dead for burial; the performance of autopsies and other surgical procedures; the storage of caskets, funeral urns, and other related funeral supplies; and, the storage of funeral vehicles, but not including facilities for cremation.

Garage, Private: Accessory building designed or used for the private storage of not more than three (3) automobiles owned and used by the occupants of the building to which it is accessory, with no facilities for mechanical service or repair of a commercial or public nature. On a lot occupied by a multiple-unit dwelling, the private garage may be designed and used for the storage of twice as many automobiles as there are dwelling units. A garage which is attached to the main dwelling structure shall be considered part of that structure for purposes of setback, yard and height regulations.

Garage, Public: A building or portion thereof, other than a private garage, designed or used as a business enterprise with a fee or service charge being paid to the owner for renting, selling, or storing motor-driven vehicles.

Garage, Repair: Any building, premises, or land in which or upon which a business, service, or industry involving the maintenance, servicing, repair, or painting of motor vehicles is conducted or rendered, such services taking place within an enclosed building or screened from public view.

Garden Apartment: A dwelling unit situated within a structure consisting of no more than three (3) stories with access to the dwelling units provided by means of an interior hallway or foyer, each dwelling unit normally consisting of a portion of one (1) floor of the structure.

Gasoline Service Station: (see Service Station)

Geometric Design: Typical cross-sections used in street design.

Gift Shop: A building, or area within a building, comprising no more than 3,000 square feet that display and sells merchandise at retail that is related to a historic person, place or event.

Golf Course: Any area of land, publicly or privately owned, on which the game of golf is played, including accessory uses and buildings customary thereto, but excluding lighted golf driving ranges as defined herein.

Golf Driving Range: A limited area on which golf players do not walk, but onto which they drive golf balls from a central driving tee.

Gooseneck Lighting: A type of light fixture in which a lamp or lightbulb is attached to a flexible, adjustable shaft to allow the user to position the light source without moving the fixture or item to be illuminated. When applied for the purposes of illumination of signage, the lighting is directed on a sign element.

Governing Body: The Town Council of Warrenton, Virginia.

Governmental Buildings: (see Building, Governmental)

Green: Land open to the general public for passive recreational use that contains lawns, shade trees and/or landscaped areas. Paved pedestrian walkways and sitting areas may cover up to twenty-five percent (25%) of the green. Greens may be publicly owned or owned in common by a property owners association. Greens may but are not required to be square or rectangular in shape.

Grade: The average of the finished ground level at the center of all walls of a building. In the case where walls are parallel to and within five (5) feet of a sidewalk, the ground level shall be measured at the sidewalk.

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

Grain and feed supply stores: A business which sells grain, seed, feed and related agricultural products on a wholesale basis, and may sell at retail as well.

Gross Floor Area: (see Floor Area, Gross)

Gross Leasable Space: (see Floor Area, Gross Leasable).

Group Home: A building which provides living accommodations for the physically or mentally handicapped, children sixteen (16) years of age or younger, abused adults, or persons sixty-five (65) years of age or older. The residents of such group homes shall be supervised by a resident or nonresident staff persons in charge of their area.

Health Official; Health Officer: The health director or sanitarian of the County of Fauquier, Virginia, or his designated agent.

Health or Fitness Facilities: An indoor establishment, which may include saunas and steambaths, offering or providing facilities for and instruction in general health, physical fitness, and controlled exercises such as weight lifting, calisthenics, and aerobic dancing.

Heliport: Any landing area used for the landing and taking off of helicopters for the purpose of picking up or discharging of passengers or cargo, including fueling and emergency service facilities.

Heritage tree: any tree that has been individually designated by the local governing body to have notable historic or cultural interest.

Highway Engineer: The engineer appointed by the Town Manager or designated state official serving the local VDOT residency.

Historic District: An area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation, and designated and/or mapped and adopted by the Town Council as an overlay district of the Zoning Ordinance.

Historic District Definitions (reference HD District):

1. *Alteration***:** Any change, modification, or addition to a part of or all of the exterior of any building or structure.
2. *Building:* Any enclosed or open structure which is a combination of materials to form a construction for occupancy or use.
3. *Building Official:* The person appointed by the Town Manager as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building.
4. *Building Permit:* An approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.
5. *Contributing Properties:* Properties so designated on the inventory map of landmarks and contributing properties which is adopted as a part of this Ordinance, being generally those properties which by reason of form, materials, architectural details, and relation to surrounding properties contribute favorably to the general character of the part of the Historic District in which they are located but which by reason of recent age, lack of historic significance, or other factors are not designated as historic landmarks under the criteria of this Ordinance.
6. *Certificate of Appropriateness:* The approval statement signed by the Chairman of the Architectural Review Board which certifies the appropriateness of a particular request for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building within a historic district, subject to the issuance of all other regional permits needed for the matter sought to be accomplished.
7. *Demolition:* The dismantling or tearing down of all or part of any building and all operations incidental thereto.
8. *Historic District:* An area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.
9. *Historic Landmark:* Defined as any building or place listed in the National Register of Historic Places, or in the Virginia Landmarks Register, or any building or place officially designated as a

landmark structure or place by the Town of Warrenton on the inventory map which is adopted as a part of this Ordinance.

10. *Reconstruction:* Any or all work needed to remake or rebuild all or a part of any building to a sound condition, but not necessarily of original materials.
11. *Repairs:* Any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.
12. *Restoration:* Any or all work connected with the returning to or restoring of a building, or a part of any building, to its original condition through the use of original or nearly original materials.

Historic Shrine: (see Museum)

Home Garden: A garden in a residential district for the production of vegetables, fruits, and flowers generally for use and/or consumption by the occupants of the premises.

Home Business: Same as Home Occupation, except that a home business is permitted to have up to three full-time equivalent employees who do not reside in the dwelling in addition to any family employees who reside on the premises.

Home Occupation: Any occupation or activity conducted solely by a member of the family residing on the premises which is incidental and secondary to the use of the premises for dwelling, and in general an occupation where services are performed in such a way that visits to the premises by members of the public are infrequent and that the character and intensity of the use is compatible with the quiet nature of residential neighborhoods, provided that (a) not more than the equivalent area of one quarter (1/4) of the total interior finished floor space of the dwelling shall be used for such purpose; (b) that such occupation shall not require external or internal alterations, or the use of machinery or equipment not customary for purely domestic household purposes; (c) that no commodity is stored or sold, except as are made on the premises; (d) there shall be no group instruction, assembly or activity, or no display that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling.
When within the above requirement, a home occupation includes, but is not limited to the following**:** art studio; dressmaking; home offices, teaching, with musical instruction limited two (2) pupils at a time. However, a home occupation shall not be interpreted to include the conduct of barber shops and beauty parlors, retail stores, nursing homes, medical offices, clinics, convalescent homes, rest homes, child care centers, day care centers or nursery schools, restaurants, tea rooms, tourist homes, massage parlors or similar establishments offering services to the general public.

Homeowners Association: A private nonprofit corporation of homeowners for the purpose of owning, operating, improving and maintaining various common property and facilities.

Hospital: An institution primarily for human in-patient care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities, rendering medical, surgical, obstetrical, or convalescent care, including nursing homes, homes for the aged, and sanatoriums.

Hospital, Special Care: A special care hospital shall mean an institution rendering care primarily for mental or feeble-minded patients, alcoholics, or drug addicts.

Hotel: A facility offering transient lodging accommodations for ten or more individuals on a daily rate and providing additional services, such as restaurants, meeting rooms, and recreational facilities (also see Motel).

Housing, Emergency: (see Emergency Housing)

Household Pet Grooming: A commercial business limited to the routine grooming of household pets, as defined herein, including bathing, hair cutting and similar functions. (also see Pet Grooming)

Housekeeping Unit: (see Dwelling Unit)

Human Scale: The design and appearance of a building façade or group of facades such that a human being perceives that the facades relate to the size of a human being and are not perceived to be overwhelming, disorienting or intimating due to the apparent size.

I - District: A zoning district for industrial uses.

Ice cream truck: A vehicle primarily offering delivery and/or self-service of pre-packaged frozen novelties or treats including ice cream, frozen yogurt, popsicles and similar fare. This type of vendor must obtain an itinerant merchant license from the Town Manager.

Illustrative Material: Accompanying pictorial and written data.

Impervious: Condition of a material that prevents significant percolation of water or discharge.

Impervious Surface: A surface on previously undeveloped land that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, including gravel driveways and parking areas.

Improvements: All utilities, facilities, buildings, and structures including but not limited to streets, cul-de-sacs, storm and sanitary sewers, water lines, curb and gutter, and landscaping required pursuant to the terms of the Ordinances of Warrenton, Virginia.

Industry, Heavy: A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

Industry, Light: A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing or storage or manufacturing processes that involve hazardous or offensive conditions.

Inn: A single-family dwelling, portion thereof, or accessory building to, where short-term lodging is provided for compensation to transient guests only. Additional services, such as restaurants, meeting and event space, and recreational facilities may also be provided. The operator may or may not live on the premises. Up to twelve (12) guest rooms may be provided.

Inoperable Vehicle: A vehicle parked outside of a structure in any zoning district within the Town that cannot be operated mechanically and/or does not display a current, valid Town and State registration decal.

Institutional uses or buildings: Educational and philanthropic operations, including museums, art galleries, and libraries

Internal Relationships: Those associations pertaining to on-site considerations.

Janitorial service establishment: A commercial facility used to store equipment and materials used in providing janitorial services, which may include limited administrative office space for the enterprise.

Junk Vehicle: An inoperable or abandoned motor vehicle without current Town and State registration.

Junk Yard: The use of any area of land lying within one hundred (100) feet of a state highway or the use of more than two hundred (200) square feet of land area in any location for the storage, keeping, or abandonment of junk including scrap metals or other scrap materials. The term "junk yard" shall include the term "automobile graveyard" as defined herein.

Jurisdiction: The limits of territory within which authority may be exercised by the governing body.

Kennel: (see Animal Kennel).

Landscape Architect: A person who is certified by the State of Virginia in the practice of landscape design.

Laboratories, research: A workplace devoted to scientific research and experimentation.

Laboratories, medical: A workplace devoted to routine testing of medical samples and related items associated with the diagnosis and treatment of diseases.

Land-Disturbing Activity or Land Disturbance: ~~Any land change which may result in the alteration or removal of the Town's Natural Landscape including trees and woodlands, that potentially changes its runoff characteristics and that might impact the natural waterways within the Town through the erosion or movement of sediment into town and state waterways or onto neighboring lands. This includes, but is not limited to, clearing and grading, excavating, transporting and filling of land, except that the term shall not include the exceptions under Article 4-5 or Article 5-3 (c) of the Zoning Ordinance.~~ 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, or the conversion of land from permeable to impermeable surfaces. REFER TO: Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance.

Land Disturbance Permit (LDP): A permit issued by the Town for clearing, filling, excavating, or transporting of soil, or any combination thereof. REFER TO: Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance.

Landscaping: The modification of existing site conditions by earthwork, planting, and/or structural installation to complete a desired landscape scheme.

Landscape Design: The planned treatment of land, structures, plants, topography, and other natural features.

Laundromat: A business that provides home-type washing, drying, and/or ironing machines for hire to be used by customers on the premises.

Laundry: A commercial facility where washing, drying, ironing, and/or dry cleaning are performed, but do not include self service machines.

Laundry, Pick Up-Drop Off: A business that provides laundry services to customers but washing, drying, or dry cleaning facilities are not located on the immediate premises.

Lawn and Garden Equipment: Motorized and non-motorized equipment used to cultivate or maintain lawns and garden plots of yards associated with non-agricultural land uses.

Library: A place devoted to the collection and display of books, manuscripts and related intellectual property for use and circulation by the public but not for sale.

Lighting (reference Lighting Regulations):

Footcandle: Unit of luminance. One lumen per square foot. It is the luminous flux per unit area in the Imperial system. One footcandle equals approximately 0.1 (0.093) lux.

Flood Lam: A specific form of lamp designed to direct its output in a specific direction (a beam) but with a diffusing glass envelope**:** Such lamps are so designated by the manufacturers and are typically used in residential outdoor area lighting.

Full Cutoff Light Fixture or Luminaire; Fully Shielded Light Fixture: A lighting fixture from which no light output, either directly from the lamp or a diffusing element, is emitted at or above a horizontal plane drawn through the bottom of the fixture and no more than 10% of the lamp's light intensity is emitted at an angle 10 degrees below that horizontal plane, at all lateral angles around the fixture. Implicit in the definition is a fixture that is aimed straight down and has a flat lens. Any structural part of the light fixture providing this shielding must be permanently affixed.

Glare: The sensation produced by a bright source within the visual field that is sufficiently brighter than the level to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance and visibility. The magnitude of glare depends on such factors as the size, position, brightness of the source, and on the brightness level to which the eyes are adapted.

High Intensity Discharge Lamp: A mercury vapor, metal halide, or high or low pressure sodium lamp.

IESNA: Illuminating Engineering Society of North America

Illuminance, Luminance: The intensity of incident light at a point, measured with a light meter in footcandles or lux.

Initial lumens: The lumens emitted from a lamp, as specified by the manufacturer of the lamp.

Lamp: The component of a luminaire that produces light. A lamp is also commonly referred to as a bulb.

Light pollution: Any adverse effect of manmade light.

Light Trespass: Light falling where it is not wanted or needed, typically across property boundaries.

Lumen: Unit of luminous flux; used to measure the amount of light emitted by lamps.

Luminaire: The term "luminaire" means a complete lighting unit, less the support assembly, consisting of a lamp or lamps together with the components designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply. A luminaire is also commonly referred to as a fixture.

Lux. Unit of Luminance: One lumen per square meter. It is the luminous flux per unit area in the metric system. One lux equals approximately 10 (10.8) footcandles.

Installed: The attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.

Opaque: Opaque means that a material does not transmit light from an internal illumination source. Applied to sign backgrounds, means that the area surrounding any letters or symbols on the sign either is not lighted from within, or allows no light from an internal source to shine though it.

Outdoor Light Fixture or Lumenaire: An outdoor illuminating device, outdoor lighting or reflective surface, lamp or similar device, permanently installed or portable, used for illumination or advertisement.

Temporary Lighting: Lighting which does not conform to the provisions of this Code and which will not be used for more than one thirty (30) day period within a calendar year, with one thirty (30) day extension. Temporary lighting is intended for uses which by their nature are of limited duration; for example holiday decorations, civic events, or construction projects.

Live-Work Unit: (see Dwelling, Live-Work Unit)

Loading Space: A space within the main building or on the same lot providing for the standing, loading, or unloading of trucks and other carriers.

Lodge: (see Club).

Lot: A numbered and recorded portion of a subdivision intended for transfer of ownership or for building development for a single building or accessory building or, in the case of land not transferred for sale, a measured parcel of land having fixed boundaries and designated on a plat or survey showing the metes and bounds or simply described by metes and bounds.

Lot Area: The total horizontal area of the lot lying within the lot lines, provided that no area of land lying within any street or right-of-way shall be deemed a portion of any lot area. The area of any lot abutting a street shall be measured to the street right-of-way.

Lot, Corner: A lot abutting upon two (2) or more streets at their intersection. All sides along the streets shall be considered front yards.

Lot, Coverage: The area of a site covered by buildings or roofed areas.

Lot, Depth of: The average horizontal distance between the front and rear lot lines.

Lot, Double Frontage: An interior lot having frontage on two (2) streets.

Lot, Interior: A lot other than a corner lot with only one street frontage.

Lot Line: A property boundary line of any lot held in single and separate ownership from adjacent property, except that, in the case of any lot abutting a street, the lot line or such portion of the lot as abuts the street shall be deemed to be the same as the street line, and shall not be the center line of the street, or any other line within the street line even though such may be the property boundary line.

Lot, Pipestem: A lot with access provided to the bulk of the lot by means of a narrow corridor that does not meet the street frontage requirement of the district regulations.

Lot, through: A lot in which both the front and rear lot lines abut a street.

Lot of Record: A lot which has been recorded among the land records in the Office of the Circuit Court of Fauquier County, Virginia.

Lot, Substandard: (see Nonconforming Lot).

Lot, Width of: The horizontal distance between side lot lines measured at the required front setback line.

Lumber and building supply: A commercial use devoted to the storage and sale of wood, lumber and related building materials.

Manufacture and/or Manufacturing: The processing, fabrication, assembly, and distribution of products such as, but not limited to**:** scientific or precision instruments, photographic equipment, communication equipment, computation equipment, household appliances, toys, sporting and athletic goods, glass products made of purchased glass, electric lighting and wiring equipment, industrial controls, lithographic and printing processes, radio and TV receiving sets, watches and clocks, optical goods, and electrical machinery.

Marquee: A permanent structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall and generally designed and constructed to provide protection against the weather.

Massage Therapist: A practitioner who is licensed or certified by the state and/or a recognized professional organization, to practice massage therapy for purposes of medical care or physical therapy rather than for entertainment or recreation.

Materials: The physical elements of which something is made or fabricated.

Medical or Dental Clinic: Any building or group of buildings occupied by medical practitioners and related services for the purpose of providing health services to people on an out-patient basis.

Medical Center: Any building or group of buildings that provides a range of professional medical services that would normally be found in hospitals, medical clinics and medical offices.

Medical Laboratory: (see Laboratory, Medical)

Meeting Hall: (see Assembly Hall)

Mentally or physically impaired person: A person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200, as certified in a writing provided by a physician licensed by the Commonwealth.

Message, Commercial: Any sign, wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

Message, Noncommercial: Any sign, wording or logo that does not represent a commercial message or commercial speech. See also “Message, Commercial.”

Mini-Warehouse: A structure containing separate storage spaces of varying sizes leased or owned on an individual basis for self-storage of business, household, or contractors supplies.

Mixed-Use: The development of a neighborhood, parcel(s), building, or structure with a variety of complementary and integrated uses, such as, but not limited to, residential, office, retail, public and institutional uses, personal services, and recreation arranged in a compact urban form.

Mobile Food Cart: Any non-motorized mobile food unit with limited infrastructure that serves food and/or beverages intended for immediate consumption. Mobile food carts may not exceed six (6) feet in length, three (3) in width (excluding wheels), or four (4) feet in height (excluding wheels and umbrellas). Mobile Food Carts include pushcarts and similar devices.

Mobile Food Vehicle: A motorized mobile food unit which is self-sufficient in terms of potable water, sanitary sewer and electric utilities, and generally consists of an enclosed truck, trailer or similar vehicle, where food may be stored, prepared, cooked, and/or served. An open bed truck, van or converted automobile is not considered a mobile food vehicle and is NOT eligible for a mobile food vending permit.

Mobile Food Vendor: Any person or business selling foods from a mobile food cart or mobile food vehicle, which is stationary for a period of time longer than that necessary to complete a sale or greater than a fifteen (15) minute period. This definition does not apply to traveling ice cream trucks, cafeteria trucks serving active construction sites, or non-commercial vehicles.

Mobile Home (also "Manufactured Home"): (see "Dwelling, Mobile Home")

Mobile Home Park: A residential neighborhood conforming to the requirements of the former MHP Residential District.

Mobile Home Subdivision: An arrangement of lots designed and intended for the placement of mobile homes for residential purposes, meeting the requirement of the former MHP Residential District.

Modular home; Modular dwelling: (see Dwelling, Modular)

Monument sales: Sales of headstones, plaques and similar elements for memorials.

Motel: A building or a group of two (2) or more detached or semi-detached buildings containing rooms or apartments having separate entrances provided directly or closely in connection with automobile parking or storage space serving such rooms or apartments, which building or group of buildings is designed, intended, or used principally for the providing of sleeping accommodations for automobile travelers and is suitable for occupancy at all seasons of the year.

Motion picture studio: A building or group of buildings in which videos, motion pictures or other visual recordings are filmed.

Mural: A painting or other artistic depiction on the wall of a building which does not serve the purpose of commercial or business advertisement or promotion.

Museum: A building which provides educational or aesthetic opportunities for the visiting public on a regular schedule. Artifacts, artwork, historical documents, photographs, costumes, and other objects are exhibited and cared for by a professional staff.

Neighborhood Professional Business: Any establishment containing between 1,500 and 5,000 square feet of gross floor area, on the ground floor of a building/structure wherein the primary occupation is the provision of services on a fee or contract basis. Retail sales to the general public are not permitted, except as a secondary and subordinate activity, and not exceeding ten (10) percent of the gross floor area. The retail sales area component should be clearly delineated within the building/structure. Business service establishments shall not have more than two (2) employees, including the owner.

New Urbanism: A pattern of urban design which incorporates various traditional town planning principles, including narrow streets, on-street parking, interconnected streets, alleys, small front setbacks, mixed-uses and similar features.

Noise: Sound of a harsh, loud, or confused kind causing disturbance to occupants of an abutting, adjacent, or adjoining property, as provided for in the performance standards of these regulations and any other provisions of the Town Code.

Nonconforming Activity: (see Nonconforming Use)

Nonconforming Lot: An otherwise legally platted lot that does not conform to the minimum area or width requirements of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

Nonconforming Sign: An otherwise legal sign that does not conform with the regulations of this Ordinance for the district in which it is located, either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

Nonconforming Structure: An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this Ordinance, or is designed or intended for a use that does not conform to the use regulations of this Ordinance, for the district in which it is located, either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

Nonconforming Use: The otherwise legal use of a building or structure or a tract of land, other than a sign, that does not conform with the regulations of this Ordinance for the district in which it is located, either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

Non-profit organization: A non-profit organization incorporated under the provisions of section 501 [c] 3 of the federal code.

Non-Residential Floor Space: The area of a building that is not used for residential purposes. Areas used primarily for storage shall not be counted towards non-residential floor space.

Nursery School: (see Day Care Center).

Nursing or Convalescent Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness, or infirmity are unable to care for themselves.

Office: A building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations.

Office, business and professional: (see Business and Professional Office)

Office, medical: (see Medical or Dental Clinic)

Off-Street Parking Space or Parking Bays: A reasonably level space, available for the parking of one (1) motor vehicle, not less than nine (9) feet wide and having an area of not less than one hundred sixty-two (162) square feet exclusive of passageways or other means of circulation or access.

One Hundred-Year Flood: A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one (1) percent chance of occurring each year, although the flood may occur in any year).

On-Site: That area within the boundary of any land to be developed or planned for development.

Open Space: An area that is intended to provide light and air, and is designed for either environmental, scenic, or recreational purposes and may include, but is not limited to, lawns, decorative planting, walkways, active and passive recreation areas, playgrounds, fountains, swimming pools, wooded areas, and water bodies, but not including driveways, parking lots, and storage yards.

Open Space, Common: Open space within or related to a development, not in individually owned lots or dedicated for public use, but which is designed and intended for the common use or enjoyment of the residents of a development.

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

Outdoor Lighting: (see Lighting)

Outdoor Storage: The keeping in an unroofed area of any goods, junk, material, merchandise, or vehicles in the same place for more than one (1) week.

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

Owner-Applicant: (see Applicant-Owner).

Parcel: A continuous quantity of land, as shown on the official parcel maps of the County Commissioner of the Revenue and/or an approved record plat, in the possession of, owned by, or recorded as the property of the same person or persons.

Park: An area open to the general public and reserved for recreational, educational, or scenic purposes.

Parking, off-street: Parking in spaces designated outside of the street right-of-way.

Parking, on-street: Parking in spaces designated within the street right-of-way.

Parking Lot: An area not within a building where motor vehicles may be stored for the purposes of temporary, daily, or overnight off-street parking. For the purposes of this Article, parking lots are defined as any area used for the display or parking of any and all types of vehicles, boats, farm machinery, lawn and garden equipment, or heavy construction equipment, whether or not these items are for sale or lease. This definition includes, but is not limited to, parking lots and display areas for automobile dealerships and service stations. The area of the parking lot shall be calculated to include all paved areas used for ingress, egress, internal circulation, loading, and parking stalls.

Parking Space, All Weather: A parking space surfaced to whatever extent necessary to permit reasonable use under all conditions of weather.

Passive Recreation: (see Recreation, Passive)

Passive Recreation Area: (see Recreation Area or Facilities, Passive)

Patio Home or Patio House: For purposes herein, same as atrium house (also see Atrium House, Townhouse).

Peak Flow Rate: The maximum instantaneous flow from a given storm condition at a particular location.

Performance Bond: Surety, cash escrow, letter of credit, any combination thereof, or other such legal arrangement acceptable to the Town to ensure that measures could be taken by the Town, at the applicant's expense, should they fail to initiate or maintain appropriate action per the approved site plan or permit.

Permittee: The person to whom the permit authorizing construction, building, or land-disturbing activities is issued, and who is ultimately responsible for those activities.

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

Personal Service Establishment or Store: Establishments primarily engaged in the repair, care, maintenance or customizing of personal property that is worn or carried about the person, or is a physical component of the person, such as the following which will serve as illustration**:** beauty parlors, barber shops, shoe repair, tailor shops, opticians, and similar places of business. Personal Service Establishments do not include dry cleaning plants, or linen or diaper service establishments.

Pet, Household: Small, domestic animals that are customarily kept in the house or residential yard for the company or enjoyment of the owner, such as but not limited to dogs, cats, rabbits, birds, rodents, fish and other such animals that pose no threat, harm or disturbance to neighboring residents or properties.

Pet Grooming: A commercial business limited to the routine grooming of household pets, as defined herein, including bathing, hair cutting and similar functions.

Pipeline, Major: A main trunk pipeline that carries water, gas or other material, or that collects stormwater or wastewater, and connects to one or more smaller lines that provide the service to specific customers.

Pipestem Lot: (see Lot, Pipestem).

Planned Unit Development: A development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages, including principal and accessory structures and uses substantially related to the character and purposes of the development, and including streets, circulation ways, utilities, buildings, open spaces, and other site features and improvements. It also includes a program for the provision, operation, and maintenance of such areas, facilities, and improvements as will be for common use by some or all of the occupants of the planned development but will not be provided, operated, or maintained at public expense. PUD includes mixed-use developments, single use residential developments and/or commercial developments, in accord with the provisions of this Ordinance.

Planner: Person qualified to prepare site development plans, either licensed as such or meeting the educational training and work experience standards for membership of the American Institute of Certified Planners.

Planning Director: The person designated by the Town Manager to serve in this capacity. All references to the Planning Director in this Ordinance shall also include the Community Development Director.

Plat: A map or plan of a tract or parcel of land which is to be or has been subdivided (when used as a verb, plat is synonymous with subdivide).

Playground: A recreational area which is graded and either planted in grass or paved, or a combination of both, which may have play equipment, and which may be lighted or unlighted for nighttime sports activities in accord with the provisions of this ordinance.

Plumbing and electrical supply: A business which sells plumbing and/or electric products on a wholesale basis, and may sell at retail as well.

Porch: A structure attached to a building to shelter an entrance or to serve as a semi-enclosed space, usually roofed and generally open-sided, but it may be screened or glass enclosed.

Premise: A contiguous parcel of land with its appurtenances and buildings that functions as a unit. For the purpose of this ordinance, an outparcel along the perimeter of a shopping center or similar multi-tenant use that contains a freestanding building and a parking area separate from the shopping center as indicated on an approved site plan shall be considered a premises separate from the premises of the shopping center.

Printing establishments: Printing, publishing, and engraving establishment; photographic processing; blueprinting; photocopying; and similar uses

Profile: A drawing of a side or sectional elevation of an object.

Property: Any tract, lot, or parcel, or several of the same collected together for the purpose of subdividing, preparing a site development plan, and/or developing.

Public Buildings: (see Building, Public)

Public Facilities Manual: The Town of Warrenton Public Facilities Manual. This manual provides standards and specifications for public facilities construction within the Town.

Public Water and Sewer Systems: A water or sewer system owned and operated by a municipality or county, or owned and operated by a private individual or a corporation approved by the Governing Body and properly licensed by the State Corporation Commission, and subject to special regulations as herein set forth.

Pumping station: A component of a public water or wastewater system that pumps material from one line to another for either distribution or collection.

R – District (Residential District): Any zoning district beginning with "R" and/or any zoning district designed primarily for residential uses.

Raceway or Wireway: A raceway or wireway is a form of mounting structure for signs that are a narrow structure attached to a wall where electrical conduit can run within and where the sign structure itself is mounted to the raceway or wireway.

Recreation, Active: Intensive play or athletic activity involving individual or group participation in games, sports or other activity. Includes such activities as baseball, basketball, tennis, soccer, golf, swimming, riding and other activities involving physical exertion. May be private, public or commercial in nature.

Recreation Area or Facilities, Active: Area or facilities designed for intensive play or athletic activity by either juveniles or adults.

Recreation, Commercial: (see Commercial Recreation)

Recreation, Passive: Activity involving minimal physical exertion such as sitting, walking, picnicking, bird watching and reading.

Recreation Area or Facilities, Passive: Natural areas with or without facilities, primarily scenic, for passive activities, e.g., sitting, walking, riding, or picnicking.

Recycling Center: A facility that is not a junkyard and in which recoverable resources, such as newspapers, glassware, and metal cans, are collected, stored, flattened, crushed, or bundled, either by machine or by hand, within a completely enclosed building, in preparation for further processing or manufacturing at another facility.

Recycling Collection Point: An incidental use that serves as a neighborhood drop-off point for recoverable resources, for temporary storage in containers, or small structures, not including processing of such items. Generally, these facilities are located in shopping center parking lots, or other public or semi-public areas such as churches or schools.

Recycling Plant: A facility that is not a junkyard and in which recoverable resources, such as magazines, books, and other paper products; glass; metal cans; and other products, are recycled, reprocessed, and treated, within a completely enclosed building, to return such products to a condition in which they may again be used for production.

Rental service establishment: A business that rents household equipment and/or vehicles.

Rescue Squad: An emergency medical and rescue company, typically operated as a non-profit organization, using emergency medical vehicles to serve customers.

Rest Home: (see Nursing Home).

Restaurant: An establishment whose principal business is the selling of unpackaged food to the customer in a ready-to-consume state, in individual servings, or in nondisposable containers, and where the customer consumes these foods while seated at tables or counters located within the building. This definition also includes cafes, cafeterias, sit-down restaurants, tea rooms, confectionery shops, refreshment stands, and outdoor cafes.

Restaurant, Carry-Out: An establishment that provides prepared food for pick-up by the customer or delivery by the restaurant employees, but not eat-in facilities.

Restaurant, Drive-Through: An establishment that delivers prepared food, beverages, and/or desserts to customers in motor vehicles, regardless of whether or not it also serves customers who are not in motor vehicles, for consumption on or off the premises.

Restaurant, Fast Food: An establishment whose principal business is the sale of pre-prepared or rapidly prepared food, beverages, and/or desserts directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises. Orders are not generally taken at the customer's table and food is generally served in disposable wrapping or containers.

Retail Stores and Shops: Buildings for the display and sale of merchandise at retail (but specifically exclusive of coal, wood, and lumber yards), such as the following which serve as illustrations**:**
drugstore, newsstand, food or grocery store, candy shop, dry goods and notions store, antique store, gift shop, hardware store, household appliance store, furniture store, florist, music and radio store. This group also includes the consolidation of retail stores into one or more buildings as a shopping center.

Retail uses, General: (see Retail Stores and Shops)

Retail uses, Personal services: Retail uses that provide services to individuals, such as barber, beauty salon, nail care, and the like.

Retail uses, Business services: Retail uses that provide services to businesses, such as office supplies, office equipment, data processing, and the like.

Retail Use, Automated: A retail establishment that is fully automated, without a full time attendant or proprietor.

Retention Facility: The same as a Detention Facility except that the lower water elevation of the pond may be at a level lower than the normal hydraulic grade line of the drainage system into which it drains. Water detained in this lower elevation must therefore be dissipated by evaporation, seepage into the soil, or retained as a permanent water pool.

Reverse Frontage: A lot with double frontage which is not accessible from one of the streets upon which it fronts, usually the street designed for or experiencing the highest vehicular traffic volumes.

Right-of-Way: A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or for another special use. May include a fee simple or easement ownership.

Road, Public: All public property reserved or dedicated for street traffic, maintained by the Town of Warrenton or the Virginia Department of Highways.

Road, Private: A way open to vehicular ingress and egress established as a separate tract for the benefit of certain adjacent properties, not including driveways, and not maintained by the Town of Warrenton or the Virginia Department of Highways.

Rooming House: (see Boarding House).

Rug and carpet cleaning and storage with incidental sales of rugs and carpets: A business which cleans and/or stores rugs and carpets and which may sell or trade such items as an incidental use.

Satellite Dish Antenna: A device incorporating a reflective surface that is solid, open mesh, or bar configured, usually in a round, parabolic shape, intended to receive and/or transmit radio, electromagnetic, or microwaves from terrestrially based and/or orbitally based sources.

School: Any public, parochial, or private place of instruction that provides a curriculum of elementary or secondary academic instruction, including kindergartens, elementary schools, middle schools, junior high schools, vocational schools, and high schools, meeting all the licensing requirements of the Commonwealth of Virginia.

Screening: (see Buffer).

Seating Capacity: The actual seating capacity of an area based upon the number of fixed seats or one (1) seat per eighteen (18) inches of bench or pew length. For other areas where seats are not fixed, the seating capacity shall be one (1) seat for every seven (7) square feet of net floor area, excluding floor area devoted to permanent displays and/or storage.

Security service office or station: A kiosk, office or other structure out of which the security personnel of a building or complex operate.

Sediment: Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site or origin by air, water, gravity, or ice and has come to rest on the earth's surface, either above or below sea level.

Self-Service Storage Units: (see Mini-Warehouse).

Senior Citizens Center: A licensed facility which provides care, supervision, and recreation activities for persons 55 years of age and older, during a portion of the day and which is not used for lodging or overnight care.

Service Station: Buildings and premises where the primary use is the supply and dispensing of retail motor fuels, lubricants, batteries, tires, motor vehicle accessories, and/or light maintenance activities, performed within an enclosed building, such as engine tune-ups, lubrication, and minor or emergency repairs. This definition does not include heavy automobile maintenance activities such as engine overhauls, automobile painting, and body or fender work.

Setback: The minimum distance by which any building or structure must be separated from the front, side, or rear lot line.

Setback Line: The line which establishes the required setback. The same as building line.

Shopping Center: A grouping of retail business and service uses on a single site with common, shared parking facilities and combined access points to the public road system.

Shrub: A low-growing, usually multi-stemmed, woody plant.

Sign: Any object, device, display, or structure, or part thereof, visible from a public place, a public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water which is designed and used to attract attention to an institution, organization, business, product, service, event, or location by any means involving words, letters, figures, designs, symbols, fixtures, logos, colors, illumination, or projected images. The term “sign” also does not include the display of merchandise for sale on the site of the display.

Sign Area: The entire display area of a sign including the advertising surface located on one or more sign faces and any framing, trim and molding, but not including the supporting structure as measured pursuant to Section 6-5.

Sign Copy: Those letters, numerals, and figures, symbols, logos, and graphic elements comprising the content or message of a sign.

Sign Face: The surface of the sign upon, against or through which the message of the sign is exhibited.

Sign Height: The vertical distance to top of sign structure as measured pursuant to Section 6-5.

Sign, Awning: A sign painted on, printed on or attached flat against the surface of an awning.

Sign, Banner: A temporary sign constructed of a flexible substrate such as, canvas, plastic, fabric or similar lightweight, non-rigid material that can be mounted to a structure with cord, rope, cable, or a similar method. Where a banner sign is supported by stakes or another type of supporting structure for posting in the ground, such sign shall be classified as a "Sign, Yard."

Sign, Building: Signs that are attached to the building including wall signs, projecting signs, awning signs, marquee signs, suspended signs, and canopy signs.

Sign, Canopy: A sign attached to the soffit or fascia of a canopy.

Sign, Changeable Copy: A sign designed so that the characters, letter or illustrations can be changed or rearranged manually or electronically without altering the sign display surface. May also be known as readerboards. See also the definition of "Sign, Electronic Message Center."

Sign, Drive-Through: Any signage allocated along a drive-through lane that is oriented toward the customer or user in the drive-through lane.

Sign, Electronic Message Center: Any sign that uses changing lights to form a sign message or messages wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. Such signs may be included in the definition of other types of signs if they otherwise meet those definitions and do not have features of prohibited signs, such as flashing signs.

Sign, Feather: A temporary sign that is constructed of lightweight cloth, canvas, plastic fabric or similar lightweight, non-rigid material and that is supported by a single vertical pole mounted into the ground or on a portable structure that may resemble a sail, bow, or teardrop.

Sign, Free Standing: Any sign supported upon the ground by a monument, pedestal, bracing, or other permanent measure and not attached to any building. See also the definition of "Sign, Monument.

Sign, Marquee: A sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed or both types of lettering in use.

Sign, Monument: A permanent freestanding sign other than a pole sign, not attached to a building, which is placed upon or supported by the ground independently of any other structure, typically on a monument or pedestal structure.

Sign, Neon: Any illuminated sign that is comprised of glass tubing that contains neon or other gases that light up in various colors when an electric discharge is applied to the gas.

Sign, Nonconforming: Any sign which was erected legally prior to the adoption of this code, but which does not comply with subsequently enacted sign restrictions and regulations or a sign which does not conform to the sign code requirements.

Sign, On-Premise: A sign with a message that relates to an activity located on the same premise.

Sign, Permanent: A sign permitted by this code to be located on the premises for an unlimited period of time, constructed of rigid material, and designed to be permanently attached to a structure or the ground.

Sign, Portable: Any sign not attached to the ground or a sign designed to be transported, including signs designed to be transported by means of wheels. Such signs shall not include sidewalk signs as allowed in Section 6-15.

Sign, Projecting: A sign that is affixed perpendicular to a building or wall and extends more than eighteen inches beyond the face of such building or wall.

Sign, Sidewalk (A-Frame): A freestanding sign which is ordinarily in the shape of an "A" or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure. See also the definition of T-frame signs. Such signs are placed on a public sidewalk, private sidewalk, or similar walkway, in a manner established in Section 6-15.6.1.

Sign, Sidewalk (T-Frame): A freestanding sign which is ordinarily in the shape of an upside down "T" or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure. See also the definition for A-frame signs. Such signs are placed on a public sidewalk, private sidewalk, or similar walkway, in a manner established in Section 6-15.6.1.

Sign, Temporary: A sign that is neither permanently anchored to the ground, nor permanently affixed to a structure, nor mounted on a chassis, constructed of materials not intended for extended/permanent use, and/or is intended for a limited period of display.

Sign, Vehicle: A vehicle sign shall be considered to be used for the primary purpose of advertising if the vehicle fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle. Vehicle signs include those attached to or placed on a vehicle or trailer.

Sign, Wall: A sign attached directly to an exterior wall of a building with the exposed face of the sign in a plane parallel to the building wall. A wall signs shall include cornice and transom signs as allowed in the Historic District.

Sign, Window: A sign attached to, in contact with, placed upon or painted on the window or door of a building which is intended for viewing from the outside of such building. This does not include merchandise located in a window. A structure that would be considered a sign if mounted on the exterior of the building, but which is mounted inside the building and oriented to be visible through the window by a person outside of the window, shall be considered a window sign for the purposes of this Article.

Sign, Yard: Any temporary sign placed on the ground or attached to a supporting structure, posts, or poles, that is not attached to any building.

Sign fabricating and painting: The fabrication, painting or assembly of any type of sign as defined herein.

Simplicity: Directness of expression in design.

Site Development Plan: Detailed drawings indicating all building construction and land improvements, including landscape treatments and related information as required by this Ordinance. Also defined as the Site Development Plan Ordinance, Town of Warrenton, Virginia, December, 1970.

Small equipment sales and/or service operations: A commercial enterprise devoted to the repair and sales of small scale motorized equipment for residential or commercial activities, such as lawn mowers and power tools.

Special Exception: (see Special Use Permit)

Special Use Permit: A permit for a use that, owing to some special characteristics attendant to its operation, installation, or relation to the neighborhood, is permitted in a district, subject to Town Council or BZA approval, in accordance with the provisions of Article 11 of this Ordinance. Special Use Permits are subject to special requirements and/or conditions that may be imposed by the Council or BZA, respectively, different from those usual requirements for the district in which the special use in located.

Specifications: A detailed, precise presentation of the materials and procedures to be employed in the construction of all physical improvements required by the ordinance applicable in the Town of Warrenton, Virginia.

Specimen tree: any tree that has been individually designated by the local governing body to be notable by virtue of its outstanding size and quality for its particular species.

Square: Land open to the general public for passive recreational use that contains paved pedestrian plazas, lawns, shade trees and/or landscaped areas. Paved pedestrian plazas may cover up to 90% of the square. Squares may be publicly owned or owned in common by a property owners association. Squares are not required to be square or rectangular in shape.

State: The Commonwealth of Virginia.

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

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

Steep Slope: A slope exceeding twenty-five (25) percent grade.

Storage yards: A yard area in which materials, equipment and/or vehicles used for construction, excavating or similar activities are stored, kept and/or maintained. Storage yards may be partially covered, enclosed or screened.

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

Stormwater Management: ~~Under the Articles, Manuals, Forms, and Regulations set forth for the purposes of Stormwater Management, in addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein~~

~~by reference, the words and terms used in this Ordinance have the following meanings unless otherwise specified herein.~~ **REMOVED** (XXXX, 2024). REFER TO: Chapter 21 of the Town Code, Erosion and Stormwater Management Ordinance.

~~*Adequate channel*: A natural or manmade channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks. For manmade channels, the ten-year frequency storm is used to verify that stormwater will not overtop the channel banks, and the two-year storm is used to demonstrate that stormwater will not cause erosion to the channel bed or banks. For natural channels, that channel capable of conveying the runoff from a two-year storm without overtopping its banks or eroding the channel lining, or without causing flooding of structures from the 100-year storm event.~~

~~*Administrator, VSMP*: The Administrator of the Town of Warrenton Virginia Stormwater Management Program.~~

~~*Agreement in lieu of a stormwater management plan*: A contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan. This differs from an Agreement in lieu of an erosion and sediment control plan.~~

~~*Applicant/Developer*: Any person, his Agent, or his assigns submitting a stormwater management plan for approval.~~

~~*Channel*: An elongated depression having a definite bed and bank which serves to confine the flow of water.~~

~~*Concentrated Flow*: Converging area between sheet flow and channel flow. The area where a stream could be said to begin.~~

~~*Conduit or conveyance*: A general term for any open or enclosed facility, natural or man-made, which is intended for the conveyance of water.~~

~~*Control measure*: Any best management practice or stormwater facility (BMP) or other method used to minimize the discharge of pollutants to state waters.~~

~~*Control Section*: A section or a reach of a conduit where conditions exist that make the water level stable. A control section may be partial or complete. A complete control section is independent of downstream conditions and is effective at all stages. An overflow dam or rock ledge crossing a channel are examples. Control sections may be either natural or artificial.~~

~~*Culvert*: A closed conduit carrying water under a highway, railroad, or other embankment. A culvert is distinguished from a bridge by generally having the same material all around its perimeter, and having a regular, symmetrical shape.~~

~~*Debris*: Any material, including floating trash or suspended sediment moved by a flowing stream.~~

~~*Deter*: The practice of containing standing water for a brief time after a surface water runoff event for the purpose of reducing peak runoff rates and/or for removing pollutants. Detention may be achieved in facilities that are normally dry (detention ponds).~~

~~*Discharge*~~:

~~(a) The quantity of water, silt, or other mobile substances passing along a conduit per unit of time: rate of flow expressed as cubic feet per second, liters per second, million of gallons per day, etc.~~

~~(b) The act involved in water or other liquid passing through an opening or along a conduit or channel.~~

~~(c) The water or other liquid which emerges from an opening or passes along a conduit or channel.~~

~~*Ditch*: An artificial channel.~~

~~*Flood Routing*: Determining the changes in the rise and fall of floodwater as it proceeds downstream along a drainageway, including the effects of structures.~~

~~*Frequency of Storm*: The anticipated period in years that will elapse, based on average probability of storms in the design region, before a storm of a given intensity and/or total volume will recur. A 10-year storm can be expected to occur on the average of once every 10 years, but has a 10% chance of occurring in any given year.~~

~~*General permit*: The state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.~~

~~*Infiltration Facility*: A stormwater management facility which temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during non-rainfall periods.~~

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

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

~~*On-site Stormwater Management Facilities*: Facilities which are designed to control stormwater runoff emanating from a specific site.~~

~~*Peak Discharge*: The maximum instantaneous flow from a given storm condition at a specific location.~~

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

~~*Predevelopment Runoff*: Conditions that exist at the time that plans for a land development activity are approved by the plan approval authority. For staged development, the first item approved or permitted shall establish the time at which predevelopment conditions are fixed. In the case of land development by governmental agencies, the initiation of land acquisition shall establish the time at which predevelopment conditions are fixed.~~

~~*Regional Watershed-Wide Stormwater Management Facility or Regional Facility*: A facility or series of facilities designed to control stormwater runoff from a large contributing area, although only portions of the watershed may experience land development.~~

~~*Regulations*: Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870, as amended.~~

~~*State Board*: The Virginia State Water Control Board.~~

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

~~*Storm Sewer*: A sewer that carries only stormwater, drainage and other surface water, but not domestic sewage or industrial wastes. A storm sewer system consists of underground conduits, inlets, manholes, open channels, swales and special appurtenances.~~

~~*Stormwater Detention Basin or Detention Basin*: A stormwater management facility which temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during non-rainfall periods.~~

~~*Stormwater Drainage System*: A system of conduits and associated structures used to collect and convey runoff.~~

~~*Stormwater Management Facility*: A device that controls stormwater and changes the characteristics of runoff including, but not limited to the quantity and quality, the period of release, or the velocity of flow.~~

~~*Stormwater management plan*: Document(s) containing material describing methods for complying with the requirements of Article 5 of this Ordinance.~~

~~*Stormwater Pollution Prevention Plan (SWPPP)*: A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Ordinance. The document shall identify and require the implementation of control measures, and shall include an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan, and other information that fully demonstrate how the project will comply with the applicable regulations and requirements.~~

~~*Virginia Stormwater BMP Clearinghouse*: A reference website maintained by the Department of Environmental Quality that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.~~

~~*VSMP Authority Permit*: An approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after evidence of general permit coverage has been provided by the Department.~~

~~*Waste load allocation or waste load (WLA)*: The portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.~~

Streams: Water bodies identified as streams on the US Geological Survey topographical maps, the National Wetlands Inventory, or county soil maps.

Story: That portion of a building, other than the basement, included between the surface of any floor and the surface of the floor next above it. If there be no floor above it, the space between the floor and the ceiling next above it.

Story, Half: A space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two thirds of the floor area is finished off for use.

Street: A strip of land subject to vehicular and/or pedestrian traffic providing means of access to property; also designated as road, lane, drive, avenue, right-of-way, highway, boulevard, trail, court, place, terrace, etc. (see Street, Public)

Street, Arterial: A highway utilized primarily as a supplement to, and an extension of, the interstate highway system, defined in the Virginia State Highway Commission Standards as an arterial highway. A minimum right-of-way of one hundred twenty (120) feet is required and carrying capacity is in excess of eight thousand (8,000) vehicles per lane per day.

Street, Collector: Any existing or future street shown as a collector street on the adopted Comprehensive Plan or that carries a volume of through traffic between four hundred (400) and three thousand (3,000) vehicles per day.

Street, Interstate: A thoroughfare utilized to carry interstate traffic with a minimum right-of-way of three hundred (300) feet in rural area and carrying capacity in excess of fifteen hundred (1,500) vehicles per lane per hour.

Street, Line: The dividing line between a street or road right-of-way and the contiguous property.

Street, Local: A street that carries or is anticipated to carry a volume of traffic less than four hundred (400) vehicles per day, the right-of-way of which shall not be less than fifty (50) feet.

Street, Primary Thoroughfare: A street that carries or is anticipated to carry a volume of traffic exceeding three thousand (3,000) vehicles per day, the right-of-way of which shall not be less than seventy (70) feet, and should, where feasible, have a minimum right-of-way of ninety (90) feet.

Street, Private: A local or collector street constructed to Town and State standards or the equivalent thereto, guaranteed to be maintained by a private corporation by means of a covenant, deed, and easement acceptable to the Town of Warrenton. Such streets shall have guaranteed public vehicular access.

Street, Public: All public property reserved or dedicated for street traffic, improved to the standards set by the Town of Warrenton or the Virginia Department of Transportation. The lot frontage and setback requirements of this ordinance refer to the public street.

Street, Secondary Collector: A street that carries or is anticipated to carry a volume of through-traffic exceeding four hundred (400) vehicles per day, the right-of-way of which shall not be less than fifty (50) feet nor more than ninety (90) feet depending upon existing or anticipated traffic volume.

Street, Service Drive: A public right-of-way generally parallel with and contiguous to a major highway. Primarily designed to promote safety by eliminating pernicious ingress and egress to the major safe and orderly points of access to the major highway.

Street, Width: The total width of the strip of land dedicated or reserved for public travel includes roadway, curb and gutter, sidewalks, planting strips, and where necessary, utility easements.

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, among other things, drainage structures, dwellings, buildings, signs, fences, walls, etc., but not private driveways.

Studios for artists, photographers, and sculptors: A work space for the creation of artworks, photography and related or similar activities.

Studios and trade schools: A work space for the conduct, teaching and/or practice of artist or business trades.

Subdivide: To divide any tract, parcel, or lot of land into two (2) or more parts for the purpose of transferring ownership of any part or for the purpose of building development of any sort. The term "subdivide" includes the term "resubdivide" and when appropriate to the context shall relate to the process of subdividing.

Subdivision: means the same as “subdivision” as defined in Article 5 of the Town Subdivision Ordinance.

Subdivision Agent: An employee of the Community Development Department designated by the Planning Director to administer the Subdivision Ordinance and any other similar duties as may be assigned by the Planning Director.

Substations: An appurtenant structure for collecting, processing or distributing a public utility commodity, including electric substations but not including any part of a water or sewer system.

Surveyor, Land: An individual who is certified and licensed by the Commonwealth of Virginia and who is registered with the State Department of Professional and Occupational Regulation as a "registered land surveyor."

Taxicabs stands: An office, kiosk or other station at which taxis are dispatched.

Taxidermist: A person who prepares animal carcasses for ornamental display.

Tea Room: A room or rooms within a private residence, where teas, other beverages, and food products are provided for compensation. The operator of the facility shall live on the premises.

Temporary family health care structure: A transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the Industrialized Building Safety Law (§ 36-70 et seq.) and the Uniform Statewide Building Code (§ 36-97 et seq.). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

Theaters: A building, structure or place designed or used primarily for the commercial exhibition of motion pictures to the general public or used for the performance of plays, acts, dramas or musical productions by actors, actresses and/or musicians.

Time of Concentration: The time it takes for runoff to travel from the most hydraulically distant part of the watershed to a point of reference, (i.e. basin outlet, drop inlet, etc.).

Tire recapping and retreading: A business which re-caps and/or re-treads motor vehicle tires.

Total maximum daily load (TMDL): The sum of the individual waste-load allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs. TMDLs for the Chesapeake Bay include phosphorus, nitrogen and total suspended solids (TSS).

Tourist Home: A dwelling where only lodging is provided for compensation for up to five (5) persons (in contradistinction to hotels and boardinghouses) and open to transients.

Town: The Town of Warrenton, Virginia, a municipal corporation.

Town Arborist: International Society of Arboriculture (ISA) Certified Arborist contracted by the Town to oversee the preservation of Town's tree inventory.

Town Engineer: The person designated to serve in this capacity by the Town Manager.

Town Manager: The duly appointed Town Manager of Warrenton, Virginia.

Townhouse: (see Dwelling, Townhouse).

Transitional Housing: The housing is designed to provide temporary housing for not more than four (4) unrelated persons for a maximum of six months. Transitional housing and counseling services shall be provided by a coalition of churches and/or human service organizations. A house coordinator must reside on the premises, and a substitute house coordinator shall be on the premises if the house coordinator is away from the residence for more than one day.

Transmission Line, Major: A main trunk line that carries electricity, telecommunications signals or other similar items, and connects to one or more smaller lines that provide the service to specific customers.

Transmission and receiving towers: Any structure used for the purpose of supporting one (1) or more antennas or microwave dishes, including self-supporting lattice towers, guy towers, or pole towers. The term includes radio, television and telephone transmission towers, alternative antenna support structures such as buildings and rooftops, and other existing support structures, including monopoles. Additional definitions include**:**

(1) *Alternative Tower Structure:* Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

(2) *Antenna:* Any exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of electromagnetic waves, provided that this definition shall not be interpreted to include an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one (1) meter or less in diameter; or an antenna that is designed to receive video programming services via multipoint distribution services; including multi-channel, multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one (1) meter or less in diameter or diagonal measurement; or an antenna that is designed to receive television broadcast signals.

(3) *FAA:* The Federal Aviation Administration.

(4) *FCC:* The Federal Communications Commission.

(5) *Height:* When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

(6) *Telecommunication Facility:* Any structure used for the purpose of supporting one (1) or more antennas or microwave dishes, including self-supporting lattice towers, guy towers, or pole towers. The term includes radio and television transmission towers, alternative antenna support structures such as buildings and rooftops, and other existing support structures.

(a) *Telecommunication Facility, Freestanding:* A structure that stands alone for the sole purpose of supporting antennas, dishes and other such telecommunications equipment.

(b) *Telecommunication Facility, Attached:* A structure or building whose main purpose is to support or house other uses, and to which antennas, dishes and other such telecommunications equipment is attached so as to avoid constructing a freestanding tower.

Travel Lane: Space specifically designated and reserved on the site for the movement of vehicular traffic.

Travel Trailer: A mobile unit less than twenty-nine (29) feet in length and less than four thousand five hundred (4,500) pounds in weight which is designated for temporary human habitation.

Treatment Plant: The central facility for treatment and purification of water or wastewater, as part of a public water or sewer system owned and operated by the Town or other government entity, or by an approved private operator to serve a community area.

Tree canopy; tree cover: Includes all areas of coverage by plant material exceeding five feet in height and the extent of planted tree canopy at 10 or 20 years maturity, based upon the following published reference**:** Manual of Woody Landscape Plants**:** Their Identification, Ornamental Characteristics, Culture, Propagation and Uses by Michael A. Dirr (or equivalent professional publication).

Tree, Canopy: A deciduous tree that normally exceeds thirty (30) feet in height at maturity, and is shown on the list of species in Article 8 of this Ordinance.

Tree, Ornamental: A tree that normally does not exceed thirty (30) feet in height at maturity, and is shown on the list of species in Article 8 of this Ordinance.

Tree Protection Zone: An area that is radial to the trunk of a tree in which no construction activity shall occur. The tree protection zone shall be fifteen (15) feet from the trunk of the tree to be retained, or the distance from the trunk to the dripline, whichever is greater. Where there are a group of trees or woodlands, the tree protection zone shall be the aggregate of the protection zones for the individual trees.

Truck sales and service repair garages: A business which sells trucks and/or which provides repair and maintenance services for trucks.

Use: Activity proposed for any portion or part of a parcel, tract, or lot.

Use, Accessory: (see Accessory Use).

U.S.G.S.: U.S. Geological Survey.

U.S.C. & G.S.: U.S. Coast and Geodetic Survey.

Utility: (1) A system of facilities provided by any agency which, under public franchise or ownership, or under certificate of convenience and necessity, provides the public with electricity, gas, heat, steam, communication, rail transportation, water, sewage collection, or other similar service; (2) A closely regulated private enterprise with an exclusive franchise for providing a public service; (3) the component parts of such facilities, including poles, wires, transformers, underground pipelines or conduits. Treatment plants are defined as separate items.

Variance: In the application of the Zoning Ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Vehicular Use Area: The entire paved area that encompasses all parking spaces, loading areas, stacking spaces, and the access drives that provide access to those spaces but that does not include the entry drive or driveway with no direct access to a parking space, stacking space, or loading space.

Vending Machine: An automated device for the sale of goods, typically snacks, beverages and the like.

Vending Gallery: A building or structure containing multiple vending machines.

Veterinary Hospital: A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.

Video Game Gallery: (see Amusement Arcade)

Virginia Stormwater Management Act: Article 1.1 (§62.1-44.15:24 et seq.) of Chapter 6 of Title 62.1 of the Code of Virginia.

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

Virginia Stormwater Management Program authority (VSMP authority): Authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

Visitor Center: A facility established for the purpose of disseminating information about the Town, County of Fauquier or the region. The facility may provide an interpretative area, and small auditorium for visitors or tourists.

Warehouse: A building used primarily for the storage of goods and materials.

Wall: A structure which serves to enclose or subdivide a building, usually presenting a continuous surface except where penetrated by doors, windows, and the like.

Wall, Retaining: A wall constructed to support soil or sub-surface structures.

Water Storage Tank: An enclosed structure used for the storage of water for distribution.

Water and Sewer Systems: (see Public water and sewer systems)

Watercourse: Any naturally occurring, constant or intermittent, surface water and its associated banks, bed, and floodplains.

Watershed: The total drainage area contributing runoff to a single point.

Waterway: A water body, or body of water, including periodic and permanent, partially or wholly inundated areas. Waterways can include ephemeral, intermittent, and perennial streams, lakes, estuaries and shorelines, ponds including vernal ponds, lakes, impoundments, and wetlands.

Wayside Stand, Roadside Stand, Wayside Market: Any structure or land used for the sale of agricultural or horticultural produce, livestock, or merchandise produced by the owner or his family on their farm.

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

Wholesale Establishments: A business and its premises where goods are sold on a bulk basis to distributors and direct sales to the general public are limited. Wholesale establishments are also characterized by the use of trucks for delivery or pick-up of goods sold.

Woodland: An area comprising one (1) or more acres of wooded land where the largest trees have at least a six (6) inch caliper, or a grove of trees forming one (1) canopy where ten (10) or more trees have at least eight (8) inch calipers.

Yard: An open space on a lot other than a court, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

Yard, Front: An open space on the same lot as a building between the nearest front line of the building (exclusive of steps) and the front lot or street line, and extending across the full width of the lot.

Yard, Rear: An open unoccupied space on the same lot as a building between the nearest rear line of the building (exclusive of steps) and the rear line of the lot, and extending the full width of the lot.

Yard, Sale: Use of the premises of a residential dwelling for general sales of a temporary nature, open to the public with the purpose of disposing of personal, family, or household goods or articles. The term yard sale includes but is not limited to activities known as garage sales, porch sales, backyard sales, and moving sales.

Yard, Side: An open unoccupied space on the same lot as a building between the nearest side line of the building (exclusive of steps) and the side line of the lot, and extending from the front yard line to the rear yard line.

Zero Lot Line: The location of a building on a lot in such a manner that one (1) or more of the building's sides rests directly on a lot line. The side(s) of the building resting on the line typically does not include windows.

Zoning Administrator: An employee of the Community Development Department designated by the Planning Director to administer the Zoning Ordinance and any other similar duties as may be assigned by the Planning Director.

Zoning Ordinance: The Zoning Ordinance of the Town of Warrenton, Virginia.

Resolution

July 16, 2024
Planning Commission
Regular Meeting

A RESOLUTION TO RECOMMEND APPROVAL OF ZOTA-24-2, A ZONING ORDINANCE TEXT AMENDMENT TO ARTICLES 2, 4, 5, 10, 11, 12 AND THE TABLE OF CONTENTS, TO ADDRESS THE CREATION OF A NEW STAND-ALONE EROSION AND STORMWATER CONTROL ORDINANCE AS CHAPTER 21 OF THE TOWN CODE

WHEREAS, Warrenton, VA (Hereinafter "the Town") is a municipal corporation located within the County of Fauquier; and

WHEREAS, the Warrenton Town Council may, by ordinance, amend, supplement, or change the regulations of the Zoning Ordinance of the Town whenever the public necessity, convenience, general welfare or good zoning practice may require such an amendment; and

WHEREAS, on June 23, 2023, the State Water Control Board approved and adopted the new Virginia Erosion and Stormwater Management Regulations so as to create a new, combined Ordinance which took effect on July 1, 2024; and

WHEREAS, the Warrenton Town Council adopted a new, combined Erosion and Stormwater Management Ordinance as Chapter 21 of the Town Code of Warrenton on June 11, 2024, in compliance with State law; and

WHEREAS, the Town of Warrenton Zoning Ordinance must now be amended and revised so as to reflect the creation of this new, combined Erosion and Stormwater Control Ordinance; and

WHEREAS, these affected Zoning Ordinance sections include Article 4 *Site Conservation Manual* and Article *5 Stormwater Management*, which must be repealed in entirety; and

WHEREAS, additionally Zoning Ordinance Articles 2 *General Provisions*, 10 *Site Development Plans*, 11 *Administration, Procedures and Enforcement*, 12 *Definitions*, and the *Table of Contents*, must also be revised to refer to the new, combined Erosion and Stormwater Management Ordinance; and

WHEREAS, the Warrenton Town Council initiated this text amendment on April 9, 2024; and

WHEREAS, the Warrenton Planning Commission held a work session to discuss this text amendment on May 21, 2024; and

WHEREAS, the Warrenton Planning Commission held a public hearing on this matter on July 16, 2024; and

WHEREAS, the Warrenton Planning Commission finds that per the Code of Virginia Section 15.2-2286.A.7, this text amendment is for the good of public necessity, convenience, general welfare, and good zoning practice; now, therefore be it

RESOLVED, by the Warrenton Planning Commission on this 16th day of July 2024, that the Planning Commission issues a recommendation of approval to the Warrenton Town Council for this text amendment to Articles 2, 4, 5, 10, 11, 12 and the Table of Contents of the Town of Warrenton Zoning Ordinance as set forth herein.

Resolution

Votes:
Ayes:
Nays:
Absent from Vote:
Absent from Meeting:

For Information:
Community Development Director,
Town Attorney

ATTEST: _____
Town Recorder

Community Development Department

STAFF REPORT

Commission Meeting Date:	July 16, 2024
Agenda Title:	ZMA 2023-01 Warrenton United Methodist Church/Hero's Bridge
Requested Action:	Hold a Work Session
Staff Lead:	Denise Harris, Planning Manager
Decision Deadline:	October 24, 2024 Unless Applicant Defers

EXECUTIVE SUMMARY

ZMA 2023-01 Warrenton United Methodist Church/Hero's Bridge: A Zoning Map Amendment is being proposed by Trustees of Warrenton United Methodist Church (Owners) and Hero's Bridge (Applicant) for a Residential Planned Unit Development (R-PUD) .The R-PUD is to allow for construction of 44-duplex units for age restricted affordable housing to serve veterans, walking trails, office/community center, a multi-purpose recreation center, and the existing church. The approximate 9.8640 acres, located at 341 Church Street, is zoned R-10 (Residential) and RO (Residential Office). The Future Land Use Map designation is Medium Density Residential. (GPINs 6984-16-7013, 6984-15-1823, 6984-15-1930, and 6984-16-5101)

BACKGROUND

ZMA 2023-01 Warrenton United Methodist Church/Hero's Bridge was accepted on December 21, 2023. Staff provided agency comments on January 30, 2024. The Applicant resubmitted on June 20, 2024, which is currently being reviewed by agency staff. Staff identified comments related to how many parcels are proposed for the rezoning; how the proposal meets Plan Warrenton 2040; infrastructure needs; emergency access; and proffers. The Applicant will consider the Planning Commission Work Session discussion and staff comments for its Public Hearing submission. At that time, a staff report will be produced as part of the Public Hearing.

STAFF RECOMMENDATION

Hold a Work Session.

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT

STATEMENT OF JUSTIFICATION

June 12, 2024

The Trustees of Warrenton United Methodist Church seek a zoning map amendment from R-10, Residential, and RO, Residential Office, to R-PUD, Residential Planned United Development, on PINs 6984-16-5101 (portion),6984-16-7013, 6984-15-1823 and 6984-15-1930. The area of the zoning map amendment is approximately 9.8640 acres (hereinafter, the "Property").

This Property is currently used for the Warrenton United Methodist Church. Hero's Bridge, in partnership with the Church, proposes the construction of a 44-unit affordable, cottage-like, duplex units of approximately 1,150 square feet each to provide affordable housing to senior veterans 65 and older. Although the Church is the formal applicant, it and Hero's Bridge are referred to herein as the Applicants where appropriate.

REASONS FOR THE PROPOSED ZONING MAP AMENDMENT

Hero's Bridge is a Fauquier-based nonprofit that aids principally those who served in Vietnam, Korea and World War II. Since its inception in 2016, it has assisted nearly 500 seniors in the five county Rappahannock Rapidan Health District. Hero's Bridge uses younger workers with the older clients ("Battle Buddies") using the rapidly growing Community Health Worker philosophy to address social determinants of health in these lower income, and to reach socially isolated senior veterans.[1] This work is important to the overall health and well-being of our local senior population. A recent market study indicated that 24% of our seniors are veterans, and nearly 13% of these live below the poverty line. Addressing isolation, nutrition, transportation, and housing needs in this vulnerable population helps relieve the burden and stress on local emergency services, publicly provided social services, and health systems. All residents are screened as other rental communities screen tenants, and Hero's Bridge does not rent to anyone convicted of a "barrier" crime, or who is listed on the sex offender registry. None of the residents can be active users of illicit drugs.

Since its inception one of the most common reasons the community refers these older veterans to Hero's Bridge is the need to assist those living in substandard or unaffordable housing. For six years, Hero's Bridge has attempted to address individual situations through its HomeFront program, which involves helping clients remain in individual houses that may be in poor condition, and where maintenance is costly. Unfortunately, some of these situations cannot be remediated and there is simply insufficient housing stock available for independent seniors. The market study

[1] Social determinants of health are generally the conditions in the environments where people are born, live, learn, work, play, worship, and age, that affect a wide range of health, functioning, and quality-of-life outcomes and risks.

indicated that "[a]ll market area tax credit communities reported full occupancy with wait lists ranging from three months to over two years." It also says that "[t]he results of the Net Demand analysis indicate demand for 398 additional senior rental units over the next three years, with no identified senior rental projects in the pipeline." (The emphasis is ours).[2] All of the Hero's Bridge homes will be rental.

It is thus critical to increase the housing stock for seniors in this community. If this is accomplished it will also provide a relief valve on other areas of the housing market by freeing up additional homes for the workforce population.

Hero's Bridge has evaluated numerous locations for these homes. Because the County requires new development to occur within "service districts" and at Vint Hill, there were no properties available, principally because of the lack of water and sewer infrastructure. At Vint Hill, where there is such infrastructure, Hero's Bridge proposal was rejected by the Commonwealth wished to preserve available land for its own purposes. There was also concern about the ready availability of doctors, groceries, and a pharmacy. After many months of searching, the only parcel that is feasible is that which has been made available through the grace of the Warrenton United Methodist Church.

Actual housing is only one part of the problem, however. Many have consequential health needs, and Hero's Bridge provides permanent supportive services through its Community Health Worker model. Necessary care is accomplished through visitations by a variety of health professionals, including daily visits from social workers, assistance with veterans benefits, and a 12 seat van for transport to other care givers and for shopping. These seniors are already living in this broader community and to the extent they require services from EMS companies, this program can relieve some of that burden and it places the residence in close proximity to EMS services when essential, and close to groceries, pharmacies, and the hospital.

CONSISTENCY OF THIS APPLICATION WITH THE TOWN'S COMPREHENSIVE PLAN

The Property is planned Medium Density Residential on the Town's Future Land Use Plan Map. With an acreage of 9.8640 and 44 homes this equates to a density of 4.5 homes per net acre.[3] It is also the case that the R-PUD is intended to be developed at a 0.40 FAR, and this proposal is at a density of 0.14 FAR. This unique proposal is consistent with numerous goals and objectives of the Town's Plan Warrenton 2040. In particular, Housing Recommendation H-1 is to ensure equitable, attainable housing opportunities across residents of all ages, incomes, and abilities by catering to the needs of a diverse community, including young families, professionals early in their careers, essential workforce, and those entering retirement. Recommendation H-4 is to create

[2] The assisted living centers and the Puller Veterans Care Center at Vint Hill cost between $3,000 and $8,000 per month, but the homes at the proposed site will be significantly more affordable.

regional partnerships to address and enhance attainable housing supply.[4] This proposal not only provides attainable, affordable housing for senior veterans, but essential services, as well.

THE APPROXIMATE TIME SCHEDULE FOR THE COMPLETION OF THE DEVELOPMENT

The 44-unit affordable duplex homes will be constructed in Phase I. The Small Office/Community Center will also be constructed with Phase I. They are both shown on General Development Plan (GDP). The Multipurpose Recreational Center (Phase II) is anticipated to be constructed after Phase I, and timing is not presently known.

IMPACT MITIGATION AND CONSISTENCY WITH R-PUD PLANNING CONSIDERATIONS

1. The principal benefit to be derived from the approval of this application, of course, is the ability to fulfill a need for senior veterans in the community, in a safe environment and within the supporting arms of the Church itself.

2. With respect to the signal issues of transportation and parking, few of Hero's residents will have cars, which will result in a low traffic volume. The only other vehicles will be for deliveries, occasional visits (many, if not most, of the residents do not have family to support them), and Hero's Bridge will provide a van service for residents to transport them to shopping and services that cannot be obtained from visiting providers. For Phase I the estimated daily trip generation from that Phase is approximately 303 vehicles. A small office will generate 86 vehicles per day for a total of 389 vehicles per day.

Once Phase II, the Recreation Center, is completed, that will add only 53 more vehicle trips per day and including two small offices, total trip generation at full buildout several years hence will be 1,259 vehicles per day.[5]

The proposal only requires 1 parking space per home, even with the occasional outside vehicle. Because of the low traffic volume, there will be little impact on the existing roads surrounding the site. Principal access will be by Church Street and Moser Road, but Church is not a signalized intersection at Broadview and so it can be assumed that vehicles may also use Sullivan Street to access Waterloo. The total number of parking spaces provided in Phase I is 219, and in Phase II, 243.

3. The buildings in both Phases will be within the height permitted in the R-PUD. The only exception is the existing Church.

[4] The Plan also references the achievement of "attainable housing for all ages, incomes, and needs." Plan, Executive Summary, p. 5.

[5] Both total vehicles per day, and parking spaces, include the Church.

4. The engineering of the site will, by law, be required to provide stormwater management according to regulations far stricter today than were in place when any of the existing homes in the neighborhoods surrounding, or the Church, were built. This should improve existing conditions in the area.

5. The Applicant is proposing landscaping as depicted on the GDP. The Property is otherwise currently home to the Church, and the remainder of the Property is largely cleared, graded, and maintained as a lawn. The Plans meet the 25% open space requirement.

6. There will little in the way of additional burden on community facilities or public services, because Hero's Bridge will effectively become an adjunct of those facilities by providing the services that are its core mission.

7. The development would be served by public water and sewer and understand that both are available.

COMMUNITY OUTREACH

Even before submitting an application for this Rezoning, the Church and Hero's Bridge actively engaged with adjacent property owners and the neighborhood for about a year. The goal was to understand anticipated impacts and to address them at the outset of the application. To that end, the Hero's Bridge website reflects the substance of those discussions and has both updates and a FAQ page that can be readily accessed by interested persons. This Application seeks to accommodate the major issues that the community has brought to the Applicants' attention.

THE CHARACTER OF THE SURROUNDING AREA

The surrounding area is zoned residential and is so developed. The Property is near the Broadview Avenue Corridor, which is commercial. Below is a zoning map that shows the surrounding residential and nearby commercial. The proposal corresponds with the Town's Future Land Use Plan Map.

Zoning Map:

MODIFICATIONS TO THE R-PUD REQUIRED

The Applicants have evaluated the Town's different zoning classifications in detail to determine which might be suitable for this proposal. None of the existing districts are a perfect match for this use, even though it would advance a Comprehensive Plan goal and would offer a needed service to a worthy community. No residential district permits development as proposed. The C (Commercial) District has a Mixed-Use Option by Special Use Permit, but there is no secondary use proposed that would satisfy the requirements of that Option, and the Applicants are concerned that it would propose a commercially zoned property in the midst of these otherwise residential neighborhoods, and could require consideration of a Comprehensive Plan amendment. The use that is offered here is residential and not commercial.

Ultimately, and after discussions with Staff, the Applicants determined that they should apply for a proffered R-PUD. At present, however, the Zoning Ordinance requires a minimum lot of 25 acres for such a rezoning. This site is just over 9 acres in size. Staff has suggested that there are two options to pursue, either a zoning text amendment to alter the minimum lot size generally or tailored to specific conditions, or employment of the Council's power to use proffers to amend the Zoning Ordinance in a given case, as the Supreme Court has decided is lawful and proper with

Council concurrence in Rowland v. Town Council of Warrenton, 298 Va. 703 (2020). The staff has not expressed to the Applicants a preference either way, believing that to be a question for the Council.

The Applicants suggest that Rowland means what it says, that the conditional zoning system is intended to address each property according to its needs and that, as the Court wrote, "we conclude that the General Assembly intended for these statutes to grant localities the authority to permit deviations from the requirements of a zoning ordinance by accepting voluntary proffers as part of a rezoning application. . . . [W]e are of opinion . . . the zoning applicant may make, or the locality may suggest, any proffer which can be viewed as beneficial to the community, even if that proffer creates a condition 'not generally applicable to land similarly zoned.'" Id. at 717-18, and the emphasis is in the original.

Therefore, the Applicants propose that the Council consider, and if it is disposed to grant the rezoning applied for, approve a proffer statement that alters the minimum required acreage for an R-PUD and those requirements that would otherwise preclude this proposal, leaving it subject to all other applicable provisions of the Town's Ordinances.

NOTES:

1. THE PARCEL IDENTIFICATION NUMBERS FOR THE PROPERTY SHOWN HEREON ARE 6984–16–5101 AND 6984–16–7013. THE PROPERTIES SHOWN HEREON ARE CURRENTLY ZONED R–10 AND ARE RECORDED IN IN THE FAUQUIER COUNTY DEED BOOK 189 PG 311, AND BOOK 716 PG 1919, RESPECTIVELY. THE PROPERTIES SHOWN HEREON ARE NOW IN THE NAME OF WARRENTON METHODIST CHURCH TEES AND WARRENTON UNITED METHODIST CHURCH, RESPECTIVELY, AS RECORDED AMONG THE LAND RECORDS OF FAUQUIER COUNTY, VIRGINIA.
2. BOUNDARY BASED ON A FIELD RUN SURVEY BY RDA, DATED JUNE 8, 2023.
3. THIS PLAN IS SUBJECT TO ANY DEEDS AND RESTRICTIONS OF RECORD.
4. CONTOUR INTERVAL 2 FEET, TAKEN FROM SURVEY BY RDA, DATED JUNE 8, 2023 AND IS BASED ON NAVD ZONING 1988 DATUM (NAVD88 1988 DATUM.)
5. ACCORDING TO THE DEEDS OF RECORD FOR THIS PROPERTY, THE TOWN'S PUBLISHED ZONING AND TOPOGRAPHY MAPS, AND FROM AN ON–SITE VISIT, NO DELINEATION OF ANY GRAVE, OBJECT, OR STRUCTURE MARKING A PLACE OF BURIAL WAS INDICATED ON–SITE.
6. NO WETLANDS, RPA, OR 100 YEAR FLOODPLAINS EXIST ON SITE.

ADJACENT OWNER INFORMATION

SYMBOL	P.I.D.	OWNER	D.B./PG.	AREA (AC.)	EX. ZONE	EX. CLASS	HISTORIC BUILDING OR STRUCTURE
1	6984–15–1823	WARRENTON UNITED METHODIST CHUCH	732/1688	0.1855	RO	RELIGIOUS	NO
2	6984–15–1930	WARRENTON UNITED METHODIST CHUCH	732/1688	0.2623	RO	RELIGIOUS	NO
3	6984–15–1967	WARRENTON UNITED METHODIST CHUCH	732/1688	0.2623	RO	RELIGIOUS	NO
4	6984–16–1084	HELEN J. GRIMSLEY, TRUSTEE & JOESEPH O. GRIMSLEY, TRUSTEE	1435/1454	0.2623	RO	SINGLE FAMILY–URBAN	NO
5	6984–16–2102	HELEN J. GRIMSLEY, TRUSTEE & JOESEPH O. GRIMSLEY, TRUSTEE	1435/1454	0.2623	RO	SINGLE FAMILY–URBAN	NO
6	6984–16–2149	KENNETH W. DOWSON	953/1189	0.2627	C	COMMERCIAL & INDUSTRIAL	NO
7	6984–16–2267	KENNETH W. DOWSON	953/1189	0.2627	C	COMMERCIAL & INDUSTRIAL	NO
8	6984–16–3313	RELYANCE PROPERTIES, LLC.	1601/1481	0.2627	RO	COMMERCIAL & INDUSTRIAL	NO
9	6984–16–2482	REYLANCE PROPERTIES, LLC.	1601/1481	0.2928	RO	SINGLE FAMILY–URBAN	NO
10	6984–16–3427	COLUMBIA GAS OF VIRGINIA, INC.	204/526	0.0052	RO	INTERSTATE PIPELINE TRANS. CO.	NO
11	6984–16–3465	TOWN OF WARRENTON	105/333	0.2660	RO	TOWN OF WARRENTON	NO
12	6984–16–3113	MALCOLM W. ALLS & PRISCILLA G. HOTTLE	1301/1492	0.4113	R–10	SINGLE FAMILY–URBAN	NO
13	6984–16–3568	WOODWARD ESTATE, LLC.	1332/2407	0.4588	R–10	SINGLE FAMILY–URBAN	NO
14	6984–16–4564	MELANIE J. REIL	755/982	0.4542	R–10	SINGLE FAMILY–URBAN	NO
15	6984–16–5551	JOLIE J. SMITH	1718/1717	0.4542	R–10	SINGLE FAMILY–URBAN	NO
16	6984–16–6468	STUYVESANT LLC.	1194/1626	0.4542	R–10	SINGLE FAMILY–URBAN	NO
17	6984–16–7459	MELISSA A. HUNT	1660/1651	0.4542	R–10	SINGLE FAMILY–URBAN	NO
18	6984–16–8433	GEORGE W. SOUTHARD	241/199 & 1691/1894	0.4500	R–10	SINGLE FAMILY–URBAN	NO
19	6984–16–9430	PATRICIA S. FRANSELLA & PAUL FRANSELLA SR.	1459/193	0.4521	R–10	SINGLE FAMILY–URBAN	NO
20	6984–26–0337	MICHAEL & TERRI CHURCH	1440/248	0.4600	R–10	SINGLE FAMILY–URBAN	NO
21	6984–26–1376	WILLIAM W. SANDERS, III	656/1505	0.7078	R–10	SINGLE FAMILY–URBAN	NO
22	6984–16–8079	JANET L. THOMPSON	1429/1757	0.2295	R–10	SINGLE FAMILY–URBAN	NO
23	6984–16–8042	JAMES & KATHLEEN CALDWELL	1569/511	0.2295	R–10	SINGLE FAMILY–URBAN	NO
24	6984–26–1109	MARGARET A. HODGE	1467/2163	0.2420	R–10	SINGLE FAMILY–URBAN	NO
25	6984–26–0174	GREGORY ALAN GEORGE	1488/550	0.2515	R–10	SINGLE FAMILY–URBAN	NO
26	6984–26–0141	GREGORY ALAN GEORGE	1488/550	0.1255	R–10	SINGLE FAMILY–URBAN	NO
27	6984–26–0047	OWEN V. CUMMINGS & MARY M. NEWMAN	1568/821	0.1300	R–10	SINGLE FAMILY–URBAN	NO
28	6984–26–0032	OWEN V. CUMMINGS & MARY M. NEWMAN	1568/821	0.2460	R–10	SINGLE FAMILY–URBAN	NO
29	6984–25–0916	AMANDA BERNADETTE HAMMACK TRUSTEE & STEPHEN LEE HAMMACK TRUSTEE	1742/667	0.2352	R–10	SINGLE FAMILY–URBAN	NO
30	6984–25–0900	CARRIE J. BANKS & PHILLIP BANKS	1423/1479	0.2126	R–10	SINGLE FAMILY–URBAN	NO
31	6984–15–9864	MATTHEW D. BIERLEIN	1694/1102	0.2150	R–10	SINGLE FAMILY–URBAN	NO
32	6984–15–9769	MARCIA P. SOUTHERN & MICHAEL L. SOUTHERN	1683/2354	0.1941	R–10	SINGLE FAMILY–URBAN	NO
33	6984–15–9734	MARCIA P. SOUTHERN & MICHAEL L. SOUTHERN	1683/2354	0.0980	R–10	SINGLE FAMILY–URBAN	NO
34	6984–15–9712	STEPHEN T. SHIPE & THOMAS M. SHIPE	282/2220	0.1002	R–10	SINGLE FAMILY–URBAN	NO
35	6984–15–9616	STEPHEN T. SHIPE & THOMAS M. SHIPE	282/2220	0.2549	R–10	SINGLE FAMILY–URBAN	NO
36	6984–15–8670	RIGOBERTO CASTANEDA & MARIA MEZA SANTOS	1657/1669	0.1876	R–10	SINGLE FAMILY–URBAN	NO
37	6984–15–8552	DARYLE W. HAWKINS & PEGGY SUE HAWKINS	1347/60	0.2539	R–10	SINGLE FAMILY–URBAN	NO
38	6984–15–6256	WILLIAM EDLOE SUDDUTH JR. REVOC. LVG. TRUST	253/1250	0.7400	R–10	SINGLE FAMILY–URBAN	NO
39	6984–15–6437	WILLIAM EDLOE SUDDUTH JR. REVOC. LVG. TRUST	253/1250	0.7800	R–10	SINGLE FAMILY–URBAN	NO
40	6984–15–5531	CHRISTOPHER KENNETH GATTI & NANCY HAYNES GATTI	811/42	0.8081	R–10	SINGLE FAMILY–URBAN	NO
41	6984–15–3575	DONALD BROMLEY & MIYUKI SUMI MALONEY	1735/1555	1.0000	R–10	SINGLE FAMILY–URBAN	NO
42	6984–15–0772	360 CHURCH STREET LLC.	1301/2414	0.3900	RO	SINGLE FAMILY–URBAN	NO

Sanitary As-built

From	To	Pipe Information			
B	A	289.6 ' -	8 "	PVC	@ 2.22%
C	B	208.0 ' -	8 "	PVC	@ 5.38%
E	D	402.6 ' -	8 "	DIP	@ 0.47%
F	E	248.5 ' -	8 "	DIP	@ 3.59%

Storm As-built

From	To	Pipe Information			
2	1	74.4 ' -	15 "	RCP	@ 5.99%
3	2	153.2 ' -	15 "	RCP	@ 6.17%
4	2	63.0 ' -	15 "	RCP	@ 0.78%
5	6	31.1 ' -	30 "	RCP	@ 5.37%
7	6	179.5 ' -	42 "	RCP	@ 1.12%
8	7	24.7 ' -	24 "	RCP	@ 0.85%
10	9	104.9 ' -	36 "	RCP	@ 2.07%
11	10	141.5 ' -	36 "	RCP	@ 2.97%
12	11	154.8 ' -	36 "	RCP	@ 4.88%
14	13	30.3 ' -	15 "	CMP	@ 1.85%
15	16	29.1 ' -	30 "	RCP	@ 0.79%

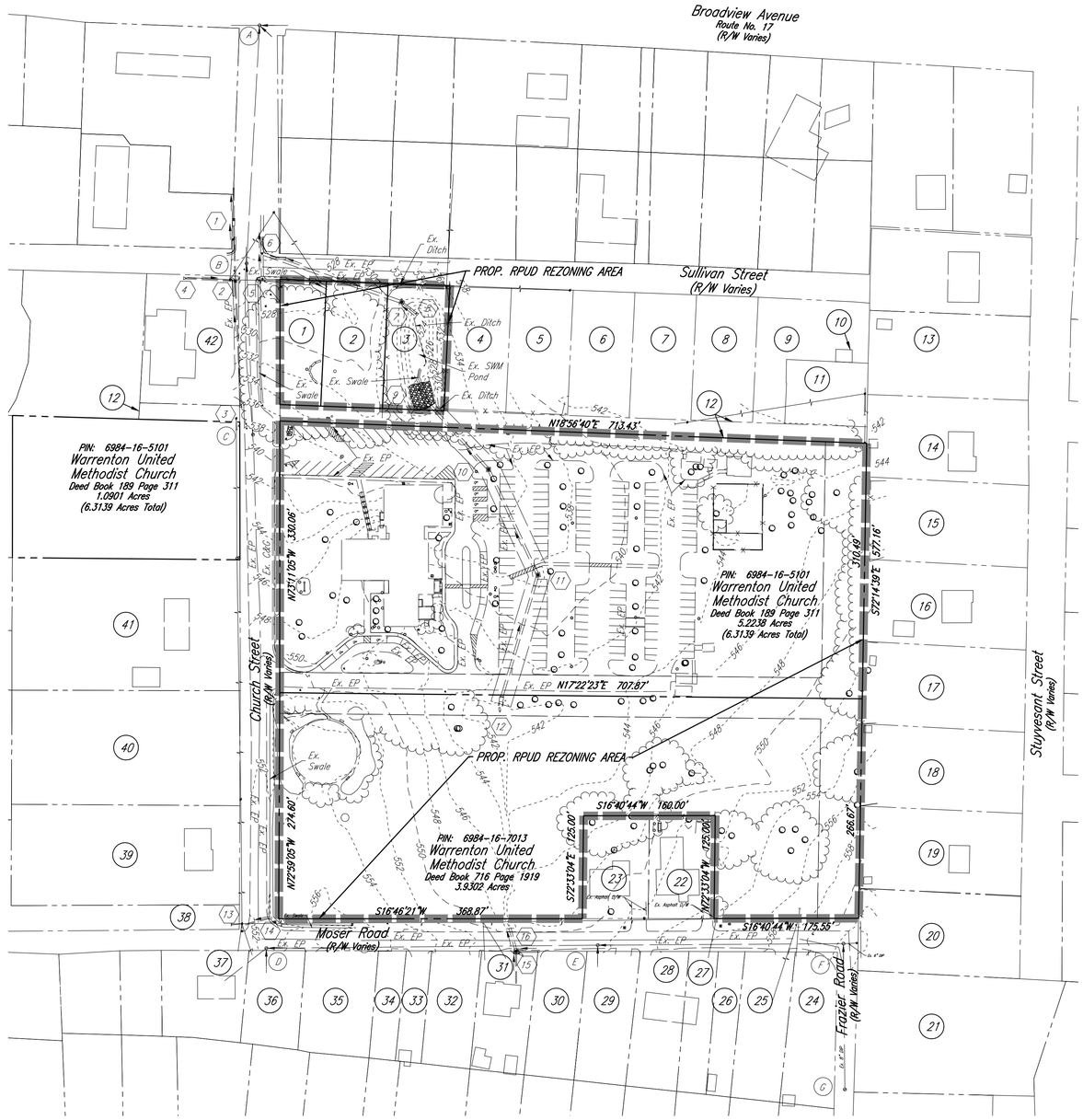
VCS, NORTH 1983

GRAPHIC SCALE

80 0 40 80 160 320

(IN FEET)
1 inch = 80 ft.

– DENOTES RPUD REZONING AREA (9.8640 ACRES).



Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 046835
06/03/2024
PROFESSIONAL ENGINEER

EXISTING CONDITIONS PLAT

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171–002
SHEET NUMBER:	C.01

VICINITY MAP
SCALE: 1"=2,000'

– DENOTES ROAD CENTERLINES

– DENOTES ZONING BOUNDARIES

– DENOTES RPUD REZONING AREA (9.8640 ACRES)

VCS NORTH 1983

GRAPHIC SCALE

200 0 100 200 400 800

(IN FEET)
1 inch = 200 ft.

Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 048635
PROFESSIONAL ENGINEER
06/03/2024

ZONING PLAT

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE
ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.02

SITE TABULATIONS

STREET ADDRESS_____341 CHURCH STREET
P.I.D._____6984-16-5101, 6984-16-7013
PROP. ZONE_____R-PUD
TOTAL R-PUD AREA_____9.8640 ACRES
OR 429,675 SF

PROPOSED USE: MULTIFAMILY WITH ADU
LOT SIZE MINIMUM_____10,000 SF
LOT WIDTH MINIMUM_____80'

BUILDING SETBACKS
FRONT_____20'
SIDE_____15'
REAR_____35'

F.A.R.
ALLOWABLE (PER ZONING)_____0.40 (0.40*429,675 SF=171,870 SF)
PROPOSED_____0.13 (56,768 SF/429,675 SF)

BUILDING HEIGHT
MAXIMUM ALLOWED_____35'

CHURCH (EXISTING)
BUILDING HEIGHT_____47'
GROSS FLOOR AREA (GFA)_____24,368 SF

DUPLEX:
BUILDING HEIGHT_____<35'
BEDROOMS_____1 PER UNIT
GFA (UNIT)_____600 SF (APPROX.)
TOTAL BEDROOMS_____1*44 UNITS=44 BEDROOMS
TOTAL GFA_____600 SF*44 UNITS=26,400 SF (APPROX.)

OFFICE BUILDING:
BUILDING HEIGHT_____<35'
GFA_____6,000 SF (APPROX.)

PARKING REQUIRED

CHURCH (EXISTING):_____PER ZONING ORDINANCE ARTICLE 7-4
1 PER 5 SEATS DESIGN CAPACITY
REQUIRED (375 SEATS)_____75 SPACES

DUPLEX:_____PER ZONING ORDINANCE ARTICLE 7-3
0.5 PER DWELLING UNIT
REQUIRED (44 UNITS)_____22 SPACES

OFFICE:_____PER ZONING ORDINANCE ARTICLE 7-6
1 PER 500 SF OF GROSS FLOOR AREA (GFA)
REQUIRED (6,000 SF GFA)_____12 SPACES

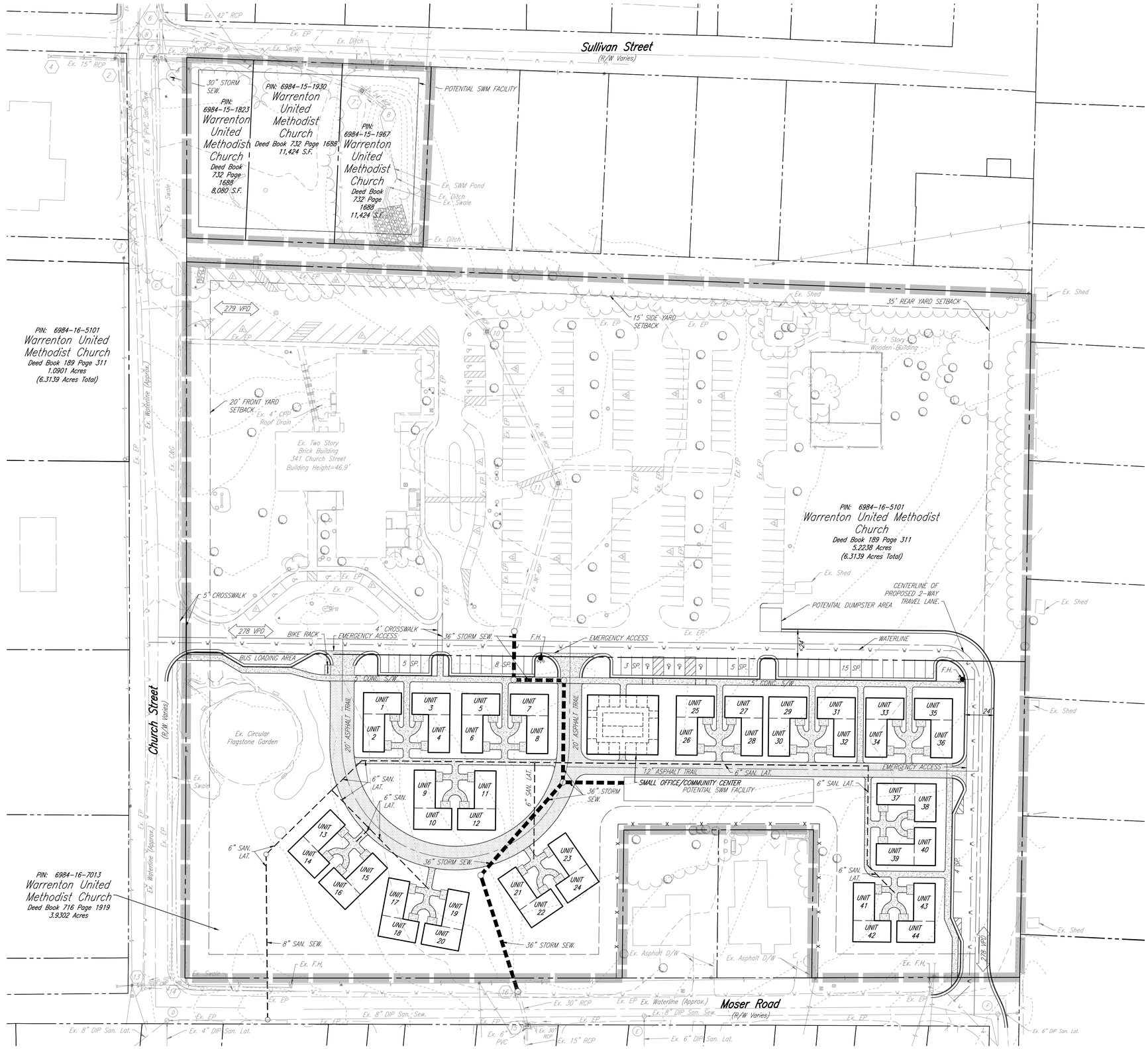
REGULAR PARKING REQUIRED_____109 SPACES
HANDICAP SPACES REQUIRED_____5 SPACES
REGULAR PARKING PROVIDED_____208 SPACES
HANDICAP SPACES PROVIDED_____11 SPACES
TOTAL PARKING PROVIDED_____219 SPACES

EXISTING TRAFFIC VOLUME
TYPE: CHURCH
(ITE 11TH EDITION, LAND USE CODE 560)
TOTAL GFA: 24,368 SF = 182 VPD (WEEKDAY), 767 (SUNDAY)

ESTIMATED TRAFFIC VOLUME PER THIS APPLICATION
TYPE: AFFORDABLE HOUSING (SENIOR)
(ITE 11TH EDITION, LAND USE CODE 223)
TOTAL DWELLING UNITS: 44 = 4/0.11 = 37 VPD (WEEKDAY AND SUNDAY)

TYPE: SMALL OFFICE/COMMUNITY CENTER
(ITE 11TH EDITION, LAND USE CODE 712)
TOTAL EMPLOYEES: 4 = 31 VPD (WEEKDAY AND SUNDAY)

TOTAL ADDITIONAL VPD PER THIS APPLICATION: 68 (WEEKDAY AND SUNDAY)
TOTAL SITE VPD: 250 (WEEKDAY), 835 (SUNDAY)



– DENOTES PROPOSED R-PUD AREA

VCS, NORTH 1983

GRAPHIC SCALE

40 0 20 40 80 160

(IN FEET)
1 inch = 40 ft.

Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 048835
06/03/2024
PROFESSIONAL ENGINEER

CONCEPT PLAN – PHASE I

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.03

SITE TABULATIONS

STREET ADDRESS_____341 CHURCH STREET
P.I.D._____6984-16-5101, 6984-16-7013
PROP. ZONE_____R-PUD
TOTAL R-PUD AREA_____9.864 ACRES
OR 429,680 SF

PROPOSED USE: MULTIFAMILY WITH ADU
LOT SIZE MINIMUM_____10,000 SF
LOT WIDTH MINIMUM_____80'

BUILDING SETBACKS
FRONT_____20'
SIDE_____15'
REAR_____35'

F.A.R.
ALLOWABLE (PER ZONING)_____0.40 (0.40*429,680 SF=171,872 SF)
PROPOSED_____0.18 (75,768 SF/429,680 SF)

BUILDING HEIGHT
MAXIMUM ALLOWED_____35'

CHURCH (EXISTING)
BUILDING HEIGHT_____47'
GROSS FLOOR AREA (GFA)_____24,368 SF

DUPLEX:
BUILDING HEIGHT_____<35'
BEDROOMS_____1 PER UNIT
GFA (UNIT)_____600 SF (APPROX.)
TOTAL BEDROOMS_____1*44 UNITS=44 BEDROOMS
TOTAL GFA_____600 SF*44 UNITS=26,400 SF (APPROX.)

OFFICE BUILDING:
BUILDING HEIGHT_____<35'
GFA_____6,000 SF (APPROX.)

RECREATIONAL CENTER:
BUILDING HEIGHT_____<35'
GFA
FITNESS CLUB_____8,500 SF (APPROX.)
OFFICE SPACE_____10,500 SF (APPROX.)
TOTAL_____19,000 SF (APPROX.)

PARKING REQUIRED

CHURCH (EXISTING):_____PER ZONING ORDINANCE ARTICLE 7-4
1 PER 5 SEATS DESIGN CAPACITY
REQUIRED (375 SEATS)_____75 SPACES

DUPLEX:_____PER ZONING ORDINANCE ARTICLE 7-3
0.5 PER DWELLING UNIT
REQUIRED (44 UNITS)_____22 SPACES

OFFICE:_____PER ZONING ORDINANCE ARTICLE 7-6
1 PER 500 SF OF GROSS FLOOR AREA (GFA)
REQUIRED (6,000 SF GFA)_____12 SPACES

RECREATIONAL CENTER:_____PER ZONING ORDINANCE ARTICLE 7-5, 7-6
1 PER 200 SF OF GFA (FITNESS CLUB)
REQUIRED (8,500 SF GFA)_____43 SPACES
1 PER 500 SF OF GFA (OFFICE)
REQUIRED (10,500 SF GFA)_____21 SPACES

REGULAR PARKING REQUIRED_____173 SPACES
HANDICAP SPACES REQUIRED_____6 SPACES
REGULAR PARKING PROVIDED_____232 SPACES
HANDICAP SPACES PROVIDED_____11 SPACES
TOTAL PARKING PROVIDED_____243 SPACES

EXISTING TRAFFIC VOLUME
TYPE: CHURCH
(ITE 11TH EDITION, LAND USE CODE 560)
TOTAL GFA: 24,368 SF = 182 VPD (WEEKDAY), 767 (SUNDAY)

ESTIMATED TRAFFIC VOLUME PER THIS APPLICATION
TYPE: AFFORDABLE HOUSING (SENIOR)
(ITE 11TH EDITION, LAND USE CODE 223)
TOTAL DWELLING UNITS: 44 = 4/0.11 = 37 VPD (WEEKDAY AND SUNDAY)

TYPE: SMALL OFFICE/COMMUNITY CENTER
(ITE 11TH EDITION, LAND USE CODE 712)
TOTA EMPLOYEES: 4 = 31 VPD (WEEKDAY AND SUNDAY)

TYPE: SMALL OFFICE
(ITE 11TH EDITION, LAND USE CODE 712)
TOTAL GFA: 10,500 SF = 151 VPD (WEEKDAY AND SUNDAY)

TYPE: MULTIPURPOSE RECREATIONAL FACILITY
(ITE 11TH EDITION, LAND USE CODE 435)
TOTAL GFA: 8,500 SF = 273 VPD (WEEKDAY AND SUNDAY)

TOTAL ADDITIONAL VPD PER THIS APPLICATION: 492 (WEEKDAY AND SUNDAY)
TOTAL SITE VPD: 674 (WEEKDAY), 1,259 (SUNDAY)

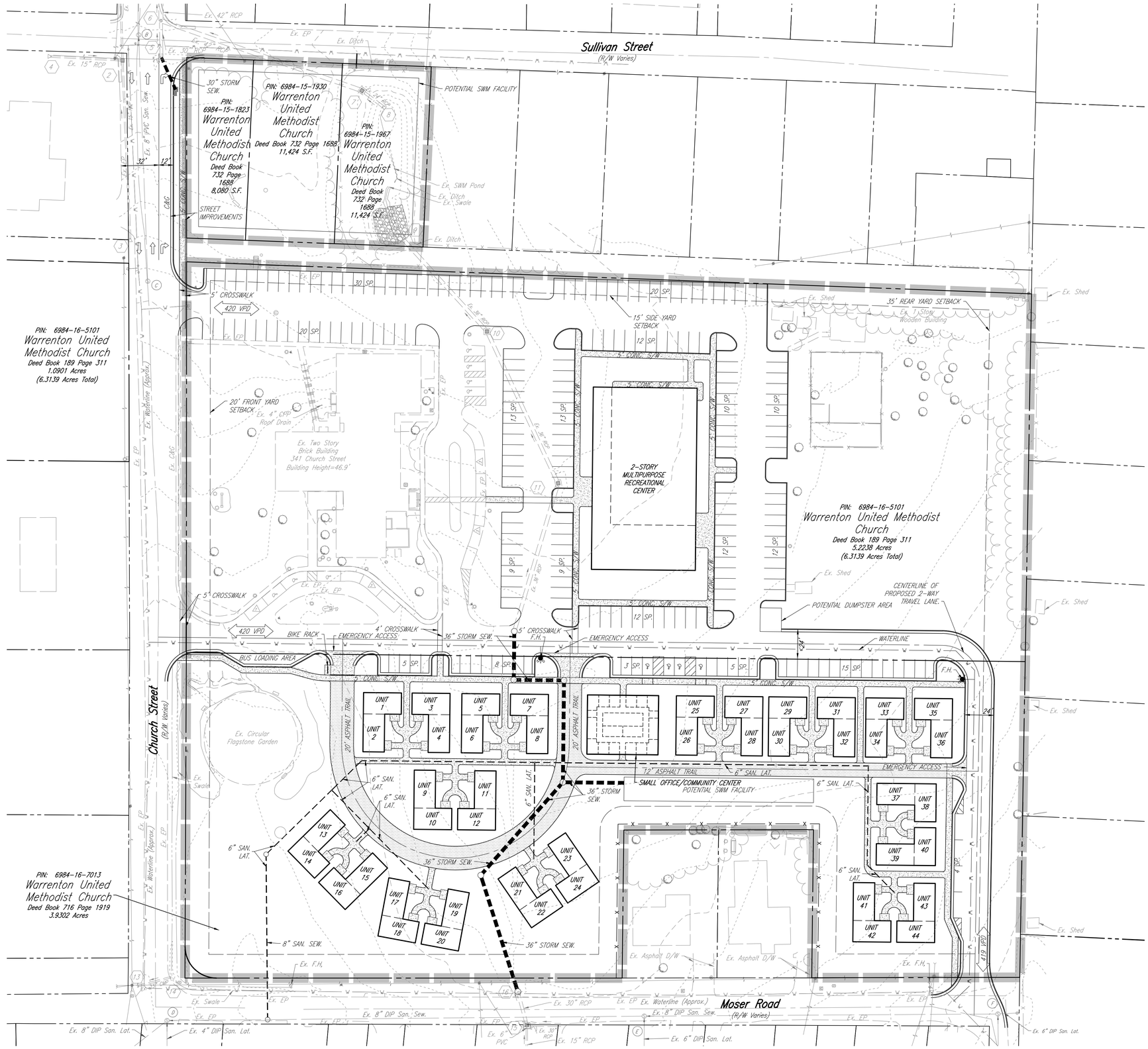
– DENOTES PROPOSED R-PUD AREA

VCS NORTH 1983

GRAPHIC SCALE

40 0 20 40 80 160

(IN FEET)
1 inch = 40 ft.



Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 046835
06/03/2024
PROFESSIONAL ENGINEER

CONCEPT PLAN – PHASE II

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.04

LANDSCAPING TABULATIONS

INTERIOR PARKING LOT LANDSCAPING (MINIMUM REQUIREMENTS)

REQUIRED (PLANTING)_____1 TREE AND 3 SHRUBS FOR EVERY 8 SP.
40 SP./8=5 TREES, 40 SP.*3/8=15 SHRUBS

PROVIDED _____6 TREES, 15 SHRUBS

BUFFER YARD LANDSCAPING (MINIMUM REQUIREMENTS)

FROM SINGLE FAMILY DETACHED DWELLINGS:

REQUIRED_____A FENCE WITH MIN. 6' HEIGHT, WITH EVERGREEN TREES INTERSPERSED EVERY 25' ALONG THE THE SIDE OF THE WALL FACING THE RESIDENTIAL USE.
677'/25'=28 TREES

PROVIDED_____28 TREES

FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREETS

REQUIRED (PLANTING)_____1 LARGE EVERGREEN TREE FOR EVERY 15'.
709'/15'=48 TREES

PROVIDED_____48 TREES

OPEN SPACE (MINIMUM REQUIREMENTS)

REQUIRED _____25% (0.2519.8640 AC-2.4660 AC OR 107,420 SF)

PROVIDED _____65% (6.4295 AC/9.8640 AC)

*NO PUBLIC STREET IS BEING PROPOSED AND THE EXISTING PUBLIC STREETS ARE NOT BEING EXTENDED OR WIDENED WITH THIS PROJECT. THEREFORE, NO STREET TREES ARE REQUIRED PER TOWN OF WARRENTON ZONING ORDINANCE ARTICLE 8.5.1 BUT ARE STILL BEING PROPOSED TO ENHANCE SITE LANDSCAPING.

BUFFER AREA LEGEND

LABEL	TYPE	LENGTH	WIDTH
BUFFER "A"	FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREET	164'	25' MIN.
BUFFER "B"	FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREET	369'	25' MIN.
BUFFER "C"	FROM SINGLE-FAMILY DETACHED DWELLINGS	125'	15' MIN.
BUFFER "D"	FROM SINGLE-FAMILY DETACHED DWELLINGS	160'	15' MIN.
BUFFER "E"	FROM SINGLE-FAMILY DETACHED DWELLINGS	125'	15' MIN.
BUFFER "F"	FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREET	176'	25' MIN.
BUFFER "G"	FROM SINGLE-FAMILY DETACHED DWELLINGS	267'	15' MIN.

LARGE/CANOPY DECIDUOUS TREES

ORNAMENTAL DECIDUOUS TREES

LARGE EVERGREEN TREES

SHRUBS

DENOTES TREES COUNTING TOWARDS INTERIOR PARKING LOT LANDSCAPING)

AREA COUNTING TOWARDS OPEN SPACE

LANDSCAPED AREA COUNTING TOWARDS INTERIOR PARKING LOT LANDSCAPING

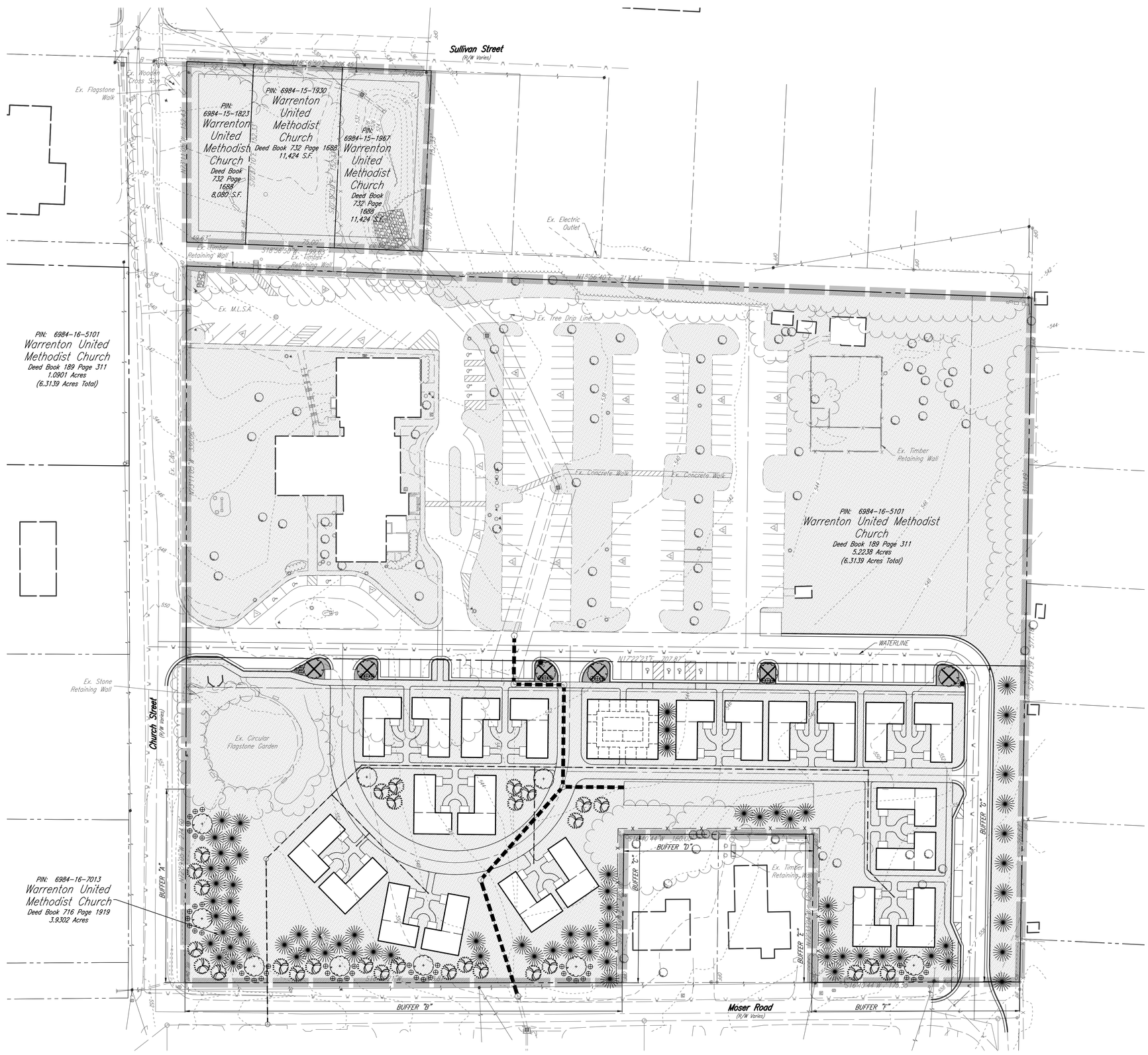
– DENOTES PROPOSED R-PUD AREA

VCS NORTH 1983

GRAPHIC SCALE

40 0 20 40 80 160

(IN FEET)
1 inch = 40 ft.



Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 046835
06/03/2024
PROFESSIONAL ENGINEER

LANDSCAPE PLAN - PHASE I

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.05

LANDSCAPING TABULATIONS

INTERIOR PARKING LOT LANDSCAPING (MINIMUM REQUIREMENTS)
- REQUIRED (PLANTING) ____ 1 TREE AND 3 SHRUBS FOR EVERY 8 SP. 214 SP./8=28 TREES, 214 SP.*3/8=84 SHRUBS
- PROVIDED ____ 28 TREES, 84 SHRUBS

BUFFER YARD LANDSCAPING (MINIMUM REQUIREMENTS)

FROM SINGLE FAMILY DETACHED DWELLINGS:
- REQUIRED ____ A FENCE WITH MIN. 6' HEIGHT, WITH EVERGREEN TREES INTERSPERSED EVERY 25' ALONG THE THE SIDE OF THE WALL FACING THE RESIDENTIAL USE. 410'/25'=17 TREES
- PROVIDED ____ 17 TREES

FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREETS
- REQUIRED (PLANTING) ____ 1 LARGE EVERGREEN TREE FOR EVERY 15'. 710'/15'=48 TREES
- PROVIDED ____ 48 TREES

STREET TREE PLANTING (MINIMUM REQUIREMENTS)
- REQUIRED ____ 1 CANOPY TREE FOR EVERY 50' OF STREET FRONTAGE OR 2 ORNAMENTAL TREES FOR EACH CANOPY TREE REQUIRED. 200' FRONTAGE/50=4 CANOPY TREES
- PROVIDED ____ 7 CANOPY TREES, 20 ORNAMENTAL TREES

OPEN SPACE (MINIMUM REQUIREMENTS)
- REQUIRED ____ 25% (0.25*9.8640 AC=2.4660 AC OR 107,420 SF)
- PROVIDED ____ 6.3% (6.2075 AC/9.8640 AC)

BUFFER AREA LEGEND

LABEL	TYPE	LENGTH	WIDTH
BUFFER "A"	FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREET	164'	25' MIN.
BUFFER "B"	FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREET	369'	25' MIN.
BUFFER "C"	FROM SINGLE-FAMILY DETACHED DWELLINGS	125'	15' MIN.
BUFFER "D"	FROM SINGLE-FAMILY DETACHED DWELLINGS	160'	15' MIN.
BUFFER "E"	FROM SINGLE-FAMILY DETACHED DWELLINGS	125'	15' MIN.
BUFFER "F"	FROM ADJACENT MAJOR COLLECTOR OR ARTERIAL STREET	176'	25' MIN.
BUFFER "G"	FROM SINGLE-FAMILY DETACHED DWELLINGS	267'	15' MIN.

LARGE/CANOPY DECIDUOUS TREES

ORNAMENTAL DECIDUOUS TREES

LARGE EVERGREEN TREES

SHRUBS

DENOTES TREES COUNTING TOWARDS INTERIOR PARKING LOT LANDSCAPING)

AREA COUNTING TOWARDS OPEN SPACE

LANDSCAPED AREA COUNTING TOWARDS INTERIOR PARKING LOT LANDSCAPING

– DENOTES PROPOSED R-PUD AREA

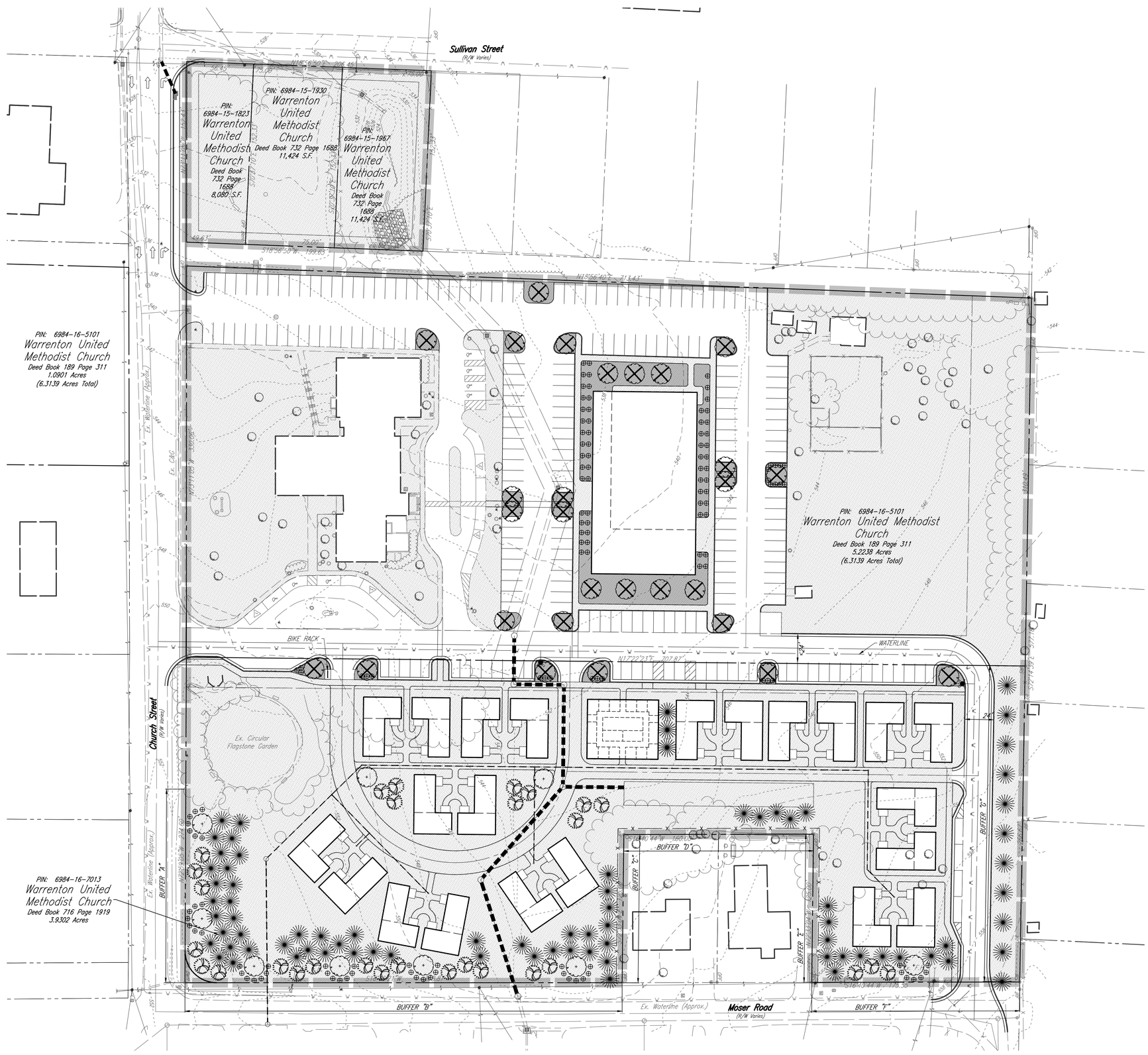
VCS NORTH 1983

GRAPHIC SCALE

40 0 20 40 80 160

(IN FEET)

1 inch = 40 ft.



Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 048935
06/03/2024
PROFESSIONAL ENGINEER

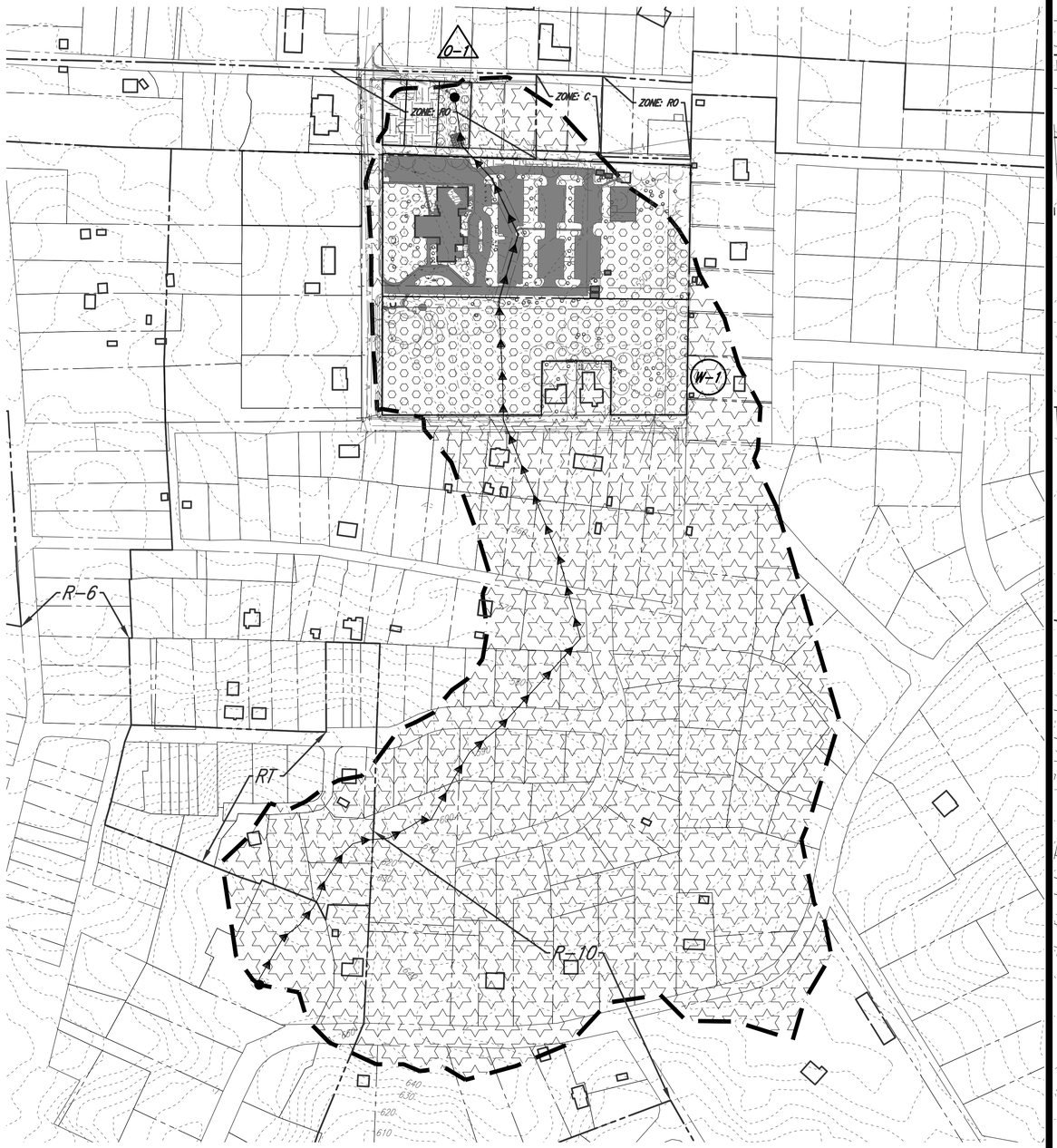
LANDSCAPE PLAN – PHASE II

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

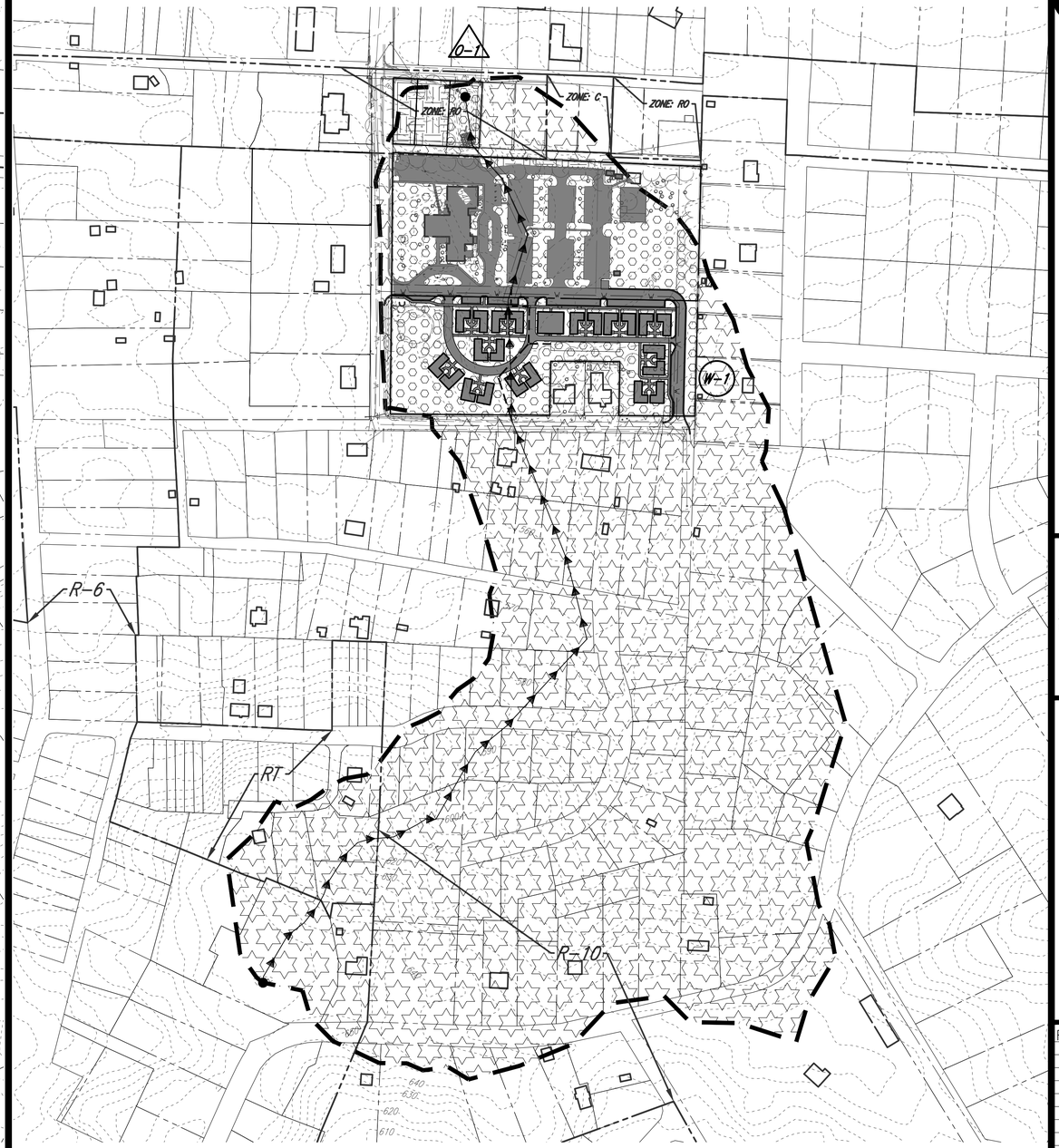
REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.06

PRE-DEVELOPMENT DRAINAGE MAP



POST-DEVELOPMENT DRAINAGE MAP



VCS NORTH 1983

GRAPHIC SCALE

150 0 75 150 300 600

(IN FEET)

1 inch = 150 ft.

LEGEND

- O-1 — DENOTES OUTFALL NUMBER
- DENOTES OUTFALL WATERSHED DIVIDE
- W-1 — DENOTES WATERSHED NUMBER
- DENOTES PROPOSED R-PUD AREA
- DENOTES TOC FLOW LINE

ON-SITE (IMPERVIOUS)
A = 2.40 AC
C = 0.90

ON-SITE (OPEN SPACE)
A = 6.45 AC
C = 0.30

ON-SITE (WOODS)
A = 0.55 AC
C = 0.25

OFF-SITE (RESIDENTIAL)
A = 35.85 AC
C = 0.40

NOTE: DRAINAGE AREA IS DELINEATED USING AVAILABLE INFORMATION FROM TOWN OF WARRENTON GIS

PRE-DEVELOPMENT ON-SITE RUNOFF
TO OUTFALL O-1
A = 9.40 AC
C = 0.45
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 22.40 CFS

PRE-DEVELOPMENT OFF-SITE RUNOFF
TO OUTFALL O-1
A = 35.85 AC
C = 0.40
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 76.00 CFS

*TOC DETERMINED USING VDOT DRAINAGE MANUAL APPENDIX 6D-5 WITH A HEIGHT OF 1.30' AND A MAXIMUM LENGTH OF TRAVEL OF 2,500 FT.

LEGEND

- O-1 — DENOTES OUTFALL NUMBER
- DENOTES OUTFALL WATERSHED DIVIDE
- W-1 — DENOTES WATERSHED NUMBER
- DENOTES PROPOSED R-PUD AREA
- DENOTES TOC FLOW LINE

ON-SITE (IMPERVIOUS)
A = 4.20 AC
C = 0.90

ON-SITE (OPEN SPACE)
A = 4.65 AC
C = 0.35

ON-SITE (WOODS)
A = 0.55 AC
C = 0.25

OFF-SITE (RESIDENTIAL)
A = 35.85 AC
C = 0.40

NOTE: DRAINAGE AREA IS DELINEATED USING AVAILABLE INFORMATION FROM TOWN OF WARRENTON GIS

POST-DEVELOPMENT ON-SITE RUNOFF
TO OUTFALL O-1
A = 9.40 AC
C = 0.60
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 29.90 CFS

POST-DEVELOPMENT OFF-SITE RUNOFF
TO OUTFALL O-1
A = 35.85 AC
C = 0.40
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 76.00 CFS

*TOC DETERMINED USING VDOT DRAINAGE MANUAL APPENDIX 6D-5 WITH A HEIGHT OF 1.30' AND A MAXIMUM LENGTH OF TRAVEL OF 2,500 FT.

Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 046835
PROFESSIONAL ENGINEER
06/03/2024

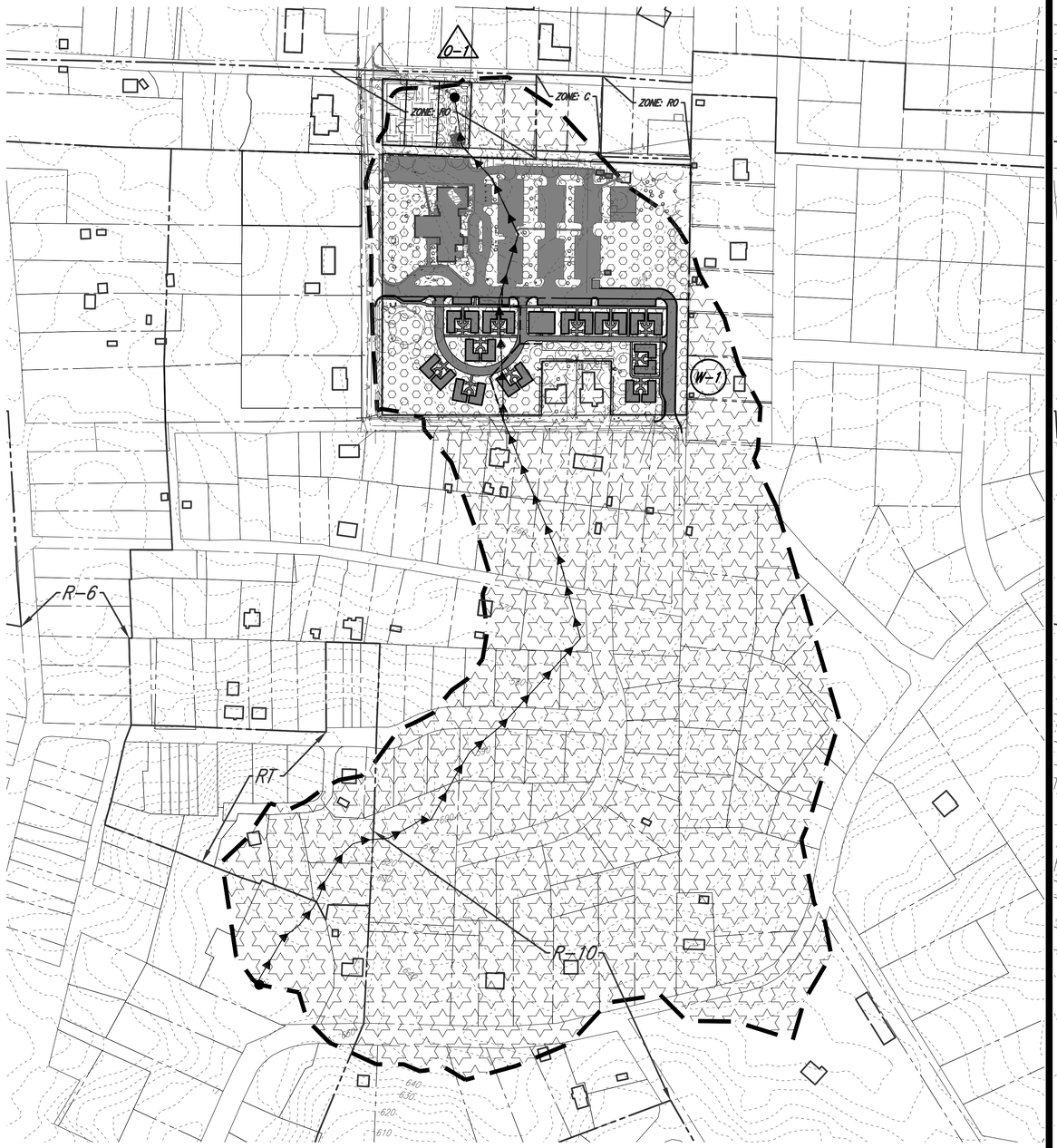
PRE & POST DEVELOPMENT DRAINAGE MAP - PHASE I

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

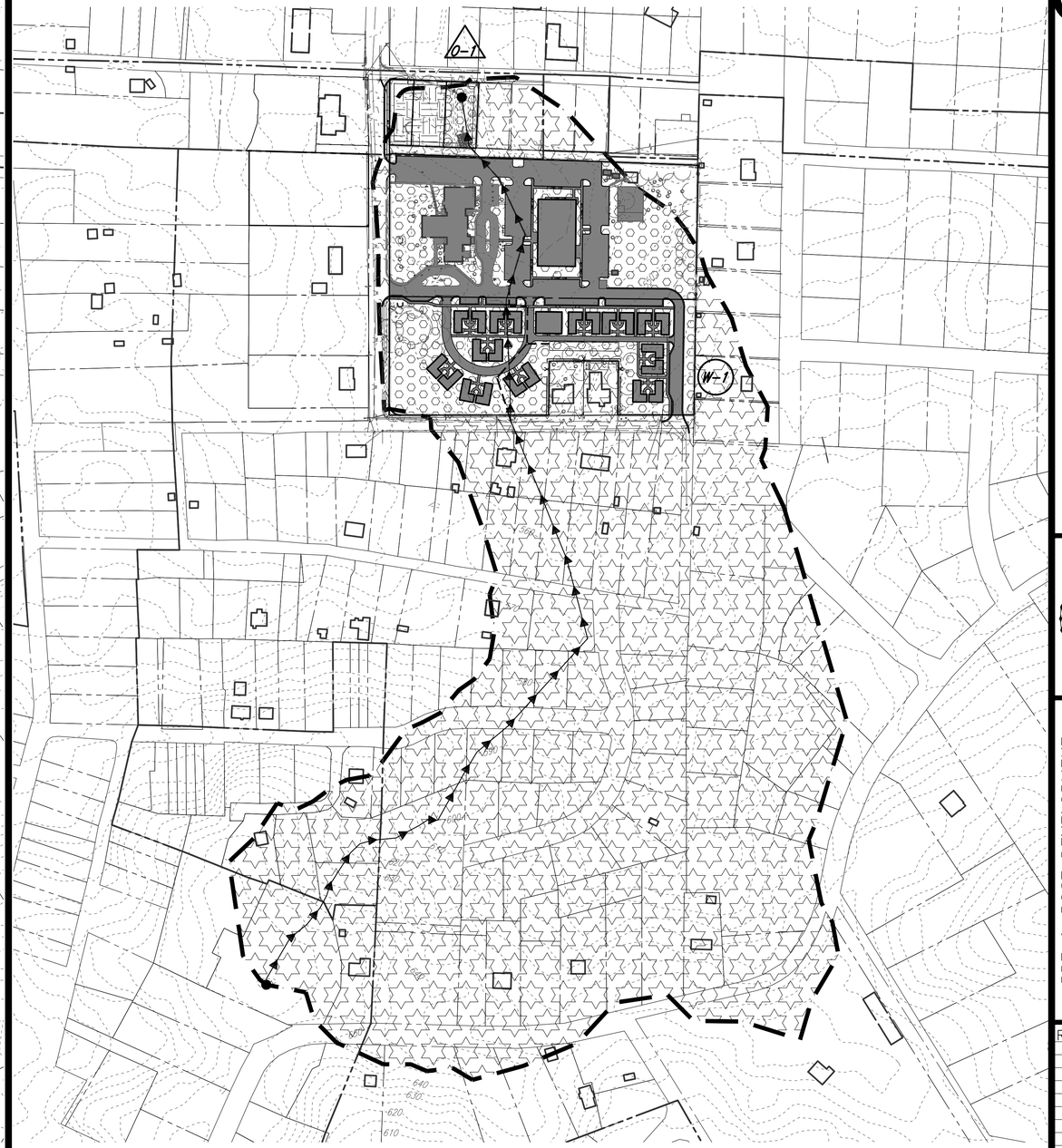
REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.07

PRE-DEVELOPMENT DRAINAGE MAP



POST-DEVELOPMENT DRAINAGE MAP



VCS NORTH 1983

GRAPHIC SCALE

150 0 75 150 300 600

(IN FEET)

1 inch = 150 ft.

LEGEND

- O-1 — DENOTES OUTFALL NUMBER
- DENOTES OUTFALL WATERSHED DIVIDE
- W-1 — DENOTES WATERSHED NUMBER
- DENOTES PROPOSED R-PUD AREA
- DENOTES TOC FLOW LINE

ON-SITE RUNOFF (IMPERVIOUS)
A = 4.20 AC
C = 0.90

ON-SITE RUNOFF (OPEN SPACE)
A = 4.65 AC
C = 0.35

ON-SITE RUNOFF (WOODS)
A = 0.55 AC
C = 0.25

OFF-SITE RUNOFF (RESIDENTIAL)
A = 35.85 AC
C = 0.40

POST-DEVELOPMENT ON-SITE RUNOFF
TO OUTFALL O-1
A = 9.40 AC
C = 0.60
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 29.90 CFS

PRE-DEVELOPMENT OFF-SITE RUNOFF
TO OUTFALL O-1
A = 35.85 AC
C = 0.40
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 76.00 CFS

*TOC DETERMINED USING VDOT DRAINAGE MANUAL APPENDIX 6D-5 WITH A HEIGHT OF 1.30' AND A MAXIMUM LENGTH OF TRAVEL OF 2,500 FT.

NOTE: DRAINAGE AREA IS DELINEATED USING AVAILABLE INFORMATION FROM TOWN OF WARRENTON GIS

LEGEND

- O-1 — DENOTES OUTFALL NUMBER
- DENOTES OUTFALL WATERSHED DIVIDE
- W-1 — DENOTES WATERSHED NUMBER
- DENOTES PROPOSED R-PUD AREA
- DENOTES TOC FLOW LINE

ON-SITE RUNOFF (IMPERVIOUS)
A = 4.55 AC
C = 0.90

ON-SITE RUNOFF (OPEN SPACE)
A = 4.50 AC
C = 0.35

ON-SITE RUNOFF (WOODS)
A = 0.35 AC
C = 0.25

OFF-SITE RUNOFF (RESIDENTIAL)
A = 35.85 AC
C = 0.40

POST-DEVELOPMENT ON-SITE RUNOFF
TO OUTFALL O-1
A = 9.40 AC
C = 0.60
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 29.90 CFS

POST-DEVELOPMENT OFF-SITE RUNOFF
TO OUTFALL O-1
A = 35.85 AC
C = 0.40
TOC = 10 MIN.*
I = 5.30 IN/HR
Q (10-YR) = 76.00 CFS

*TOC DETERMINED USING VDOT DRAINAGE MANUAL APPENDIX 6D-5 WITH A HEIGHT OF 1.30' AND A MAXIMUM LENGTH OF TRAVEL OF 2,500 FT.

NOTE: DRAINAGE AREA IS DELINEATED USING AVAILABLE INFORMATION FROM TOWN OF WARRENTON GIS

Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

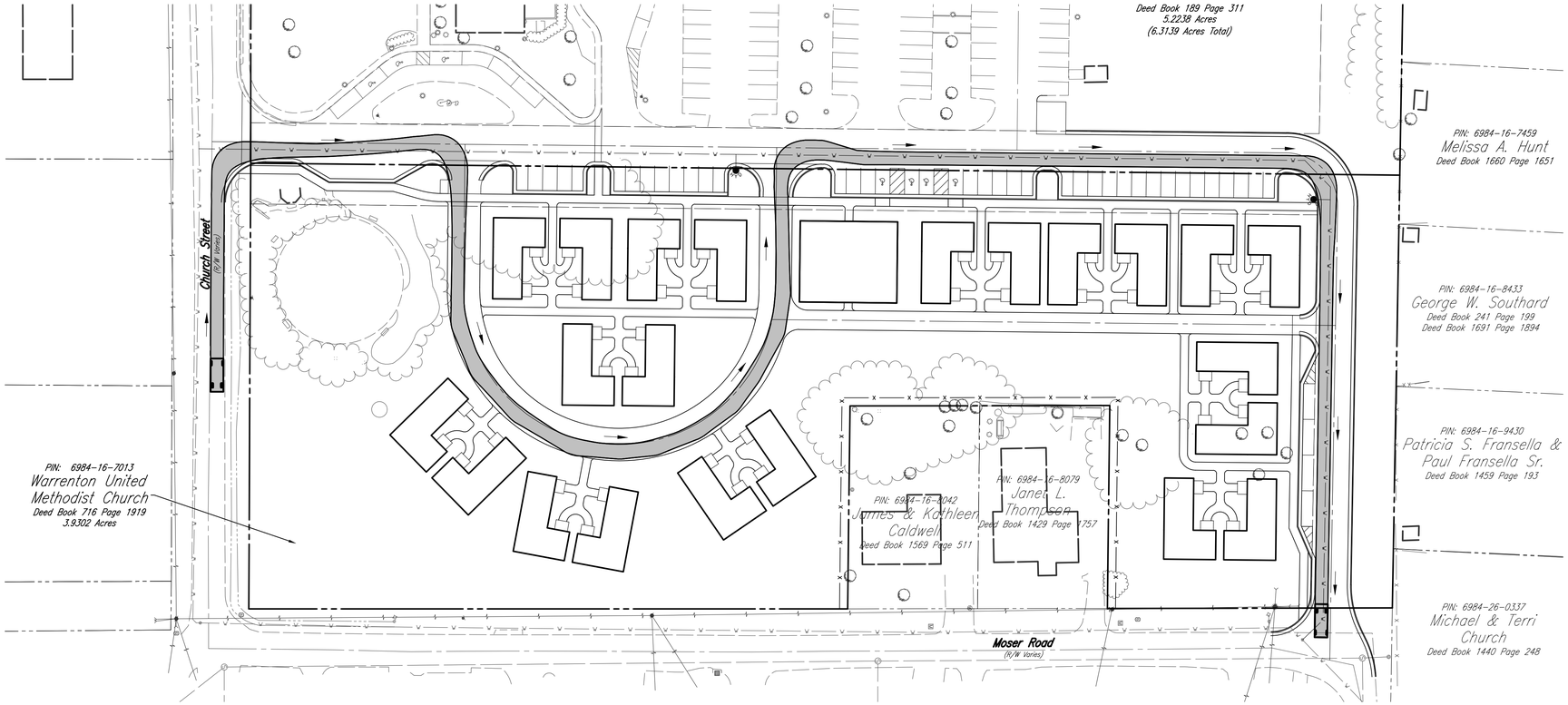
COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 048835
PROFESSIONAL ENGINEER
06/18/2024

PRE & POST DEVELOPMENT DRAINAGE MAP - PHASE II

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE
ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.08



Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 048535
PROFESSIONAL ENGINEER
06/03/2024

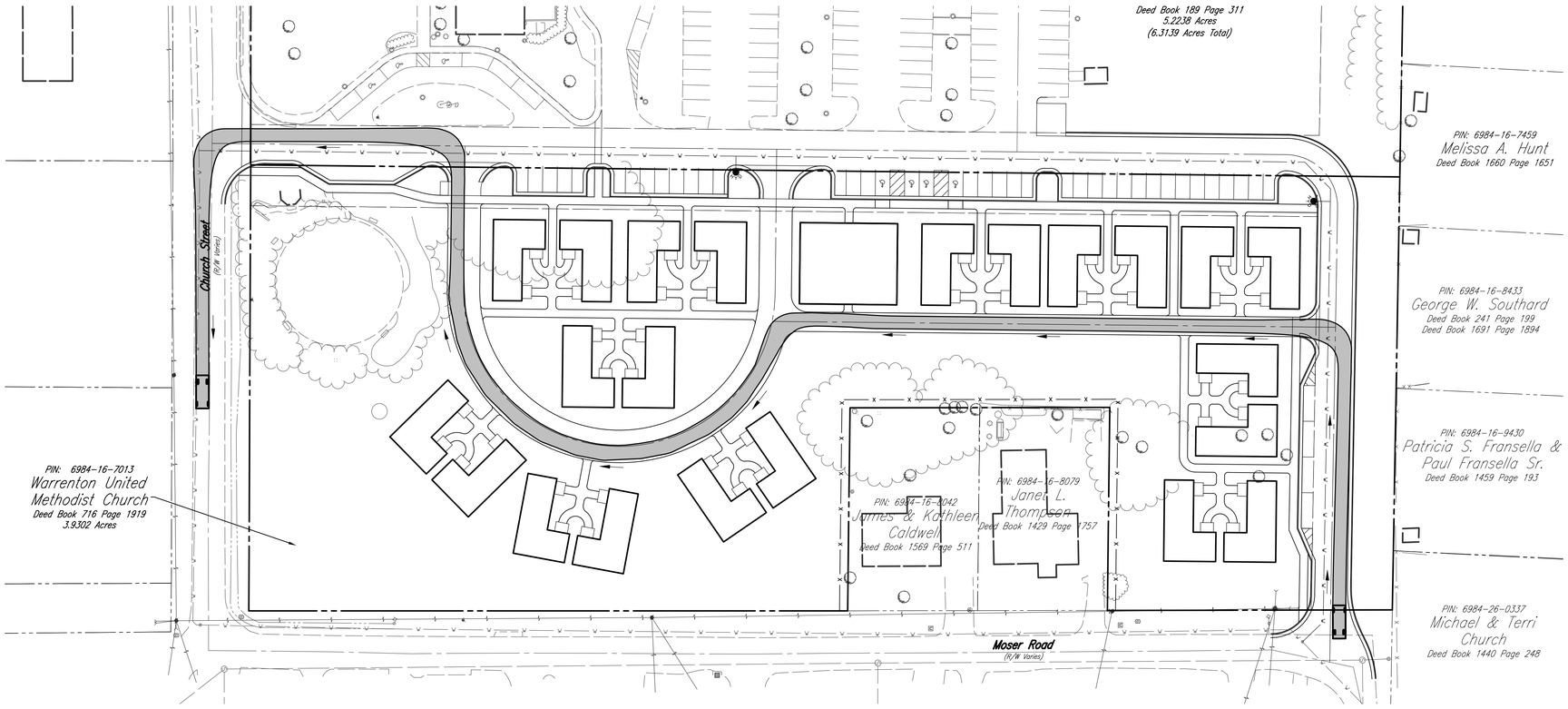
NOTE: AMBULANCE VEHICLE TRACKING PATH CREATED USING A HORTON 453 TYPE III FORD E-SERIES AMBULANCE VEHICLE (DIMENSIONS=20.4'x7.8')

VCS NORTH 1983

GRAPHIC SCALE

50 0 25 50 100 200

(IN FEET)
1 inch = 50 ft.

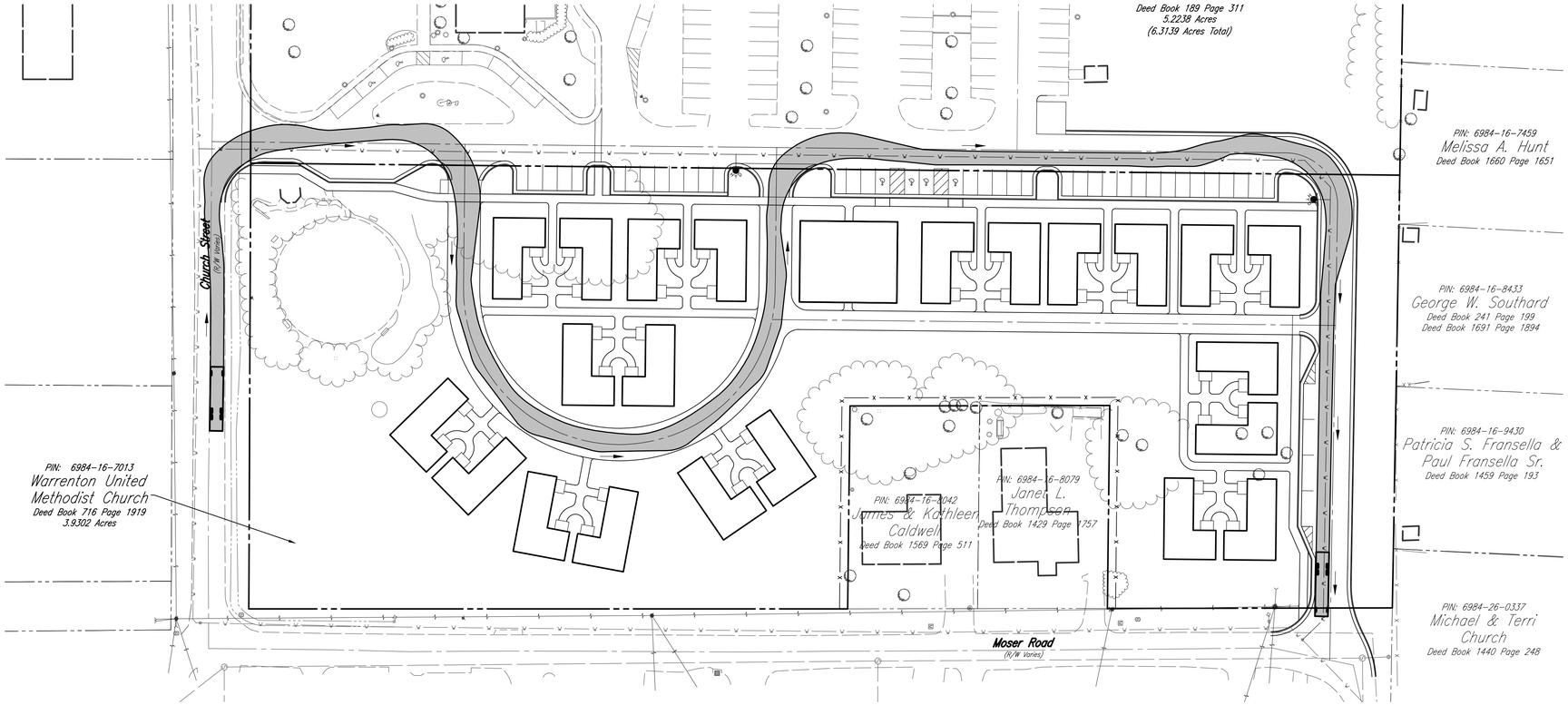


VEHICLE TURNING ANALYSIS - AMBULANCE - PHASE I

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE
ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.09



Rinker Design Associates
11100 Endeavor Court, Suite 200, Manassas, VA 20109
Telephone: (703) 368-7373 www.rdacivil.com
Engineering * Surveying * Transportation * Environmental Services

COMMONWEALTH OF VIRGINIA
JEREMY KARLS
Lic. No. 048535
PROFESSIONAL ENGINEER
06/03/2024

NOTE: FIRE TRUCK VEHICLE TRACKING PATH CREATED USING AASHTO 2011 (US CUSTOMARY), SU-40 VEHICLE (DIMENSIONS=39.5'x8').

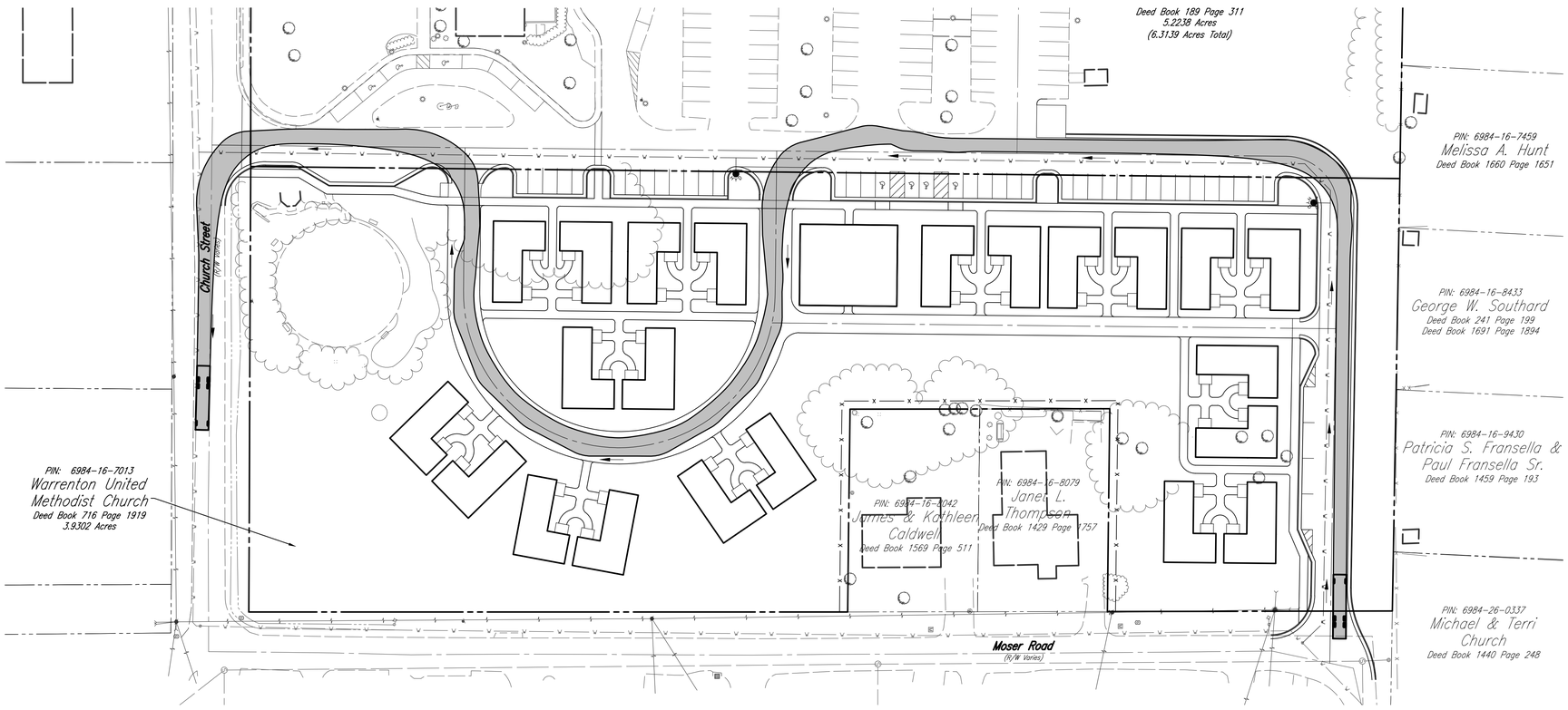
VCS NORTH 1983

GRAPHIC SCALE

50 0 25 50 100 200

(IN FEET)

1 inch = 50 ft.



VEHICLE TURNING ANALYSIS - FIRE TRUCK - PHASE I

WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE ZONING MAP AMENDMENT
CENTER DISTRICT
TOWN OF WARRENTON

REVISIONS:

PLAN DATE:	JUNE 3, 2024
DESIGN BY:	AS
CHECKED BY:	JLK
ARCHITECT:	N/A
JURISDICTIONAL PLAN NO.	
RDA PLAN #:	21171-002
SHEET NUMBER:	C.10

DRAFT

PROFFER STATEMENT
WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE
9.154 ACRES

Rezoning:	ZMA 2023-01 Warrenton United Methodist Church / Hero's Bridge
Record Owner:	Trustees of the Warrenton United Methodist Church
Property:	PINs 6984-16-5101 (portion),6984-16-7013, 6984-15-1823 and 6984-15-1930,approximately 9.8640 acres (hereinafter the "Property")
Zoning:	R-10 (Residential) and RO (Residential Office) to R-PUD (Residential Planned Unit Development)
Project Name:	Warrenton United Methodist Church / Hero's Bridge
Date:	June 12, 2024

Preliminary Matters:

Pursuant to Va. Code Ann. §§ 15.2-2296, 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1, and § 11.3.9.17 of the Town of Warrenton Zoning Ordinance, the undersigned hereby voluntarily proffers that the development and use of the Property shall be in substantial conformance with the following conditions unless an amendment thereto is approved by the Town Council, upon proper application. In the event this rezoning is granted as applied for by the Applicant, then these Proffers shall supersede and replace in their entirety all other Proffers made prior hereto with respect to the Property. In the event this rezoning is not granted as applied for by the Applicant, then these Proffers shall be deemed withdrawn and shall be null and void, and any existing Proffers will remain in full force and effect.

The headings of the Proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the Proffers. Any improvements proffered herein below shall be provided at the time of development of the portion of the site served by the improvement, unless otherwise specified. The terms "Applicant" and "Developer" shall include all future owners and

successors in interest. These Proffers shall apply to the entirety of the Property and the development referenced in these Proffers is the "Project."

For purposes of this Proffer Statement, the "General Development Plan" or "GDP" shall be sheets 3,4, 5 and 6 of the plan entitled "Warrenton United Methodist Church / Hero's Bridge Zoning Map Amendment," prepared by Rinker Design Associates, PC, dated April 26, 2024.

DEVELOPMENT AND USE

1. Development: The Property, comprised of approximately 9.8640 acres, shall be developed as a Residential Planned Unit Development (R-PUD), notwithstanding any requirement for a larger parcel size for rezoning to that zoning, in substantial conformance with the GDP and these proffers. Upon submission of final site development plans, minor changes and adjustments may be made to the road and street alignments, entrances, parking, dimensions and location of SWM/BMP facilities, the exact configuration and location of building footprints, and other similar features as shown on the CDP, provided they meet the intent of these Proffers and are approved by the Director of Community Development.

2. Land Use Mix: Notwithstanding the provisions of §§ 3-5.2.4.1 and 3-5.4.2.2 of the Zoning Ordinance, the land use mix on the Property shall consist of the following, as depicted on the GDP:

    a. Residential:

        i. The maximum number of duplex units shall be forty-four (44), which shall be in 22 one-story homes and available for rent only. The Applicant shall not be required to subdivide these duplex units and said duplex units will be provided as depicted on the GDP.

        ii. Each individual residential unit shall have one bedroom and all units shall be ADA accessible.

        iii. The Property may be developed with one unit type.

        iv. The Applicant shall, to the extent permitted by federal and state law, rent homes on the Property to veterans 65 years of age and older who served in Vietnam, Korea, and World War II, in

accordance with its mission as set out in the Statement of Justification submitted with this rezoning.

b. Small Office / Community Center: A Small Office / Community Center will be constructed during Phase I of the project in the location shown on the GDP. The Small Office / Community Center may include, but shall not be limited to, a movie viewing area, a senior technology library, an arts and crafts area, a music area, an area for pet therapy for residents, and a fitness room.

c. Multipurpose Recreational Center: A Multipurpose Recreational Center may be constructed on the Property and shall not exceed 19,000 square feet. The Multipurpose Recreational Center may include, but shall not be limited to, multi-purpose gym/event space, meeting areas, a kitchen, educational space, an indoor walking track, and multi-purpose office space.

d. Existing Uses and Structures: The existing uses and structures (including, but not limited to, the church and associated houses) on the Property may remain.

3. Height: No new structure on the Property shall exceed 35 feet in height.

4. Phasing: Development of the Property may be phased as generally depicted on the GDP. The Applicant may construct Phase I initially and thereafter construct Phase II improvements at any time, provided that parking, landscaping and stormwater management improvements are provided at the time each phase is constructed.

5. Affordable Dwelling Units:

   a. The homes constructed on the Property shall be deemed Affordable Dwelling Units pursuant to the provisions of § 9-3 of the Zoning Ordinance for the period of time set forth in that Section. The Applicant shall record a restrictive covenant or other form of legal and binding agreement approved by the Town Attorney and Town Council to ensure that the homes are so maintained, under approved terms and conditions.

   b. Because of the nature and purpose of the Applicant's housing program, it shall not be required to make the homes available first to persons residing or working in the Town of Warrenton or Fauquier

County but shall be permitted to rent to persons qualifying under its rules and regulations developed for that purpose.

COMMUNITY DESIGN

6. Architecture:

   a. Duplex Units: The level of quality of the duplex units shall be in general conformance with the elevation entitled "Warrenton UMC Proposed Housing Elevation," prepared by Design Concepts Architecture + Interiors, and dated March 16, 2023 (hereinafter, the "Housing Elevations"), provided that minor modifications may be made in connection with final design.

   b. Small Office / Community Center: The level of quality of the Small Office / Community Center shall be compatible with the Housing Elevations.

   c. Multipurpose Recreational Center: The level of quality of the Multipurpose Recreational Center shall be in general conformance with the elevations entitled "Warrenton UMC Multi-Purpose Building," prepared by Design Concepts Architecture + Interiors, dated November 18, 2022 and consisting of two sheets, provided that minor modifications may be made in connection with final design.

7. Landscaping: Landscaping of the Property shall be provided in general conformance with the GDP. All new landscaping/plantings shall be non-invasive, indigenous species, native to Virginia. All landscaping shall be maintained by the Owner/Applicant.

8. Outdoor Amenities: Outdoor amenities constructed with Phase I, shall include, but shall not be limited to walking trails, senior appropriate fitness trail signage, a gazebo, and an existing flagstone garden.

9. Lighting: All outdoor lighting shall conform to the requirements of Article 9 of the Warrenton Zoning Ordinance and shall be designed as to avoid light spillover onto adjacent properties.

WATER AND SEWER AND STORMWATER MANAGEMENT

10. Public Water and Sewer: The Property shall be served by public water and sewer. The Applicant shall design and construct all on-site and off-site

improvements necessary to provide such service for the demand generated by development on the Property in accordance with applicable laws, ordinances, and regulations, and at its expense.

11. Stormwater Management: Stormwater management for Phases I and II shall be provided as generally shown on the GDP and s required by applicable laws, ordinances, and regulations.

TRANSPORTATION

12. Phase I Pedestrian Improvements: In connection with Phase I the Applicant shall install all the internal pedestrian improvements that are depicted on the GDP.

13. Phase II Pedestrian Improvements: In Phase II the Applicant shall construct pedestrian improvements within existing right-of-way along Church Street from the western most access along Church Street to Sullivan Street, as generally depicted on the GDP. The final design and location of the sidewalk and road improvements shall be determined in connection with site plan review for Phase II.

14. Bike Rack: The Applicant shall provide a bike rack in the location generally depicted on the GDP in connection with Phase I.

[Signatures on following pages]

DRAFT

PROFFER STATEMENT
WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE
9.154 ACRES

Rezoning:	ZMA 2023-01 Warrenton United Methodist Church / Hero's Bridge
Record Owner:	Trustees of the Warrenton United Methodist Church
Property:	PINs 6984-16-5101 (portion) ~~and 6984-16-7013 approximately 9.154~~ ,6984-16-7013, 6984-15-1823 and 6984-15-1930,approximately 9.8640 acres (hereinafter the "Property")
Zoning:	R-10 ~~(Residential)~~(Residential) and RO (Residential Office) to R-PUD (Residential Planned Unit Development)
Project Name:	Warrenton United Methodist Church / Hero's Bridge
Date:	~~November 30~~June 12, ~~2023~~ 2024

Preliminary Matters:

Pursuant to Va. Code Ann. §§ 15.2-2296, 15.2-2297, 15.2-2298, 15.2-2303 or 15.2-2303.1, and § 11.3.9.17 of the Town of Warrenton Zoning Ordinance, the undersigned hereby voluntarily proffers that the development and use of the Property shall be in substantial conformance with the following conditions unless an amendment thereto is approved by the Town Council, upon proper application. In the event this rezoning is granted as applied for by the Applicant, then these Proffers shall supersede and replace in their entirety all other Proffers made prior hereto with respect to the Property. In the event this rezoning is not granted as applied for by the Applicant, then these Proffers shall be deemed withdrawn and shall be null and void, and any existing Proffers will remain in full force and effect.

The headings of the Proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the Proffers. Any improvements proffered herein below shall be provided at the time of development of the

portion of the site served by the improvement, unless otherwise specified. The terms "Applicant" and "Developer" shall include all future owners and successors in interest. These Proffers shall apply to the entirety of the Property and the development referenced in these Proffers is the "Project."

For purposes of this Proffer Statement, the "~~Concept~~ General Development Plan" or "~~CDP~~GDP" shall be sheets 3~~-~~, 4, 5 and ~~4-~~6 of the plan entitled "Warrenton United Methodist Church / Hero's Bridge Zoning Map Amendment,~~-~~" prepared by Rinker Design Associates, PC, dated ~~November 29~~April 26, ~~2023~~ 2024.

~~1.~~DEVELOPMENT AND USE ~~OF THE PROPERTY~~

1. Development: ~~1.1.~~The Property, comprised of approximately ~~9.154~~ 9.8640 acres, shall be developed as a Residential Planned Unit Development (R-PUD), notwithstanding any requirement for a larger parcel size for rezoning to that zoning, in substantial conformance with the ~~CDP~~ GDP and these proffers. ~~Notwithstanding the provisions of §§ 3-5.2.4.1 and 3-5.4.2.2 of the Zoning Ordinance, the land use mix on the Property shall consist of the land uses depicted on the CDP, including1.2. not more than 22 duplex residential homes in a quadplexes comprising 44 individual living homes substantially conforming to the CDP, 2 single-family dwellings, offices, a community center, and/or a recreation building, and a church. There need not be two dwelling types, and all may be duplexes as set forth herein.~~Upon submission of final site development plans, minor changes and adjustments may be made to the road and street alignments, entrances, parking, dimensions and location of SWM/BMP facilities, the exact configuration and location of building footprints, and other similar features as shown on the CDP, provided they meet the intent of these Proffers and are approved by the Director of Community Development.

~~structure on the Property shall exceed 35 feet in height; provided that this shall not apply to the existing church on the Property as of the date of approval of this Rezoning, which shall remain as a permitted and not as a nonconforming structure.1.5. The homes shall be available for rent and not for sale. The Applicant shall therefore not be required to subdivide the property into individual lots of any minimum size, establish minimum lot frontage, require compliance with minimum setbacks, or lot coverage, and shall not be required to create setbacks between homes within each grouping of duplex homes, but shall ensure separation between those homes as depicted on the CDP.~~

2. ~~1.4.No~~ Land Use Mix: Notwithstanding the provisions of §§ 3-5.2.4.1 and 3-5.4.2.2 of the Zoning Ordinance, the land use mix on the Property shall consist of the following, as depicted on the GDP:

   a. Residential:

      i. The maximum number of duplex units shall be forty-four (44), which shall be in 22 one-story homes and available for rent only. The Applicant shall not be required to subdivide these duplex units and said duplex units will be provided as depicted on the GDP.

      ii. Each individual residential unit shall have one bedroom and all units shall be ADA accessible.

      iii. The Property may be developed with one unit type.

~~1.6. The Project may be developed in Phases such that the dwelling homes and office building may be constructed in Phase I without a requirement for commercial construction. Further Phases of the Project may be constructed at any time. All site development shall require a Site Development Plan and other required permits prior to the initiation of construction.~~

~~2. AFFORDABLE DWELLING HOMES~~

      iv. The Applicant shall, to the extent permitted by federal and state law, rent homes on the Property to veterans 65 years of age and older who served in Vietnam, Korea, and World War II, in accordance with its mission as set out in the Statement of Justification submitted with this rezoning.

   b. Small Office / Community Center: A Small Office / Community Center will be constructed during Phase I of the project in the location shown on the GDP. The Small Office / Community Center may include, but shall not be limited to, a movie viewing area, a senior technology library, an arts and crafts area, a music area, an area for pet therapy for residents, and a fitness room.

   c. Multipurpose Recreational Center: A Multipurpose Recreational Center may be constructed on the Property and shall not exceed 19,000 square feet. The Multipurpose Recreational Center may include, but shall not be limited to, multi-purpose gym/event space,

meeting areas, a kitchen, educational space, an indoor walking track, and multi-purpose office space.

d. Existing Uses and Structures: The existing uses and structures (including, but not limited to, the church and associated houses) on the Property may remain.

3. Height: No new structure on the Property shall exceed 35 feet in height.

4. Phasing: Development of the Property may be phased as generally depicted on the GDP. The Applicant may construct Phase I initially and thereafter construct Phase II improvements at any time, provided that parking, landscaping and stormwater management improvements are provided at the time each phase is constructed.

5. Affordable Dwelling Units:

a. ~~2.1.~~The homes constructed on the Property shall be deemed Affordable Dwelling Units pursuant to the provisions of § 9-3 of the Zoning Ordinance for the period of time set forth in that Section. The Applicant shall record a restrictive covenant or other form of legal and binding agreement approved by the Town Attorney and Town Council to ensure that the homes are so maintained, under approved terms and conditions.

b. ~~2.2.~~Because of the nature and purpose of the Applicant's housing program, it shall not be required to make the homes available first to persons residing or working in the Town of Warrenton or Fauquier County but shall be permitted to rent to persons qualifying under its rules and regulations developed for that purpose.

~~4.~~

~~3. PARKING~~

~~3.1. Parking requirements for the Project shall be as set forth on the Concept Development Plan.~~

PROFFER STATEMENT
WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE
+/- ~~9.154~~ 9.864 Acres

~~-~~COMMUNITY DESIGN

6. Architecture:

   a. Duplex Units: The level of quality of the duplex units shall be in general conformance with the elevation entitled "Warrenton UMC Proposed Housing Elevation," prepared by Design Concepts Architecture + Interiors, and dated March 16, 2023 (hereinafter, the "Housing Elevations"), provided that minor modifications may be made in connection with final design.

   b. Small Office / Community Center: The level of quality of the Small Office / Community Center shall be compatible with the Housing Elevations.

   c. Multipurpose Recreational Center: The level of quality of the Multipurpose Recreational Center shall be in general conformance with the elevations entitled "Warrenton UMC Multi-Purpose Building," prepared by Design Concepts Architecture + Interiors, dated November 18, 2022 and consisting of two sheets, provided that minor modifications may be made in connection with final design.

7. ~~4.1.~~Landscaping: Landscaping of the Property shall be provided in general conformance with the ~~CDP~~GDP. All new landscaping/plantings shall be non-invasive, indigenous species, native to Virginia. All landscaping shall be maintained by the Owner/Applicant.

8. Outdoor Amenities: Outdoor amenities constructed with Phase I, shall include, but shall not be limited to walking trails, senior appropriate fitness trail signage, a gazebo, and an existing flagstone garden.

~~4.2. The Project shall include Healthy Lifestyle Amenities, including but not limited to walking trails, recreation areas, and other active recreation facilities as depicted on the CDP.~~

~~**5. LIGHTING**~~

9. ~~5.1.~~Lighting: All outdoor lighting shall conform to the requirements of Article 9 of the Warrenton Zoning Ordinance and shall be ~~so~~ designed as to avoid light spillover onto adjacent properties.

PROFFER STATEMENT
WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE
+/- ~~9.154~~ 9.864 Acres

~~6.~~WATER AND SEWER AND STORMWATER MANAGEMENT

10. ~~6.1.~~Public Water and Sewer: The Property shall be served ~~with~~ by public water and ~~public~~ sewer. The Applicant shall design and construct all on-site and off-site improvements necessary to provide such service for the demand generated by development on the Property in accordance with applicable laws, ordinances, and regulations, and at its expense.

11. ~~6.2.~~Stormwater Management: Stormwater management for ~~all~~ Phases ~~of the Project~~ I and II shall be provided ~~to accommodate the site as~~ as generally shown on the GDP and s required by applicable laws, ordinances, and regulations.

TRANSPORTATION

12. Phase I Pedestrian Improvements: In connection with Phase I the Applicant shall install all the internal pedestrian improvements that are depicted on the GDP.

13. Phase II Pedestrian Improvements: In Phase II the Applicant shall construct pedestrian improvements within existing right-of-way along Church Street from the western most access along Church Street to Sullivan Street, as generally depicted on the GDP. The final design and location of the sidewalk and road improvements shall be determined in connection with site plan review for Phase II.

14. Bike Rack: The Applicant shall provide a bike rack in the location generally depicted on the GDP in connection with Phase I.

[Signatures on following pages]

WALSH COLUCCI
LUBELEY & WALSH PC

Jessica L. Pfeiffer
(703) 680-4664 Ext. 5119
jpfeiffer@thelandlawyers.com
Fax: (703) 680-6067

June 14, 2024

Via Hand Delivery and E-mail (dharris@warrentonva.gov)

Denise M. Harris
Planning Manager
21 Main Street
Warrenton, VA 20186

Re: ZMA 2023-01 Zoning Map Amendment, Warrenton United Methodist Church/Hero's Bridge
Resubmission and Comment Response Letter

Dear Mrs. Harris:

In response to the comments received to date and our meeting with you, please find the following resubmission materials compiled into twelve (12) individual packages.

1. Revised, executed Land Development Application. Please note one package includes the original and the rest are copies;
2. Revised, executed Land Use Application Affidavits. Please note one package includes the original and the rest are copies;
3. Copy of the Warrenton United Methodist Church / Hero's Bridge – Statement of Justification, dated November 30, 2023, revised June 12, 2024;
4. Full size copy and reduction of the general development plan entitled "Warrenton United Methodist Church / Hero's Bridge Zoning Map Amendment," prepared by Rinker Design Associates, P.C., dated June 3, 2024 and consisting of the following sheets (hereinafter, the "GDP"):
    - Existing Conditions Plat
    - Zoning Plat
    - Concept Plan – Phase I
    - Concept Plan – Phase II

- Landscape Plan – Phase I
- Landscape Plan – Phase II
- Pre & Post Development Drainage Map – Phase I
- Pre & Post Development Drainage Map – Phase II
- Vehicle Turning Analysis – Ambulance – Phase I
- Vehicle Turning Analysis – Fire Truck – Phase I;

5. Copy of the preliminary environmental analysis entitled "Warrenton United Methodist Church – Waters of the U.S. (WOTUS) and Wetland Delineation Report," prepared by InterAgency, Inc., dated April 29, 2024 (hereinafter, the "Preliminary Environmental Analysis");
6. Copy of the draft Proffer Statement, dated June 12, 2024;
7. Copy of the redlined proffers reflecting revisions from the version dated November 30, 2023.

The following are the Applicant's responses to the comments that they received. Please note that only weaknesses/items to be addressed are listed below.

As an initial statement with respect to these responses, the Applicant observes, as the Staff is aware, that there is no existing zoning classification in the Town that fits the use proposed in this application entirely. Because it does not seem prudent or advisable to create a new zoning classification that can be applied in other locations, the Applicant has chosen to employ the flexibility provided to all applicants under the Virginia conditional zoning statutes and Supreme Court decisions to use proffers to create an enforceable framework for this unique and valuable use. It has been with this in mind, and the sound comments received, that these responses have been prepared.

Planning Staff, dated January 19, 2024	
Agency Comment	Applicant's Response
Please update the Statement of Justification to address these components of the comprehensive plan and address how the Concept Development Plan and elevations meet the comprehensive plan goals. Of particular concern is the varying descriptions of the rezoning proposal makes it is impossible at this time to determine if the application is in conformance with the Future Land Use Map Medium Density designation that	Please see the revised Statement of Justification included with this resubmission. As discussed at the meeting on March 7, 2024, the density is within that of the Medium Density designation. The approximate density is 4.5 dwelling units per acre.

states up to 5 dwelling units per acre. Please advise as a Comprehensive Plan Amendment may be required with the rezoning application.	
The Applicant should review these goals and address them in the resubmission. In addition, the Applicant should further explain the provided bus/van service, how it will be utilized, and if infrastructure (shelters, etc) will be provided for it. Likewise, the Statement of Justification indicates "daily visits from social workers, assistance with veterans' benefits, visitors. The Applicant states there will be a total of 947 vehicle trips per day, an increase from the estimated current volume of 182 trips per day generated by the Church. This is a substantial increase on neighborhood streets with no proposed improvements.	According to the project engineer, the proposed Phase I vehicles per day are estimated to be an additional 68 trips for both weekday and weekend (Sunday) scenarios. The proposed additional trips added are the equivalent of 7 single-family homes, which is equal to the by right number of homes that could be constructed in the same development area without a rezoning. The proposed Phase II vehicle trips are an additional 492 trips for both weekday and weekend (Sunday) scenarios. These trips are higher than anticipated because the project engineer had to use , the most similar options in the ITE Manual. As discussed at our meeting with the Staff on March 7, 2024, Hero's Bridge plans to use a 12-person van for the residents. The van would be run approximately two times a week to take residents to shop for groceries, medicine, etc. A dedicated parking spot for this van is depicted on the revised GDP. There may be four staff for Hero's Bridge, which will include one full time community health care worker, one property manager, and two volunteers. There will likely be visits from doctors and other health care providers about once a month.
The Applicant seeks to locate a residential development near community facilities. Specific to the site, the Applicant needs to assess how emergency service vehicles will access the units, the existing infrastructure and water pressure requirements for fire suppression, and the, as proposed, off-site stormwater facility. The Applicant should consider bringing all	Please see the revised GDP, which includes two sheets that show how fire trucks and ambulance can maneuver the property and access the proposed units. This has been done. Further water analysis and SWM engineering calculations will be included in connection with site plan review.

associated parcels into the proposal for a proper PUD. Please address.	
As stated above, bungalow courts, as defined in the Housing Chapter, are recommended as a potentially appropriate land use in R-10. However, the Zoning Ordinance has not yet been updated to incorporate this. The Applicant is proposing a form of goal H-4; however, it is unclear who will maintain control of the property the residential units will be built upon. Likewise, it is unclear who is responsible for the building and maintaining of the community building or where the proposed senior services will be provided on site (e.g. the offices, the community building, the church, etc). Finally, the Applicant should take into account the existing character of the neighborhood and consider if the proposed elevations are in keeping with the scale, character, and heritage.	The units in connection with Phase I will be maintained by Hero's Bridge under a written agreement with the Church. The Multipurpose Recreational Center proposed with Phase II would be maintained by both the Church and Hero's Bridge. The property will continue to be owned by the Church, and the Church will continue as a fully functioning Methodist Church. The Applicant maintains that the design of the facilities is consistent with the community, but in order to accommodate the purpose of the proposal they cannot be designed as individual single-family residences that are identical to those already existing in the community. These homes will not adversely affect the surrounding area.
Proffer 1.2 contains the unclear phrase "22 duplex residential homes in quadplexes." Note that the PUD zoning district provides at 3-5.2.4.1, "Uses within the R-PUD shall emphasize residential uses permitted in the underlying base zoning district." However, section 3-5.2.5.1 (9) does allow Two-, Three-, and Four- Family dwelling units in an R-PUD. The phrase "22 duplex residential homes in a quadplexes" is unclear, then, for the following reasons: • Its inconsistent with itself: duplexes are not quadplexes. • The phrase "a quadplexes" is ungrammatical. • R-PUD doesn't allow duplexes or quadplexes – did the Applicant mean two- and four- family dwelling units? • Because the proposed development isn't divided into lots, the proposed dwelling units do not meet the definition of "two-	Please see the revised proffers where this has been clarified. The GDP references these units as duplexes.

family dwelling" or "four-family dwelling" in the Zoning ordinance. By failing to "emphasize residential uses permitted in the underlying base zoning district," the proposed rezoning is arguably inconsistent with the purposes of R-PUD.	
Proffer 1.2 fails to provide a bedroom count or other basis for determining density. The Town should therefore require additional information to determine if the proposed development is consistent with the PUD density standard set out in Zoning Ordinance 3-5.2.3.1 (1). Because there is only one dwelling type, the proposed development also is inconsistent with 3-5.2.4.2 (3).	Please see the revised proffers where this has been clarified. Each of the units will have one bedroom. Please see the proffers where this is addressed in Proffer #2.
Proffer 1.4 purports to make the existing Church a permitted use, as opposed to a nonconforming use, after the rezoning. Is this due to a desire to be able to expand the Church in the future without complying with the rules governing expansion of a non-conforming use?	Please see the proffers where this is addressed in Proffer #2. The Church has no expansion plans, except to the extent that it will wish to participate in the Multipurpose Recreational Center when it is constructed with Phase II. Counsel for the Applicant has recommended in circumstances that are similar to this that an ongoing use become a proffered permitted use in order to avoid any possible issues that may arise in the event of a catastrophic loss and attendant limitations on reconstruction.
Proffer 2.2 does *not* limit residency to veterans, the elderly, or any group of people. It references the Applicant's housing program but does not incorporate it by reference.	It is legally permissible to limit housing to older persons under the federal Housing for Older Persons Act, an element of the Fair Housing Act, at both state and federal levels. It is not, however, lawful to proffer to restrict housing to any other group because that would constitute a discriminatory housing practice. It is permissible for an organization like Hero's Bridge to develop and implement a program that focuses on a group of needful persons. As a matter of policy, it serves veterans 65 years of age and

	older and the proffers have been revised accordingly.
Proffer 3.1 would allow Phase II's recreation center to occupy much of the area now provided for parking. Please provide an analysis of the parking needs that would justify this.	Please see the revised GDP which includes a parking analysis under the site tabulations.
Proffer 4.1 does not require maintenance of landscaping. It should identify the party responsible for maintenance, the standard for maintenance, and the inspection schedule.	Hero's Bridge and the Church will both be responsible for the maintenance of the Property, including its landscaping, based on their private agreement. There will be a 49-year long term ground lease with two 10-year renewal periods, effectively a 69-year ground lease. Hero's Bridge will own all of the structures and will be responsible for the upkeep of the structures and the landscaping/maintenance of Phase I. The church will continue to be responsible for all of the upkeep and maintenance of the other parcels. Hero's Bridge and the Church will share maintenance of common areas which would mainly be the shared drive that enters the community. All of these upkeep and maintenance plans are in the legally binding lease.
Proffer 4.2 does not include any enforceable criteria for amenities. It references "walking trails, recreation areas, and other active recreation facilities as depicted on the CDP," but the CDP does not show any such facilities unless you count the Phase II recreational center. Nor does proffer 4.2 provide any timelines or specifications for creating any such facilities.	Please see the revised GDP. A Small Office/Community Center will be constructed with Phase I. This will be for the residents and contain amenities. This Small Office/Community Center is intended to have a movie viewing area, a senior technology library, an arts and crafts area, a music area, an area for pet therapy for residents, and a fitness room. The outdoor amenities with Phase I will include walking trails with senior appropriate fitness trail signage, a wildlife sanctuary, gazebos, and an existing flagstone garden for meditation purposes. In addition to the amenities in Phase I, a separate Multipurpose Recreational Center is proposed to be constructed in Phase II. The Multipurpose

	Recreational Center will potentially include multi-purpose gym/event space, meeting areas, a kitchen, educational space, an indoor walking track, and multi-purpose office space.
Proffer 5.1 requires that outdoor lighting be "so designed as to avoid light spillover," but doesn't require it to be built to match the design. Cf. proffer 6.1 ("design and construct").	The proposed lighting will be limited to parking and travelways, as required. The buildings will likely have security lighting, and the trail may have ground mounted lighting. A detailed lighting plan/design will be provided in connection with site plan review. It will all be so designed as to avoid any light spillover.
Police Department, dated February 7, 2024	
Agency Comment	Applicant's Response
As a note to the below security related recommendations. Many of these recommendations are currently being built into Hero's Bridge's owner's specifications that will go to all potential design/building contractors. More details can be provided in connection with site plan review.	
<u>Traffic:</u> • There would be a minor effect to vehicular traffic during construction. • Once construction is complete, the entrances on Moser Rd. and Church St. will direct traffic into and out of the complex. • As designed, the exit from the facility onto Frazier Rd. will alleviate traffic backup for persons exiting onto Broadview Ave. by providing an alternate exit route. • Should the parking lot not be sufficient for residents and Church goers, overflow parking will be on Church St. and Moser Rd, which present a safety issue. There is space near the playground where additional parking could be accommodated.	Acknowledged. Acknowledged. Acknowledged. Please see the revised GDP, which includes a parking analysis under the site tabulations. There is no intention to use on-street parking. The traffic generation and parking requirements likely overestimate the number of vehicles per day and parking required based on the nature of the use.

<u>Pedestrian:</u> • Pedestrian safety will not be affected by this construction. • A sidewalk is recommended around the facility on Church St. and Moser Rd.	Acknowledged. Please see the revised GDP, where pedestrian connectivity is shown.
<u>Lighting</u>: A detailed lighting plan has not been submitted at this time. • CPTED best practices show lighting should be LED or OLED with a correlated color temperature of between 2700 and 3000 Kelvin. • After installation a night-time lighting study should be done to check illumination, uniformity, and brightness and to ensure the lights are properly shielded so glare doesn't affect traffic or existing properties on Moser Rd. and Church St. • Lighting should be of an unbreakable material and be tamperproof to prevent vandalism and pockets of shadows. • There will be multiple pathways throughout this facility; lighting at night is a safety concern and should be a priority. Residents may have a significant distance to walk from the parking lot to their unit.	The proposed lighting will be limited to parking and travelways, as required. The buildings will likely have security lighting and the trail may have ground mounted lighting. A detailed lighting plan/design will be provided in connection with site plan review and not only will there be no light spillover, but the Police Department comments will be taken into consideration during the site development plan process.
<u>Landscaping:</u> • The construction will result in new landscaping being installed. • Tree type and placement should be planned so the canopy doesn't interfere with the lights in the parking lot or along pathways as they grow.	Please see the revised GDP where landscaping is depicted. The Applicant will provide more landscaping detail in connection with site plan review.

• Tree type and shrubbery should not prevent line of sight access to the property or provide concealment. • Tree placement should be considered so as not to allow access onto the roofs.	
CPTED best practices for schools include considerations for both interior and exterior construction. This special use permit does not include interior plans. I have included some recommendations for school safety considerations: • Fewer entrances. Once school is in session, only the main front entrance can be opened from the outside. All visitors must use the front entrance. • Provide a separate, controlled entrance for staff. • Can the school office staff clearly see the entrance area and can they observe approaching visitors before they reach the entrance? • Main entrance should be secured with a man trap. • Do office staff have the ability to physically deny entry to visitors by remotely locking/unlocking the man trap? • Do staff members have immediate lockdown capability in classrooms and other locations? • Clearly establish and define school property lines. • Enclose the campus; this is more a measure to keep outsiders out than insiders in. Besides defining property boundaries, a robust fence forces a perpetrator to consciously trespass, rather than allowing casual entry. • Ensure that classrooms and administrative areas can be closed off and	This is not a school, and while these comments are appreciated, they do not appear applicable to this application.

locked from the gym and other facilities that might be used after hours. • Restrict external access to parking areas. Have clearly defined areas for staff and visitor parking. Staff parking can be secured by controlled entrances. • Prohibit through-traffic on campus. • Minimize secluded hiding spaces for unauthorized persons. • Avoid blocking lines of sight with landscaping. • Provide clear signage and posted rules as to who is allowed to use parking facilities and when they are allowed to do so.	
Zoning, dated January 12, 2024	
Agency Comment	Applicant's Response
General	
The plan does not address the current conditions of Church Street, Moser Road, or the intersection of Church Street with Sullivan Street/Broadview Ave.; address. The existing edge of pavement, pavement markings, signage, curb/gutter and sidewalk, existing drainage features, etc. should be shown so that the proposed impacts to area roadways can be evaluated.	Please see the revised GDP (Sheets C.03 and C.04) where these items are now shown, as requested.
Aerial imagery and topography show a significant drainage feature running across the width of the 3.9-acre portion of the property; Soil Survey maps show that soil type 17B, described as having potential hydric inclusions and an elevated ground water table, are located in a broad swath following the general location of this drainage feature. a. Provide a site-specific evaluation of the property to include the location of any wetlands and/or stream channels, evaluation data points, the survey-	Please see the Preliminary Environmental Analysis that is provided with this resubmission.

accurate location of wetlands and stream channel banks, along with a determination of the type of water flow (ephemeral, intermittent, perennial). b. Staff notes that should any hydric soils be found, that a Jurisdictional Determination by the USACE will be required as a part of any future Site Development Plan application, to include required permits for wetland/stream channel disturbance from the USACE and DEQ.	
Property records show the presence of a waterline easement in the north-eastern property corner, near Unit 44; show the easement and any existing waterline. Revise the plan as necessary to address the utility.	The project engineer has confirmed that we do not possess any records that show that easement, but if it does exist, there is no waterline associated with ____. The easement would be vacated if necessary.
The application does not address adequate water and sewer service. a. Show existing water lines, and approximate locations of all proposed connections and new lines, to include fire hydrants and adequate fire service lines. b. Show existing sewer lines and manholes, as well as approximate locations of all proposed new lines.	Please see the revised GDP (Sheets C.03 and C.04) where the approximate locations of the existing and proposed waterlines, proposed hydrants, and existing and proposed sanitary sewers have been added. The locations of the proposed fire service lines and sanitary building connections will be provided in connection with site plan review once the architectural layout of the proposed buildings has been determined. The Applicant has no reason to believe there is insufficient sewer and water service available for the project.
The application does not provide sufficient information to show that adequate stormwater management can be provided for the property. a. Provide a preliminary/conceptual SWM plan, to include major drainage sheds. b. Label existing drainage facilities with type, size, and invert information. c. Staff notes that the existing outfall on PIN 6984-15-1967 is known to have	Storm sewer labels and a Storm As-Built table have been added to the GDP for clarification. Pre- and post-development drainage maps for the Phase I and Phase II designs have also been added to the GDP (Sheets. C.07 and C.08). The SWM design depicted is preliminary, and a more detailed SWM design will be included with the site development plan.

issues with adequate conveyance of storm flows; the proposed development will add a significant amount of new impervious area leading to an increase in runoff volume that could negatively impact neighboring properties and existing drainage facilities. Ensuring the adequacy of the off-site receiving facilities and structures must be considered.	
The application does not address how mail service and package deliveries will be accommodated; address.	This has not been determined at this time; however, the Applicant anticipates that mail will be received in the Small Office/Community Center. Hero's Bridge will work with the appropriate Town Staff in the USPS in connection with site plan and building permit review.
The property currently exists as two separate parcels, however the statement of justification speaks to cross-use of facilities and services; either show the separating parcel line as "To be Vacated" or revise the plan and application materials to show that the residential/office component are stand-alone facilities that are completely separate from the Church and recreational facility.	The Applicant cannot consolidate the parcels because of United Methodist Church restrictions.
Proffer Statement	
The proffer statement provided for review includes multiple statements that repeat minimum zoning ordinance requirements that must be addressed by all development projects and are not proffers as such.	Please see the revised proffers where this has been clarified and such duplicative requirements removed.
The elevation drawings that were submitted as a part of the application materials are not addressed as part of the proffer statement, in terms of proffered materials, color palette, architectural treatments, or style. Either remove the elevations from the application as extraneous	Please see the revised proffers where the elevation drawings have been added.

or include the elevations as a part of the plan set and address the elevations as a part of the proffer statement in defined, enforceable terms.	
The proffer statement does not provide details as to the homes, such as number of bedrooms, number of levels, square footage, ADA accessibility, etc.; address.	The proffers and GDP provide the level of detail that is known at this point. The homes will be one bedroom, one level and ADA accessible and/or aging in place friendly.
Staff notes that the statement of justification speaks to the intent to serve older and/or disable veterans, however nothing in the proffer statement speaks to this intent, nor to how the Church use is an integral part of the services to be provided to the residents.	Please see the revised Statement of Justification where this has been added.
The statement of justification includes the provision of bus service, and nursing, physical and mental health services, however the proffer statement does not include any of these services. Either amend the statement of justification to remove these items or revise the proffer statement to include these services as integral to the intent and function of the project.	The Applicant did not remove this from the Statement of Justification because it is an important aspect of the use; however, we did provide additional information regarding parking, trip generation and uses to address this comment.
Should the project be intended to serve the elderly, disabled persons, veterans, or other groups with identifiable needs, then the proffers and plan drawing should include facilities that cater to the needs of persons that meet these demographic characteristics such as accessible/universal design features for both outdoor facilities and interior building design.	Please see the proffers and GDP where the information that is known is included. The Small Office/Community Center and Multipurpose Recreational Center will be ADA compliant.
Section 1, proffer 1.2 states that there are 2 single family dwellings that are part of this application, however these dwellings are not indicated in the plan set; address.	Please see the revised proffers where this has been addressed. These 2 homes are not part of the application.
Section 1, proffer 1.4 is unclear in intent, as the Church structure and use is part of the overall	Please see the revised proffers where the height has been clarified as 35 feet.

rezoning application per the statement of justification. Additionally, the height limitation is a standard found in the zoning ordinance and not a proffer.	
Section 1, proffer 1.5 states that "… shall ensure separation between those homes as depicted on the CDP", however staff does not understand the intent of this statement; resolve.	Please see the revised proffers where this has been removed.
Section 1, proffer 1.6 does not provide a defined trigger for when the office or recreation center will be constructed in relation to construction of the residential units; either address by including a defined, enforceable trigger, or remove the office and recreation center from the application materials altogether.	A Small Office/Community Center will be constructed in connection with the units in Phase I. The Multipurpose Recreational Center in Phase II does not have a defined trigger, at this time, quite simply because the Applicant and Hero's Bridge cannot predict when the funds will be available to proceed with Phase II. Please see the revised proffers where more information on timing has been added.
Section 2, proffers 2.1 and 2.2 are unclear, lacking detail or an explanation of intent; address.	Please see the revised proffers where these have been clarified.
Section 3, proffer 3.1 is unclear in intent, as the plan drawing does not provide sufficient detail to ensure that all zoning ordinance requirements are met for on-site parking and loading. The proffer should either be deleted so as to not seem to be allowing the developer to meet a standard that may be less than the minimum requirements of the ordinance, or revised so as to actually proffer some site improvements that is more than the absolute ordinance minimum.	Please see the revised proffers where this proffer has been removed.
Section 4, proffer 4.1 does not address any buffering or screening beyond the minimum requirements of the zoning ordinance that must be met by all projects, and the landscaping shown on the plan does not meet minimum ordinance requirements; address.	Please see the revised GDP where buffering and screening have been revised/clarified.

Section 4, 4.2 does not specify a minimum number or type of amenities to be provided, nor are any such shown on the plan drawing; revise.	Please see the revised GDP. A Small Office/ Community Center and amenities will be constructed with the Phase I. This Small Office/Community Center is intended to have a movie viewing area, a senior technology library, an arts and crafts area, a music area, an area for pet therapy for residents, and a fitness room. The outdoor amenities will include walking trails with senior appropriate fitness trail signage, a wildlife sanctuary, gazebos, and an existing flagstone garden for meditation purposes. In addition to the amenities in Phase I, a separate Multipurpose Recreational Center is proposed to be constructed in Phase II. The Multipurpose Recreational Center will potentially include multi-purpose gym/event space, meeting areas, a kitchen, educational space, an indoor walking track, and multi-purpose office space.
Section 5, proffer 5.1 is a minimum zoning ordinance requirement and not a proffer.	Please see the revised proffers where this proffer has been clarified.
Section 6, proffers 6.1 and 6.2 are minimum requirements that all developments must provide, and not a proffer.	Please see the revised proffers where these proffers have been clarified.

Article 3-5.2.3.1 – General Planning Considerations (R-PUD)	
The plan does not clearly illustrate the use of open space required, but the statement of justification does not address the use of open space by the residents.	Please see the revised GDP where the use of open space is further detailed.
The application does not address pedestrian connectivity; resolve. a. Provide crosswalk connections from the residential area to the Church and recreational center across the internal accessway. b. Provide sidewalk connections from the proposed development areas to the outer perimeter of the site. c. Provide sidewalk along all street frontages. d. Address how residents will access the larger pedestrian network outside of the project boundaries. e. Provide a bike rack or other facilities to address multi-modal transportation.	Please see the revised GDP (Sheets C.03 and C.04) which includes cross walk connection, additional sidewalks and a bike rack has been added. Upon consideration of the provision of pedestrian walkability, it would appear most prudent to provide a sidewalk connection along Church Street, to connect to the existing sidewalk from the intersection of Church Street and Sullivan Street to Broadview Avenue. Discussions with members of the surrounding community have indicated a general unwillingness to see sidewalk installed elsewhere on Moser or Sullivan itself.
The internal accessways are narrow and appear to have tight turn radii; adequate access by EMS vehicles must be provided to all areas within the project. a. Provide a turn radius/travel path diagram to show that large EMS vehicles can maneuver throughout the site. b. The existing public roadways appear to be narrow; show that EMS vehicles can access the site from Church Street and Moser Road, to include the Church St./Moser Rd. intersection and the Moser Rd./Frazier Rd. intersection.	Please see the revised GDP (Sheets C.09 and C.10), which includes a sheet depicting vehicle turning analyses for EMS vehicles.
As a recommendation, the applicant should indicate how fire suppression/protection will be addressed, such as building construction	The Applicant will address this in connection with site plan review.

methods, sprinklering of residential/office/recreational structures, fire hydrants, fire lanes and accessways, etc.	
Article 3-5.2.4.1 – Standards and Criteria for Planned Unit Developments	
The proposal appears to meet the minimum 50% residential use required for an R-PUD.	Acknowledged.
Staff is unable to determine that open space requirements are met at this time. The 25% minimum required open space is not delineated on the plan nor is the use of the open space for amenities for the residents.	Please see the revised GDP (Sheets C.05 and C.06) where the open space delineation has been added.
Article 3-5.2.4.2 – Other Criteria for Residential Planned Unit Developments	
The proposal does not meet the minimum required 25 acres; however, the applicant has requested a waiver of this requirement from the Town Council.	Acknowledged.
The proposal does not meet the requirement for two housing types. The applicant has requested a waiver of this requirement from the Town Council.	Acknowledged.
The proposal exceeds the maximum allowable 50% multi-family units.	Acknowledged.
The required open space is not delineated on the plan.	Please see the revised GDP (Sheets C.05 and C.06) where the open space delineation has been added.
The applicants have indicated that the proposed recreational facility may or may not be constructed in phase II dependent on funding; however, applicable recreational facilities must be constructed prior to construction of the next phase.	Please see the revised proffers, which includes more information regarding phasing.

Article 3-5.2.5 – Use Regulations – Residential Planned Unit Developments (R-PUD)	
The zoning ordinance does not specifically allow the proposed use. The applicant is requesting consideration from the Town Council to allow the use within the R-PUD district. Similar by-right uses are an apartment building, Senior/disability housing, and two, three, and four-family dwelling units. In comparison, a similar use that would require approval of a special use permit is affordable dwelling units (ADU) within areas designated for multifamily development.	This is a use that can be allowed by means of a proffer. See the comment at the beginning of this letter.
Article 3-5.2.5.7 – Density/Intensity and Area Regulations	
The Comprehensive Plan identifies the property as medium density residential. This designation encourages higher density areas near major thoroughfares and commercial areas. The medium density areas are intended to permit densities up to five dwelling units per acre; The applicant has requested approximately 4.8 dwelling units per acre.	The proposal is within the density range in the Comprehensive Plan.
The proposed floor area ratio (FAR) is far less than the maximum allowable FAR within the Zoning Ordinance.	With Phase II, the proposed FAR is 0.18.
Ingress/egress easements will be required to utilize the emergency access areas shown on adjacent property belonging to the Church.	Ingress and egress easements will be included in connection with site plan and plat review and approval.
Interior side yard setback adjacent to the Church is not provided. This must be a minimum of 15' unless a waiver of setback is requested from the Town Council.	Please see the revised GDP where the side yard setback has been added. The project's civil engineer has confirmed that the Church building does not lie within the setback and therefore a waiver will not be required.

Article 6 – Signs	
No signs included as part of the application. Any proposed signs will need to meet the regulations noted under Article 6 of the Zoning Ordinance.	Acknowledged.
Article 7 – Parking	
Staff is unable to verify that parking requirements are met with this submission. The plan mentions a parking demand study, but staff did not receive a copy of this. Parking requirements must be met at the time of site development plan.	Please see the revised GDP (Sheets C.03 and C.04) where more information on parking is shown. These sheets show the required parking for each proposed use per the Zoning Ordinance. The total parking proposed exceeds the minimum required amount per the Zoning Ordinance.
On sheet 2, revise the VPD calculation to address the following: a. The VPD calculations for the Church use appear to not be based off of the peak generator, which is typically Sunday; address. b. Provide all calculations used to determine the traffic volume, such as AM/PM Peak, Peak Day, Peak Hour, and other information as necessary for justification. c. Show VPD trips at each entrance, exiting the property.	Please see the revised GDP (Sheets C.03 and C.04) where VPD calculations have been revised to reflect weekday and Sunday trips. The VPD have been included at each site entrance.
The parking calculations provided as based on the unprovided parking demand study; Staff is unable to verify.	Please see the revised GDP (Sheets C.03 and C.04) where more information on parking is shown. These sheets show the required parking for each proposed use per the Zoning Ordinance. The total parking proposed exceeds the minimum required amount per the Zoning Ordinance.
The applications documents include a description of a bus service; however, the plan sheets do not indicate how this will be accommodated on site with adequate loading spaces and facilities.	Please see the revised GDP (Sheets C.03 and C.04) where a van loading area has been added for clarification. There is no public bus service planned at this time. Hero's Bridge currently uses a 12-seat passenger

	van and a smaller transport van to serve veterans. Hero's Bridge plans to continue to use both of these vehicles to support weekly trips to the store, pharmacies, doctor's offices etc.
Article 8 – Landscaping	
Staff is unable to verify landscaping requirements are met and the statement of justification does not adequately address this requirement. No landscaping details have been provided at this time. Conformance with Landscaping requirements will be required as part of the site development plan.	Please see the revised GDP (Sheets C.05 and C.06) where sheets have been added to show this information. Further details will be provided in connection with site plan review.
Landscaping for parking area calculations is not provided, but will be required at time of SDP submission.	Please see the revised GDP (Sheets C.05 and C.06) where sheets have been added to show this information. Further details will be provided in connection with site plan review.
The project area abuts two existing single-family homes off of Moser Road, PIN 6984-16-8079 (Thompson) and PIN 6984-16-8042 (McLaughlin), but does not address how any impacts to these two property owners will be addressed. As a recommendation, the applicant should consider enhanced screening and buffering between the two uses.	Please see the revised GDP (Sheets C.05 and C.06) where a fence and buffer has been added to screen these homes from the project area. These homes will be adjacent to the residential portion of the proposal.
The project area abuts four single family homes to the north, PIN 6984-16-7459 (Hunt), PIN 6984-16-8433 (Southard), PIN 6984-16-9430 (Fransella), and PIN 6984-26-0337 (Church), but does not address how any impacts to these property owners will be addressed. As a recommendation, the applicant should consider enhanced screening and buffering between the access road and the property boundary.	Please see the revised GDP (Sheets C.05 and C.06) where a buffer per the Zoning Ordinance has been added.
The application does not clearly describe how refuse will be addressed on site for all uses. Refuse facilities but must be screened from view	Please see the revised GDP (Sheets C.03 and C.04) where a proposed dumpster area has been added. A trash removal service will be contracted

of adjacent properties, the public right-of-way, and from within the lot per Article 8-8.2. See Public Utilities Public Works for when refuse pick-up is provided by the Town. a. Provide adequate dumpster areas that are convenient to the differing uses. b. Address refuse area screening via landscaping, solid walls or fencing, and gates.	for the homes/uses with the expense being incurred by the owner/Applicant.
Article 9-8 – Lighting	
The Statement of Justification acknowledges all lighting must meet requirements of Article 9 of the Zoning Ordinance, but overall does not address site lighting. All fixtures on site will require conformance to current lighting standards. Staff suggests that the applicant should consider how sidewalk/trail lighting and parking area lighting will be provided, the general type and height of outdoor lighting fixtures, and the potential for glare, light trespass, and light pollution affecting surrounding properties.	The proposed pole lighting will be limited to parking and travelways, as required. The buildings will likely have security light. There may be ground mounted lighting on the trails, if required. Further details will be provided in connection with site plan review.
Article 9-3 – Affordable Dwelling Unit Provisions	
The proposal does not meet the eligibility requirements as stated under Article 9-3.1 of the Zoning Ordinance. The applicant has suggested a "proffer" for offering these ADU to qualifying individuals based on Hero's Bridge rules and regulations. This may be considered as a waiver, but not a proffer.	Acknowledged. This has been done.
The plans do not indicate how many bedrooms the units are intended to have, and staff is not able to determine the parking reduction allowance as provided for in Article 9-3.6.	The homes will be one bedroom, and this is reflected in the proffers. Please see the revised GDP (Sheets C.03 and C.04) where parking information has been provided.

Article 9-12 – Open Space	
Open space must be used for the benefit of the residents. The plan does not indicate what recreational facilities will be used within the open space for the enjoyment of the residents. The applicant should ensure that adequate facilities will be provided to support intended outdoor recreation uses.	Please see the revised GDP (Sheets C.03 and C.04) and above where open space and amenities have been addressed.
Provide additional detail on the small circular areas that are shown along the 12' asphalt trail; what purpose do these objects serve?	Please see the revised GDP where these have been removed.
Article 11-3.10.3	
The criteria listed under Article 11-3.10.3 are those items that the Planning Commission and Town Council should consider when reviewing a SUP application. Zoning staff defers to Planning staff in the compliance assessment of these criteria.	Acknowledged.
Public Works and Utilities, dated January 22, 2024	
Agency comment	Applicant's Response
Article 4 – Site Conservation Manual (SCM)	
Conformance with erosion and sediment control (ESC) requirements is required at the time of SDP submission. The concept plan does not appear to show ESC measures and/or calculations. They will need to meet the requirements of the Site Conservation Manual Article 4, 9VAC25-840, Virginia and Erosion and Sediment Control Law, and State Regulations.	Acknowledged. These items, if required, will be provided in connection with site plan review.

Article 5 – Stormwater Management (SWM)	
Conformance with stormwater requirements is required at the time of SDP submission. No calculations were provided with the concept plan. They will need to meet the requirements of the Stormwater Management Ordinance Article 5, 9VAC25-870, and the Virginia Stormwater Management Regulation for new development. This will be critical to ensure the size and area of the two SWM locations will be adequate to meet the regulations for both quantity and quality of surface water runoff.	Please see the revised GDP (Sheets C.07 and C.08) depicting this information. A more detailed SWM design and adequate outfall analysis will be provided in connection with site plan review.
The existing Stormwater Management Facility located on PIN#6984-15-1967-000 will need to be upgraded to meet the stormwater requirements for quality and quantity. A new Stormwater Management Agreement will be required.	A more detailed SWM analysis and design will be provided in connection with site plan review. The existing Stormwater Management Facility located on PIN 6984-15-1967 will be upgraded, if necessary or required.
There are existing flooding and drainage concerns at the intersection of Sullivan and Church Street that could be exacerbated. Hydrology and hydraulics grade line calculations will need to be provided to ensure adequacy and prevent further flooding and drainage issues.	Per the project engineer, all development will be designed to current standards ensuring that further drainage issues do not occur.
The project is being shown to be built over an existing channel. How will water conveyance be addressed with this project since it is taking flow from the neighborhood? The existing channel will need to be evaluated to determine if any additional federal or state permitting is required.	Please see the revised GDP (Sheets C.03 and C.04) where a preliminary storm sewer alignment has been added.
A portion of this project is shown to be in the 500-year floodplain. While this is does not inhibit the potential for developing and making improvements to the property, it created the need for special considerations in the design of any building foundations under the ground surface	A preliminary environmental analysis has been provided with this resubmission.

and the infrastructure to convey drainage through and off the site.	
Water and Sanitary Sewer	
The site proposes 44 Senior Living rental units, a. recreational building, and the existing Church remaining in place. AtR-10. this, the existing Church uses about 29,000 gallons a month which equates to approximately 960 gallons a day. The application indicates the total site land area is 9.14 acres and is zoned R-10. Based on this, the by-right water and wastewater use for up to 39 residential units would be around 11,700 gallons per day. Under the proposed use, maintaining the existing Church, 44 elderly/age restricted apartment units, and a 2-story 19,000 square foot Recreational Center with a non-defined water demand, is estimated to require a water demand between 10,000 and 13,000 gallons per day.	Acknowledged. Further water demand information can be provided in connection with site plan review.
The proposed plan would be reviewed in more detail when final plans are submitted should this permit be approved.	Acknowledged.
Public Works	
Parking for units 13 through 24 and 37 through 44 is questionable as currently shown. Based on this layout, it would appear there would be strong motivation for routine parking along Moser Road, which the current street design would not support.	Please see the revised GDP (Sheets C.03 and C.04) where more information on parking is shown. These sheets show the required parking for each proposed use per the Zoning Ordinance. The total parking proposed exceeds the minimum required amount per the Zoning Ordinance.
Storm drainage will be a major concern during design development.	Please see the revised GDP (Sheets C.03 and C.04) where a preliminary storm sewer alignment has been added.

Fire Company, dated January 18, 2024	
Consider wider walkways that will support fire apparatus. We need a width of at least 20' to ensure we can operate an apparatus in the back parts of the development.	Please see the revised GDP (Sheets C.03 and C.04) where the asphalt trail has been widened to 20 feet.
Consider additional fire hydrants to ensure ease of active fire operations.	Please see the revised GDP (Sheets C.03 and C.04) where additional fire hydrants have been added.
Consider requiring residential sprinklers due to the closeness of the occupancies.	If required, sprinklers will be required in connection with site plan and/or building permit review.
Will this space be rentals/transient living or special use?	The homes will be rented.

We trust these responses address your comments. Please do not hesitate to contact me if you have any questions or need additional information. Thank you for your assistance in connection with this application.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Jessica L. Pfeiffer

Jessica L. Pfeiffer

JLP/mac

cc: Carl Chapman
Molly Brooks
Rob Seidel
Chip Carson
Jeremy Karls
John Foote

P1437792.DOCX

WARRENTON UNITED METHODIST CHURCH

WATERS OF THE U.S. (WOTUS) AND WETLAND DELINEATION REPORT

APRIL 29, 2024

PREPARED BY:

INTERAGENCY, INC.
80 M ST., SE, SUITE 100
WASHINGTON, DC 20003

TABLE OF CONTENTS

CONTENTS

1.0 INTRODUCTION 4

2.0 METHODOLOGY 4

2.1 Database Review 4

2.2 Field Methods 5

3.0 RESULTS 7

4.0 CONCLUSION 8

5.0 REFERENCES 10

INDEX OF EXHIBITS

1. Vicinity Map
2. USGS Topographic Quadrangle Map
3. NAIP Aerial Imagery
4. NWI Map
5. NRCS Custom Soil Resource Report
6. FEMA FIRMette Map
7. DEQ WetCAT Report
8. Antecedent Precipitation Tool Report
9. Study Area Photographs
10. Wetland Determination Data Forms
11. Stream Assessment Forms
    a. Virginia DEQ Stream Identification Form
    b. Fairfax County DPWES Methodology
    c. North Carolina NCDWQ Methodology
12. Wetlands and Waters of the U.S. (WOTUS) Delineation Map

LIST OF ACRONYMS

17B	Middleburg Loam
AOI	Area of Interest
APT	Antecedent Precipitation Tool
CWA	Clean Water Act
DEQ	Department of Environmental Quality
DPWES	Department of Public Works and Environmental Services
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FGDC	Federal Geographic Data Committee
GPS	Global Positioning System
IA	InterAgency, Inc.
NAIP	National Agriculture Imagery Program
NCDWQ	North Carolina Division of Water Quality
NRCS	National Resources Conservation Service
NWI	National Wetland Inventory
NWS	National Weather Service
OHWM	Ordinary High-Water Mark
PWD	Professional Wetland Delineator
PWS	Professional Wetland Scientist
R4	Intermittent Stream Channel
SSWD	State Surface Water Determination
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USDA	U.S. Department of Agriculture
USGS	U.S. Geological Survey
VSWD	Virginia State Waters Delineator
WetCAT	Wetland Condition Assessment Tool
WOTUS	Waters of the U.S.

1.0 Introduction

InterAgency, Inc. (IA) performed a wetland and waters of the U.S. (WOTUS) delineation within the Warrenton United Methodist Church (WUMC) study area to document current site conditions. As noted below, an unnamed intermittent tributary conveying stormwater within a manmade stormwater swale was documented within the study area.

The approximately 11-acre study area is located within the Town of Warrenton, Virginia and can be accessed from Church Street along the southern boundary. A vicinity map is included as Exhibit 1. The centroid of the study area is located at approximately 38.7201 N, -77.8038 W and is included within the Warrenton, Virginia U.S. Geological Survey (USGS) Quadrangle Map (Exhibit 2).

The study area comprises the WUMC church and parking lot surrounded by a maintained lawn and forested cover. The natural slight topography has been altered by development activities in the past. A summer natural color image from the National Agriculture Imagery Program (NAIP) is included within Exhibit 3.

2.0 Methodology

The wetland delineation field work was conducted by Lauren Conner, PWS, PWD, VSWD[1]. Methodology and data review notes are outlined below in support of this study.

2.1 Database Review

Prior to conducting field work, IA conducted database reviews to determine the existing documented resources within the study area. The U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) database (Exhibit 4) was reviewed to determine if any wetland or stream features have been documented within the study area. As noted in this exhibit, no wetland or stream features have been documented on or within 100-feet of the study area.

U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) (Exhibit 5) data was reviewed to determine the soil characteristics within the study area. The central portion of the Area of Interest (AOI) developed on the NRCS database is mapped as Middleburg loam (17B), a mapped hydric soil. The remaining soils mapped within the NRCS AOI are mapped as nonhydric.

The study area is located within the Great Run - Rappahannock River watershed. The Federal Emergency Management Association (FEMA) National Flood Hazard Layer FIRMette panel 51061C0306C (Effective 2/6/2008) (Exhibit 6) documents that the majority of the study area is located within Zone X: Area of Minimal Flood Hazard.

[1] Certified Professional Wetland Scientist (PWS #2766) through the Society of Wetland Scientists, licensed Professional Wetland Delineator (PWD #3402-000155) through the Virginia Department of Professional and Occupational Regulation and Virginia State Waters Delineator (VSWD #0045), Virginia Department of Environmental Quality (DEQ).

However, one swale within the central portion of the study area is documented as an area of 0.2% Annual Chance of Flood.

In preparation for field work, the Virginia Department of Environmental Quality (DEQ) Wetland Condition Assessment Tool (WetCAT) database (Exhibit 7) was reviewed for documented features and watershed data surrounding the study area. No stream or wetland features have been mapped within the study area by DEQ.

2.2 Field Methods

This delineation was performed in accordance with the U.S. Army Corps of Engineers (USACE) 1987 Corps of Engineers Wetlands Delineation Manual – Technical Report 87-1 (USACE, 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0) (USACE, 2012). In addition, this wetland delineation was performed in compliance with the Federal Geographic Data Committee (FGDC) Wetlands Classification Standard (FGDC, 2013) and the Virginia DEQ State Surface Waters Determination (SSWD) guidance. Wetlands are classified as features that meet the wetland hydrology, hydrophytic vegetation, and hydric soil parameters outlined by the USACE and DEQ in the above-mentioned guidance.

Field work was performed on April 20, 2024 to document current site conditions. As the study area is approximately eleven acres, transects were developed to verify that the site was thoroughly searched for wetlands and other WOTUS. Jurisdictional features were flagged with vinyl pink-glo flagging and were subsequently located via Global Positioning System (GPS) methods in the field on April 20, 2024.

IA reviewed observed weather data from the National Weather Service (NWS) prior to field work to review current hydrologic conditions. Precipitation and temperature data were reviewed for two weeks prior to field work, as noted in **Table 1** below.

Table 1. National Weather Service Observed Weather Data

Month	Day	Temperature (°F)			Precipitation (Inches)
		Maximum	Minimum	Average	
4	6	57	38	47.5	0.00
	7	65	34	49.5	0.00
	8	75	35	55.0	0.00
	9	80	49	64.5	0.00
	10	80	61	70.5	Trace
	11	71	64	67.5	0.05
	12	67	57	62.0	0.10
	13	67	46	56.5	Trace
	14	84	42	63.0	0.00
	15	85	25	71.5	Trace
	16	78	48	63.0	0.00
	17	74	59	66.5	Trace
	18	79	53	66.0	Trace
	19	57	53	55.0	0.01

Source: National Weather Service (https://www.weather.gov/wrh/Climate?wfo=lwx)

IA reviewed the Antecedent Precipitation Tool (APT) developed by the U.S. Environmental Protection Agency (EPA) and the USACE was utilized to determine whether field data was collected during normal climatic conditions (Exhibit 8). This tool calculates precipitation normalcy data and documents patterns from a 30-year record. The observed conditions and analysis of precipitation data documents that the delineation field work was conducted under a mild drought.

Study area photographs are included within Exhibit 9. Wetland delineation data points (Exhibit 10) were conducted utilizing the USACE Eastern Mountains and Piedmont Region Automated Wetland Determination Data Sheet (version 2.0) and reference the current 2020 National Wetland Plant List, version 3.5, to document the indicator status of individual plant species. In accordance with the USACE guidance, the vegetative sampling plot consists of a 30’ radius for the tree and woody vine strata, a 15’ radius for the sapling/shrub stratum and a 5’ radius for the herbaceous stratum. Primary and secondary wetland hydrology indicators were accessed at the data point location. A soil profile was classified to a depth of 18” denoting the soil matrix and presence or absence of redoximorphic features.

Assessments of the delineated stream channel and swales were conducted in the field to determine the flow regime within each reach. Methodologies utilized for these assessments were the DEQ Stream Identification Field Data Form (Exhibit 11A), the Fairfax County Department of Public Works and Environmental Services (DPWES) Perennial Stream Field Identification Protocol (Exhibit 11B), and the North Carolina Division of Water Quality (NCDWQ) Methodology for Identification of Intermittent and

Perennial Streams and Their Origins (Exhibit 11C), Version 4.11, effective September 1, 2010.

These assessments are based on hydrological, physical and biological characteristics within a stream channel. The Fairfax County DPWES protocol is utilized to determine if a stream channel is perennial or intermittent based on the overall score along with supporting information. Per this protocol, a perennial stream channel is defined as a 'body of water flowing in a natural or man-made channel year-round, except during periods of drought.' In addition, an intermittent stream channel is defined as a 'body of water flowing in a natural or man-made channel that contains water for only part of the year.' Based on the Fairfax County DPWES protocol, a stream channel is perennial if the overall score is greater than or equal to 25 points (FC DPWES, 2003).

The NCDWQ methodology was developed to identify ephemeral, intermittent and perennial stream channel using geomorphic, hydrologic and biological characteristics. Based on this methodology, an ephemeral stream channel is 'a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events.' This stream classification 'lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water' (NCDWQ, 2010). Based on the NCDWQ methodology, a stream channel is at least intermittent if the overall score is greater than or equal to 19 points and perennial if the score is over 30 points.

3.0 RESULTS

One intermittent stream channel located within a manmade stormwater swale and retention feature was located within the study area. This feature, as well as study area photographs and data point locations, is depicted within the Wetlands and WOTUS Delineation Map (Exhibit 12). Feature-specific descriptions are included in **Table 2** and in the narrative below.

Table 2. Summary of Wetlands and WOTUS Within Study Area

WARRENTON UMC							
SUMMARY OF WETLANDS AND WOTUS WITHIN STUDY AREA							
Water ID	Latitude	Longitude	Cowardin Class	Stream (Linear Feet)	Area (Square Feet)	Area (Acres)	Class of Aquatic Resource (Tidal/Non-tidal, Section 10/404, etc.
S-1	38.71970	-77.80290	R4	272	973	0.02	Non-tidal, Section 401
S-2	38.71990	-77.80530	R4	120	202	<0.01	Non-tidal, Section 401
TOTAL				392	1,175	0.03	

- Feature S-1: This feature is located in the eastern portion of the study area and is located within a manmade stormwater swale constructed during the development of the property (Exhibit #9, Photos 5-8). This feature exhibits a discontinuous ordinary

high-water mark (OHWM) and was identified as a stream channel utilizing the DEQ Stream Identification Field Data Form. An assessment utilizing the Fairfax County DPWES and NCDWQ protocols identified the stream as intermittent, with scores of 9 and 16.5, respectively.

A wetland delineation data point (Exhibit #10, Data Point #1) was conducted to document the conditions at the downslope end of this feature where an OHWM is absent. As noted within this data point, hydric soil and wetland hydrology parameters were satisfied at this location. However, the feature lacks hydrophytic vegetation. Therefore, this feature was classified as an intermittent (R4) stream channel.

- Feature S-2: This feature, located within a stormwater retention basin, was determined to be an R4 stream channel. Due to obstruction by a security fence, the approximate limit of the stream channel within the retention basin is depicted on the Wetland and WOTUS Delineation Map (Exhibit #12).

Several upland swales are located within and immediately adjacent to the study area. These topographic features lack hydric soils and a continuous OHWM. These features are noted on the Wetland and WOTUS Delineation Map and shown in the Study Area Photographs (Exhibit 9).

As previously noted, these stormwater conveyance and retention features were constructed at the time of site development. The intermittent stream channel developed within these manmade features.

4.0 Conclusion

IA conducted a wetland delineation within the WUMC study area in the Town of Warrenton Virginia. Upon completion of the field work, an unnamed R4 stream channel located within manmade stormwater features was delineated within the study area. Offsite stormwater pipes and collected surface runoff provides the hydrologic input for this R4 stream channel. As described in detail above, a total of 392 linear feet (LF), 1,175 square feet (SF) and 0.03 acre (AC) of R4 stream channel is located within the study area.

This wetland delineation was completed pursuant to guidance issued by the USACE, FGDC, and DEQ. Per the United States Supreme Court *Sackett v. Environmental Protection Agency (Sackett)* decision in May 2023, the definition of WOTUS has been revised. The Supreme Court determined that federal jurisdiction of features under the Clean Water Act (CWA) "extends only to those wetlands with a continuous surface connection to bodies that are waters of the United States in their own right, such that they are indistinguishable from those waters."

Based on IA's best professional judgement and the guidance noted above, it is anticipated that the R4 stream channel within the WUMC study area is jurisdictional to DEQ only as it lacks a continuous surface connection to bodies of water that can be classified as WOTUS under the *Sackett* Decision. Coordination with the USACE and DEQ to confirm each agency's determination on the jurisdiction of these features is strongly advised.

This study documents current field conditions as of April 2024 and available agency database information at the time of the study. Such information and field conditions may be subject to change in the future. Pursuant to DEQ guidance, this study has been conducted by a certified PWD and VSWD.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Professional Name:	Lauren Conner
Certification No.:	VSWD No. 0045
Signature:	
Date:	April 29, 2024

5.0 REFERENCES

Fairfax County Department of Public Works and Environmental Services (DPWES). 2003. *Perennial Stream Field Identification Protocol*. Available online at https://www.fairfaxcounty.gov/publicworks/sites/publicworks/files/assets/documents/pdf/03_ps_protocol_ada.pdf

Federal Geographic Data Committee. 2013. Classification of wetland and deepwater habitats of the United States. FGDC-STD-004-2013. Second Edition. Wetlands Subcommittee, Federal Geographic Data Committee and U.S. Fish and Wildlife Service, Washington, DC.

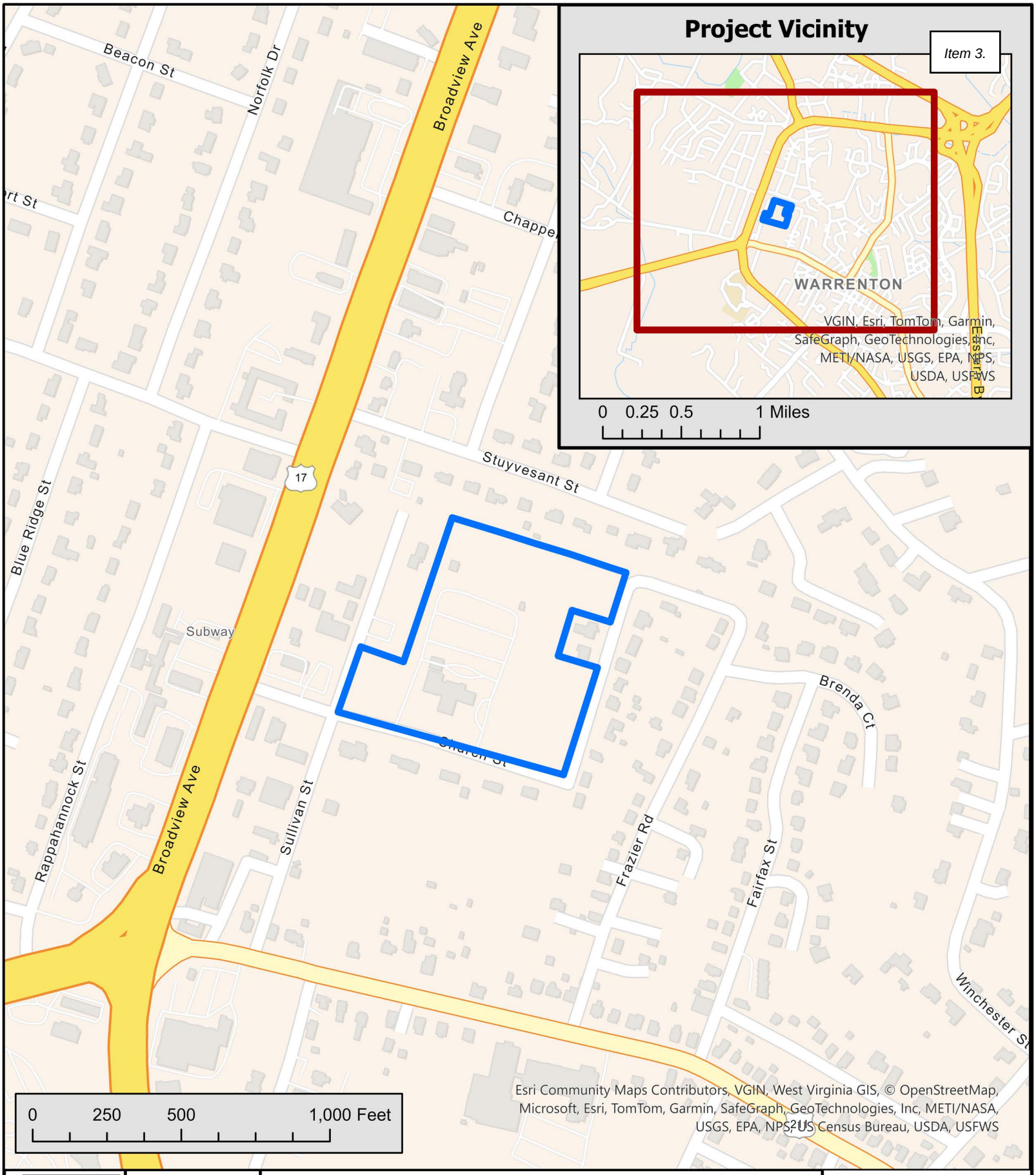
NC Division of Water Quality. 2010. *Methodology for Identification of Intermittent and Perennial Streams and their Origins, Version 4.11*. North Carolina Department of Environment and Natural Resources, Division of Water Quality, Raleigh, NC. Available online at https://files.nc.gov/ncdeq/Water%20Quality/Surface%20Water%20Protection/401/Policies_Guides_Manuals/StreamID_v_4point11_Final_sept_01_2010.pdf

Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at the following link: http://websoilsurvey.sc.egov.usda.gov/.

U.S. Army Corps of Engineers, 1987. Army Corps of Engineers Environmental Laboratory Corps of Engineers Wetlands Delineation Manual. Wetland Research Program. Technical Report 87-1.

U.S. Army Corps of Engineers 2012. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0). ERDC/EL TR-10-20. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

U.S. Department of Homeland Security. Federal Emergency Management Agency (FEMA). FEMA Flood Map Service Center. Available online at https://msc.fema.gov/portal/home.



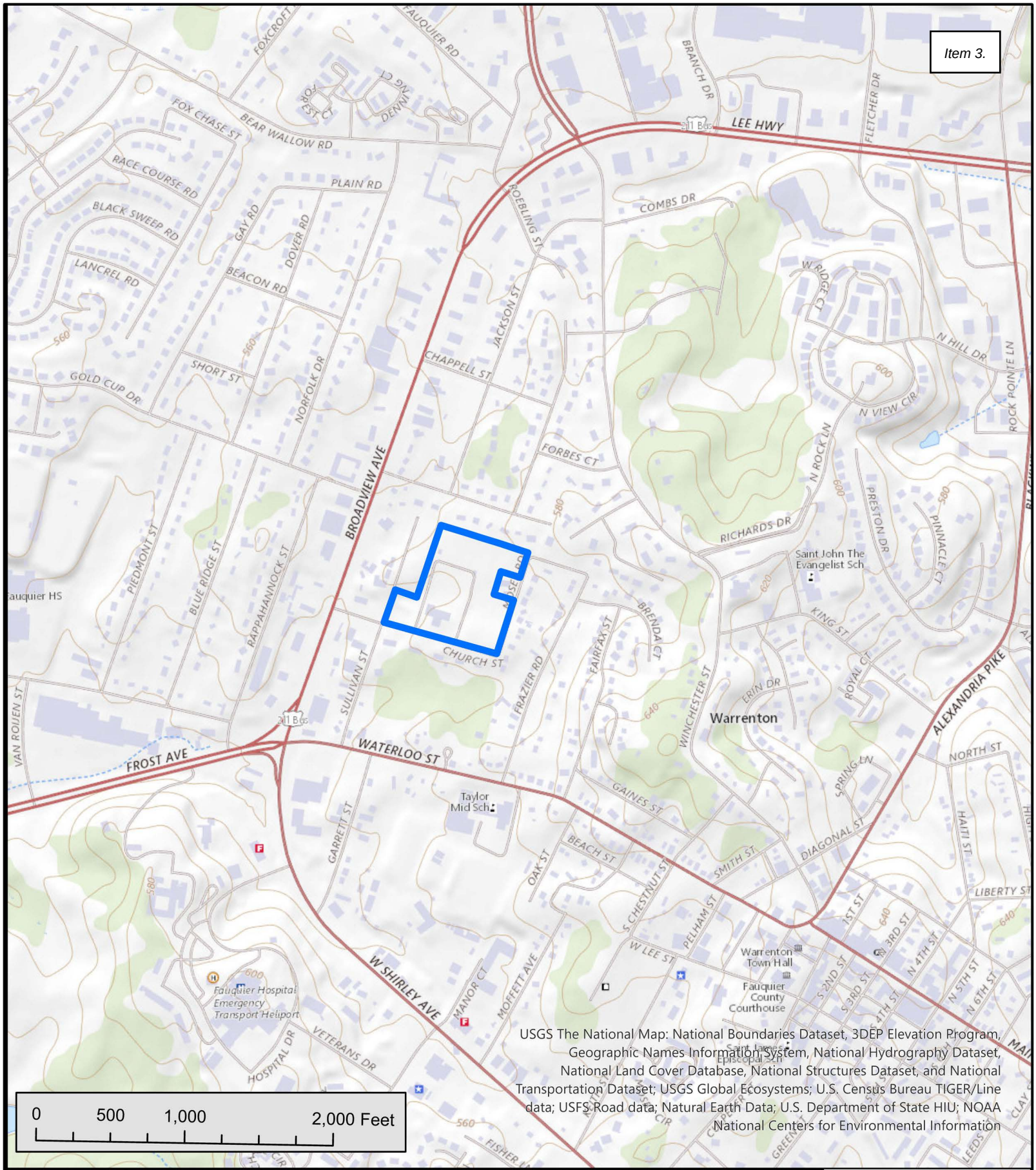
Warrenton UMC

Exhibit #1: Vicinity Map

Latitude: 38.7201
Longitude: -77.8038
LRR P; MLRA 138

Legend

- Vicinity
- Study Area



USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State HIU; NOAA National Centers for Environmental Information

N

Warrenton UMC

Exhibit #2:
USGS Topographic Map
Warrenton, Virginia

Legend

Study Area

375

N

Warrenton UMC

Exhibit #3:
NAIP Aerial Imagery Map

Legend

Study Area

376

U.S. Fish and Wildlife Service
National Wetlands Inventory

Warrenton UMC

April 20, 2024

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

National Wetlands Inventory (NWI)
This page was produced by the NWI mapper

United States Department of Agriculture

NRCS

Natural Resources Conservation Service

A product of the National Cooperative Soil Survey, a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations, and local participants

Custom Soil Resource Report for Fauquier County, Virginia

Study Area

Preface

Soil surveys contain information that affects land use planning in survey areas. They highlight soil limitations that affect various land uses and provide information about the properties of the soils in the survey areas. Soil surveys are designed for many different users, including farmers, ranchers, foresters, agronomists, urban planners, community officials, engineers, developers, builders, and home buyers. Also, conservationists, teachers, students, and specialists in recreation, waste disposal, and pollution control can use the surveys to help them understand, protect, or enhance the environment.

Various land use regulations of Federal, State, and local governments may impose special restrictions on land use or land treatment. Soil surveys identify soil properties that are used in making various land use or land treatment decisions. The information is intended to help the land users identify and reduce the effects of soil limitations on various land uses. The landowner or user is responsible for identifying and complying with existing laws and regulations.

Although soil survey information can be used for general farm, local, and wider area planning, onsite investigation is needed to supplement this information in some cases. Examples include soil quality assessments (http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/health/) and certain conservation and engineering applications. For more detailed information, contact your local USDA Service Center (https://offices.sc.egov.usda.gov/locator/app?agency=nrcs) or your NRCS State Soil Scientist (http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/contactus/?cid=nrcs142p2_053951).

Great differences in soil properties can occur within short distances. Some soils are seasonally wet or subject to flooding. Some are too unstable to be used as a foundation for buildings or roads. Clayey or wet soils are poorly suited to use as septic tank absorption fields. A high water table makes a soil poorly suited to basements or underground installations.

The National Cooperative Soil Survey is a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations, and local agencies. The Natural Resources Conservation Service (NRCS) has leadership for the Federal part of the National Cooperative Soil Survey.

Information about soils is updated periodically. Updated information is available through the NRCS Web Soil Survey, the site for official soil survey information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require

alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Contents

Preface.....2
How Soil Surveys Are Made.....5
Soil Map.....8
Soil Map.....9
Legend.....10
Map Unit Legend.....11
Map Unit Descriptions.....11
Fauquier County, Virginia.....13
17B—Middleburg loam, 2 to 7 percent slopes, frequently flooded.....13
45B—Fauquier silt loam, 2 to 7 percent slopes.....14
References.....16

How Soil Surveys Are Made

Soil surveys are made to provide information about the soils and miscellaneous areas in a specific area. They include a description of the soils and miscellaneous areas and their location on the landscape and tables that show soil properties and limitations affecting various uses. Soil scientists observed the steepness, length, and shape of the slopes; the general pattern of drainage; the kinds of crops and native plants; and the kinds of bedrock. They observed and described many soil profiles. A soil profile is the sequence of natural layers, or horizons, in a soil. The profile extends from the surface down into the unconsolidated material in which the soil formed or from the surface down to bedrock. The unconsolidated material is devoid of roots and other living organisms and has not been changed by other biological activity.

Currently, soils are mapped according to the boundaries of major land resource areas (MLRAs). MLRAs are geographically associated land resource units that share common characteristics related to physiography, geology, climate, water resources, soils, biological resources, and land uses (USDA, 2006). Soil survey areas typically consist of parts of one or more MLRA.

The soils and miscellaneous areas in a survey area occur in an orderly pattern that is related to the geology, landforms, relief, climate, and natural vegetation of the area. Each kind of soil and miscellaneous area is associated with a particular kind of landform or with a segment of the landform. By observing the soils and miscellaneous areas in the survey area and relating their position to specific segments of the landform, a soil scientist develops a concept, or model, of how they were formed. Thus, during mapping, this model enables the soil scientist to predict with a considerable degree of accuracy the kind of soil or miscellaneous area at a specific location on the landscape.

Commonly, individual soils on the landscape merge into one another as their characteristics gradually change. To construct an accurate soil map, however, soil scientists must determine the boundaries between the soils. They can observe only a limited number of soil profiles. Nevertheless, these observations, supplemented by an understanding of the soil-vegetation-landscape relationship, are sufficient to verify predictions of the kinds of soil in an area and to determine the boundaries.

Soil scientists recorded the characteristics of the soil profiles that they studied. They noted soil color, texture, size and shape of soil aggregates, kind and amount of rock fragments, distribution of plant roots, reaction, and other features that enable them to identify soils. After describing the soils in the survey area and determining their properties, the soil scientists assigned the soils to taxonomic classes (units). Taxonomic classes are concepts. Each taxonomic class has a set of soil characteristics with precisely defined limits. The classes are used as a basis for comparison to classify soils systematically. Soil taxonomy, the system of taxonomic classification used in the United States, is based mainly on the kind and character of soil properties and the arrangement of horizons within the profile. After the soil

scientists classified and named the soils in the survey area, they compared the individual soils with similar soils in the same taxonomic class in other areas so that they could confirm data and assemble additional data based on experience and research.

The objective of soil mapping is not to delineate pure map unit components; the objective is to separate the landscape into landforms or landform segments that have similar use and management requirements. Each map unit is defined by a unique combination of soil components and/or miscellaneous areas in predictable proportions. Some components may be highly contrasting to the other components of the map unit. The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The delineation of such landforms and landform segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, onsite investigation is needed to define and locate the soils and miscellaneous areas.

Soil scientists make many field observations in the process of producing a soil map. The frequency of observation is dependent upon several factors, including scale of mapping, intensity of mapping, design of map units, complexity of the landscape, and experience of the soil scientist. Observations are made to test and refine the soil-landscape model and predictions and to verify the classification of the soils at specific locations. Once the soil-landscape model is refined, a significantly smaller number of measurements of individual soil properties are made and recorded. These measurements may include field measurements, such as those for color, depth to bedrock, and texture, and laboratory measurements, such as those for content of sand, silt, clay, salt, and other components. Properties of each soil typically vary from one point to another across the landscape.

Observations for map unit components are aggregated to develop ranges of characteristics for the components. The aggregated values are presented. Direct measurements do not exist for every property presented for every map unit component. Values for some properties are estimated from combinations of other properties.

While a soil survey is in progress, samples of some of the soils in the area generally are collected for laboratory analyses and for engineering tests. Soil scientists interpret the data from these analyses and tests as well as the field-observed characteristics and the soil properties to determine the expected behavior of the soils under different uses. Interpretations for all of the soils are field tested through observation of the soils in different uses and under different levels of management. Some interpretations are modified to fit local conditions, and some new interpretations are developed to meet local needs. Data are assembled from other sources, such as research information, production records, and field experience of specialists. For example, data on crop yields under defined levels of management are assembled from farm records and from field or plot experiments on the same kinds of soil.

Predictions about soil behavior are based not only on soil properties but also on such variables as climate and biological activity. Soil conditions are predictable over long periods of time, but they are not predictable from year to year. For example, soil scientists can predict with a fairly high degree of accuracy that a given soil will have a high water table within certain depths in most years, but they cannot predict that a high water table will always be at a specific level in the soil on a specific date.

After soil scientists located and identified the significant natural bodies of soil in the survey area, they drew the boundaries of these bodies on aerial photographs and

identified each as a specific map unit. Aerial photographs show trees, buildings, fields, roads, and rivers, all of which help in locating boundaries accurately.

Soil Map

The soil map section includes the soil map for the defined area of interest, a list of soil map units on the map and extent of each map unit, and cartographic symbols displayed on the map. Also presented are various metadata about data used to produce the map, and a description of each soil map unit.

Custom Soil Resource Report
Soil Map

Map Scale: 1:2,240 if printed on A landscape (11" x 8.5") sheet.

N

Meters: 0 30 60 120 180

Feet: 0 100 200 400 600

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 18N WGS84

MAP LEGEND

Area of Interest (AOI)
- Area of Interest (AOI)

Soils
- Soil Map Unit Polygons
- Soil Map Unit Lines
- Soil Map Unit Points

Special Point Features
- Blowout
- Borrow Pit
- Clay Spot
- Closed Depression
- Gravel Pit
- Gravelly Spot
- Landfill
- Lava Flow
- Marsh or swamp
- Mine or Quarry
- Miscellaneous Water
- Perennial Water
- Rock Outcrop
- Saline Spot
- Sandy Spot
- Severely Eroded Spot
- Sinkhole
- Slide or Slip
- Sodic Spot
- Spoil Area
- Stony Spot
- Very Stony Spot
- Wet Spot
- Other
- Special Line Features

Water Features
- Streams and Canals

Transportation
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

Background
- Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:12,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Fauquier County, Virginia
Survey Area Data: Version 19, Aug 25, 2023

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jul 13, 2022—Oct 6, 2022

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
17B	Middleburg loam, 2 to 7 percent slopes, frequently flooded	4.3	40.6%
45B	Fauquier silt loam, 2 to 7 percent slopes	6.3	59.4%
Totals for Area of Interest		**10.7**	**100.0%**

Map Unit Descriptions

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

Most minor soils have properties similar to those of the dominant soil or soils in the map unit, and thus they do not affect use and management. These are called noncontrasting, or similar, components. They may or may not be mentioned in a particular map unit description. Other minor components, however, have properties and behavioral characteristics divergent enough to affect use or to require different management. These are called contrasting, or dissimilar, components. They generally are in small areas and could not be mapped separately because of the scale used. Some small areas of strongly contrasting soils or miscellaneous areas are identified by a special symbol on the maps. If included in the database for a given area, the contrasting minor components are identified in the map unit descriptions along with some characteristics of each. A few areas of minor components may not have been observed, and consequently they are not mentioned in the descriptions, especially where the pattern was so complex that it was impractical to make enough observations to identify all the soils and miscellaneous areas on the landscape.

The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The objective of mapping is not to delineate pure taxonomic classes but rather to separate the landscape into landforms or landform segments that have similar use and management requirements. The delineation of such segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, however,

onsite investigation is needed to define and locate the soils and miscellaneous areas.

An identifying symbol precedes the map unit name in the map unit descriptions. Each description includes general facts about the unit and gives important soil properties and qualities.

Soils that have profiles that are almost alike make up a *soil series*. Except for differences in texture of the surface layer, all the soils of a series have major horizons that are similar in composition, thickness, and arrangement.

Soils of one series can differ in texture of the surface layer, slope, stoniness, salinity, degree of erosion, and other characteristics that affect their use. On the basis of such differences, a soil series is divided into *soil phases*. Most of the areas shown on the detailed soil maps are phases of soil series. The name of a soil phase commonly indicates a feature that affects use or management. For example, Alpha silt loam, 0 to 2 percent slopes, is a phase of the Alpha series.

Some map units are made up of two or more major soils or miscellaneous areas. These map units are complexes, associations, or undifferentiated groups.

A *complex* consists of two or more soils or miscellaneous areas in such an intricate pattern or in such small areas that they cannot be shown separately on the maps. The pattern and proportion of the soils or miscellaneous areas are somewhat similar in all areas. Alpha-Beta complex, 0 to 6 percent slopes, is an example.

An *association* is made up of two or more geographically associated soils or miscellaneous areas that are shown as one unit on the maps. Because of present or anticipated uses of the map units in the survey area, it was not considered practical or necessary to map the soils or miscellaneous areas separately. The pattern and relative proportion of the soils or miscellaneous areas are somewhat similar. Alpha-Beta association, 0 to 2 percent slopes, is an example.

An *undifferentiated group* is made up of two or more soils or miscellaneous areas that could be mapped individually but are mapped as one unit because similar interpretations can be made for use and management. The pattern and proportion of the soils or miscellaneous areas in a mapped area are not uniform. An area can be made up of only one of the major soils or miscellaneous areas, or it can be made up of all of them. Alpha and Beta soils, 0 to 2 percent slopes, is an example.

Some surveys include *miscellaneous areas*. Such areas have little or no soil material and support little or no vegetation. Rock outcrop is an example.

Fauquier County, Virginia

17B—Middleburg loam, 2 to 7 percent slopes, frequently flooded

Map Unit Setting

National map unit symbol: 21m5c
Elevation: 160 to 1,510 feet
Mean annual precipitation: 34 to 46 inches
Mean annual air temperature: 43 to 66 degrees F
Frost-free period: 174 to 211 days
Farmland classification: Prime farmland if protected from flooding or not frequently flooded during the growing season

Map Unit Composition

Middleburg and similar soils: 85 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Middleburg

Setting

Landform: Drainageways
Landform position (two-dimensional): Toeslope
Landform position (three-dimensional): Base slope
Down-slope shape: Linear
Across-slope shape: Convex
Parent material: Alluvium derived from igneous and metamorphic rock and/or colluvium derived from igneous and metamorphic rock

Typical profile

H1 - 0 to 9 inches: loam
H2 - 9 to 48 inches: silty clay loam
H3 - 48 to 61 inches: silt loam

Properties and qualities

Slope: 2 to 7 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Well drained
Runoff class: Low
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 5.95 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: Frequent
Frequency of ponding: None
Available water supply, 0 to 60 inches: High (about 10.0 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 2w
Hydrologic Soil Group: A
Ecological site: F148XY027PA - Moist, Piedmont - felsic, Riparian Zone, Ecotonal Meadow-Shrub-Forest
Hydric soil rating: No

45B—Fauquier silt loam, 2 to 7 percent slopes

Map Unit Setting

National map unit symbol: 21m76
Elevation: 310 to 1,200 feet
Mean annual precipitation: 34 to 46 inches
Mean annual air temperature: 43 to 66 degrees F
Frost-free period: 174 to 211 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Fauquier and similar soils: 85 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Fauquier

Setting

Landform: Interfluves
Landform position (two-dimensional): Summit, shoulder
Landform position (three-dimensional): Interfluve
Down-slope shape: Linear
Across-slope shape: Convex
Parent material: Residuum weathered from greenstone

Typical profile

H1 - 0 to 6 inches: silt loam
H2 - 6 to 36 inches: clay
H3 - 36 to 60 inches: silt loam

Properties and qualities

Slope: 2 to 7 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Well drained
Runoff class: Low
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water supply, 0 to 60 inches: High (about 9.2 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B
Ecological site: F148XY026PA - Moist, High Base-Saturation, Upland, Mixed Oak - Hickory - Conifer Forest
Hydric soil rating: No

References

American Association of State Highway and Transportation Officials (AASHTO). 2004. Standard specifications for transportation materials and methods of sampling and testing. 24th edition.

American Society for Testing and Materials (ASTM). 2005. Standard classification of soils for engineering purposes. ASTM Standard D2487-00.

Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of wetlands and deep-water habitats of the United States. U.S. Fish and Wildlife Service FWS/OBS-79/31.

Federal Register. July 13, 1994. Changes in hydric soils of the United States.

Federal Register. September 18, 2002. Hydric soils of the United States.

Hurt, G.W., and L.M. Vasilas, editors. Version 6.0, 2006. Field indicators of hydric soils in the United States.

National Research Council. 1995. Wetlands: Characteristics and boundaries.

Soil Survey Division Staff. 1993. Soil survey manual. Soil Conservation Service. U.S. Department of Agriculture Handbook 18. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/soils/?cid=nrcs142p2_054262

Soil Survey Staff. 1999. Soil taxonomy: A basic system of soil classification for making and interpreting soil surveys. 2nd edition. Natural Resources Conservation Service, U.S. Department of Agriculture Handbook 436. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/soils/?cid=nrcs142p2_053577

Soil Survey Staff. 2010. Keys to soil taxonomy. 11th edition. U.S. Department of Agriculture, Natural Resources Conservation Service. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/soils/?cid=nrcs142p2_053580

Tiner, R.W., Jr. 1985. Wetlands of Delaware. U.S. Fish and Wildlife Service and Delaware Department of Natural Resources and Environmental Control, Wetlands Section.

United States Army Corps of Engineers, Environmental Laboratory. 1987. Corps of Engineers wetlands delineation manual. Waterways Experiment Station Technical Report Y-87-1.

United States Department of Agriculture, Natural Resources Conservation Service. National forestry manual. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/home/?cid=nrcs142p2_053374

United States Department of Agriculture, Natural Resources Conservation Service. National range and pasture handbook. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/landuse/rangepasture/?cid=stelprdb1043084

United States Department of Agriculture, Natural Resources Conservation Service. National soil survey handbook, title 430-VI. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/scientists/?cid=nrcs142p2_054242

United States Department of Agriculture, Natural Resources Conservation Service. 2006. Land resource regions and major land resource areas of the United States, the Caribbean, and the Pacific Basin. U.S. Department of Agriculture Handbook 296. http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/soils/?cid=nrcs142p2_053624

United States Department of Agriculture, Soil Conservation Service. 1961. Land capability classification. U.S. Department of Agriculture Handbook 210. http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_052290.pdf

National Flood Hazard Layer FIRMette

FEMA

77°48'33"W 38°43'25"N

77°47'56"W 38°42'57"N

0 250 500 1,000 1,500 2,000 Feet

1:6,000

Basemap Imagery Source: USGS National Map 2023

Legend

Item 3.

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR F UT

SPECIAL FLOOD HAZARD AREAS
- Without Base Flood Elevation (BFE) *Zone A, V, A99*
- With BFE or Depth *Zone AE, AO, AH, VE, AR*
- Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD
- 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile *Zone X*
- Future Conditions 1% Annual Chance Flood Hazard *Zone X*
- Area with Reduced Flood Risk due to Levee. See Notes. *Zone X*
- Area with Flood Risk due to Levee *Zone D*

OTHER AREAS
- NO SCREEN Area of Minimal Flood Hazard *Zone X*
- Effective LOMRs
- Area of Undetermined Flood Hazard *Zone D*

GENERAL STRUCTURES
- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

OTHER FEATURES
- 20.2 Cross Sections with 1% Annual Chance
- 17.5 Water Surface Elevation
- Coastal Transect
- 513 Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

MAP PANELS
- Digital Data Available
- No Digital Data Available
- Unmapped

N

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 4/23/2024 at 12:22 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community id FIRM panel number, and FIRM effective date. Map i unmapped and unmodernized areas cannot be use regulatory purposes.

WetCat Report

April 19, 2024 - Created from the Wetland Condition Assessment Tool Viewer (WetCAT)

- Study Area
- Virginia-APNEP Boundary Combined
- Hydrologic Units (12-digit)

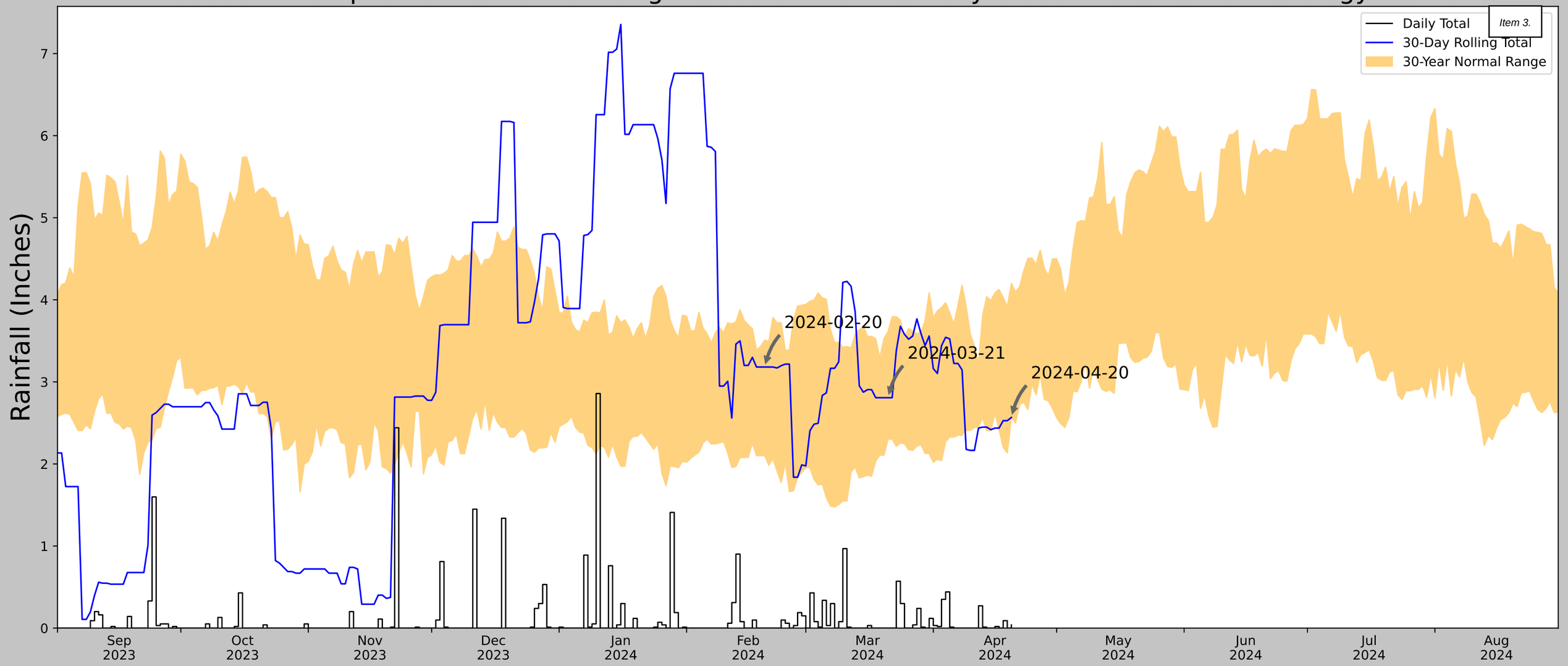
0 0.01 0.03 0.05 mi
0 0.02 0.04 0.09 km

Maxar, Microsoft
Esri Community Maps Contributors, VGIN, West Virginia GIS, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/ NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

VIMS | William & Mary
Virginia Institute of Marine Science
Center for Coastal Resources Management

DEQ
Virginia Department of Environmental Quality

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	38.721, -77.8038
Observation Date	2024-04-20
Elevation (ft)	546.853
Drought Index (PDSI)	Mild drought (2024-03)
WebWIMP H_2O Balance	Wet Season

30 Days Ending	30^{th} %ile (in)	70^{th} %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2024-04-20	2.56811	4.200394	2.566929	Dry	1	3	3
2024-03-21	2.301181	3.611811	2.807087	Normal	2	2	4
2024-02-20	2.101181	3.509055	3.181102	Normal	2	1	2
Result							Drier than Normal - 9

US Army Corps of Engineers

ERDC

Figures and tables made by the Antecedent Precipitation Tool Version 2.0

Developed by: U.S. Army Corps of Engineers and U.S. Army Engineer Research and Development Center

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
RIXEYVILLE 2.5 N	38.6169, -77.9696	492.126	11.478	54.727	5.793	6145	88
RIXEYVILLE 6.1 N	38.6639, -77.9756	532.152	3.263	40.026	1.599	270	0
RIXEYVILLE 6.3 NNE	38.6696, -77.9467	481.955	3.845	10.171	1.769	65	0
CULPEPER 2.6 NW	38.5015, -78.0302	518.045	8.619	25.919	4.102	2	2
WARRENTON 6.1 S	38.628, -77.808	445.866	8.757	46.26	4.346	89	0
BOSTON 4 SE	38.5458, -78.0981	589.895	8.503	97.769	4.658	2547	0
WARRENTON 3 SE	38.6811, -77.7678	500.0	11.758	7.874	5.384	2205	0
SPERRYVILLE	38.6553, -78.2272	750.0	14.154	257.874	10.019	27	0
THE PLAINS 2 NNE	38.8947, -77.7547	529.856	22.416	37.73	10.933	2	0

Warrenton United Methodist Church
Exhibit #9
Study Area Photographs

1. Looking southeast at the upland swale located in the northwestern corner of the study area. No state waters or Waters of the U.S. (WOTUS) are located in this portion of the study area.

2. Looking south at the maintained lawn located in the northern portion of the study area. No state waters or WOTUS are located in this portion of the study area.

Warrenton United Methodist Church
Exhibit #9
Study Area Photographs

3. Looking south at the swale located in the northeastern corner of the study area. No state waters or WOTUS are located in this portion of the study area.

4. Looking at the yard inlet located to the east, upslope, of the stormwater swale located in the eastern portion of the study area. This inlet conveys stormwater flow along Moser Road and connected to underground stormwater pipes and outfalls west of Moser Road.

Warrenton United Methodist Church
Exhibit #9
Study Area Photographs

5. Looking east (upslope) at the stormwater swale (Feature S-1) located along the eastern portion of the study area. Flow observed within this feature is conveyed under Moser Road onto the study area. This portion of the stormwater swale contains a contiguous ordinary high water mark (OHWM) and has been classified as an intermittent stream channel.

6. Looking west (downslope) at the stormwater swale (Feature S-1) located along the eastern portion of the study area. This portion of the stormwater swale exhibits a discontinuous OHWM; however, it has been classified as an intermittent stream channel.

Warrenton United Methodist Church
Exhibit #9
Study Area Photographs

7. Looking west (downslope) at Data Point #1 located within the stormwater swale (Feature S-1) located in the eastern portion of the study area. Wetland hydrology and hydric soil indicators are satisfied; however, hydrophytic vegetation is not present within this swale. A continuous OHWM is lacking in this portion of this feature. However, this feature has been classified as an intermittent stream channel due to the upslope characteristics.

8. Looking east (upslope) at Data Point #2 located adjacent to the stormwater swale located in the eastern portion of the study area. The hydric soil indicator is satisfied at this location; however, wetland hydrology and hydrophytic vegetation is not present within this swale.

Warrenton United Methodist Church
Exhibit #9
Study Area Photographs

9. Looking north at the upland swale located in the central portion of the study area. Hydric soils and an ordinary high water mark (OHWM) are absent. No state waters or other WOTUS are located in this portion of the study area.

10. Looking at a yard inlet located within the parking lot in the central portion of the study area.

Warrenton United Methodist Church
Exhibit #9
Study Area Photographs

11. Looking southwest at the swale located in the southwestern portion of the study area. No state waters or WOTUS are located in this portion of the study area.

12. Looking east at the stormwater swale (Feature S-2) located within a constructed stormwater retention feature located at the western portion of the study area. A continuous ordinary high water mark and hydrophytic vegetation are not present within this feature. No wetlands or WOTUS are located within this portion of the study area.

Warrenton United Methodist Church
Exhibit #9
Study Area Photographs

13. Looking south at the upland swale located along Sullivan Street. No OHWM or wetland indicators are present within this swale. No state waters or other WOTUS are located in this portion of the study area.

14. Looking northeast at the Church located within the southern portion of the study area. No state waters or other WOTUS are located in this portion of the study area.

U.S. Army Corps of Engineers
WETLAND DETERMINATION DATA SHEET – Eastern Mountains and Piedmont Region
See ERDC/EL TR-12-9; the proponent agency is CECW-CO-R

OMB Control #: 0710-0024, Exp:11/30/2
Requirement Control Symbol EXEMPT:
(Authority: AR 335-15, paragraph 5-2a)

Project/Site: Warrenton UMC City/County: Town of Warrenton Sampling Date: 4/20/24

Applicant/Owner: RDA Civil State: VA Sampling Point: 1

Investigator(s): LLC Section, Township, Range:

Landform (hillside, terrace, etc.): Swale Local relief (concave, convex, none): Concave Slope (%): 2-7

Subregion (LRR or MLRA): LRR S, MLRA 148 Lat: 38.7198 Long: -77.8034 Datum: NAD83

Soil Map Unit Name: 17B - Middleburg Loam NWI classification: None

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No ____ (If no, explain in Remarks.)

Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____

Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes ____	No X	**Is the Sampled Area**
Hydric Soil Present?	Yes X	No ____	**within a Wetland?** **Yes** ____ **No** X
Wetland Hydrology Present?	Yes X	No ____	

Remarks:
Two of the three wetland parameters (i.e., hydric soil and wetland hydrology) are satisfied at this data point, which characterizes the stormwater swale located in the esatern portion of the study area.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- X Surface Water (A1)
- X High Water Table (A2)
- X Saturation (A3)
- ___ Water Marks (B1)
- ___ Sediment Deposits (B2)
- ___ Drift Deposits (B3)
- ___ Algal Mat or Crust (B4)
- ___ Iron Deposits (B5)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Aquatic Fauna (B13)
- ___ True Aquatic Plants (B14)
- ___ Hydrogen Sulfide Odor (C1)
- ___ Oxidized Rhizospheres on Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Tilled Soils (C6)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ___ Surface Soil Cracks (B6)
- ___ Sparsely Vegetated Concave Surface (B8)
- X Drainage Patterns (B10)
- ___ Moss Trim Lines (B16)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Stunted or Stressed Plants (D1)
- ___ Geomorphic Position (D2)
- ___ Shallow Aquitard (D3)
- ___ Microtopographic Relief (D4)
- ___ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X	No ____	Depth (inches): 2
Water Table Present?	Yes X	No ____	Depth (inches): 0
Saturation Present? (includes capillary fringe)	Yes X	No ____	Depth (inches): 0

Wetland Hydrology Present? **Yes** X **No** ____

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:
Date of latest rainfall: 4/19/24 0.01".

Remarks:

VEGETATION (Four Strata) – Use scientific names of plants. Sampling Point: 1

Tree Stratum (Plot size: 30)	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
5.			
6.			
7.			
	=Total Cover		
50% of total cover:	20% of total cover:		
Sapling/Shrub Stratum (Plot size: 15)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	=Total Cover		
50% of total cover:	20% of total cover:		
Herb Stratum (Plot size: 5)			
1. *Eleocharis obtusa*	20	Yes	OBL
2. *Ludwigia alternifolia*	5	No	FACW
3. *Poa pratensis*	45	Yes	FACU
4. *Glechoma hederacea*	15	No	FACU
5. *Taraxacum officinale*	10	No	FACU
6. *Lamium purpureum*	15	No	UPL
7.			
8.			
9.			
10.			
11.			
	110 =Total Cover		
50% of total cover: 55	20% of total cover: 22		
Woody Vine Stratum (Plot size: 30)			
1.			
2.			
3.			
4.			
5.			
	=Total Cover		
50% of total cover:	20% of total cover:		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 1 (A)

Total Number of Dominant Species Across All Strata: 2 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 50.0% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species	20	x 1 =	20
FACW species	5	x 2 =	10
FAC species	0	x 3 =	0
FACU species	70	x 4 =	280
UPL species	15	x 5 =	75
Column Totals:	110 (A)		385 (B)

Prevalence Index = B/A = 3.50

Hydrophytic Vegetation Indicators:

___ 1 - Rapid Test for Hydrophytic Vegetation

___ 2 - Dominance Test is >50%

___ 3 - Prevalence Index is ≤3.0[1]

___ 4 - Morphological Adaptations[1] (Provide supportin data in Remarks or on a separate sheet)

___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must b present, unless disturbed or problematic.

Definitions of Four Vegetation Strata:

Tree – Woody plants, excluding vines, 3 in. (7.6 cm) o more in diameter at breast height (DBH), regardless o height.

Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than or equal to 3.28 ft m) tall.

Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall.

Woody Vine – All woody vines greater than 3.28 ft in height.

Hydrophytic Vegetation Present? **Yes** ___ **No** X

Remarks: (Include photo numbers here or on a separate sheet.)
No tree, sapling/shrub or woody vine strata present.

SOIL

Sampling Point: 1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	Matrix %	Redox Features Color (moist)	Redox Features %	Type[1]	Loc[2]	Texture	Remarks
0-4	10YR 3/2	90	5YR 5/8	10	C	M	Loamy/Clayey	Prominent redox concentrations
								Many small rocks
4-18	5Y 4/2	95	10YR 4/3	5	C	M	Loamy/Clayey	Distinct redox concentrations
								Gravel present

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- X Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7)
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Mucky Mineral (F1) **(MLRA 136)**
- ___ Loamy Gleyed Matrix (F2)
- X Depleted Matrix (F3)
- X Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 122, 136)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147, 148)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Red Parent Material (F21) **(outside MLRA 127, 147, 148)**
- ___ Very Shallow Dark Surface (F22)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? **Yes** X **No** ___

Remarks:

U.S. Army Corps of Engineers
WETLAND DETERMINATION DATA SHEET – Eastern Mountains and Piedmont Region
See ERDC/EL TR-12-9; the proponent agency is CECW-CO-R

OMB Control #: 0710-0024, Exp:11/30/
Requirement Control Symbol EXEMPT:
(Authority: AR 335-15, paragraph 5-2a)

Project/Site: Warrenton UMC City/County: Town of Warrenton Sampling Date: 4/20/24

Applicant/Owner: RDA Civil State: VA Sampling Point: 2

Investigator(s): LLC Section, Township, Range:

Landform (hillside, terrace, etc.): Swale Local relief (concave, convex, none): Concave Slope (%): 2-7

Subregion (LRR or MLRA): LRR S, MLRA 148 Lat: 38.719826 Long: -77.803393 Datum: NAD83

Soil Map Unit Name: 17B - Middleburg Loam NWI classification: None

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No ____ (If no, explain in Remarks.)

Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____

Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes ____	No X	**Is the Sampled Area**
Hydric Soil Present?	Yes X	No ____	**within a Wetland?** **Yes** ____ **No** X
Wetland Hydrology Present?	Yes ____	No X	

Remarks:
Only one of the three wetland parameters (i.e., hydric soil) is satisfied at this location, which documents the constructed stormwater swale located in the eastern portion of the study area.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- ___ Surface Water (A1)
- ___ High Water Table (A2)
- ___ Saturation (A3)
- ___ Water Marks (B1)
- ___ Sediment Deposits (B2)
- ___ Drift Deposits (B3)
- ___ Algal Mat or Crust (B4)
- ___ Iron Deposits (B5)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Aquatic Fauna (B13)
- ___ True Aquatic Plants (B14)
- ___ Hydrogen Sulfide Odor (C1)
- ___ Oxidized Rhizospheres on Living Roots (C3)
- ___ Presence of Reduced Iron (C4)
- ___ Recent Iron Reduction in Tilled Soils (C6)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ___ Surface Soil Cracks (B6)
- ___ Sparsely Vegetated Concave Surface (B8)
- ___ Drainage Patterns (B10)
- ___ Moss Trim Lines (B16)
- ___ Dry-Season Water Table (C2)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Stunted or Stressed Plants (D1)
- ___ Geomorphic Position (D2)
- ___ Shallow Aquitard (D3)
- ___ Microtopographic Relief (D4)
- ___ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes ____	No X	Depth (inches): ____
Water Table Present?	Yes ____	No X	Depth (inches): ____
Saturation Present? (includes capillary fringe)	Yes ____	No X	Depth (inches): ____

Wetland Hydrology Present? **Yes** ____ **No** X

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:
Date of latest rainfall: 4/19/24 0.01".

Remarks:

VEGETATION (Four Strata) – Use scientific names of plants. Sampling Point: 2

Tree Stratum (Plot size: 30)	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
5.			
6.			
7.			
	=Total Cover		
50% of total cover:		20% of total cover:	

Sapling/Shrub Stratum (Plot size: 15)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	=Total Cover		
50% of total cover:		20% of total cover:	

Herb Stratum (Plot size: 5)	Absolute % Cover	Dominant Species?	Indicator Status
1. *Oxalis sp.*	15	No	
2. *Rumex crispus*	5	No	FAC
3. *Poa pratensis*	95	Yes	FACU
4. *Glechoma hederacea*	10	No	FACU
5. *Taraxacum officinale*	10	No	FACU
6. *Lamium purpureum*	15	No	UPL
7. *Anthoxanthum odoratum*	10	No	FACU
8.			
9.			
10.			
11.			
	160 =Total Cover		
50% of total cover:	80	20% of total cover:	32

Woody Vine Stratum (Plot size: 30)			
1.			
2.			
3.			
4.			
5.			
	=Total Cover		
50% of total cover:		20% of total cover:	

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 0 (A)

Total Number of Dominant Species Across All Strata: 1 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 0.0% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species	0	x 1 =	0
FACW species	0	x 2 =	0
FAC species	5	x 3 =	15
FACU species	125	x 4 =	500
UPL species	15	x 5 =	75
Column Totals:	145 (A)		590 (B)

Prevalence Index = B/A = 4.07

Hydrophytic Vegetation Indicators:

___ 1 - Rapid Test for Hydrophytic Vegetation

___ 2 - Dominance Test is >50%

___ 3 - Prevalence Index is ≤3.0[1]

___ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)

___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Four Vegetation Strata:

Tree – Woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height.

Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall.

Woody Vine – All woody vines greater than 3.28 ft in height.

Hydrophytic Vegetation Present? **Yes** ___ **No** X

Remarks: (Include photo numbers here or on a separate sheet.)
No tree, sapling/shrub or woody vine strata present.

SOIL

Sampling Point: 2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	Matrix %	Redox Features Color (moist)	Redox Features %	Redox Features Type[1]	Redox Features Loc[2]	Texture	Remarks
0-2	10YR 2/2	100					Loamy/Clayey	Many fine roots
2-8	10YR 4/2	75	7.5YR 4/4	15	C	PL/M	Loamy/Clayey	
			10YR 4/1	10	D	M		
8-18	10YR 4/4	85	5YR 4/6	5	C	M	Loamy/Clayey	
			10YR 4/1	10	D	M		

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- X Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7)
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Mucky Mineral (F1) **(MLRA 136)**
- ___ Loamy Gleyed Matrix (F2)
- X Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 122, 136)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147, 148)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Red Parent Material (F21) **(outside MLRA 127, 147, 148)**
- ___ Very Shallow Dark Surface (F22)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? **Yes** X **No** ___

Remarks:

DEQ Stream Identification Field Data Form

Project/Site: WUMC City/County: Town of Warrenton Date: 4/20/2024 Applicant/Owner: RDA Civil Investigator(s): Lauren Conner Landform (hillslope, terrace, etc.): Stream Valley/Terrace Local relief (concave, convex, none): Concave Slope (%): 0-3
Lat: 38.7197 Long: -77.8028 Datum: NAD 83

SUMMARY OF FINDINGS – Attach site map showing sampling point locations within and upstream of the head of the stream. **Stream bed present:** ☒ **Yes** ☐ **No** **Stream bank present:** ☒ **Yes** ☐ **No** **OHWM present:** ☒ **Yes** ☐ **No**	**Stream Identified:** ☒ **Yes** ☐ **No** **Stream Reach 1-A (A/B Flagging Series in eastern portion of study area).**

Site overview from remote and online resources. **Check boxes for online resources used to evaluate site:** ☐ Gage data ☒ LIDAR ☐ Regional Curve Data ☒ Soil Survey ☐ Climatic data ☒ Topographic Maps ☒ Aerial photos ☒ Other	Describe land use and flow regime conditions from online resources. **Were there any recent extreme events (flooding or drought)?** Per the National Weather Service, the last rainfall event was 0.01" on 4/19/2024.

Check the boxes next to the field indicators used in stream determination:

Geomorphic Indicators:

☒ **Channel Bank Features**

☐ Natural line impressed on bank (above or below bankfull)

☐ Undercut bank

☐ Break in slope (on bank or at valley bottom)

☐ Continuous bed and bank

☒ Shelving (Top of bank, natural levee, or other)

☐ Clear bankfull storm event indicators present

☐ **Channel Bars**

☐ Shelving (on bar)

☐ Unvegetated (on bar)

☐ Vegetation transition (on bar)

☐ Sediment transition or sorting (on bar)

☐ Upper limit of deposition (on bar)

☐ **Channel Bed / Bedload Transport Evidence**
☒ Depositional (deposited sediment, lateral bars, mid channel bars, etc.)
☐ Bedform features (riffle, pool, steps, etc.)
☒ Erosional (scour, smoothing, etc.)
☐ Secondary channel (lateral or parallel along the same valley or floodplain)
☒ Evidence of thalweg
☐ Headcuts (with other evidence)
☐ Hydric soil development (changes in the character of soil)
☐ Mudcracks (found within an unvegetated flow path/channel)
☐ Changes in particle-size distribution (sediment sorting)

Vegetation Indicators:

☐ **Change in Vegetation Type / Density**
☐ Vegetation absent (channel bed)
☒ Vegetation matted down or bent (channel bed or bars)
☐ Exposed roots below intact soil layer (channel banks)
☐ Destruction of terrestrial vegetation (channel banks, top of bank, etc.)
☐ Change in plant community (transition from channel bed to floodplain)

Ancillary Indicators:

☐ Wracking/presence of organic litter (along channel banks or floodplain)
☐ Presence of obstacle marks (i.e. erosion/sedimentation around large obstacles in flow path)
☒ Leaf litter disturbed or absent
☐ Water staining
☐ Weathered clast or bedrock
☐ Deposited sediment within leaf pack (floodplain)

Other observed Indicators and/or additional observations?
Stormwater swale connecting a yard inlet across Moser Road and an inlet at the parking lot in the central portion of the study area. This stormwater feature is located within a manmade swale at this location. Feature lacks a continuous ordinary high water mark (OHWM). A data point conducted within this feature documents the presence of hydric soils and hydrology due to surface water after recent precipitation event.

Describe rational for location of stream and provide supporting evidence for stream identification:

Chesapeake Bay Preservation Act Flow Regime Determination (if applicable): Site within CBPA locality? ☐ Yes ☒ No
If Yes, which flow regime determination was used:
☐ NC DWQ ☒ Fairfax ☐ James City County
Flow Regime Determination Results: ☐ Ephemeral ☒ Intermittent ☐ Perennial

Note: Please refer to the "USACE 2022 National OHWM Field Delineation Manual for Rivers and Streams: Interim Version" at http://dx.doi.org/10.21079/11681/46102 for detail on terminology.

Fairfax County DPWES Perennial Stream Field Identification Protocol

Site ID:	1-A	**Flags:**	A-1 to A-12
Date:	4/20/2024	Recorder:	LLC
Time:	14:00	Evaluators:	LLC

Field Indicators:					**Parameter**
I.) Streamflow and Hydrology	Absent	Weak	Moderate	Strong	**Score:**
1.) Presence or absence of flowing water and >48 hrs since last rainfall	0	1	2	3	1
2.) Presence of high groundwater table or seeps and springs	0	1	2	3	1
3.) Leaflitter in streambed	1.5	1	0.5	0	1
4.) Drift Lines	0	0.5	1	1.5	0.5
5.) Sediment on debris or plants	0	0.5	1	1.5	0
				Total Streamflow and Hydrology Points:	3.5
II.) Geomorphology	Absent	Weak	Moderate	Strong	
1.) Riffle-pool sequence	0	1	2	3	0
2.) Sequence Sorting (USDA texture)	0	1	2	3	1
3.) Natural Levees	0	1	2	3	0
4.) Sinuosity	0	1	2	3	0
5.) Active or Relic Floodplain	0	1	2	3	1
6.) Braided Channel	0	1	2	3	0
7.) Recent Alluvial Deposits	0	1	2	3	1
8.) Bankfull Bench present	0	1	2	3	0
9.) Continuous Bed and Bank	0	1	2	3	1
10.) 2nd order or greater channel present	Yes = 3		No = 0		0
				Total Geomorphology Points:	4
III.) Streambed Soils					
1.) Redoximorphic features present in sides of channel or head cut.	Present = 0		Absent = 1.5		0
2.) Chroma	Gleyed = 3	1 = 2	2 = 1	>2 = 0	2
				Total Streambed Soils Points:	2
IV.) Vegetation	Absent	Weak	Moderate	Strong	
1.) Rooted Aquatic Plants in Streambed	0	1	2	3	0
2.) Presence of Periphyton/green algae	0	1	2	3	0
3.) Iron Oxidizing Bacteria/Fungus	0	0.5	1	1.5	0.5
4.) Wetland Plants in Streambed (Skip if no plants present in streambed)					
SAV = 3	Mostly OBL = 2	Mostly FACW = 1	Mostly FAC = 0.5	Mostly FACU, UPL, or None = 0	1
				Total Vegetation Points:	1.5

Comments:
Blunt spike rush (*Eleocharis obtusa* ; OBL) and marsh seedbox (*Ludwigia alternifolia* ; FACW) observed in channel. Note that most of the plants observed within the channel were FACW.

Front Page Total 9 **Points**

Fairfax County DPWES Perennial Stream Field Identification Protocol

Site ID: 1-A **Flags:** A-1 to A-12

V.) Benthic Macroinvertebrates	Absent	Weak	Moderate	Strong	**Parameter Score:**
1.) Benthic Macroinvertebrates	0	0.5	1	1.5	0
2.) Bivalves	0	1	2	3	0
3.) EPT Taxa	Present = 3		Absent = 0		0
				Total Benthic Macroinvertebrate Points:	0

VI.) Vertebrates	Absent	Weak	Moderate	Strong	
1.) Fish	0	0.5	1	1.5	0
2.) Amphibians	0	0.5	1	1.5	0
				Total Vertebrate Points:	0

Benthics/Amphibians Found:

Comments:
No fish, amphibians or other animals found.

Total Points: 9

Weather Observations

Date of Last Rainfall:	4/19/2024
Rainfall Amount:	0.01"
Weather Data Source:	National Weather Service

NC Division of Water Quality –Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11

NC DWQ Stream Identification Form Version 4.11

Date: 4/20/2024	**Project/Site**: Warrenton UMC **Stream Reach 1-A**	**Latitude:** 38.7196
Evaluator: Lauren Conner	**County:** Town of Warrenton	**Longitude:** -77.8027
Total Points: *Stream is at least intermittent if ≥ 19 or perennial if ≥ 30** **16.5**	**Stream Determination (circle one) Ephemeral Intermittent Perennial**	**Other** *e.g. Quad Name*: Warrenton, Virginia

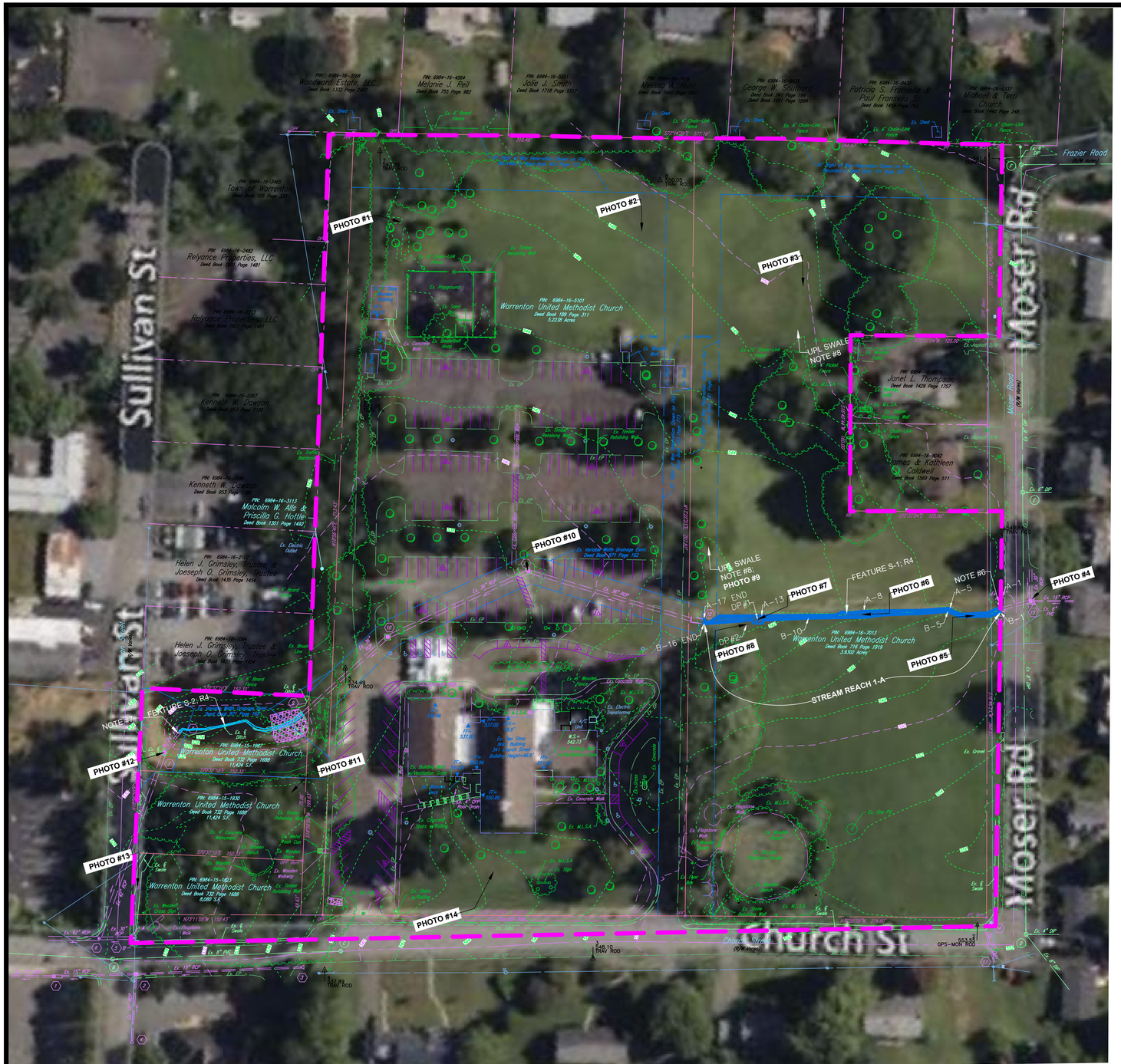
A. Geomorphology (Subtotal = 4.5)	Absent	Weak	Moderate	Strong	Parameter Score:
1[a]. Continuity of channel bed and bank	0	1	2	3	1
2. Sinuosity of channel along thalweg	0	1	2	3	0
3. In-channel structure: ex. riffle-pool, step-pool, ripple-pool sequence	0	1	2	3	0
4. Particle size of stream substrate	0	1	2	3	1
5. Active/relict floodplain	0	1	2	3	1
6. Depositional bars or benches	0	1	2	3	0
7. Recent alluvial deposits	0	1	2	3	1
8. Headcuts	0	1	2	3	0
9. Grade control	0	0.5	1	1.5	0
10. Natural valley	0	0.5	1	1.5	0.5
11. Second or greater order channel	No = 0		Yes = 3		0

[a] artificial ditches are not rated; see discussions in manual

B. Hydrology (Subtotal = 6.5)					
12. Presence of Baseflow	0	1	2	3	1
13. Iron oxidizing bacteria	0	1	2	3	1
14. Leaf litter	1.5	1	0.5	0	1
15. Sediment on plants or debris	0	0.5	1	1.5	0
16. Organic debris lines or piles	0	0.5	1	1.5	0.5
17. Soil-based evidence of high water table?	No = 0		Yes = 3		3

C. Biology (Subtotal = 5.5)					
18. Fibrous roots in streambed	3	2	1	0	2
19. Rooted upland plants in streambed	3	2	1	0	2
20. Macrobenthos (note diversity and abundance)	0	1	2	3	0
21. Aquatic Mollusks	0	1	2	3	0
22. Fish	0	0.5	1	1.5	0
23. Crayfish	0	0.5	1	1.5	0
24. Amphibians	0	0.5	1	1.5	0
25. Algae	0	0.5	1	1.5	0
26. Wetland plants in streambed	FACW = 0.75; OBL = 1.5 Other				1.5
*perennial streams may also be identified using other methods. See p. 35 of manual.					
				Total Reach Score:	16.5

Notes: Blunt spike rush (*Eleocharis obtusa*; OBL), marsh seedbox (*Ludwigia alternifolia*; FACW), Kentucky bluegrass (*Poa pratensis*; FACU), ground ivy (*Glechoma hederacea*; FACU), dandelion *(Taraxacum officinale; FACU)* and purple dead nettle (*Lamium purpureum*; UPL) observed in stream channel. No macrobenthos, fish or amphibians observed within the channel.



LEGEND

- STUDY AREA
- INTERMITTENT STREAM CHANNEL (R4)
- APPROXIMATE INTERMITTENT STREAM CHANNEL (R4)
- DATA POINT

WARRENTON UMC

SUMMARY OF WETLANDS AND WOTUS WITHIN STUDY AREA

Water ID	Latitude	Longitude	Cowardin Class	Stream (Linear Feet)	Area (Square Feet)	Area (Acres)	Class of Aquatic Resource (Tidal/Non-tidal, Section 10/404, etc.
S-1	38.71970	-77.80290	R4	272	973	0.02	Non-tidal, Section 401
S-2	38.71990	-77.80530	R4	120	202	<0.01	Non-tidal, Section 401
TOTAL				392	1,175	0.03	

Cowardin Classification
R4 = Intermittent Stream Channel

Notes:

1. Wetland and waters of the U.S. (WOTUS) delineation field work was completed on April 20, 2024 by Lauren Conner, PWS, PWD, VSWD. Wetland and stream delineation flagging was located by InterAgency, Inc. (IA) via GPS (with submeter accuracy) on April 20, 2024.
2. The horizontal datum is based on the Virginia South State Plane Coordinate System, North American Datum, 1983. The vertical datum was established using GPS methods and is based on the National Geodetic Vertical Datum NAVD 1988. Topographic and base information provided to InterAgency, Inc. by RDA Civil on March 19, 2024. Natural color aerial imagery from Microsoft Bing (copyright 2023) was utilized as a base for this exhibit.
3. The wetland delineation has been completed pursuant to Virginia Department of Environmental Quality (DEQ) and the U.S. Army Corps of Engineers (USACE) 1987 wetland delineation manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0), dated November 2010.
4. As the study area is ±11 acres, transects were established and the study area was systematically searched for wetlands and other WOTUS.
5. Jurisdictional features within the study area were flagged with pink-glo vinyl flagging. The data point location was denoted using pink-glo and orange-glo vinyl flagging.
6. This jurisdictional feature originates upslope, outside of the study area.
7. This jurisdictional feature continues downslope, outside of the study area.
8. Upland swale feature lacks hydric soil and a contiguous ordinary high water mark (OHWM); therefore, this is not a jurisdictional feature to DEQ or the USACE.

Exhibit #12: Wetlands and Waters of the U.S. (WOTUS) Delineation Map
Warrenton United Methodist Church (WUMC)

Prepared By: InterAgency, Inc. **Prepared For:** RDA Civil **Date:** April 2024 **Scale:** 1" = 50' **Draft:** LLC

GRAPHIC SCALE
50 0 25 50 100 200
(IN FEET)
1 inch = 50 ft.

EXPERIENCE WARRENTON VIRGINIA EST. 1810

Planning Commission Work Session
ZMA 2023-01 Warrenton United Methodist Church/ Hero's Bridge
July 16, 2024

PC Decision Deadline October 24,2024 Unless Applicant Defers

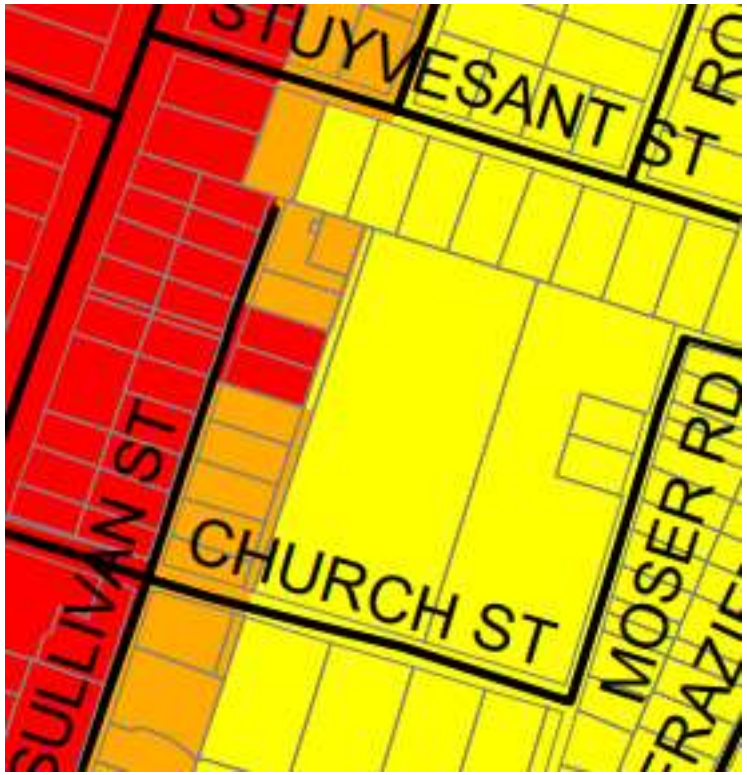
Rezoning Application

- **GPINs:** 6984-16-5101, 6984-16-7013, 6984-15-1823, 6984-15-1930
- **Property Owner:** Trustees of the Warrenton United Methodist Church
- **Applicant:** Hero's Bridge
- **Zoning:** R-10 (Residential) and RO (Residential Office
- **Comprehensive Plan:** Medium Density Residential
- **ZMA** to R-PUD to allow for affordable duplex unit development on approximately 9.8640 Acres
- 44 Residential Dwellings
  - Serve Veterans age 65 and older
  - Approximately 1,150 square feet
  - 2 Phases units and church
  - Recreational and office facilities

Location

Adjacent Land Uses

Zoning Map



Existing Church

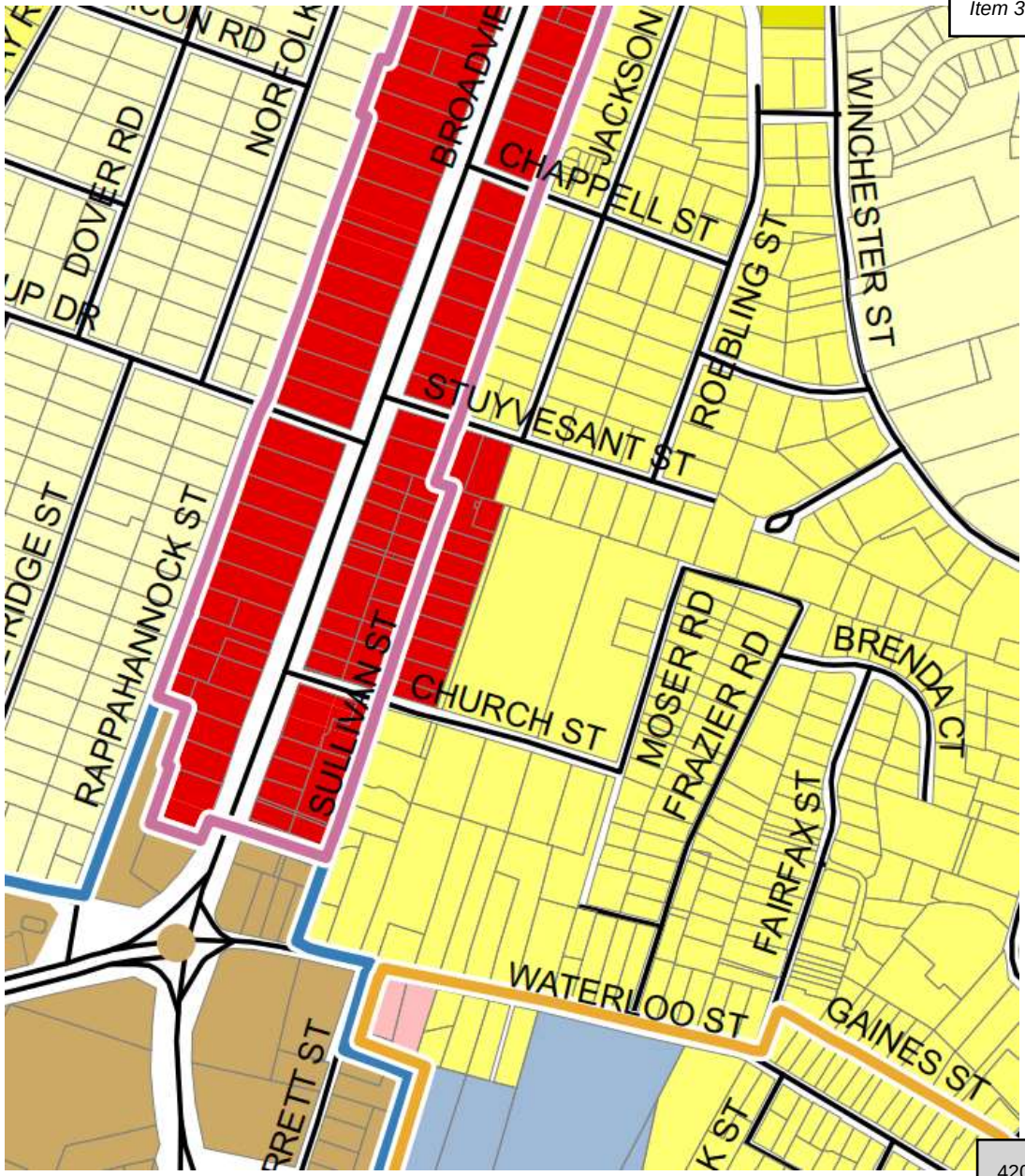
Residential

Commercial

Zoning Districts

- R-15
- R-10
- R-6
- RT
- RMF
- RO
- PSP
- C

Future Land Use Map



Plan Warrenton 2040

GOALS

H-1: Ensure equitable, attainable housing opportunities across residents of all ages, incomes, and abilities by catering to the needs of a diverse community, including young families, professionals early in their careers, essential workforce, and those entering retirement.

POLICIES & STRATEGIES

H-1.1: Encourage development of the "Missing Middle" housing types beyond traditional single-family homes, townhouses, and apartments by updating the Zoning Ordinance to create a beneficial mix.

H-1.2: Create a range of housing types that are compatible to existing neighborhoods in scale and character to attract a more diverse demographic.

H-1.3: Encourage the development of workforce housing by revising the existing density bonus program.

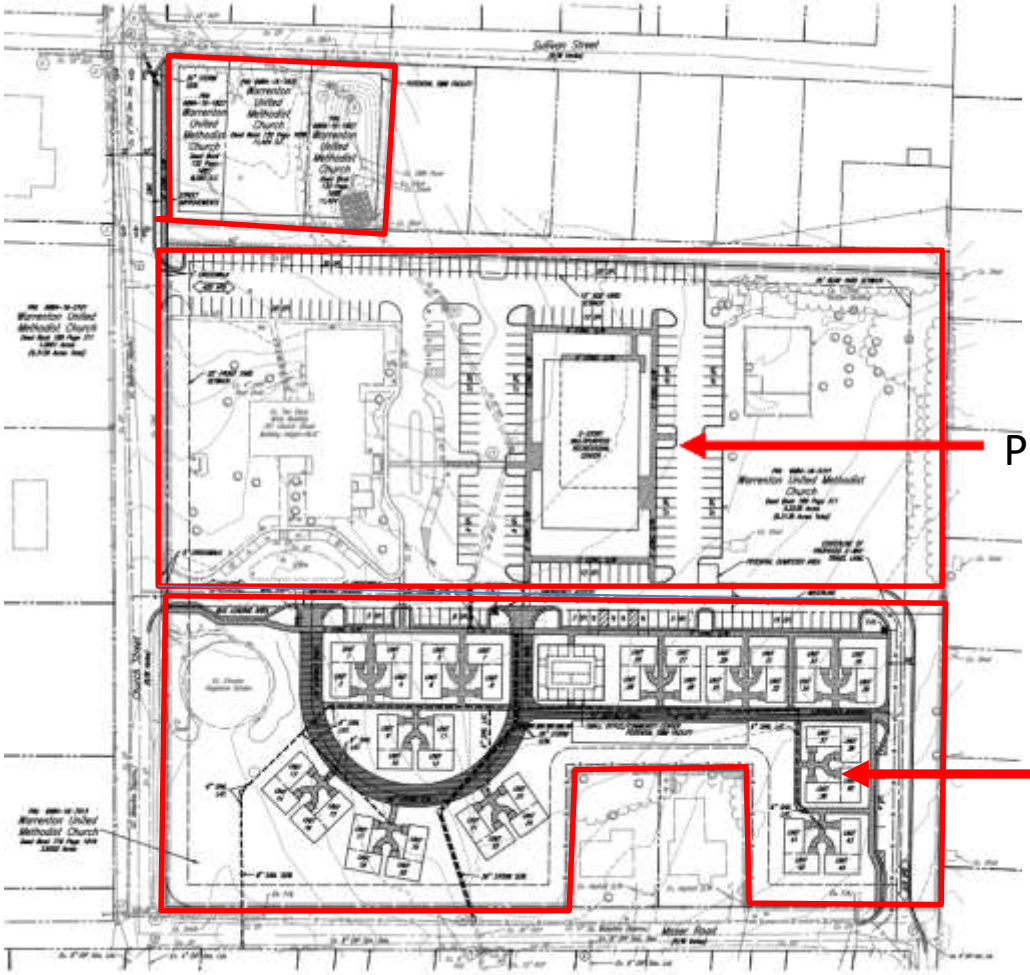
H-1.4: Expand the Accessory Dwelling Unit (ADU) ordinance by updating the Zoning Ordinance to allow for greater lot coverage for development of detached ADUs (i.e. converted garage or granny unit) and set appropriate square footage maximums.

H-1.5: Encourage the use of universal design principles for new construction and home renovations to allow residents to age-in-place.

H-1.6: Promote aging in place policies and revise the Zoning Ordinance to facilitate multi-generational residential development.

H-1.7: Engage community partners and residents to create a committee to address affordability, optimum percentages of housing typology mix, and design.

Proposal



Proposal Includes

- 44 Units
- Circular Flagstone Garden
- Bus Loading Area/Parking
- 12/20’ Asphalt Trail
- Office/Community Center
- 2 Story Multipurpose Recreational Center

Requested Modifications Through Proffers

- Reduce required minimum PUD 25 to 9 acres
- Rowland v. Town Council of Warrenton
  "we conclude that the General Assembly intended for these statutes to grant localities the authority to permit deviations from the requirements of a zoning ordinance by accepting voluntary proffers as part of a rezoning application. . . . [W]e are of opinion . . . the zoning applicant may make, or the locality may suggest, any proffer which can be viewed as beneficial to the community, even if that proffer creates a condition 'not generally applicable to land similarly zoned.'"

Agency Reviews

- Zoning – Phasing, uses, modifications/waivers
- Transportation and Parking
- Water and Sewer
- Walkability/Perimeter Sidewalks
- Landscaping/Buffers/Required Open Space
- Elevations/Proffered Materials
- Stormwater/Drainage/Soils
- Plan Warrenton 2040

Next Steps

- Hold a Work Session
- Applicant will receive Second Submission Agency Comments
- Schedule PC Public Hearing, after Public Hearing Submission with Signed Proffers and Legal Notifications

ZMA 2023-01, WARRENTON UNITED METHODIST CHURCH / HERO'S BRIDGE

July 16, 2024

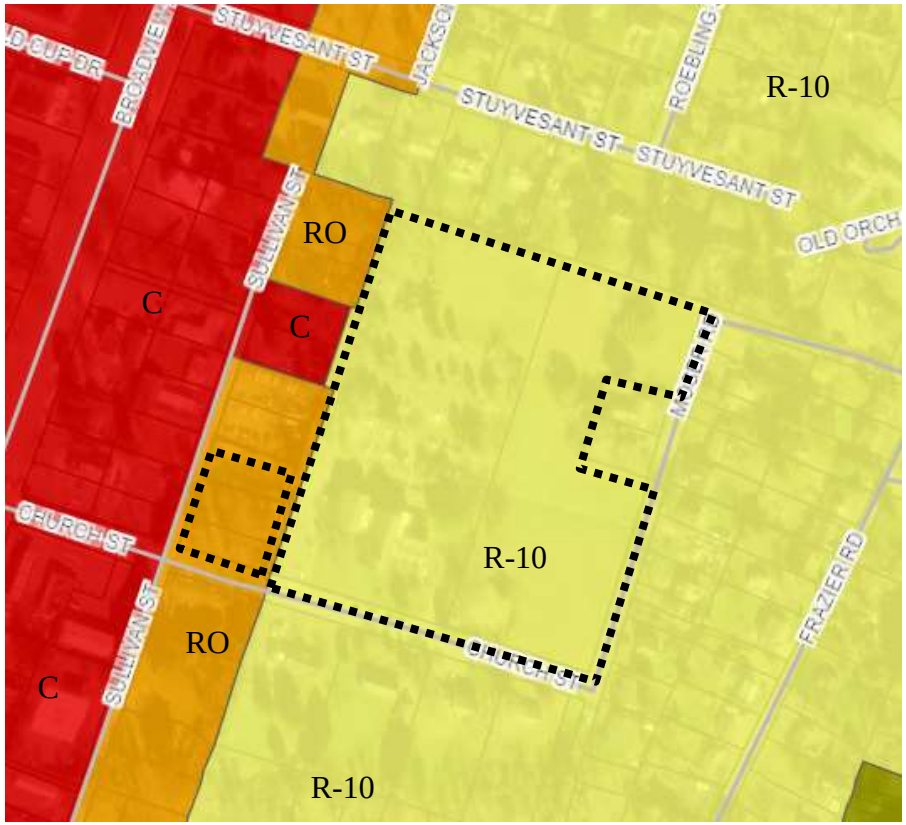
PLANNING COMMISSION WORK SESSION

426

PROPERTY LOCATION

ZONING & FUTURE LANE USE

ZONING
RO and R-10



Future Land Use
Re-Planned Commercial and Medium Density Residential

STUYVESANT ST
STUYVESANT ST
SULLIVAN ST
FRAZIER RD
MOSER RD
CHURCH ST
CHURCH ST

AERIAL

PHASE I ILLUSTRATIVE PLAN

WARRENTON UMC

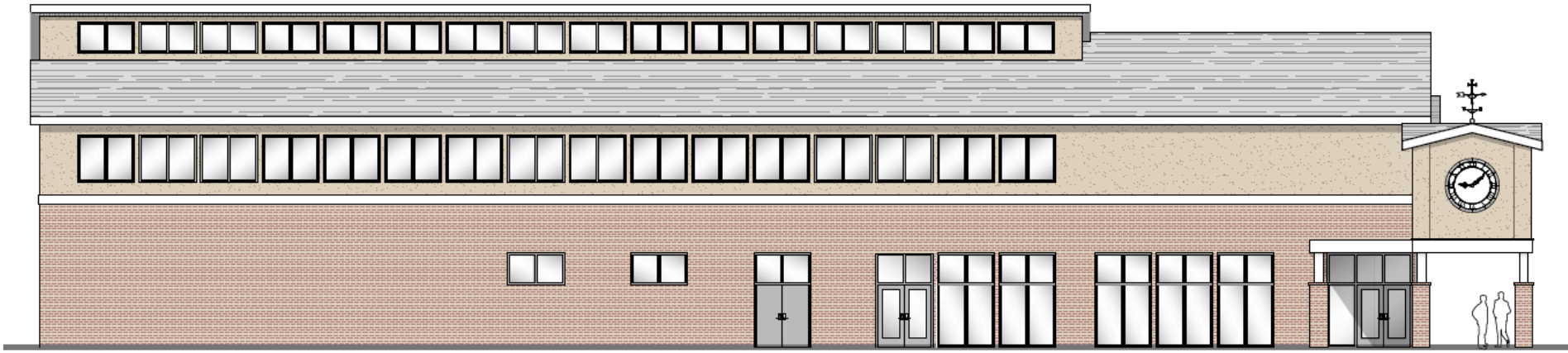
PROPOSED HOUSING ELEVATION

MARCH 16, 2023

DESIGN CONCEPTS
architecture + interiors
131 South Loudoun Street Winchester, VA 22601
Phone: (540) 722-7247; Fax: (540) 722-7248
architect@1designconcepts.com

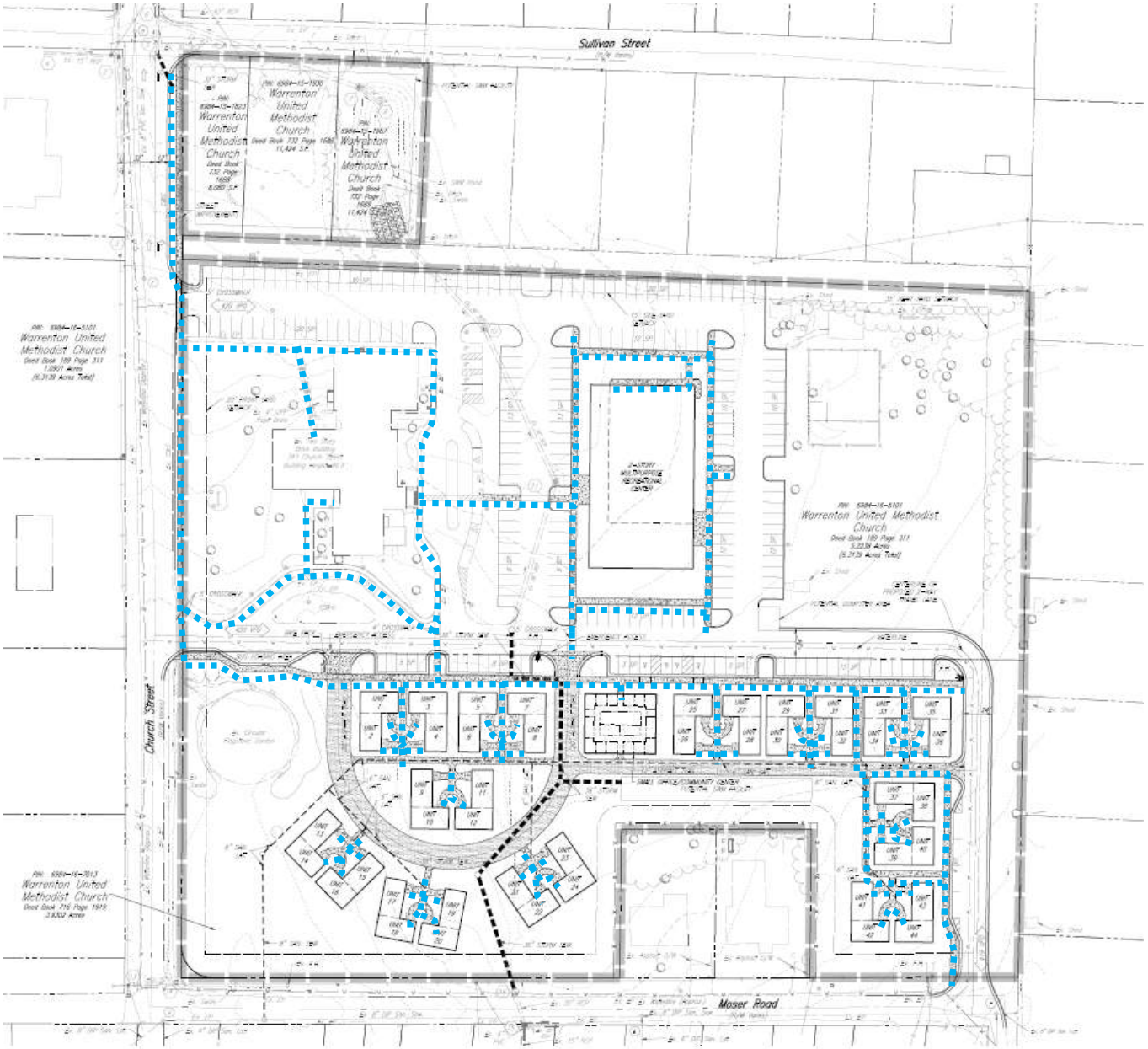
HOUSING ELEVATION

PHASE II ILLUSTRATIVE PLAN



MULTI PURPOSE RECREATIONAL CENTER

433



PEDESTRIAN CONNECTIVITY

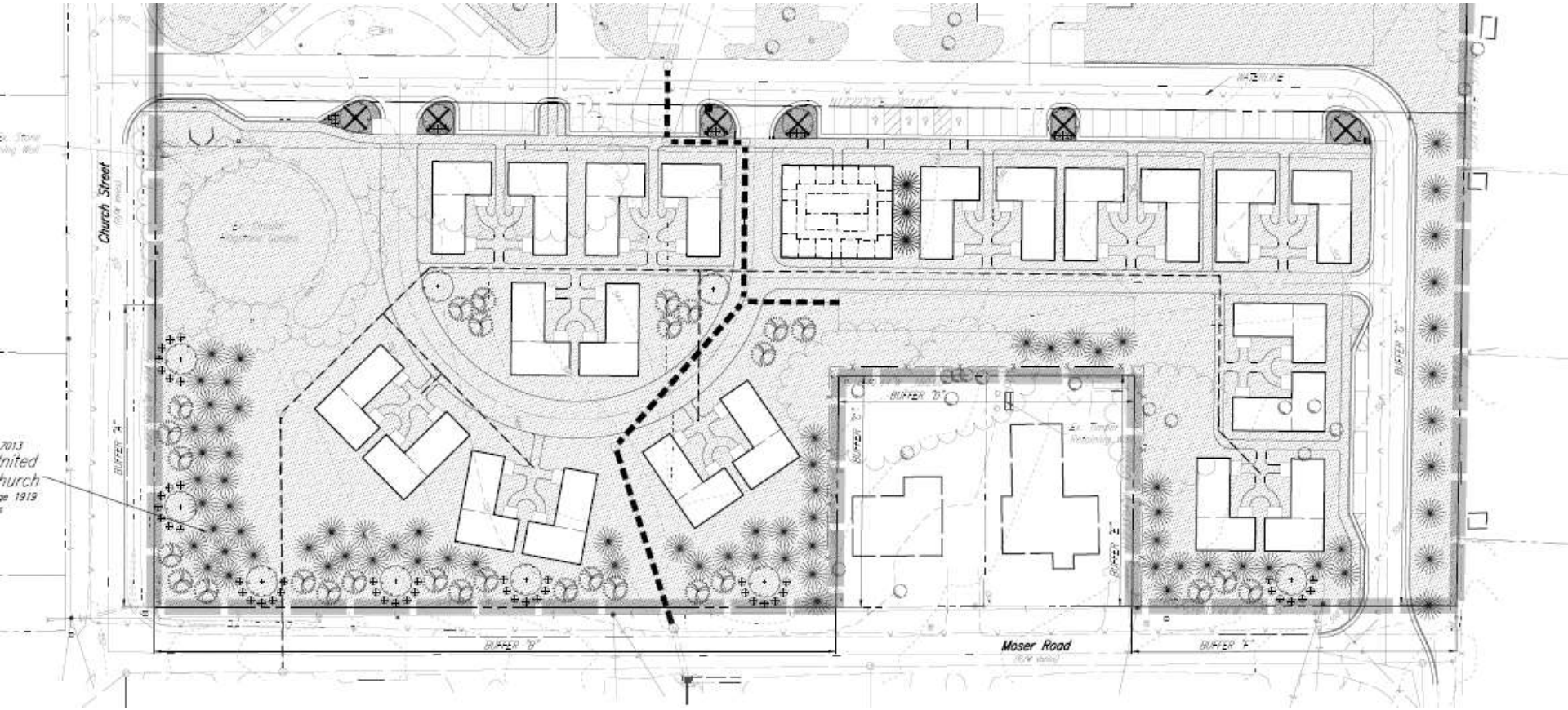
LARGE/CANOPY DECIDUOUS TREES

ORNAMENTAL DECIDUOUS TREES

LARGE EVERGREEN TREES

SHRUBS

DENOTES TREES COUNTING TOWARDS INTERIOR PARKING LOT LANDSCAPING)



PHASE I LANDSCAPE PLAN

ILLUSTRATIVE PLAN

THANK YOU