

Public Hearing Notice

The Clarke County Board of Supervisors will conduct a public hearing in the Berryville Clarke County Government Center Main Meeting Room, 101 Chalmers Court, 2nd Floor, Berryville, VA, on Tuesday, June 18, 2024, at 6:30 pm, or as soon thereafter as the matter may be heard, to hear public comment on the following:

PH2024-09: CC2024-02 Code of Clarke County Chapter 148, Erosion & Sediment Control. The entire chapter is proposed to be repealed and replaced entirely. The proposed replacement chapter is based on the Virginia Department of Environmental Quality's local erosion and sediment control model ordinance, which was updated to incorporate state regulation changes that will take effect July 1, 2024. The proposed chapter imposes the state's standard regulations for land disturbances of more than 10,000 square feet but less than one acre, unless specifically exempted, and outlines permitting requirements, monitoring and inspection responsibilities, and the enforcement process.

Information regarding the above matters, including a full copy of the proposed text changes, is available to the public in the Clarke County Administration office and on the County website. Any person desiring to speak on the above matters should appear at the appointed time and place. Written copies of statements are requested but not required. Clarke County does not discriminate on the basis of handicapped status in admission to its programs and activities. Accommodations will be made for handicapped persons upon prior request.

Clarke County Board of Supervisors



Berryville Voting District
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(540) 955-7158

Millwood Voting District
Terri T. Catlett-Vice Chair
(540) 837-2328

Russell Voting District
Doug Lawrence
(540) 955-2144

Buckmarsh Voting District
David S. Weiss – Chair
(540) 955-2151

White Post Voting District
Bev B. McKay
(540) 837-1331

County Administrator
Chris Boies
(540) 955-5175

To: Board of Supervisors

From: Chris Boies

Re: Chapter 148, Erosion & Sediment Control

Date: May 21, 2024

Per the attached memo from the Virginia Department of Environmental Quality (DEQ), various changes have been made by the State Water Control Board to state erosion and sediment control regulations. Based on these changes, DEQ has updated the local erosion and sediment control model ordinance. County staff used the new model ordinance to rewrite the existing Chapter 148 of the Code of Clarke County. It is recommended the existing Chapter 148 be repealed in its entirety and replaced with the new proposed chapter.

As background information, the Code of Virginia requires all counties and cities (optional for towns) to operate an erosion and sediment control program. These programs include reviewing erosion and sediment control plans, issuing land disturbance permits, conducting inspections, enforcing local and state regulations, and various program administrative responsibilities. Localities operating these programs can implement more stringent local regulations if justified by special circumstances found in the locality. Local governments can also oversee a stormwater regulation program, which applies to development of one or more acres. For localities not adopting stormwater regulations, DEQ is the permitting and inspection authority. The proposed ordinance uses the standard state regulations (nothing more stringent) and does not include stormwater. This program falls under the Building Inspection Program in Clarke County.

The various changes made at the state level go into effect on July 1, 2024. The Board of Supervisors authorized a public hearing at the May 21st meeting, and that public hearing has been advertised for June 18th at 6:30 p.m. Pending receiving the public's comments, it is recommended that adoption of the text amendments be effective July 1, 2024.

The model ordinance provides the basic framework for the local erosion and sediment control program. This chapter regulates land disturbance of more than 10,000 square feet but less than one acre unless specifically exempted in Section 148-5. Regulated land disturbance requires the submission and approval of an erosion and sediment control plan before land disturbance activities commence. The ordinance outlines the requirements to obtain a land disturbance permit, spells out responsibilities for monitoring and inspecting the site, and codifies the enforcement process. The provisions found in the model ordinance largely follow state regulations that we are required to follow.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

To: All Local Virginia Erosion and Sediment Control Program Administrators
All Local Virginia Stormwater Management Program Administrators

From: Megan Mayfield, Director, Division of Water Permitting

Date: December 27, 2023

Subject: Virginia Erosion and Stormwater Management Program and Virginia Erosion and Sediment Control Program Model Ordinances

At the June 22, 2023 State Water Control Board (Board) meeting, the Board approved and adopted the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875) and approved the repeal of the Erosion and Sediment Control Regulations (9VAC25-840), Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850), and Virginia Stormwater Management Program Regulation (9VAC25-870). The VESM Regulation and repeal of the other regulations, will be effective July 1, 2024. The Final VESM Regulation was published on December 4, 2023 in the *Virginia Register of Regulations*, Volume 40 Issue 8. Below is a link to the final regulation:

[Vol. 40 Iss. 8 \(Final\) 9VAC25-840, Erosion And Sediment Control Regulations December 04, 2023 \(virginia.gov\)](#)

Also on July 1, 2024, Chapters 68 and 758 of the 2016 Acts of Assembly become effective. Those Acts, referred to as the “Consolidation Bill,” combine stormwater management and erosion and sediment control requirements under the Virginia Erosion and Stormwater Management Act (VESMA), §§ 62.1-44.15:24 through 62.1-44.15:50 of the Code of Virginia. Requirements for a Virginia Erosion and Sediment Control Program (VESCO) are in the Erosion and Sediment Control Law (ESCL) for Localities Not Administering a Virginia Erosion and Stormwater Management Program, §§ 62.1-44.15:51 through 62.1-44.15:66 of the Code of Virginia. With the Consolidation Bill and VESM Regulation becoming effective on July 1, 2024, local ordinances for the administration of a Virginia Erosion and Sediment Control Program

(VESCP) or Virginia Stormwater Management Program (VSMP) will need to be updated to reflect both the new law and regulations.

Consistent with § 62.1-44.15:27 of the Code of Virginia, the Virginia Department of Environmental Quality (DEQ) has prepared a Virginia Erosion and Stormwater Management Program (VESMP) Model Ordinance and a Virginia Erosion and Sediment Control Program (VESCP) Model Ordinance to assist in the development of the appropriate local ordinance for your locality. The model ordinances incorporate requirements in the VESMA, ESCL for Localities Not Administering a Virginia Erosion and Stormwater Management Program, and VESM Regulation. Copies of each are attached for your use.

The DEQ is not required to review and/or approve the local ordinances, or associated documents, manuals, etc., prior to adoption. Please note that 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, establish more stringent local requirements. If a VESMP authority elects to adopt more stringent ordinances, the authority shall submit a letter report to the DEQ when more stringent stormwater management ordinances or more stringent requirements are authorized by such stormwater management ordinances. If a VESCP authority elects to adopt more stringent ordinances, the authority shall report to the DEQ when more stringent erosion and sediment control ordinances are determined to be necessary.

Please feel free to contact Rebecca Rochet if you have any questions or need additional assistance (Rebecca.Rochet@deq.virginia.gov or 804-801-2950).

Chapter 148 Soil Erosion and Sediment Control

Table of Contents

Chapter 148 Soil Erosion and Sediment Control	2
§ 148-1. Title Purpose and Authority.....	2
§ 148-2. Definitions.....	2
§ 148-3. Local Erosion and Sediment Control Program.....	6
§ 148-4. Regulated Land-Disturbing Activities.....	7
§ 148-5. Activities Not Required to Comply With the ESCL.....	8
§148-6. Submission and Approval of Plans; Contents of Plans	9
§148-7. Erosion and Sediment Control Plan; Contents of Plans	12
§148-8. Permits; Fees; Security for Performance.....	12
§148-9. Monitoring, Reports, and Inspections.....	13
§148-10. Penalties, Injunctions, and Other Legal Actions.....	15
§148-11. Appeals and Judicial Review.....	16
Amendments Chapter 148.....	17

PROPOSED

Chapter 148 Soil Erosion and Sediment Control

§ 148-1. Title Purpose and Authority

- A. This ordinance shall be known as the ‘Erosion and Sediment Control Ordinance of Clarke County.’ The purpose of this ordinance is to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources of Clarke County by establishing requirements for the effective control of soil erosion, sediment deposition and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.
- B. This ordinance is authorized by § 62.1-44.15:54 of the Code of Virginia.

§ 148-2. Definitions

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

AGREEMENT IN LIEU OF A PLAN	A contract between the County and the owner that specifies conservation measures that must be implemented to comply with the requirements of this ordinance for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by Clarke County in lieu of formal site plan.
APPLICANT	Any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.
BOARD	The State Water Control Board.
CERTIFIED INSPECTOR FOR ESC	An employee or agent of the VESCP authority who (i) holds a certificate of competence 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 FOR ESC	An employee or agent of the VESCP authority who (i) holds a certificate of competence 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.

CERTIFIED PROGRAM ADMINISTRATOR FOR ESC

An employee or agent of the VESCP authority who holds a certification from the department in the classification of program administrator or (ii) is enrolled in the department's training program for program administration and successfully completes such program within one year after enrollment.

CLEARING

Any activity, which removes the vegetative ground cover including, root mat removal or topsoil removal.

COUNTY

The County of Clarke.

DEPARTMENT

The Virginia Department of Environmental Quality.

DISTRICT OR

Refers to the Lord Fairfax Soil and Water Conservation District.

SOIL AND WATER CONSERVATION DISTRICT

EROSION AND SEDIMENT CONTROL PLAN OR

PLAN

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

EROSION IMPACT AREA

An area of land 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.

ESC

Erosion and sediment control.

FARM BUILDING OR STRUCTURE	The same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.
EXCAVATING	Any digging, scooping or other methods of removing earth materials.
FILLING	Any depositing or stockpiling of earth materials.
GRADING	Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.
LAND DISTURBANCE OR LAND-DISTURBING ACTIVITY	A man-made 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.
LAND-DISTURBING PERMIT OR APPROVAL	A permit or an approval allowing a land-disturbing activity to commence issued by the County after the requirements of § 62.1-44.15:55 of the Code of Virginia have been met.
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.
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 Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and this ordinance, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.
PEAK FLOW RATE	The maximum instantaneous flow from a prescribed design storm at a particular location.

PERCENT IMPERVIOUS	the impervious area within the site divided by the area of the site multiplied by 100.
PERMITEE	the person to whom the permit is issued.
PERSON	any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.
RESPONSIBLE LAND DISTURBER OR RLD	an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan. 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 the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) as a prerequisite for engaging in land disturbance. The RLD must be designated on the erosion and sediment control plan or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.
RUNOFF VOLUME	the volume of water that runs off the land development project from a prescribed storm event.
SINGLE-FAMILY DETACHED RESIDENTIAL STRUCTURE	a noncommercial dwelling that is occupied exclusively by one family.
SOIL EROSION	the movement of soil by wind or water into state waters or onto lands in the Commonwealth.
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.
TRANSPORTING	any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the

buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

**VIRGINIA EROSION AND
SEDIMENT CONTROL
PROGRAM OR**

VESCP

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 Erosion and Sediment Control Law (ESCL).

**VIRGINIA EROSION AND
SEDIMENT CONTROL
PROGRAM AUTHORITY OR**

VESCP AUTHORITY

For purposes of this ordinance means the County that has been 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, the State Water Control Law, of Title 62.1 of the Code of Virginia.

**VESCP PLAN-APPROVING
AUTHORITY**

Means the County Building Inspections Department responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

VPDES PERMIT

A General VPDES (Virginia Pollutant Discharge Elimination System) Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880, issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

§ 148-3. Local Erosion and Sediment Control Program

Pursuant to § 62.1-44.15:54 of the Code of Virginia, the County hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources) for all areas of the County except those properties located within the Town of Berryville.

In accordance with § 62.1-44.15:52 of the Code of Virginia, 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 man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made 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, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it 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 it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

- A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified 9VAC25-875-600, unless such land-disturbing activities are in accordance with the grandfathering provisions of 9VAC25-875-490.
- B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer for ESC. Inspections of land-disturbing activities shall be conducted by a certified inspector for ESC. The Erosion and Sediment Control Program of the County shall contain a certified program administrator for ESC, a certified plan reviewer for ESC, and a certified inspector for ESC (who may be the same person.)
- C. The County hereby designates the Building Inspections Department as the VESCP plan-approving authority. Plan review may be conducted by a certified third party under contract of the County.
- D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Building Official.

§ 148-4. Regulated Land-Disturbing Activities

Land-disturbing activities that meet the criteria below are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, 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 of the Virginia Erosion and Stormwater Management Regulation (Regulation).

§ 148-5. Activities Not Required to Comply With the ESCL

A. 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;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
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 United States 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 subsections 1.6, 1.7 and 1.8 of this ordinance are 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.

§148-6. Submission and Approval of Plans; Contents of Plans

- A. Except as provided herein, no person may engage in any regulated land-disturbing activity until he or she has submitted to the County an erosion and sediment control plan for the regulated land-disturbing activity and such plan has been approved by the County. No approval to begin a land disturbing activity will be issued unless evidence of VPDES permit coverage is obtained where it is required. Where the land-disturbing activity results from 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, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.
- B. The standards contained within the "Virginia Erosion and Stormwater Management Regulation (9VAC25-875)" is to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The VESCP plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Erosion and Stormwater Management Regulation shall take precedence.
- C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control

Law for Localities not Administering a Virginia Erosion and Stormwater Management Program and 9VAC25-875, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber to the VESCP authority, as required by 9VAC25-875-300 and 9VAC25-875-550, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

However, the VESCP plan-approving authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. If a violation occurs during the land-disturbing activity associated with the construction of the single-family detached residential structure, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of the responsible land disturber to the VESCP authority. Failure to provide the name of the responsible land disturber shall be a violation of this ordinance.

- D. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- E. The County shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.
- F. The County may require changes to an approved plan when:
 - 1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 - 2. The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the VESCP plan-approving authority and the person responsible for carrying out the plans.

- G. The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted 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 VESCP plan-approving 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 VESCP plan-approving authority. The VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving 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.
 3. The County shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
- H. In order to prevent further erosion, the County may require approval of a plan for any land identified in the local program as an erosion impact area.
- I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- J. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34 of the Code of Virginia to the County, 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 (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted.

§148-7. Erosion and Sediment Control Plan; Contents of Plans

- 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 be consistent with the criteria, techniques, and methods in 9VAC25-875-560. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:
 - 1. Appropriate maps;
 - 2. An appropriate soil and water plan inventory and management information with needed interpretations; and
 - 3. A record of decisions contributing to conservation treatment.
- B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESMP authority. The 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 ordinance if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

§148-8. Permits; Fees; Security for Performance

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed and evidence of VPDES permit coverage where it is required.
- B. No person may engage in any land-disturbing activity until he or she has acquired a land-disturbing permit (unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance), has paid the fees and has posted the required bond.

- C. An administrative fee set by the Board of Supervisors shall be paid to the County at the time of submission of the erosion and sediment control plan.
- D. No land-disturbing permit shall be issued until the applicant submits with his or her application an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed.
- E. Applicants for permits may be required to provide to the County a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the Building Official, to ensure that measures could be taken by the County at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him or her by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the County to take such conservation action, the County may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the Building Official in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

§148-9. Monitoring, Reports, and Inspections

- A. The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The person responsible for carrying out the plan shall monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- B. The County shall periodically inspect the land-disturbing activity in accordance with 9VAC25-875-330 to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan

shall be given notice of the inspection and shall such inspection in accordance with § 62.1-44.15:60 and the land-disturbing permit.

If the Building Official determines that there is a failure to comply with the plan, notice to comply may be served upon the permittee or person responsible for carrying out the plan. Such notice shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, if available, or in the land records of the locality; or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. Upon failure to comply within the specified time, any plan approval or land-disturbance approval may be revoked and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this ordinance.

- C. Upon issuance of an inspection report denoting a violation of § 62.1-44.15:55 of the Code of Virginia, the Building Official may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Building Official may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan, such a stop work order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.

The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the County or permit holder for appropriate relief to the Circuit Court of Clarke County. The County shall serve such order for disturbance without an approved plan upon the owner by mailing with confirmation of delivery to the address specified in the land records. The order shall be posted on the site where the disturbance is occurring,

and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan within seven days from the date of service of the stop work order, the Building Official 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 has been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of Clarke County.

The owner may appeal the issuance of an order to the Circuit Court of Clarke County.

Any person violating or failing, neglecting or refusing to obey an order issued by Building Official may be compelled in a proceeding instituted in the Circuit Court of Clarke 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, the order shall immediately be lifted.

Nothing in this section shall prevent the Building Official from taking any other action authorized by this ordinance or other applicable laws.

§148-10. Penalties, Injunctions, and Other Legal Actions

- A. Any person who has violated or failed, neglected, or refused to obey any order, notice, or requirement of the County, any condition of a land-disturbance approval, or any provision of this ordinance shall, upon a finding of the District Court of Clarke County, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.
- B. The Building Official, or the owner or property which has sustained damage, or which is in imminent danger of being damaged, may apply to the Circuit Court of Clarke County to enjoin a violation or a threatened violation of §§ 62.1-44.15:55 or 62.1-44.15:58 of the Code of Virginia, without the necessity of showing that an adequate remedy at law does not exist.

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

- C. In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to the County in a civil action for damages.
- D. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the County.

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

- E. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the Building Official the County may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection D of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection A or D.
- F. The Commonwealth's Attorney shall, upon request of the County, take legal action to enforce the provisions of this ordinance.

§148-11. Appeals and Judicial Review

- A. Final decisions of the County under this ordinance shall be subject to review by the Clarke County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Amendments Chapter 148

2004-02-17

§ 148-4 Definitions add “or drilling of a water well to Agreement In Lieu of a Plan; Add to J. excluding water wells to Land Disturbing Activity

2005-06-21

§ 148-4. Definitions. Erosion And Sediment Control Sketch Plan [05-06-21] Add Erosion and Sediment Control Sketch Plan, G. remove ponds, § 148-6 add F. and renumber modify G and H

2008-12-16

§ 148 Soil Erosion and Sedimentation Control, so as to update this section and bring it into conformance with the Code of Virginia

2017-10-17

§ 148 Soil Erosion and Sedimentation Control. The purpose of the amendment is to bring the Chapter into conformance with recent changes to State law regarding erosion and sediment control by replacing the current provisions of the Chapter with new provisions. The proposed new provisions are drafted to be consistent with the Virginia Department of Environmental Quality’s Erosion and Sediment Control Model Ordinance (revised December 5, 2014).

2024-MM-DD

Complete rewrite Chapter 148 Erosion and Sediment Control

~~Chapter 148 Soil Erosion And Sedimentation Control~~

Table of Contents

Chapter 148 Soil Erosion And Sedimentation Control.....	2
 General References.....	2
 Code Of Virginia References.....	2
 § 148-1. Title Purpose and Authority.....	2
 § 148-2. Definitions.....	2
 § 148-3. Local Erosion and Sediment Control Program.....	9
 § 148-4. Submission and Approval of Plans; Contents of Plans.....	10
 § 148-5. Permits; Fees; Security for Performance.....	13
 §148-6. Monitoring, Reports, and Inspections.....	14
 §148-7. Penalties, Injunctions, and Other Legal Actions.....	16
 §148-8. Appeals and Judicial Review.....	17
Amendments Chapter 148.....	18

CURRENT

~~Chapter 148 Soil Erosion And Sedimentation Control~~

~~[HISTORY: Adopted by the Board of Supervisors of Clarke County 10-16-1990. Amendments noted where applicable.]~~

~~General References~~

~~Chapter 71 Building Construction~~

~~Chapter 161 Subdivision Of Land~~

~~Chapter 188 Zoning.~~

~~Code Of Virginia References~~

~~Title 62.1. Waters of the State, Ports and Harbors » Chapter 3.1. State Water Control Law » Article 2.4. Erosion and Sediment Control Law~~

~~§ 10.1-604 et seq. — Dam Safety Act~~

~~§ 148-1. Title Purpose and Authority~~

~~This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Clarke County." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the Clarke County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.~~

~~This Chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, known as the Virginia Erosion and Sediment Control Law.~~

~~§ 148-2. Definitions~~

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

Agreement in lieu of a plan

~~means a contract between the County and the owner that specifies conservation measures that must be implemented in the construction of a single family residence; this contract may be executed by the County in lieu of a formal site plan.~~

Applicant

~~means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a~~

~~permit, when required, authorizing land-disturbing activities to commence.~~

Board ~~means the Virginia State Water Control Board.~~

Certified inspector ~~means an employee or agent of a Virginia Erosion and Sediment Control Program (VESCP) authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.~~

Certified plan reviewer ~~means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a 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 authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.~~

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

County ~~means Clarke County.~~

Department ~~means the Department of Environmental Quality.~~

Development ~~means a parcel of land developed or to be developed as a single unit under single ownership or unified control, which is to be used for any business or industrial~~

	purpose or is to contain three or more residential dwelling units.
Director	means the Director of the Department of Environmental Quality.
District or Soil and Water Conservation District	to the Lord Fairfax Soil and Water Conservation District.
Erosion and Sediment Control Plan or 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 and all information deemed necessary by the VESCP plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
Erosion and Sediment Control Sketch Plan	means a plat or drawing of the property indicating the elevation contours and detailing the proposed areas of disturbance, including but not limited to the driveway, house site, and clearing that identifies the location and type of proposed erosion and sediment control practices to be installed prior to any land disturbing activity.
Erosion Impact Area	means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes [or to shorelines where the erosion results from wave action or other coastal processes.]
Excavating	means any digging, scooping or other methods of removing earth materials.
Filling	means any depositing or stockpiling of earth materials.

Grading

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

Land-disturbing Activity

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

- ~~1. Single family residential land disturbance activities such as home gardens and individual yard landscaping, repairs and maintenance work;~~
- ~~2. Individual service connections;~~
- ~~3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;~~
- ~~4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;~~
- ~~5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;~~
- ~~6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, de-silting 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 the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of §10.1-1163;~~

~~7. Repair or rebuilding of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of a railroad company;~~

~~8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia §10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation.~~

~~9. Disturbed land areas of less than 10,000 square feet in size including water wells. However, the County reserves the right to require all persons to obtain a Minor Land Disturbance Permit for land disturbing activities less than 10,000 square feet in area.~~

~~10. Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;~~

~~11. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority~~

~~12. of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and~~

~~13. 12. Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an~~

~~approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Zoning/Code Enforcement Officer.~~

Land-disturbing Permit

~~or Approval means a permit or other form of approval issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any other land-disturbing activity.~~

Minor Land Disturbance Permit

~~means a permit issued by County for any land-disturbing activity less than 10,000 square feet in area.~~

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 bank full storm event within its banks and allows larger flows to access its bank full bench and its floodplain.~~

Owner

~~means 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.~~

Peak flow rate

~~means the maximum instantaneous flow from a given storm condition at a particular location.~~

Permittee

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

Person

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

State permit

~~means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater~~

	individual permit or coverage issued under a state general permit.
VESCP Plan approving authority	means the program administrator or their designee as having the responsibility for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of lands and for approving plans.
VESCP Program authority	means the County which has adopted a soil erosion and sediment control program that has been approved by the Board.
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 ESC 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 ESC plan or permit as a prerequisite for engaging in land disturbance.
Runoff volume	means the volume of water that runs off the land development project from a prescribed storm event.
Single-family residence	means a noncommercial dwelling that is occupied exclusively by one family.
State waters	means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.
Stop Work Order	means a written notice sent to the responsible land disturber or owner or appropriate agent that stops all land disturbing activity on the project for a specified time period.
Transporting	means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Virginia Erosion and Sediment Control Program or VESCP

~~means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and non-agricultural runoff associated with a land disturbance 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, 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 its associated regulations.~~

Water quality volume

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

~~§ 148-3. Local Erosion and Sediment Control Program~~

~~Pursuant to §62.1-44.15:54 of the Code of Virginia, the County hereby establishes a VESCP program and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources). In accordance with §62.1-44.15:52 of the Code of Virginia, 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 man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made 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, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it 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 it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.~~

- ~~A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified in § 62.1-44.15:28 of the Stormwater Management Act and 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Regulations.~~
- ~~B. Pursuant to §62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The County's Erosion Control Program shall contain a certified program administrator, a certified plan reviewer, and a certified inspector (who may be the same person.)~~
- ~~C. The County hereby designates the program administrator as the plan-approving authority.~~
- ~~D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the program administrator.~~

~~§ 148-4. Submission and Approval of Plans; Contents of Plans~~

- ~~A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the program administrator an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the County. No approval to begin a land-disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Department for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the program administrator.~~
- ~~B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended and the Clarke County Erosion and Sediment Control Ordinance are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The program administrator, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.~~
- ~~C. A person engaging in land-disturbing activities shall obtain one of the following permits:~~

- ~~1. A Land Disturbance Permit is required for all land-disturbing activities of 10,000 square feet or greater. Approval of an Erosion and Sediment Control Plan is a prerequisite to approval of a Land Disturbance Permit.~~
 - ~~2. A Minor Land Disturbance Permit is required for all land-disturbing activities of less than 10,000 square feet. An Erosion and Sediment Control Sketch Plan may be required as a prerequisite to approval of a Minor Land Disturbance Permit at the discretion of the program administrator. Construction of non-agricultural ponds less than 10,000 square feet shall require a Minor Land Disturbance Permit.~~
 - ~~3. An Agreement in Lieu of a Plan is required for all land-disturbing activities involving the construction of a single-family residence. An Erosion and Sediment Control Sketch Plan may be required as a prerequisite to the approval of an Agreement in Lieu of a Plan at the discretion of the program administrator.~~
- ~~D. The VESCP plan approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law and the Board's regulations, and if the person responsible for carrying out the plan certifies that he will properly perform the measures included in the plan and will conform to the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber, to the program authority, as provided by §62.1-44-15:52 of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.~~
- ~~E. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.~~
- ~~F. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.~~
- ~~G. The VESCP Authority may require changes to an approved plan when:~~
- ~~1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or~~

- ~~2. The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan approving authority and the person responsible for carrying out the plans.~~
- ~~H. Variances. The VESCP plan approving authority may waive or modify any of the standards that are deemed to be inappropriate too restrictive for site conditions, by granting a variance. A variance may be granted 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 that are allowed by the plan approving 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 plan approving authority. The plan approving authority shall respond in writing either approving or disapproving such a request. If the plan approving 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.~~
 - ~~3. The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.~~
- ~~I. In order to prevent further erosion, the County may require approval of a plan for any land identified in the local program as an erosion impact area.~~
- ~~J. When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an Erosion and Sediment Control Plan shall be the responsibility of the owner.~~
- ~~K. In accordance with the procedure set forth in §62.1-44.15:55(E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U. S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent~~

~~with guidelines established by the Board. Approval of general erosion and sediment control specifications does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.~~

~~L. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, §62.1-44.15:56.~~

~~§ 148-5. Permits; Fees; Security for Performance~~

~~A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed and evidence of state permit coverage where it is required.~~

~~B. No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit (unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance) and has paid the fees and posted the required bond.~~

~~C. An administrative fee as set by the Board of Supervisors in the Clarke County fee schedule shall be paid to the Clarke County Treasurer at the time of submission of the erosion and sediment control plan. Fees incurred from inspections shall also be paid to the County.~~

~~D. No land-disturbing permit shall be issued until the applicant submits with their application an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed.~~

~~E. All applicants for permits shall either:~~

~~1. sign a statement acknowledging that the Certificate of Occupancy may be withheld for completed portions of projects and/or Building Permits for unconstructed portions of projects should the applicant fail, after proper notice, within the time specified, to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity, or~~

~~2. provide to the County a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the program administrator to ensure that measures could be taken by the County at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or~~

~~maintain appropriate conservation measures required of them by the approved plan as a result of their land-disturbing activity~~

- ~~a. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty five percent of the cost of the conservation action. Should it be necessary for the County to take such conservation action, the County may collect from the applicant any costs in excess of the amount of the surety held.~~
- ~~b. Within sixty (60) days of adequate stabilization, as determined by the program administrator in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.~~

~~§148-6. Monitoring, Reports, and Inspections~~

- ~~A. The responsible land disturber, as provided by §62.1-44.15:32, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The program administrator may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.~~
- ~~B. The Building Department shall periodically inspect the land-disturbing activity in accordance with 9VAC25-840-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. Professional fees incurred as a result of the inspections shall be paid by either: the permittee, owner, or person responsible for carrying out the plan. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.~~

~~If the program 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 mailing with confirmation of delivery to the address specified in the~~

~~permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.~~

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

~~C. Upon issuance of an inspection report denoting a violation of Code of Virginia §§62.1-44.15:55—44.15:56, the program administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.~~

~~If land-disturbing activities have commenced without an approved plan, the program administrator may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.~~

~~Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.~~

~~The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the County or permit holder for appropriate relief to the Circuit Court of Clarke County. The County shall serve such order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.~~

~~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 program administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records.~~

~~The owner may appeal the issuance of an order to the Circuit Court of Clarke County.~~

~~Any person violating or failing, neglecting or refusing to obey an order issued by the program administrator may be compelled in a proceeding instituted in the Circuit Court of Clarke County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.~~

~~Nothing in this section shall prevent the program administrator from taking any other action authorized by this ordinance.~~

~~§148-7. Penalties, Injunctions, and Other Legal Actions.~~

~~A. Violators of this ordinance shall be guilty of a Class I misdemeanor~~

~~B. Any person who violates any provision of Code of Virginia §§62.1-44.15:55—44.15:56 shall, upon a finding of the District Court of Clarke County, be assessed a civil penalty.~~

~~The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land disturbing activities without an approved plan shall be \$1,000.~~

~~Each day during which the violation is found to have existed shall constitute a separate offense.~~

~~In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.~~

~~Any such civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of §62.1-44.15:63~~

~~C. The program administrator, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of Clarke County to enjoin a violation or a threatened violation of Code of Virginia §§62.1-44.15:55—44.15:56, without the necessity of showing that an adequate remedy at law does not exist.~~

~~However, an owner of property shall not apply for injunctive relief unless~~

- ~~i. he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and~~
- ~~ii. neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to their property.~~

~~D. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to the County in a civil action for damages.~~

~~E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation.~~

~~The County may bring a civil action for such violation or failure.~~

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

~~F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the VESCP authority, the County may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty, which could be imposed under Subsection B or E.~~

~~G. The Commonwealth's Attorney shall, upon request of the program administrator, take legal action to enforce the provisions of this ordinance.~~

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

~~§148-8. Appeals and Judicial Review~~

~~Final decisions of the County under this ordinance shall be subject to review by the Circuit Court of Clarke County, provided an appeal is filed within 30 days from the date of any~~

~~written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.~~

Amendments Chapter 148

~~2004-02-17~~

~~§ 148-4 Definitions add “or drilling of a water well to Agreement In Lieu of a Plan; Add to J. excluding water wells to Land-Disturbing Activity~~

~~2005-06-21~~

~~§ 148-4. Definitions. Erosion And Sediment Control Sketch Plan [05-06-21] Add Erosion and Sediment Control Sketch Plan, G. remove ponds, § 148-6 add F. and renumber modify G and H~~

~~2008-12-16~~

~~§ 148 Soil Erosion and Sedimentation Control, so as to update this section and bring it into conformance with the Code of Virginia~~

~~2017-10-17~~

~~§ 148 Soil Erosion and Sedimentation Control. The purpose of the amendment is to bring the Chapter into conformance with recent changes to State law regarding erosion and sediment control by replacing the current provisions of the Chapter with new provisions. The proposed new provisions are drafted to be consistent with the Virginia Department of Environmental Quality’s Erosion and Sediment Control Model Ordinance (revised December 5, 2014).~~