

The Smyth County Board of Supervisors held its regular meeting on Thursday, July 11th, 2024 at 5:00 p.m. The location of the meeting was held in the First Floor Board Room of the County Office Building, 121 Bagley Circle, Suite 100, Marion, Virginia.

PRESENT: Atkins District Supervisor Charles Atkins; Rye Valley District Supervisor Jason Parris; Chilhowie District Supervisor Michael Sturgill; Saltville District Supervisor Roscoe Call.

ABSENT: Park District Supervisor Kristopher Ratliff; Royal Oak District Supervisor Courtney Widener; North Fork District Supervisor Rick Billings.

STAFF: Assistant County Administrator – Operations Lisa Richardson; Executive Assistant Auna Louthian; County Attorney Scot Farthing.

OTHERS: Smyth County Sheriff's Deputy and citizens

7/11/2024 5:02 PM Chair, Atkins District Supervisor Charles Atkins called the meeting to order and welcomed everyone.

7/11/2024 5:02 PM Becca Creasy, Zoning Administrator led the Pledge of Allegiance and Reverend Alan Gray gave the invocation.

7/11/2024 5:03 PM Director of Community and Economic Development presented TROF awards to Speyside Bourbon Cooperage and SIG (formerly Scholle IPN). Mrs. Hayen shared Speyside closed with 100% of jobs required and 92% of capital investment resulting in a \$398,400 grant award. SIG (formerly Scholle IPN) also closed with 100% of both the jobs and capital investment required resulting in a \$195,000 grant award.

7/11/2024 5:04 PM Mrs. Richardson read the rules for the public hearings and reviewed the following ad for proposed increase to water and sewer rates:

Public Hearing Proposed Increase in Water & Sewer Rates

Pursuant to Section 15.2-2119 of the Code of Virginia, The Smyth County Board of Supervisors proposes to increase the rates charged for Water and Sewer services within the Smyth County systems as follows, effective August 1, 2024:

<i>Water Rates – Residential</i>			
Current Rates		Proposed Rates – 5% increase	
0 – 1,000 gallons	\$24.10 minimum bill	0 – 1,000 gallons	\$25.30
minimum bill 1,001 – 6,000 gallons	\$10.44 per 1,000 gallons	1,001 – 6,000 gallons	\$10.96
per 1,000 gallons 6,001 and over	\$12.85 per 1,000 gallons	6,001 and over	\$13.49
per 1,000 gallons			

<i>Water Rates – Commercial</i>			
Current Rates		Proposed Rates – 5% increase	
0 – 4,000 gallons	\$56.20 minimum bill	0 – 4,000 gallons	\$59.01
minimum bill Each additional 1,000 gallons		\$12.85 per 1,000 gallons	Each
additional 1,000 gallons	\$13.49 per 1,000 gallons		

<i>Water Rates – Industrial</i>			
Current Rates		Proposed Rates – 5% increase	
0 – 25,000 gallons	\$260.98 minimum bill	0 – 25,000 gallons	\$274.03
minimum bill Each additional 1,000 gallons		\$12.85 per 1,000 gallons	Each
additional 1,000 gallons	\$13.49 per 1,000 gallons		

<i>Sewer Rates – Residential</i>			
Current Rates		Proposed Rates – 5% increase	
0 – 1,000 gallons	\$24.10 minimum bill	0 – 1,000 gallons	\$25.30
minimum bill 1,001 – 6,000 gallons	\$10.44 per 1,000 gallons	1,001 – 6,000 gallons	\$10.96
per 1,000 gallons 6,001 and over	\$12.85 per 1,000 gallons	6,001 and over	\$13.49
per 1,000 gallons			

Current Rate		Proposed Rate – 5% increase	
Residential Flat Rate	\$53.34 per month	Residential Flat Rate	\$56.00 per month

<i>Sewer Rates – Commercial</i>			
Current Rates		Proposed Rates – 5% increase	
0 – 4,000 gallons	\$56.20 minimum bill	0 – 4,000 gallons	\$59.01
minimum bill Each additional 1,000 gallons		\$12.85 per 1,000 gallons	Each
additional 1,000 gallons	\$13.49 per 1,000 gallons		

<i>Sewer Rates – Industrial and Industrial Enterprise Zone</i>			
Current Rates		Proposed Rates – 5% increase	
0 – 3,000 gallons	\$80.30 minimum bill	0 – 3,000 gallons	\$84.34
minimum bill Each additional 1,000 gallons		\$13.39 per 1,000 gallons	Each
additional 1,000 gallons	\$14.05 per 1,000 gallons		

A Public Hearing will be conducted by the Smyth County Board of Supervisors on **Thursday, July 11, 2024** beginning at 5:00 p.m., or shortly thereafter, in the Board of Supervisors meeting room, 121 Bagley Circle,

Marion, Virginia. A copy of the present and proposed rate schedule is on file at the Smyth County Administrators Office, 121 Bagley Circle, Marion, Virginia and can be viewed between the hours of 8:00 am and 5:00 pm, Monday through Friday.

At this public hearing, subject to the rules of procedure of the Board of Supervisors of Smyth County, Virginia, any person may appear and state his/her views thereon. In compliance with the Americans with Disabilities Act, persons requiring special assistance to attend and participate in this hearing should contact Clegg Williams, ADA Coordinator, at (276) 706-8315, at least 48 hours prior to the hearing.

By order of the Smyth County Board of Supervisors – Shawn M. Utt, County Administrator

7/11/2024 5:08 PM Chair, Atkins District Supervisor Charles Atkins opened the public hearing

7/11/2024 5:09 PM with no citizens wishing to speak, Chair, Atkins District Supervisor Charles Atkins closed the public hearing.

7/11/2024 5:03 PM Zoning Administrator, Becca Creasy read the following legal ad and reviewed the nuisance complaint for property located at 902 Old Wilderness Road, Ceres.

BEFORE THE SMYTH COUNTY BOARD OF SUPERVISORS

The Smyth County Board of Supervisors will conduct a public hearing in the Smyth County Office Building at 121 Bagley Circle in Marion, Virginia, on Thursday, July 11, 2024, at 5:00 P.M. or as soon thereafter to receive public input on whether the properties referenced below constitute public nuisances as defined by Smyth County Code, Article 3, Section 20-64.

1. Owner: Farrah Pennington Vaughn
Property: 229 Harris Lane, Marion, Virginia
Tax Map Nos. 46B-2-31 through 46B-2-34, continuously
2. Owner: Goodmans Chapel Methodist
Property: 902 Old Wilderness Road, Ceres, Virginia
Tax Map Nos. 10-A-19, 10-A-20A & 10-A-20D

Publication is required in cases where the property owner is either unknown or officials have been unable to locate the owner. Those with an ownership interest in the property should contact Becca Creasy at (276) 706-8316. If the property is declared a public nuisance and the owner(s) do not file a plan to abate or raze the nuisance at his/her cost, the County will file a complaint with the Circuit Court and take action to remove the nuisance. The cost will be charged to the owner and filed as a lien against the property ranking on parity with real estate taxes. Failure to pay nuisance abatement charges may result in the property being sold for nuisance abatement costs according to Virginia Code §58.1-3965 (1950), as amended.

At this public hearing, subject to the rules of procedure of the Board of Supervisors of Smyth County, Virginia, any person may appear and state his/her views thereon.

In compliance with the Americans with Disabilities Act, persons requiring special assistance to attend and participate in this hearing should contact Clegg Williams, ADA Coordinator, at (276) 706-8315 at least 48 hours before the hearing.

Smyth County fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information or to obtain a Title VI Discrimination Complaint Form, contact (276) 783-3298 or at <https://www.smythcounty.org>.

Done by order of the Board of Supervisors
Shawn Utt, County Administrator

7/11/2024 5:03 PM Chair, Atkins District Supervisor Charles Atkins opened the public hearing.

Harold Waddell of 435 Louise Ave., Marion spoke on the history of the property and the historical value of the church. Mr. Wadell also shared he believed the property owner did not get a court order from the trustees to allow the property to be sold.

Neil Hammonds 5023 West Blue Grass Trail, Ceres shared he had tried to speak to Mr. Bowman who is doing construction on the property and states he is the new owner. Mr. Hammonds shared he was under the assumption that since it was no longer a church it could be sold with a quick claim deed.

Chair, Atkins District Supervisor Charles Atkins shared the legal ownership would need to be debated with attorneys and reminded the reason for the public hearing was only for the nuisance complaint.

7/11/2024 5:30 PM Chair, Atkins District Supervisor Charles Atkins closed the public hearing.

- *Saltville District Supervisor Roscoe Call made a motion to waive the rules of the public hearing for 902 Old Wilderness Road, Ceres to allow a vote. Rye Valley District Supervisor Jason Parris seconded the motion.*

After consideration, the motion PASSED by the following vote:

AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

- *Saltville District Supervisor Roscoe Call made a motion to declare 902 Old Wilderness Road, Ceres a public nuisance and authorize County Attorney to proceed with legal action to enforce the Smyth County Ordinance. Rye Valley District Supervisor Jason Parris seconded the motion.*

After consideration, the motion PASSED by the following vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

7/11/2024 5:32 PM Zoning Administrator, Becca Creasy then reviewed the nuisance complaint for property located at 229 Harris Lane, Marion and shared she has not been able to speak with the owner.

7/11/2024 5:33 PM Chair, Atkins District Supervisor Charles Atkins opened the public hearing.

Ed Blair of 1082 Sunset Hill Drive, Marion spoke on behalf of his Mother-in-law that lives on Harris Lane. Mr. Blair shared he would really like to see the property cleaned up and stated it was currently not being inhabited.

Garry Hester of 110 West Cherry Street, Marion shared he has been trying to purchase the building on the property since 2020. Mr. Hester shared the property has multiple liens but would still like to purchase the lot with the garage on it.

7/11/2024 5:45 PM Chair, Atkins District Supervisor Charles Atkins closed the public hearing.

- *Chilhowie District Supervisor Michael Sturgill made a motion to waive the rules of*

the public hearing for 229 Harris Lane, Marion to allow a vote. Rye Valley District Supervisor Jason Parris seconded the motion.

After consideration, the motion PASSED by the following vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

- *Chilhowie District Supervisor Michael Sturgill made a motion to declare 229 Harris Lane, Marion a public nuisance and authorize County Attorney to proceed with legal action to enforce the Smyth County Ordinance. Rye Valley District Supervisor Jason Parris seconded the motion.*

After consideration, the motion PASSED by the following vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

7/11/2024 5:57 PM Minutes of the June 20th Board of Supervisors meeting:

- *A motion was made by Saltville District Supervisor Roscoe Call to approve the minutes from the June 20th, 2024, meeting as presented. Chilhowie District Supervisor Michael Sturgill seconded the motion.*

After consideration, the motion PASSED by the following vote:

AYES: Chair, Atkins District Supervisor Charles Atkins,

*Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

7/11/2024 5:58 PM Assistant County Administrator, Lisa Richardson reviewed the County financial information.

SMYTH COUNTY BOARD OF SUPERVISORS
THURSDAY, JULY 11, 2024

ACCOUNTS PAYABLE LISTING

June 2024

Request approval of the following payables:

General County	2,551,973.13
Fund 004 EDA	6,674.13
Fund 302 Public Safety Radio	36,279.64
Fund 505 Transfer Station	45,920.82
Regular Checks Total:	2,640,847.72
<u>Fund Accounts - Manual Checks</u>	
Fund 501 Water Deposit Refunds	100.00
Fund 747 Sheriff State Asset Forfeiture	-
Fund 748 Sheriff Purchase of Equipment	1,470.65
Fund 749 Recovery Court	4,523.28
Fund 760 Commonwealth Attorney Federal Drug Asset	-
Fund 770 Circuit Court Clerk - Holding Account	-
Manual Checks Total:	6,093.93
TOTAL ACCOUNTS PAYABLE - June 2024	2,646,941.65

7/11/2024 5:25 PM A motion was made by Saltville District Supervisor Roscoe Call to approve the accounts payable listing as presented above. Chilhowie District Supervisor Michael Sturgill seconded the motion.

After consideration, the motion *PASSED* by the following vote:

AYES: Chair, Atkins District Supervisor Charles Atkins,
 Vice Chair, Chilhowie District Supervisor Michael Sturgill,
 Saltville District Supervisor Roscoe Call, and
 Rye Valley District Supervisor Jason Parris.

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

7/11/2024 6:00 PM Chair, Atkins District Supervisor Charles Atkins opened citizen's time.

Logan Nester as a representative of Mount Rogers Community Services thanked the Board for their ongoing financial support and shared they are excited for the future.

7/11/2024 6:02 PM With no one else wishing to speak, Chair, Atkins District Supervisor Charles Atkins closed citizen's time.

7/11/2024 6:02 PM Building Inspector Kenneth Pennington reminded the Board the public hearing for the updates to the Stormwater and Floodplain Ordinances was held at the last meeting and if they wish the ordinances that were included in the meeting packet may now be adopted.

- *A motion was made by Saltville District Supervisor Roscoe Call to repeal the current Stormwater Ordinance and adopt the revised Stormwater Ordinance as presented below in its place. Chilhowie District Supervisor Michael Sturgill seconded the motion.*

After consideration, the motion PASSED by the following vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

Smyth County

Chapter 20 – Environmental

Article II. – Erosion and Stormwater Management Program

Pursuant to §62.1-44.15:27 of the Code of Virginia, this ordinance is adopted as part of an integrated Smyth County Erosion and Sediment Control Program and Smyth County Stormwater Management Program, to include related flood insurance and flood plain management requirements. 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 in a more convenient and efficient manner for both Smyth County and those responsible for compliance with these programs.

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Section 20-1 – 20-18 – Reserved.

Section 20-19. - TITLE, PURPOSE, AND AUTHORITY.

- A. This ordinance shall be known as the "Erosion and Stormwater Management Ordinance of Smyth County.*
- B. The purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of Smyth County, protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land-disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.*
- C. This ordinance is authorized by § 62.1-44.15:27 of the Code of Virginia.*

Section 20-20 - DEFINITIONS.

The following words and terms, when used in this ordinance, 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.

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

"Applicant" means a 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.

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

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

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

"Department" means the Virginia Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or non-silvicultural purposes. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

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

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

"Discharge of a pollutant" means:

- 1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or*
- 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft 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.

"Energy dissipator" means a non-erodible 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 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 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.

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

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

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

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

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

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

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

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

"Locality" means Smyth County.

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

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

"Manmade" means constructed by man.

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

"Minor modification" means modifications and amendments not requiring extensive review and evaluation including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates

within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"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.

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

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

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

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

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

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

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

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

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

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

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

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this ordinance.

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

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

etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

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

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

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

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

intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

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

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

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

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

"State" means the Commonwealth of Virginia.

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

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

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

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

"Stormwater," for the purposes of the VESMA, means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

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

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

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

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

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

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

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

"Surface waters" means:

1. *All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;*
2. *All interstate waters, including interstate wetlands;*
3. *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:*
 - a. *That are or could be used by interstate or foreign travelers for recreational or other purposes;*
 - b. *From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*

- c. *That are used or could be used for industrial purposes by industries in interstate commerce;*
4. *All impoundments of waters otherwise defined as surface waters under this definition;*
5. *Tributaries of waters identified in subdivisions 1 through 4 of this definition;*
6. *The territorial sea; and*
7. *Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.*

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

"SWM" means stormwater management.

"Temporary vehicular stream crossing" means a temporary nonerodable 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 nonerodable material.

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

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

"Town" means an incorporated town.

"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 [locality or the locality's designated entity] approved by the department to operate the VESMP.

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

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

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

"Wasteload allocation" or "wasteload" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality-based effluent limitation.

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

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

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

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

Section 20-21 - VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM ESTABLISHED

Pursuant to § 62.1-44.15:27 of the Code of Virginia, Smyth County 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 20-19 of this Ordinance. Smyth County hereby designates the Erosion and Stormwater Administrator as the Administrator of the Virginia Erosion and Stormwater Management Program established by this Ordinance.

Section 20-22 - REGULATED LAND DISTURBING ACTIVITIES

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

- 1. Land-disturbing activity that disturbs 10,000 square feet or more, is less than one acre, and 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.*
- 2. Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.*
- 3. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.*

B. Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

Section 20-23 - REVIEW AND APPROVAL OF PLANS (§ 62.1-44.15:34 of the Code of Virginia); PROHIBITIONS.

- A. Smyth County 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. A person shall not conduct any regulated land-disturbing activity in Smyth County until:*
- 1. 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, has been submitted to Smyth County;*
 - 2. The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.144.15:30 of the Code of Virginia is submitted to Smyth County. Exception: Smyth County may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for the construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, 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, and posting of a performance bond in accordance with subsection (E) of this section. 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. Smyth County 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 Smyth County, and posting of a performance bond pursuant to subsection E of this section. Failure to provide the name of an individual holding a Responsible Land Disturber certificate or posting of a performance bond 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 Act.*
- C. Smyth County may require changes to an approved ESM plan in the following cases:*
- 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or*
 - 2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner.*
- D. In order to prevent further erosion, Smyth County may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area. (§ 62.1-44.15:34)*

- E. *Bond requirements (4VAC50-60-104.D and Code § 603.8(A)). Prior to issuance of any permit under this article, 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 Smyth County Attorney, to ensure that appropriate measures could be taken by the county at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain necessary actions which may be required of him by the permit conditions as a result of his land-disturbing activity. The following requirements apply:*
1. *Amount of bond. The amount of the bond with surety or other security for performance shall equal the estimated cost to install and maintain appropriate erosion control and/or stormwater management measures and a reasonable allowance for estimated administrative costs which shall not exceed 25 percent of the cost of the conservation measures, but not less than \$5,000.00, the minimum for which a performance bond may be issued. 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.*
 2. *Refund or release of bond. 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 shall be released or terminated.*
- F. *Smyth County may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.*
- G. *No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.*
- H. *Smyth County is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.*

Section 20-24 - REVIEW OF A SOIL EROSION CONTROL AND STORMWATER MANAGEMENT PLAN (ESM Plan).

- A. *Smyth County shall approve or disapprove an ESM plan according to the following:*

1. *Smyth County shall determine the completeness of any application within 15 days after receipt and shall act on any application within 60 days after it has been determined by the to be complete.*
2. *Smyth County shall issue either land-disturbance approval or denial and provide a written rationale for any denial.*
3. *Prior to issuing a land-disturbance approval, Smyth County shall be required to obtain evidence of permit coverage when such coverage is required.*
4. *Smyth County 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 20-25 - 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 Smyth County in accordance with the provisions of this ordinance and the Regulation.*
- B. *Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless otherwise required by federal law:*
 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;*
 1. *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 the 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 the Code of Virginia

- 7. Installation of fence and signposts 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, Smyth County 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 ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

- 1. Activities under a state or federal reclamation program to return an abandoned property to 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 20-26 - 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 Smyth County in accordance with the VESMA, this ordinance, and attendant regulations.*
- C. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.*
- D. In addition to the requirements of subsections A through C of this section, if a specific waste load 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 waste load 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 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 20-27 - 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 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 Smyth County.
 1. *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 residential developments 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(s).*

- 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 land-disturbing activity in the development is equal to or greater than 10,000 square feet in total.*

Section 20-28 -STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN. (9VAC25875-510)

- A. *A stormwater management plan, which is a component of the ESM plan, shall be developed and submitted to the Smyth County Building and Zoning Department. The stormwater management plan shall be implemented as approved or modified by Smyth County and shall be developed in accordance with the following:*
1. *A stormwater management plan for a regulated land-disturbing activity shall apply the stormwater management technical criteria set forth in this ordinance and Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.*
 2. *A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.*
- B. *A complete stormwater management plan shall include the following elements:*
1. *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.*
 2. *A narrative that includes a description of current site conditions and final site conditions.*
 3. *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.*
 4. *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.*
 5. *Information on the proposed stormwater management facilities, including (i) a 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 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.*
 9. *If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 using off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and*
- 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 his area of professional competence.*

Section 20-29 - POLLUTION PREVENTION PLAN; CONTENTS OF PLANS. (9VAC25-875520)

- 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 20-30 - 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, Smyth County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 water quality design criteria requirements; 9VAC25-875-590 water quality compliance; 9VAC25-875-600 water quantity; 9VAC25-875-610 offsite compliance options; 9VAC25-875-620 design storm and hydrologic methods; 9VAC25-875-630 stormwater harvesting; 9VAC25-875-640 linear development project; and, 9VAC25-875-650 stormwater management impoundment structures or facilities, which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in Subsection B of this Section.*
- B. *Any land-disturbing activity shall be considered grandfathered and shall be subject to Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation provided:*
1. *A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document Smyth County determined by to be equivalent thereto (i) was approved by Smyth County prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of Article 4 of Part V of 9VAC25-875, and*

- (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;*
- 2. A permit has not been issued prior to July 1, 2014; and*
 - 3. Land disturbance did not commence prior to July 1, 2014.*
- C. Locality, state, and federal projects shall be considered grandfathered by Smyth County and shall be subject to the technical criteria of Article 4 of Part V of 9VAC25875 provided:*
- 1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012.*
 - 2. A permit has not been issued prior to July 1, 2014; and*
 - 3. Land disturbance did not commence prior to July 1, 2014.*
- D. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of Part V of 9VAC25-875 for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.*
- E. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875.*
- F. Nothing in this section shall prevent an operator from constructing to a more stringent standard at his/her discretion.*

Section 20-31 - LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES

- A. The operator shall submit a construction record drawing for permanent stormwater management facilities to Smyth County 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. Smyth County shall require the provision of long-term responsibility for, and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an*

instrument recorded in the local land records prior to general permit termination or earlier as required by Smyth County and shall at a minimum:

- 1. Be submitted to Smyth County for review and approval prior to the approval of the stormwater management plan.*
 - 2. Be stated to run with the land.*
 - 3. Provide 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 Smyth County; and*
 - 5. Be enforceable by all appropriate governmental parties.*
- C. At the discretion of Smyth County, 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 Smyth County that future maintenance for those facilities will be addressed through an enforceable mechanism at the discretion of Smyth County.*
- D. If a recorded instrument is not required pursuant to Subsection C., Smyth County shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach, and education, or other 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 Smyth County or its duly authorized agent.*

Section 20-31 - MONITORING AND INSPECTIONS.

- A. Smyth County shall inspect the land-disturbing activity during construction for:*
- 1. Compliance with the approved erosion and sediment control plan.*
 - 2. Compliance with the approved stormwater management plan.*
 - 3. Development, updating, and implementation of a pollution prevention plan; and*
 - 4. Development and implementation of any additional control measures necessary to address a TMDL.*
- B. Smyth County shall conduct periodic inspections on all projects during construction. Smyth County shall either:*
- 1. Provide for an inspection during or immediately following the 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:*
 - i. *Approved by the department prior to implementation.*
 - ii. *Established in writing.*
 - iii. *Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and*
 - iv. *Documented by inspection records.*

- C. *Smyth County shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after the completion of land-disturbing activities. Inspection programs shall:*
 1. *Be approved by the department.*
 2. *Ensure that each stormwater management facility is inspected by Smyth County or its designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and,*
 3. *Be documented by records.*

- D. *Smyth County may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.*

- E. *If a recorded instrument is not required pursuant to 9VAC25-875-130, Smyth County shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other 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 Smyth County.*

Section 20-32 - HEARINGS

- A. *Thirty days' notice. Any permit applicant or permittee, or person subject to the requirements of this ordinance, aggrieved by any action of Smyth County taken without a formal hearing, or by inaction of Smyth County, may demand in writing a formal hearing by the Board of Supervisors, or its designee, causing such grievance, provided a*

petition requesting such hearing is filed with the Erosion and Stormwater Administrator within 30 days after notice of such action is given by the Administrator.

- B. Time and place of hearing. The hearings held under this section shall be conducted by the Board of Supervisors at a regular or special meeting of the Board of Supervisors, or by at least one member of the Board of Supervisors designated by the Board of Supervisors to conduct such hearings on behalf of the board of supervisors at any other time and place authorized by the board of supervisors.*
- C. Hearing record required. A verbatim record of the proceedings of such hearings shall be taken and filed with the Smyth County Board of Supervisors. Depositions may be taken and read as in actions at law.*
- D. Power to subpoena. The Smyth County Board of Supervisors or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.*

Section 20-33 - APPEALS.

Appeal to Circuit Court within 30 days. Final decisions of the county under this article shall be subject to review by the Smyth 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.

Section 20-34 - RIGHT OF ENTRY.

- A. Smyth County or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this ordinance.*
- B. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, Smyth County 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 Smyth County on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.*

Section 20-34 - ENFORCEMENT

- A. *If the Erosion and Stormwater Administrator determines that there is a failure to comply with the permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.*
1. *The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection 2 or the permit may be revoked by the Administrator.*
 2. *If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue 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 paragraph 2 of the Sections. Such orders shall become effective upon service to the person by certified mail, return receipt requested, sent to his/her 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 proceedings for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 20-34.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 this Ordinance, Board of Supervisor decision, and/or recognized professional practice.*

- 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 Erosion and Stormwater Administrator may be compelled in a proceeding instituted by Smyth County Circuit Court by Smyth County, to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.*
- D. *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; No approved erosion and sediment control plan.*
 - v. *Failure to install stormwater BMPs or erosion and sediment controls.*
 - vi. *Stormwater BMPs or erosion and sediment controls improperly installed or maintained.*
 - vii. *Operational deficiencies.*
 - viii. *Failure to conduct required inspections.*
 - ix. *Incomplete, improper, or missed inspections; and*
 - x. *Discharges not in compliance with the requirements of 9VAC25-880-70.*
1. *The Erosion and Stormwater Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.*
 2. *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.*
 3. *Any civil penalties assessed by a court as a result of a summons issued by Smyth County shall be paid into the treasury of Smyth County, to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.*
- E. *Notwithstanding any other civil or equitable remedy provided by this ordinance or by law, any person who willfully or negligently violates any provision of this ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.*

- A. *Fees to cover costs associated with the 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. [NOTE: Such fee attributes include the costs associated with plan review, VESMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with land-disturbing activities as well as state program oversight costs.] 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 the 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 the applicant. (Includes both VESMP authority and department portions where	Department portion of the "total fee to be paid by applicant" (based on 28% of the total fee paid*)
<i>General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)</i>	\$290	\$81
<i>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)</i>	\$2,700	\$756
<i>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)</i>	\$3,400	\$952
<i>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]</i>	\$4,500	\$1,260
<i>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)</i>	\$6,100	\$1,708
<i>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)</i>	\$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 Smyth County, 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 been 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. [NOTE: Fees specified in this Subsection go to Smyth County.]

Table 3: Permit Maintenance Fees

<i>Type of Permit</i>	<i>Fee Amount</i>
<i>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)</i>	<i>\$50</i>
<i>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)</i>	<i>\$400</i>
<i>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)</i>	<i>\$500</i>
<i>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)</i>	<i>\$650</i>
<i>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)</i>	<i>\$900</i>
<i>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)</i>	<i>\$1,400</i>

General permit coverage maintenance fees shall be paid annually to Smyth County by the anniversary date of general permit coverage, or fiscal year-end, July 1 of each year. 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 20-35 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 20.20 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.

G. All incomplete payments will be deemed as nonpayment, 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. Smyth County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

<u>NAME</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSENT</u>
Charlie E. Atkins	X		
Roscoe D. Call	X		
Courtney Widener			X
Kristopher S. Ratliff, DPh			X
W. Jason Parris	X		
Mike Sturgill			
Rick A. Billings			X

I certify that this is a true and correct copy of the recorded vote taken from the minutes of the Smyth County Board of Supervisors meeting of July 11th, 2024.

Shawn Utt, Clerk of the Board

- *A motion was made by Saltville District Supervisor Roscoe Call to approve the amended Floodplain Ordinance as presented below. Chilhowie District Supervisor Michael Sturgill seconded the motion.*

After consideration, the motion PASSED by the following vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

Chapter 29

FLOODPLAIN MANAGEMENT¹

ARTICLE I. GENERAL PROVISIONS

Secs. 29-1—29-10. Reserved.

Sec. 29-11. Statutory authorization and purpose.

This chapter is adopted pursuant to the authority granted to localities by Code of Virginia §15.2-2280 et seq.

The purpose of these provisions is to prevent: the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- (1) Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

¹Editor's note(s)—Ord. adopted 10-28-1997, pertained to similar subject matter and derived from Flood Disaster Protection Act of 1973 and Code of Virginia, § 15.2-1200 is repealed by this Ord. adopted 6-12-2012 and based on 44 CFR 59 et seq. and authorized by Code of Virginia §15.2-2280 et seq.

State law reference(s)—Flood protection and dam safety, Code of Virginia, §15.2-2280 et seq.; assessment for tax purposes of property encumbered by easement permitting inundation by water, Code of Virginia, § 58.1-3620.

-
- (2) Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
 - (3) Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and, (4) protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(Ord. of 6-12-2012)

State law reference(s)—Authority to regulate flood plains, Code of Virginia, § 15.2-2280.

Sec. 29-12. Applicability.

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of Smyth County and identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the County of Smyth by FEMA.

(Ord. of 6-12-2012)

Sec. 29-13. Compliance and liability.

- (a) No land shall hereafter be developed, and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this chapter.
- (b) The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.
- (c) This chapter shall not create liability on the part of Smyth County or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. of 6-12-2012)

Sec. 29-14. Records.

Records of actions associated with administering this chapter shall be kept on file and maintained by the Floodplain Administrator in perpetuity.

(Ord. of 6-12-2012)

Sec. 29-15. Abrogation and greater restrictions.

To the extent that the provisions are more restrictive, this ordinance supersedes any ordinance currently in effect in flood-prone districts. To the extent that any other existing law or regulation is more restrictive or does not conflict it shall remain in full force and effect.

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances, or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

(Ord. of 6-12-2012)

Sec. 29-16. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this chapter. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this chapter are hereby declared to be severable.

(Ord. of 6-12-2012)

Sec. 29-17. Penalty for violations.

Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the County of Smyth shall be guilty of the appropriate violation and subject to the penalties therefore.

The VA USBC addresses building code violations and the associated penalties in Section 104 and Section 115. Violations and associated penalties of the Zoning Ordinance of Smyth County are addressed in Article VIII of the Zoning Ordinance.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this article may be declared by the County of Smyth to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

(Ord. of 6-12-2012)

Secs. 29-18—29-20. Reserved.

ARTICLE II. ADMINISTRATION

Sec. 29-21. Designation of the Floodplain Administrator.

The Floodplain Ordinance Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

- (1) Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the County of Smyth County Administrator, or his designee.
- (2) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- (3) Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

(Ord. of 6-12-2012)

Sec. 29-22. Duties and responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (a) Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
- (b) Interpret floodplain boundaries, provide available base flood elevation, and flood hazard information.
- (c) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
- (d) Review applications to determine whether all necessary permits have been obtained from the federal, state or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the state.
- (e) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
- (f) Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).
- (g) Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met or disapprove applications if the provisions of these regulations have not been met.
- (h) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
- (i) Review elevation certificates and require incomplete or deficient certificates to be corrected.
- (j) Submit to FEMA, or require applicants to submit to FEMA, data, and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the County of Smyth, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
- (k) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - (1) Flood insurance studies, flood insurance rate maps (including historic studies and maps and current effective studies and maps) and letters of map change; and
 - (2) Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.

- (l) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
- (m) Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
- (n) Administer the requirements related to proposed work on existing buildings:
 - (1) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
 - (2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
- (o) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under NFIP flood insurance policies.
- (p) Notify the Federal Emergency Management Agency when the corporate boundaries of the County of Smyth have been modified and:
 - (1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
 - (2) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.
- (q) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
- (r) It is the duty of the Floodplain Administrator to consider flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

(Ord. of 6-12-2012)

Sec. 29-23. Use and interpretation of FIRMs.

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- (a) Where field surveyed topography indicates that adjacent ground elevations:

- (1) Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
- (2) Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the SFHA.
- (b) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
- (c) Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
- (d) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
- (e) If a preliminary flood insurance rate map and/or a preliminary flood insurance study has been provided by FEMA:
 - (1) Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
 - (2) Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 1.5(C) and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
 - (3) Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(Ord. of 6-12-2012)

Sec. 29-24. Jurisdictional boundary changes.

The county floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(a)(9)(v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the state coordinating office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all flood insurance rate maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for

which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

(Ord. of 6-12-2012)

Sec. 29-25. District boundary changes.

The delineation of any of the floodplain districts may be revised by the County of Smyth where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency.

(Ord. of 6-12-2012)

Sec. 29-26. Interpretation of district boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

(Ord. of 6-12-2012)

Sec. 29-27. Submitting technical data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

(Ord. of 6-12-2012)

Sec. 29-28. Letters of map revision.

When development in the floodplain causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a conditional letter of map revision or a letter of map revision.

Examples:

- (1) Any development that causes a rise in the base flood elevations within the floodway.
- (2) Any development occurring in Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
- (3) Alteration or relocation of a stream (including but not limited to installing culverts and bridges) 44 Code of Federal Regulations § 65.3 and § 65.6(a)(12).

(Ord. of 6-12-2012)

Secs. 29-29—29-30. Reserved.

ARTICLE III. ESTABLISHMENT OF ZONING DISTRICTS

Sec. 29-31. Description of special flood hazard districts.

- (a) *Basis of districts.* The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for Smyth County prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated August 2, 2012, and any subsequent revisions or amendments thereto.

The County of Smyth may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high-water marks or approximate study methodologies.

The boundaries of the SFHA Districts are established as shown on the FIRM which is declared to be a part of this chapter, and which shall be kept on file at the Smyth County offices.

The following zones are applicable to Smyth County and are described as follows:

Zone A: No Base Flood Elevations determined.

Zone AE: Base Flood Elevations determined.

Zone X (shaded): Areas of 0.2 percent annual chance flood; areas of one percent annual chance flood with average depths of less than one foot or with drainage areas less than one square mile; and areas protected by levees annual chance flood.

Zone X (un-shaded): Areas determined to be outside the 0.2 percent annual chance floodplain.

- (1) The Floodway District is in an AE Zone and is delineated, for purposes of this chapter, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this district are specifically defined in Table 6 of the above-referenced FIS and shown on the accompanying FIRM.

The following provisions shall apply within the Floodway District of an AE zone [44 CFR 60.3(d)]:

- a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. A no-rise certificate must accompany the analysis results. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies - with the Smyth County's endorsement for a conditional letter of map revision (CLOMR) and receives the approval of the Federal Emergency Management Agency.

If Article III Section 3.1A1a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4.

- b. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured home (mobile home) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

- (2) The AE Zone on the FIRM accompanying the FIS shall be those areas for which one percent annual chance flood elevations have been provided and the floodway has not been delineated. The following provisions shall apply within an AE zone [44 CFR 60.3(c)]:

Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zone AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the County of Smyth.

Development activities in Zone AE on Smyth County's FIRM which increases the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies - with the Smyth County's endorsement - for a conditional letter of map revision, and receives the approval of the Federal Emergency Management Agency.

- (3) The A Zone on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply [44 CFR 60.3(b)]:

The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted practices, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

The Floodplain Administrator reserves the right to require hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to one foot above the base flood elevation .

During the permitting process, the Floodplain Administrator shall obtain:

- a. The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,
- b. If the structure has been flood-proofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.

Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

(Ord. of 6-12-2012)

Sec. 29-32. Overlay concept.

The floodplain districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

If there is any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.
(Ord. of 6-12-2012)

Secs. 29-33—29-40. Reserved.

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Sec. 29-41. Permit and application requirements.

- (a) *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this chapter and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Smyth County Subdivision Regulations. Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- (b) *Site plans and permit applications.* All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:
 - (1) The elevation of the base flood at the site.
 - (2) For structures to be elevated, the elevation of the lowest floor (including basement) or the lowest horizontal structural member.
 - (3) For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.
 - (4) Topographic information showing existing and proposed ground elevations.

(Ord. of 6-12-2012)

Sec. 29-42. General standards.

The following provisions shall apply to all permits:

- (a) New construction and substantial improvements shall be according to the VA USBC, Smyth County Code, and anchored to prevent flotation, collapse, or lateral movement of the structure.
- (b) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.
- (c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (d) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

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- (e) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.
- (f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- (h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions (a) through (h) above, in all special flood hazard areas, the additional provisions shall apply:

- (i) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), other required agencies, and the Federal Emergency Management Agency.
- (j) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(Ord. of 6-12-2012)

Sec. 29-43. Elevation and construction standards.

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with Section 3.1 A 3, the following provisions shall apply:

- (a) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) in Zones AE and A with detailed base flood elevations shall have the lowest floor, including basement, elevated to or above one foot above base flood elevation.
- (b) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to one foot above base flood elevation. Buildings located in all AE zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by Floodplain Ordinance Administrator.
- (c) *Space below the lowest floor.* In zones A and AE, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:
 - (1) Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of

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vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).

- (2) Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
 - (3) Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
 - b. The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.
 - c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 - d. The bottom of all required openings shall be no higher than one foot above the adjacent grade.
 - e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
 - f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.
- (d) *Standards for manufactured homes and recreational vehicles.*
- (1) All manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in Article 4, section 29-42 and section 29-43.
 - (2) All recreational vehicles placed on sites must either
 - a. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or
 - b. Meet all the requirements for manufactured homes in Article 29-73(d)(1).

(Ord. of 6-12-2012)

Sec. 29-44. Standards for subdivision proposals.

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and

- (d) Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a Flood Insurance Study for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

(Ord. of 6-12-2012)

Secs. 29-45—29-50. Reserved.

ARTICLE V. EXISTING STRUCTURES IN FLOODPLAIN AREAS

Sec. 29-51. Existing structures.

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- (a) Existing structures in the floodway area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.
- (b) Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain areas to an extent or amount of less than 50 percent of its market value shall conform to the VA USBC.
- (c) The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with this chapter and shall require the entire structure to conform to the VA USBC.

(Ord. of 6-12-2012)

Secs. 29-52—29-60. Reserved.

ARTICLE VI. VARIANCES: FACTORS TO BE CONSIDERED

Sec. 29-61. Variances.

Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the Board of Zoning Appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by

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lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase in the 100-year flood elevation.
- (b) The danger that materials may be swept on to other lands or downstream to the injury of others.
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- (e) The importance of the services provided by the proposed facility to the community.
- (f) The requirements of the facility for a waterfront location.
- (g) The availability of alternative locations not subject to flooding for the proposed use.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (i) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- (j) The safety of access by ordinary and emergency vehicles to the property in time of flood.
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (m) Such other factors which are relevant to the purposes of this chapter.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variations shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variations shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing that the issuance of a variance to construct a structure below the 100-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

(Ord. of 6-12-2012)

Secs. 29-62—29-70. Reserved.

ARTICLE VII. DEFINITIONS

Sec. 29-71. Definitions.

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

- (a) *Appurtenant or accessory structure.* A non-residential structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures not to exceed 200 square feet.
- (b) *Base flood.* The flood has a one percent chance of being equaled or exceeded in any given year.
- (c) *Base flood elevation.* The Federal Emergency Management Agency designated one percent annual chance water surface elevation and the elevation determined per Section 4.6. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this chapter, the base flood is a 100-year flood or one percent annual chance flood.
- (d) *Basement.* Any area of the building has its floor sub-grade (below ground level) on all sides.
- (e) *Board of Zoning Appeals.* The board appointed to review appeals made by individuals regarding decisions of the Zoning Administrator in the interpretation of this chapter.
- (f) *Development.* Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling or other land-disturbing activities or temporary storage of equipment or materials.
- (g) *Elevated building.* A non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).
- (h) *Encroachment.* The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
- (i) *Existing construction.* Structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."
- (j) *Flood or flooding:*
 - (1) A general or temporary condition of partial or complete inundation of normally dry land areas from
 - a. The overflow of inland or tidal waters; or,

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- b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudflows which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.
- (k) *Flood Insurance Rate Map (FIRM)*. An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
 - (l) *Flood Insurance Study (FIS)*. A report by FEMA that examines, evaluates, and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudflow and/or flood-related erosion hazards.
 - (m) *Floodplain or flood-prone area*. Any land area susceptible to being inundated by water from any source.
 - (n) *Flood proofing*. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water, and sanitary facilities, structures, and their contents.
 - (o) *Floodway*. The channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point within the community.
 - (p) *Freeboard*. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed. When a freeboard is included in the height of a structure, the flood insurance premiums may be less expensive.
 - (q) *Highest adjacent grade*. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
 - (r) *Historic structure*. Any structure that is
 - (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - (2) 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;
 - (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,

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- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either
- a. By an approved state program as determined by the Secretary of the Interior; or,
 - b. Directly by the Secretary of the Interior in states without approved programs.
- (s) *Hydrologic and Hydraulic Engineering Analysis.* Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.
- (t) *Letters of Map Change (LOMC).* A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:
- Letter of Map Amendment (LOMA):* An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a Land as defined by meets and bounds or structure is not located in a special flood hazard area.
- Letter of Map Revision (LOMR):* A revision based on technical data that may show changes to flood zones, flood elevations, floodplain, and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. To qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- Conditional Letter of Map Revision (CLOMR):* A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.
- (u) *Lowest floor.* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.
- (v) *Manufactured home.* A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days but does not include a recreational vehicle.
- (w) *Manufactured home park or subdivision.* A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- (x) *New construction.* For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after May 15, 1980, 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 a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- (y) *Post-FIRM structures.* A structure for which construction or substantial improvement occurred on or after May 15, 1980, whichever is later.

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- (z) *Pre-FIRM structures.* A structure for which construction or substantial improvement occurred on or before May 15, 1980.
- (aa) *Recreational vehicle.* A vehicle which is
 - (1) Built on a single chassis;
 - (2) 400 square feet or less when measured at the largest horizontal projection;
 - (3) Designed to be self-propelled or permanently towable by a light duty truck; and,
 - (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
- (bb) *Repetitive Loss Structure.* A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a ten-year period, in which the cost of the repair on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.
- (cc) *Severe repetitive loss structure.* - A structure that: (a) is covered under a contract for flood insurance made available under the NFIP; and (b) Has incurred flood related damage - (i) For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or (ii) For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.
- (dd) *Shallow flooding area.* A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (ee) *Special flood hazard area.* The land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in Article 3, Section 3.2 of this chapter.
- (ff) *Start of construction.* For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. - 97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 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 the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection 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 a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether that alteration affects the external dimensions of the building.
- (gg) *Structure.* For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
- (hh) *Substantial damage.* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

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- (ii) *Substantial improvement.* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 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 structure's continued designation as a historic structure.
 - (3) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.
- (jj) *Violation.* The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 3.7 B11, Section 4.3 B, Section 4.4 A, Section 4.5, and section 4.8 is presumed to be in violation until such time as that documentation is provided.
- (kk) *Watercourse.* A lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. of 6-12-2012)

<u>NAME</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSENT</u>
Charlie E. Atkins	X		
Roscoe D. Call	X		
Courtney Widener			X
Kristopher S. Ratliff, DPh			X
W. Jason Parris	X		
Mike Sturgill			
Rick A. Billings			X

I certify that this is a true and correct copy of the recorded vote taken from the minutes of the Smyth County Board of Supervisors meeting of July 11th, 2024.

Shawn Utt, Clerk of the Board

7/11/2024 6:05 PM County Attorney Report

County Attorney, Scot Farthing had nothing new to report at this time.

7/11/2024 6:05 PM County Administrator Report -

Mrs. Richardson shared she had nothing to report at this time.

7/11/2024 6:05 PM Supervisor Comment Time -

Chair, Atkins District Supervisor Charlie Atkins shared his appreciation for all working together and getting things done. He believes the County has come a long way.

Saltville District Supervisor Roscoe Call shared gave thanks to all who came as well as thanking Smyth County News and Messenger, Stephanie Porter for always highlighting Smyth County in a positive way.

Rye Valley District Supervisor Jason Parris made the following motions:

- *A motion was made by Rye Valley District Supervisor Jason Parris to reappoint Dan Slemp and William Farmer to the Rye Valley Water Authority Board for a 1-year terms with each set to expire 6/30/2025. Saltville District Supervisor Roscoe Call seconded the motion.*

After consideration, the motion PASSED by the following vote:

AYES: *Chair, Atkins District Supervisor Charles Atkins, Vice Chair, Chilhowie District Supervisor Michael Sturgill, Saltville District Supervisor Roscoe Call, and Rye Valley District Supervisor Jason Parris.*

NAYS: *None.*

ABSTAINERS: *None.*

ABSENT: *North Fork District Supervisor Rick Billings, Park District Supervisor Kristoper Ratliff, and Royal Oak District Supervisor Courtney Widener.*

- *A motion was made by Rye Valley District Supervisor Jason Parris to appoint Joe Robinson to the Wytheville Community College Board for a 4-year term set to expire 6/30/2028. Saltville District Supervisor Roscoe Call seconded the motion.*

- *After consideration, the motion PASSED by the following vote:*

AYES: Chair, Atkins District Supervisor Charles Atkins, Vice Chair, Chilhowie District Supervisor Michael Sturgill, Saltville District Supervisor Roscoe Call, and Rye Valley District Supervisor Jason Parris.

NAYS: None.

ABSTAINERS: None.

ABSENT: North Fork District Supervisor Rick Billings, Park District Supervisor Kristoper Ratliff, and Royal Oak District Supervisor Courtney Widener.

Mr. Parris then spoke about the new Rec Football program and is happy to see such a great start.

Chilhowie District Supervisor Michael Sturgill made the following motion at Royal Oak District Supervisor Courtney Widener's request:

- *A motion was made by Chilhowie District Supervisor Michael Sturgill to appoint Justine Bradley to the EDA for a 4-year term set to expire 6/30/2028. Saltville District Supervisor Roscoe Call seconded the motion.*

After consideration, the motion PASSED by the following vote:

AYES: Chair, Atkins District Supervisor Charles Atkins, Vice Chair, Chilhowie District Supervisor Michael Sturgill, Saltville District Supervisor Roscoe Call, and Rye Valley District Supervisor Jason Parris.

NAYS: None.

ABSTAINERS: None.

ABSENT: North Fork District Supervisor Rick Billings, Park District Supervisor Kristoper Ratliff, and Royal Oak District Supervisor Courtney Widener.

Mr. Sturgill also spoke about the many ways Lt. Scott Prater served Smyth County and requested the Board consider paying the remainder of the funeral bill totaling \$4,450.52. After discussion the following motion as made:

- *A motion was made by Saltville District Supervisor Roscoe Call to send Lt. Scott Prater's funeral bill to the Budget Committee for review and consideration. Rye Valley District Supervisor Jason Parris seconded the motion.*

After consideration, the motion PASSED by the following vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener*

7/11/2024 6:18 PM *Rye Valley District Supervisor Jason Parris made a motion to enter into closed session under Code of Virginia Section 2.2-3711(a)5 Business/Industrial Prospects, discussion concerning a business or industry considering expansion for which no previous announcements have been made regarding Project Rover and include Kendra Hayden in closed session. Saltville District Supervisor Roscoe Call seconded the motion.*

After consideration, the motion PASSED by the following vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener*

7/11/2024 6:28 PM *Rye Valley District Supervisor Jason Parris made a motion to adopt the following resolution and enter back into open session. Saltville District Supervisor Roscoe Call seconded the motion.*

**RESOLUTION
CERTIFICATION OF CLOSED SESSION**

WHEREAS, the Smyth County Board of Supervisors has convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Smyth County Board of Supervisors that such a meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Smyth County Board of Supervisors hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Smyth County Board of Supervisors.

After consideration, the motion PASSED by the following roll call vote:

*AYES: Chair, Atkins District Supervisor Charles Atkins,
Vice Chair, Chilhowie District Supervisor Michael Sturgill,
Saltville District Supervisor Roscoe Call, and
Rye Valley District Supervisor Jason Parris.*

NAYS: None.

ABSTAINERS: None.

*ABSENT: North Fork District Supervisor Rick Billings,
Park District Supervisor Kristoper Ratliff, and
Royal Oak District Supervisor Courtney Widener.*

7/11/2024 6:29 PM With no further business to discuss, Chair, Atkins District Supervisor Charles Atkins adjourned the meeting.