

**TOWN OF WEST POINT  
TOWN COUNCIL  
MINUTES  
January 26, 2009**

**I. CALL TO ORDER**

The West Point Town Council held its regular monthly meeting on Monday, January 26, 2009. The Honorable James H. Hudson III called the meeting to order at 7:30 p.m. Reverend Randy Mathis gave the Invocation followed by the Pledge of Allegiance.

Members Present: Mayor, Jim Hudson; Vice Mayor, Deborah Ball; Charlie Gordon; Tina Gulley; Wayne Healy; Jack Lawson; Gail Nichols and Bub Shreaves.

Also Present: Trenton L. Funkhouser, Town Manager; Andrea Erard, Town Attorney; Karen Barrow, Town Clerk; Bill Hodges, Chief of Police; Holly McGowan, Community Development Coordinator; Neal Barber, Economic Development Coordinator; and other interested persons.

**II. CITIZENS ADDRESS TO COUNCIL**

**A. Public Hearing Ordinance 01-09 – DUI Cost Recovery**

Mr. Hudson read the public hearing advertisement and asked the Town Clerk if anyone had contacted the Town with the following request: 1) Asked to review the application. 2) Submit any written comments. 3) Asked for assistance to attend the public hearing.

The Town Clerk advised no request were received.

Mr. Hudson opened the floor for citizens to comment on Ordinance 01-09. There being none, the Public Hearing was closed.

**B. Public Hearing Ordinance 02-09 Erosion & Sediment Control**

Mr. Hudson read the public hearing advertisement and asked the Town Clerk if anyone had contacted the Town with the following request: 1) Asked to review the application. 2) Submit any written comments. 3) Asked for assistance to attend the public hearing.

The Town Clerk advised no request were received.

Mr. Hudson opened the floor for citizens to comment on Ordinance 02-09. There being none, the Public Hearing was closed.

**C. Citizens Address to Council**

Mr. Hudson opened the floor for citizens to address Town Council on any Town related business.

Mr. Hudson asked if there was any one else that would like to address Town Council. There being none, Mr. Hudson closed the Citizens Address.

**D. Economic Development Authority Report**

There was no report available from the Economic Development Authority.

**III. COUNCIL RESPONSE**

None were noted.

#### IV. AGENDA CHANGES

Mr. Gordon made a motion to remove the "Mayer Sarfan property donation" from the Town Manager's agenda items. Seconded by Mrs. Gulley. Upon roll call, Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

#### V. ADOPTION OF CONSENT AGENDA

Mr. Healy made a motion to adopt the following consent agenda, seconded by Mr. Gordon. Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

- 1) Minutes of December 22, 2008 Town Council Meeting and Work Session
- 2) Cash Reports
  - a) General Fund  
Cash on hand as of December 31, 2008 - \$4,511,906.85
  - b) Water Fund  
Cash on hand as of December 31, 2008 - \$672,374.68
  - c) CIP  
Cash on hand as of December 31, 2008 - \$6,194,264.07
- 3) Monthly Budget Report
- 4) School Fund Cash Report
  - a) Cash on hand as of December 31, 2008 - \$454,147.69
- 5) West Point Monthly Police Activity Report
- 6) Building Official Monthly Report
- 7) Public Works Monthly Permit Report
- 8) Community Development Monthly Permit Report
- 9) Treasurer Monthly Report

#### V. COMMITTEE REPORTS

A. Public Safety – Mrs. Gulley reported for the Committee.

1. Ordinance 01-09 – DUI Cost Recovery Ordinance *[See Attached Ordinance]*

Mrs. Gulley made a motion to adopt Ordinance 01-09, seconded by Mr. Lawson. Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

B. Finance Committee – Mrs. Ball reported for the Committee

1. Town Code Supplement Resolution *[See attached Resolution]*

Mrs. Ball read the resolution and made a motion for Town Council to authorize the Town Manager to print the Town Code Supplement, seconded by Mrs. Nichols. Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

C. Education Committee – Mrs. Nichols reported for the Committee

Mrs. Nichols advised the West Point Middle School received the 2009 Governor's Award for Educational Excellence. The Elementary School and High School received the 2009 Board of Education Excellence Awards. Mrs. Nichols congratulated the School System on their awards and advised that she is proud of the students and their accomplishments.

D. Public Works – Mr. Gordon reported for the Committee

1. Trailer Mounted Vacuum/Excavation System Purchase

Mr. Gordon made a motion to deny the purchase, seconded by Mr. Healy.

Mayor Hudson asked for discussion.

Mrs. Gulley asked the Town Manager how often the equipment would be used.

Mr. Funkhouser advised the equipment would be used for cleaning manholes, meter box's, storm drains, vacuum drainage catch basins, street sign installation, wet or dry clean up and recovery. Mr. Funkhouser also stated the funds have been budgeted in the Water Utility Budget for FY 2008-09.

Mr. Gordon advised that due to tough economic times, Town Council should not purchase the equipment that it was not a necessity at this time.

Mr. Lawson and Mr. Shreaves advised the Public Works Committee approved the purchase of the equipment.

Upon roll call, Mrs. Ball, Mr. Gordon and Mr. Healy voted "Aye". Mrs. Gulley, Mr. Lawson, Mrs. Nichols and Mr. Shreaves voted "Nay".

Mr. Hudson advised the Motion not to purchase the equipment has failed.

Mr. Shreaves made a motion to authorize the Town Manager to purchase the Vacuum/Excavation at a cost not to exceed \$27,969.98. Seconded by Mrs. Gulley. Upon roll call, Mrs. Ball, Mr. Gordon and Mr. Healy voted "Nay". Mrs. Gulley, Mr. Lawson, Mrs. Nichols and Mr. Shreaves voted "Aye". The motion was approved with a 4 to 3 vote.

## 2. Canopy Foundation Contract Award

Mr. Gordon made a motion to award the canopy foundation contract to Walter C. Via Enterprises not to exceed \$28,500 and to authorize the Town Manager to execute and deliver the contract, seconded by Mr. Shreaves.

Mr. Hudson asked if the Town Engineer will be able to qualify Walter C. Via Enterprises to conduct the work.

Neal Barber advised that Blair Wilson has qualified Walter C. Via to conduct the work.

Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

## E. Economic and Community Development – Mr. Lawson reported for the Committee

### 1. Ordinance 02-09 – Erosion & Sediment Control Ordinance [*See attached Ordinance*]

Mr. Lawson made a motion to adopt Ordinance 02-09 as presented, seconded by Mrs. Gulley. Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

## **VII. TOWN MANAGER'S ITEMS**

Mr. Funkhouser advised there was nothing to discuss.

## **VIII. OLD BUSINESS**

There was nothing available for Old Business.

## **IX. NEW BUSINESS**

### A. Planning Commission Report - Mr. Hudson

Mr. Hudson advised there was no Planning Commission meeting in January, therefore there was nothing to report. The February Planning Commission meeting has been cancelled.

### B. Smurfit-Stone

Mr. Hudson advised that Smurfit-Stone filed Chapter 11 bankruptcy today, they will be submitting a restructuring plan to the bankruptcy court. At this point Smurfit-Stone has no plans to shut the mill down they will continue to operate as normal.

C. Closed Session

Mrs. Gulley made a motion for Town Council to enter into Closed Session pursuant to Virginia Code §2.2-3711(A)(1) for the discussion or consideration of the performance of the Chief of Police. Seconded by Mrs. Ball, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

Reconvene into Open Meeting

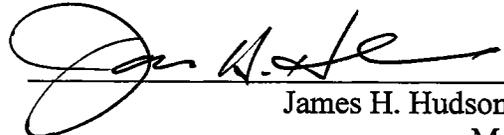
Mrs. Ball made a motion for Town Council to reconvene into Open Meeting, seconded by Mrs. Nichols. Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

Certification

Mr. Shreaves made a motion to certify that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the Council. Seconded by Mrs. Gulley, upon roll call Mrs. Ball, Mr. Gordon, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

**X. ADJOURNMENT**

There being no further business

  
James H. Hudson, III  
Mayor

ATTEST:

  
Karen M. Barrow  
Town Clerk

ORDINANCE 01-09

ORD. NO. 01-09 AMENDS THE WEST POINT TOWN CODE, CHAPTER 34, "MOTOR VEHICLES AND TRAFFIC," ARTICLE 1, "IN GENERAL," BY ADDING SECTION 34-7, "REIMBURSEMENT OF EXPENSES INCURRED IN RESPONDING TO DUI INCIDENTS AND OTHER TRAFFIC INCIDENTS." ORDINANCE NO. 01-09 ALLOWS RECOVERY OF COSTS UP TO A MAXIMUM AMOUNT OF \$ 1,000.00 FOR EXPENSES TO THE TOWN RELATED TO CERTAIN TYPES OF ACCIDENTS INVOLVING INTOXICATED INDIVIDUALS. ORDINANCE NO. 01-09 IS CONSIDERED PURSUANT TO THE GRANT OF AUTHORITY CONTAINED IN VIRGINIA CODE § 15.2-1716.

BE IT ORDAINED BY THE WEST POINT TOWN COUNCIL that the West Point Town Code, Chapter 34, "MOTOR VEHICLES AND TRAFFIC," Article 1, "In General," shall be amended by adding section 34-7, "Reimbursement of expenses incurred in responding to DUI incidents and other traffic incidents," which section shall read in its entirety as follows:

"Sec. 34-7. Reimbursement of expenses incurred in responding to DUI incidents and other traffic incidents.

A. A person convicted of violating any of the following provisions shall be liable for restitution at the time of sentencing or in a separate civil action to the Town of West Point or to any responding volunteer fire or rescue squad, or both, for reasonable expenses incurred by the Town of West Point for responding law enforcement, firefighting, rescue and emergency services, including by the sheriff's office of King William County, or by any volunteer fire or rescue squad, or by any combination of the foregoing, when providing an appropriate emergency response to any accident or incident related to such violation:

1. The provisions of Virginia Code § 18.2-51.4 (Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment), Virginia Code § 18.2-266 (driving while intoxicated), Virginia Code § 18.2-266.1 (persons under the age of 21 driving while intoxicated), Virginia Code § 29.1-738 (driving or operating a motorboat while intoxicated), Virginia Code § 29.1-738.02 (persons under the age of 21 driving or operating a motorboat while intoxicated), or a similar ordinance, when such operation of a motor vehicle, engine, train or watercraft while so impaired is the proximate cause of the accident or incident;
2. The provisions of Article 7 (Va. Code § 46.2-852 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident;
3. The provisions of Article 1 (Va. Code § 46.2-300 et seq.) of Chapter 3 of Title 46.2 of the Code of Virginia relating to driving without a license or driving with a suspended or revoked license; and
4. The provisions of Va. Code § 46.2-894 relating to improperly leaving the scene of an accident.

B. Personal liability under this section for reasonable expenses of an appropriate emergency response shall not exceed \$1,000 in the aggregate for a particular accident or incident occurring in the Town of West Point. In determining the "reasonable expenses," the Town of West Point may bill a flat fee of \$250 or a minute-by-minute accounting of the actual costs incurred. As used in this section, "appropriate emergency response"

includes all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services. The court may order as restitution the reasonable expenses incurred by the Town of West Point for responding law enforcement, fire-fighting, rescue and emergency medical services. The provisions of this section shall not preempt or limit any remedy available to the Commonwealth, to the locality or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving, operation of a vehicle or other conduct as set forth herein.”

Ordinance 01-09 shall take effect upon adoption

Vote:

Mrs. Ball	“Aye”
Mr. Gordon	“Aye”
Mrs. Gulley	“Aye”
Mr. Healy	“Aye”
Mr. Lawson	“Aye”
Mrs. Nichols	“Aye”
Mr. Shreaves	“Aye”



***A RESOLUTION TO PRINT  
A SUPPLEMENT TO THE TOWN CODE***

Whereas; a republication of the Town Code was successfully completed in September 2007 containing newly adopted ordinances through December 2006, and

Whereas; new ordinances have been adopted by Town Council since the republication beginning January 2007 through December 2008, and

Whereas; the cost for the Municipal Code Corporation to print a supplement with new chapter tabs, tax, shipping and electronic media fees at a cost of \$3,125.00, and

Whereas; in accordance with Town Code Section 1-8, the Town Council of the Town of West Point shall authorize Municipal Code Corporation to print a supplement to the Town Code.

NOW THEREFORE BE IT RESOLVED; the West Point Town Council authorizes the Town Manager to print a supplement of the Town Code with the Municipal Code Corporation at a cost of \$3,125.00.

Certified to be a true copy of a resolution adopted by the Town Council of the Town of West Point at its regular monthly meeting held January 26th, 2009 at which meeting a quorum was present and voted throughout.

  
Karen M. Barrow  
Town Clerk

ORDINANCE NO. 02-09

ORDINANCE NO. 02-09 AMENDS CHAPTER 26, "EROSION AND SEDIMENT CONTROL," ARTICLE I, "IN GENERAL," SECTION 26-1, "TITLE, PURPOSE, AND AUTHORITY," AND SECTION 26-2, "DEFINITIONS," BY ADDING DEFINITIONS FOR NATURAL CHANNEL DESIGN CONCEPTS, PEAK FLOW RATE RUNOFF VOLUME, AND WATER QUALITY VOLUME. ORDINANCE NO. 8-08 ALSO AMENDS SECTION 26-3, "LOCAL EROSION AND SEDIMENT CONTROL PROGRAM," AND SECTION 26-4, "SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS," BY ADDING A PROVISION FOR VARIANCES AND FOR A GENERAL EROSION AND SEDIMENT CONTROL SPECIFICATION FOR WETLAND MITIGATION OR STREAM RESTORATION BANKS ON AN ANNUAL BASIS FOR PERSONS ENGAGING IN MORE THAN ONE JURISDICTION IN THE CREATION AND OPERATION OF WETLAND MITIGATION OR STREAM RESTORATION BANKS. ORDINANCE NO 8-08 ADDS SECTION 26-5, "STATE AGENCY PROJECTS" AND AMENDS SECTION 26-8, "PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS," TO PROVIDE THAT, IN ADDITION TO OTHER REMEDIES, ANY PERSON VIOLATING OR FAILING, NEGLECTING, OR REFUSING TO OBEY ANY INJUNCTION, MANDAMUS OR OTHER REMEDY SHALL BE SUBJECT, IN THE DISCRETION OF THE COURT, TO A CIVIL PENALTY NOT TO EXCEED \$2,000 FOR EACH VIOLATION AND THAT A CIVIL ACTION MAY ALSO BE BROUGHT BY THE TOWN OF WEST POINT. SECTION 26-8 GOES ON TO STATE THAT WITH THE CONSENT OF A PERSON WHO HAS VIOLATED OR FAILED, NEGLECTED OR REFUSED TO OBEY ANY REGULATION OR CONDITION OF A PERMIT THE TOWN OF WEST POINT MAY PROVIDE FOR THE PAYMENT OF CIVIL CHARGES FOR VIOLATIONS IN SPECIFIC SUMS UP TO \$ 2,000 AND SUCH CIVIL CHARGES SHALL BE INSTEAD OF ANY APPROPRIATE CIVIL PENALTY. ORDINANCE NO. 8-08 IS CONSIDERED PURSUANT TO THE GRANT OF AUTHORITY CONTAINED IN VA CODE SECTION 10.1-562.

BE IT ORDAINED THAT CHAPTER 26, "EROSION AND SEDIMENT CONTROL" OF THE WEST POINT TOWN CODE SHALL BE AMENDED TO READ, IN PART, AS FOLLOWS:

"ARTICLE I. IN GENERAL

**Sec. 26-1. Title, purpose, and authority.**

- (a) *This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the Town of West Point."* The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the Town of West Point by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.
- (b) This chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (§ 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

**Sec. 26-2. Definitions.**

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

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

Applicant means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board means the Virginia Soil and Water Conservation Board.

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

- (1) Holds a certificate of competence from the board in the area of project inspection; or
- (2) Is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

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

- (1) Holds a certificate of competence from the board in the area of plan review;
- (2) Is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment; or
- (3) Is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 *of the Code of Virginia*.

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

- (1) Holds a certificate of competence from the board in the area of program administration; or
- (2) Is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

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

County means the County of King William.

Department means the Department of Conservation and Recreation.

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

Director means the director of the department.

District or soil and water conservation district refers to the Three Rivers Soil and Water Conservation District.

Erosion and sediment control plan or plan means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to

conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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

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

Filling means any depositing or stockpiling of earth materials.

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

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

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
- (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Code of Virginia, § 10.1-604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Code of Virginia, §10.1-1260 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);
- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Disturbed land areas of less than 2,500 square feet in size;
- (10) Installation of fence posts and signposts or telephone and electric poles and other kinds of posts or poles;
- (11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United

States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this chapter; and

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

Land-disturbing permit means a permit issued by the Town of West Point for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

Local erosion and sediment control program or local control program means an outline of the various methods employed by the Town of West Point to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

*Natural channel design concepts 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.*

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

*Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.*

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

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

Plan-approving authority means the zoning administrator responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

Program authority means the Town of West Point which has adopted a soil erosion and sediment control program approved by the board.

Responsible land disturber means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who:

- (1) Holds a responsible land disturber certificate of competence;
- (2) Holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review;
- (3) Holds a current contractor certificate of competence for erosion and sediment control; or
- (4) Is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Code of Virginia, § 54.1-400 et seq.) of Chapter 4 of Title 54.1.

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

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

State erosion and sediment control program or state program means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.

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

Town means the incorporated town of the Town of West Point.

Transporting means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

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

**Sec. 26-3. Local erosion and sediment control program.**

- (A) Pursuant to Code of Virginia, § 10.1-562, the Town of West Point hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.
- (B) Before adopting or revising regulations, the Town of West Point shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the Town of West Point is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the Town of West Point proposes or revises regulations that are more stringent than the state program.
- (C) Pursuant to Code of Virginia, § 10.1-561.1, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The erosion control program of the Town of West Point shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- (D) The Town of West Point hereby designates the zoning administrator as the plan-approving authority.
- (E) The program and regulations provided for in this chapter shall be made available for public inspection at the office of the zoning administrator.

**Sec. 26-4. Submission and approval of plans; contents of plans.**

- (A) Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the zoning administrator for the Town of West Point an erosion and sediment control plan for the land-disturbing activity and such plan has been

approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

- (B) The standards contained within the Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence.
- (C) The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by Code of Virginia, § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter. However, the plan approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 26.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this chapter.
- (D) The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- (E) An approved plan may be changed by the plan-approving authority when:
  - (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
  - (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed

amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.

(F) *Variances: The plan-approving authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:*

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

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

(G) In order to prevent further erosion, the Town of West Point may require approval of a plan for any land identified in the local program as an erosion impact area.

(H) When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

(I) *In accordance with the procedure set forth by Section 10.1-563 (E) of the Code of Virginia, any person engaging in more than one jurisdiction in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specification of for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board.*

(J) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the board for review and written comments. The specifications shall apply to:

(1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and

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

Individual approval of separate projects within subdivisions (1) and (2) of this subsection is not necessary when board approved

specifications are followed, however, projects included in subdivisions (1) and (2) must comply with board approved specifications. Projects not included in subdivisions (1) and (2) of this subsection shall comply with the requirements of the Town of West Point erosion and sediment control program.

- (K) State agency projects are exempt from the provisions of this chapter except as provided for in the Code of Virginia, § 10.1-564.

**Sec. 26-5 State agency projects**

*(A) A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual specifications for its conduct of land-disturbing activities which have been reviewed and approved by the Department as being consistent with the state program or (ii) the state agency has submitted a conservation plan for the project which has been reviewed and approved by the Department.*

*(B) The Department shall not approve a conservation plan submitted by a federal or state agency for a project involving land-disturbing activity (i) in any locality which has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the conservation plan is consistent with the requirements of the state program.*

*(C) The Department shall not approve a conservation plan submitted by a federal or state agency for a project involving a land-disturbing activity in one locality with a local program with more stringent regulations than those of the state program unless the conservation plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the Department, the provisions of subsection B of this section shall apply.*

*(D) The Department shall have sixty days in which to comment on any specifications or conservation plan submitted to it for review and its comments shall be binding on the state agency and any private business hired by the state agency.*

*(E) As on-site changes occur, the state agency shall submit changes in a conservation plan to the Department.*

*(F) The state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.*

**Sec. 26-8. Penalties, injunctions, and other legal actions.**

- (A) Violators of this chapter shall be guilty of a Class I misdemeanor.

- (B) Any person who violates any provision of this ordinance shall, upon a finding of the District Court of King William County, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall
- (C) The zoning administrator, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of King William County to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless:
- (1) He has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and
  - (2) Neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- (C) In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the Town of West Point in a civil action for damages.
- (D) *Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the Town of West Point. Any civil penalties assessed by a court shall be paid into the treasury of the Town of West Point, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.*
- (E) *With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, the Town of West Point may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection E.*
- (G) The commonwealth's attorney shall, upon request of the Town of West Point or the permit issuing authority, take legal action to enforce the provisions of this chapter.
- (H) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages."

Ordinance 02-09 shall take effect upon adoption.