

DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

# STAFF REPORT

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- PROPOSED COUNTY CODE AMENDMENT
- PROPOSED PFM AMENDMENT
- APPEAL OF DECISION
- WAIVER REQUEST

Proposed Amendments to Chapter 124 (Stormwater Management Ordinance), Chapter 101 (Subdivision Ordinance), and Appendix Q (Land Development Services Fees) of The Code of the County of Fairfax, Virginia Re: Implementation of the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870 et seq.).

Authorization to Advertise	December 2, 2014
Planning Commission Hearing	January 8, 2015
Board of Supervisors Hearing	February 17, 2015
Prepared by:	Code Development and Compliance Division JAF (703) 324-1780 December 2, 2014

## STAFF REPORT

### A. Issues:

Adoption of proposed amendments to Chapter 124 (Stormwater Management Ordinance), Chapter 101 (Subdivision Ordinance), and Appendix Q (Land Development Services Fees) of The Code of the County of Fairfax, Virginia. The new ordinance and proposed amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9 VAC 25-870 et seq.).

### B. Recommended Action:

Staff recommends that the Board of Supervisors (the Board) adopt the proposed amendments to Chapter 124 (Stormwater Management Ordinance), Chapter 101 (Subdivision Ordinance), and Appendix Q (Land Development Services Fees) of The Code of the County of Fairfax, Virginia. The proposed amendments implement the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Permit Regulations (9 VAC 25-870 et seq.).

### C. Timing:

Board of Supervisors authorization to advertise – December 2, 2014

Planning Commission Public Hearing – January 8, 2015

Board of Supervisors Public Hearing – February 17, 2015

Effective Date – February 18, 2015, at 12:01 a.m.

### D. Source:

Department of Public Works and Environmental Services (DPWES)

### E. Coordination:

The proposed amendments have been prepared by the Department of Public Works and Environmental Services and coordinated with the Office of the County Attorney.

### F. Background:

On January 28, 2014, the Board adopted Chapter 124 (Stormwater Management Ordinance) and amendments to Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control), 112 (Zoning Ordinance), 118 (Chesapeake Bay Preservation Ordinance), and Appendix Q (Land Development Services Fees) of *The Code of the County of Fairfax, Virginia* (County Code); repealed Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage) of the County Code; and adopted amendments to the Public Facilities Manual (PFM) all of which became effective on July 1, 2014. After adoption, the new Stormwater Management Ordinance, amendments to the County Code, amendments to the PFM, and related

materials were transmitted to the Department of Environmental Quality (DEQ) for review and approval of the County's Virginia Stormwater Management Program (VSMP) by the State Water Control Board (SWCB) in accordance with § 62.1-44.15:27(G) of the Virginia Stormwater Management Act. On July 1, 2014, the County received provisional approval of its VSMP from DEQ acting on behalf of the SWCB (Attachment 1). As part of their consistency review DEQ has requested that the County make some minor changes to the Stormwater Management Ordinance.

Amendments to the Virginia Stormwater Management Act (HB 1173) were enacted by the General Assembly during the 2014 legislative session (Chapter 303 of the 2014 Acts of Assembly). The amendments to the Stormwater Management Act eliminate requirements for state permit registration statements for the construction of single family detached residential structures, eliminate or reduce some permit fees for the construction of single family detached residential structures, and clarify appeals procedures for decisions made by localities. On June 26, 2014, the SWCB adopted amendments to the Virginia Stormwater Management Regulation (9VAC25-870 et seq.) and the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) to implement the changes to the Virginia Stormwater Management Act.

The proposed amendments to the Stormwater Management Ordinance, Subdivision Ordinance, and Appendix Q of the County Code have been prepared in response to DEQ's consistency review and the changes to the Virginia Stormwater Management Act and amended regulations. The proposed amendments include some clarifications of existing ordinance language generated by staff. Because of the primacy of state law over local ordinances, the changes related to state permit registration statements in HB 1173 went into effect on July 1, 2014.

#### G. Proposed Amendments

Key elements of the County's proposed ordinance and amendments to existing ordinances are presented below.

##### Chapter 124 (Stormwater Management Ordinance):

The proposed amendments include the following:

- Definitions were amended for consistency with the regulations.
- Definitions were added for consistency with the regulations..
- A minor change to one of the exemptions was made for consistency with the regulations. The change clarifies that the common plan of development or sale referred to in the exemption is one that disturbs one acre or greater of land.
- New provisions were added and existing provisions were modified indicating that registration statements are not required for coverage under the General

Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale. These changes implement the amendments to the Virginia Stormwater Management Act enacted by the General Assembly during the 2014 legislative session.

- Requirements were added that a stormwater management plan approved for a residential, commercial, or industrial subdivision governs the development of the individual parcels, including those parcels developed under subsequent owners and that a note be placed on the subdivision plat stating that individual parcels shall be developed in accordance with the approved stormwater management plan for the subdivision. These changes implement the amendments to the Virginia Stormwater Management Act enacted by the General Assembly during the 2014 legislative session.
- The appeals procedure has been rewritten to streamline it and eliminate the requirement for the Director of DPWES to appoint a hearing officer. The Director or his designee will evaluate and act on appeals. The final decision of the Director will still be subject to review by appeal to the Circuit Court of Fairfax County, Virginia.
- A clarification was added to the requirements for grandfathered projects and projects subject to time limits that BMPs for such projects are subject to current requirements for testing, inspection, plan submission, and dam standards in effect at the time of plan submission.

#### Chapter 101 (Subdivision Ordinance):

The proposed amendment adds a requirement for a note on the final subdivision plat stating that individual parcels shall be developed in accordance with the approved stormwater management plan for the subdivision. This change implements the amendments to the Virginia Stormwater Management Act enacted by the General Assembly during the 2014 legislative session.

#### Appendix Q

The proposed amendments include the following:

- A clarification that a permit fee is not required for Chesapeake Bay Preservation Act land-disturbing activities exempt from the Stormwater Management Ordinance under §124-1-7 of the ordinance has been added.
- Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities for Small Construction Activity/Land Clearing for: 1) areas within common plans of development or sale with land-disturbance acreage less than one acre; and 2) sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five

acres for construction of single-family detached residential structures have been set at \$0.

- Fees for annual permit maintenance for Chesapeake Bay Preservation Act land-disturbing activities have been set at \$0 eliminating the existing \$20 permit maintenance fee. Such land-disturbing activities rarely take a year to complete construction and collection of the fee is not considered cost effective.
- Fees for annual permit maintenance for: 1) areas within common plans of development or sale with land-disturbance acreage less than one acre; and 2) sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres for construction of single-family detached residential structures have been set at \$0.

These changes implement the amendments to the Virginia Stormwater Management Act enacted by the General Assembly during the 2014 legislative session.

#### H. Regulatory Impact:

The minor changes to the Stormwater Management Ordinance resulting from DEQ's consistency review of the ordinance have no regulatory impact. The changes to the Stormwater Management Ordinance resulting from changes to the Stormwater Management Act reduce the regulatory burden for the construction of single family detached residential structures by eliminating the requirement to submit registration statements for state permits for discharges of stormwater from construction activities. It is noted that only the submission of the registration statement has been eliminated and that the construction is still subject to the General Permit for Discharges of Stormwater from Construction Activities.

#### H. Fiscal Impact:

The fiscal impact of the changes to the permit fees for discharges of stormwater from construction activities is insignificant. These fees are basically for the paperwork involved in administering the permit program. Collection of these small fees is generally not cost effective. Fees for plan review and inspection are accounted for elsewhere in the fee schedule and are unchanged.

#### I. Attached Documents:

Attachment A – Amendments to Chapter 124 (Stormwater Management Ordinance)  
Attachment B – Amendments to Chapter 101 (Subdivision Ordinance)  
Attachment C – Amendments to Appendix Q (Land Development Services Fees)