

DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

STAFF REPORT

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

Proposed Chapter 124 (Stormwater Management Ordinance), Repeal of Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and Proposed 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 Re: Implementation of the Virginia Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.).

Authorization to Advertise

September 10, 2013

Planning Commission Hearing

October 9, 2013

Board of Supervisors Hearing

December 3, 2013

Prepared by:

Code Development and
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JAF (703) 324-1780
September 10, 2013

STAFF REPORT

A. Issues:

Adoption of Chapter 124 (Stormwater Management Ordinance), repeal of Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and proposed 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. 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) Permit Regulations (4 VAC 50-60 et seq.). The Board also will be asked to consider a schedule of civil penalties for use in enforcing the Stormwater Management Ordinance.

B. Recommended Action:

Staff recommends that the Board of Supervisors (the Board) adopt proposed Chapter 124 (Stormwater Management Ordinance), repeal Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage), and adopt the proposed 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. 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) Permit Regulations (4 VAC 50-60 et seq.). Staff further recommends that the Board authorize staff to review plans, at the request of an applicant, based on the adopted amendments in advance of the effective date. The Board also will be asked to approve a schedule of recommended civil penalties for use in enforcing the Stormwater Management Ordinance.

C. Timing:

Board of Supervisors authorization to advertise – September 10, 2013

Planning Commission Public Hearing – October 9, 2013

Board of Supervisors Public Hearing – December 3, 2013

Effective Date – July 1, 2014, at 12:01 a.m. except that amendments to Articles 6 (Exceptions), 7 (Exception Review Committee), and 8 (Appeals) of Chapter 118 (Chesapeake Bay Preservation Ordinance) Chapters shall become effective on adoption.

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 Department of Planning and Zoning and the Office of the County Attorney.

F. Background:

The Virginia Soil and Water Conservation Board (SWCB) adopted final amendments to the Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.) on May 24, 2011, with an effective date of September 13, 2011. An earlier version of the amended regulations was adopted in 2010 but suspended by the SWCB prior to becoming effective because of issues raised by localities and the public. During the 2012 and 2013 legislative sessions, the General Assembly adopted amendments to the Code of Virginia (Chapters 785 & 819 of the 2012 Acts of Assembly and Chapter 756 of the 2013 Acts of Assembly) transferring regulatory and enforcement authority for the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act to the State Water Control Board and Virginia Department of Environmental Quality (DEQ). During the 2013 legislative session, the General Assembly also adopted a separate amendment to the Stormwater Management Act (Va. Code Ann. § 62.1-44.15:33 (2013)) that placed constraints on localities' ability to adopt more stringent requirements than the minimum requirements of the regulations. As a result of the amendment passed during the 2013 legislative session, the County will need to justify any more stringent requirements unless the requirements were in effect prior to January 1, 2013. Additional amendments to the VSMP Permit Regulations, the Virginia Erosion and Sediment Control Regulations (4 VAC 50-30 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (4 VAC 50-90 et seq.) were adopted by the VSWCB on September 28, 2012, with an effective date of November 21, 2012. Staff anticipates that the regulations will need to be republished in 2013 because of the transfer of program oversight to the State Water Control Board and DEQ.

The adoption of a local stormwater management ordinance by Fairfax County is mandatory under the Virginia Stormwater Management Act (Act). The Act gives localities until June 13, 2013, to adopt local ordinances to comply with the regulations. However, pursuant to the Act, the SWCB granted the County an extension to June 13, 2014. Adoption of a Stormwater Management Ordinance and amendments to the Subdivision Ordinance, Erosion and Sedimentation Control Ordinance, Zoning Ordinance, and Chesapeake Bay Preservation Ordinance are necessary at this time to implement revisions to state laws and regulations. In addition, current Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage) are proposed to be repealed because they are being incorporated, with minor revisions, into the new Stormwater Management Ordinance. In a separate action the Board is being asked to adopt related amendments to the Public Facilities Manual (PFM). After the County has amended its ordinances and the PFM, the

State Water Control Board and DEQ will review the ordinances and PFM for consistency with state law and regulations. The County is required to submit the new and revised ordinances, revised PFM, a funding and staffing plan, and associated policies and procedures for administering the stormwater management program to DEQ by December 15, 2013. The final adopted ordinances must be submitted to DEQ by April 1, 2014.

The regulations delegate responsibility to localities for plan reviews and inspections related to the General VSMP Permit for Discharges from Construction Activities, and the state retains responsibility for issuance of coverage under the general permit to operators (land disturbers). This delegation will be effective July 1, 2014, which coincides with the effective date of the new general permit. Currently, DEQ performs all functions related to the general permit. The County's current responsibility related to the general permit is to inform DEQ when we have issued permits for land disturbing activity. Under the new regulations, localities may collect fees for plan review, inspection, and administrative functions related to the general permit. The regulations include a fee schedule for VSMP permits which is split between DEQ (28% of the total fee for initial coverage) and localities. Localities may increase or decrease the total fee provided that DEQ receives the amount listed as the state's share in the regulations. The new Stormwater Management Ordinance provides for DEQ's share of the fees to be paid directly to DEQ at the time permit coverage is requested. The County's share of the fees has been incorporated into the review and inspection fees for stormwater management facilities in the Land Development Services Fees in Appendix Q.

The Final Regulation Agency Background Document (June 10, 2011) prepared by DCR describes the issues associated with the regulatory action as follows:

The primary advantage of this regulatory action is enhanced water quality and management of stormwater runoff in the Commonwealth. Citizens often complain about flooding caused by increased amounts of stormwater runoff and the runoff is also a contributor to excessive nutrient enrichment and sedimentation in numerous rivers, lakes, and ponds throughout the state, as well as a continued threat to estuarine waters and the Chesapeake Bay. The water quality and quantity criteria established by this regulatory action will improve upon today's stormwater management program and assist the Commonwealth in reducing nutrient and sediment pollution statewide and meeting Chesapeake Bay restoration goals. The regulations will have numerous benefits including reductions in flood risk, avoidance of infrastructure costs through the use of LID practices, improved aquatic life, and enhancement of recreational and commercial fisheries.

The implementation of local stormwater management programs will also have benefits for the regulated community. Today, construction activity operators must go to two sources in order to receive needed Erosion and Sediment Control (locality) and Stormwater (department) approvals. The

development of local stormwater management programs will allow for both approvals to be received from a singular source, thus improving efficiency as well as saving time for the developer. Even in localities where the department is the stormwater program administrative authority, the program envisioned by these regulations will allow for greater customer service and oversight over today's more limited program.

The primary disadvantage of this regulatory action will be increased compliance costs in some instances for construction site operators. However, the final regulations have been modified in a number of ways to significantly reduce the fiscal impacts associated with compliance with the water quality and quantity technical standards and it is believed that the final regulations represent a reasonable balance between necessary water quality and quantity improvements and potential economic concerns. It should be noted that the offsite compliance options will help moderate compliance costs. It is anticipated that before the implementation of these regulations in 2014 that nutrient trading opportunities will be greatly expanded [The expansion of nutrient trading opportunities referenced in this 2011 document has not yet occurred; ed.].

Approximately 90 percent of the new Stormwater Management Ordinance consists of requirements from the state Stormwater Management Act and Regulations. For the remaining 10 percent of the ordinance, where the County had latitude to develop specific requirements, an extensive outreach program was implemented to gain input from stakeholders. Outreach efforts included:

- Stakeholder Meetings - Stakeholders included representatives from industry, citizens groups, design professionals, environmental groups, and other individuals interested in participating. A kickoff meeting was held on July 24, 2012; work sessions were held on September 24, 2012, October 17, 2012; and a close-out meeting was held on July 24, 2013.
- Web site (<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>) – A website was created to keep the public updated on the ordinance adoption schedule, draft ordinances, and solicit input. Email notifications were sent to stakeholders to alert them to meetings and updates to draft ordinance postings on the website.
- Board Committee Presentations – Staff presented various options for the major policy issues at four Environmental Committee and Development Process Committee meetings between November 2012 and June 2013.
- Planning Commission Presentations – Staff presented an overview of the Stormwater Management Ordinance and the major policy issues to the Planning Commission Environmental Committee at two meetings between October 2012 and April 2013. Staff is scheduled to present an update on the ordinance to the Environmental Committee on September 19, 2013.

- Environmental Quality Advisory Council (EQAC) Presentations – Staff made presentations on the Stormwater Management Ordinance and policy issues at three EQAC meetings.
- Engineering Standards Review Committee (ESRC) – Staff worked with representatives on the ESRC from the development community, engineers, environmental groups, and citizen groups to develop the proposed amendments to the Public Facilities Manual.
- District Advisory Group Presentations – Staff presented various Stormwater Management Ordinance topics at meetings in the Mount Vernon, Braddock, and Providence Districts.

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 new Stormwater Management Ordinance was written to implement the Virginia Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.) as required by the Virginia Stormwater Management Act (Va. Code. Ann. § 62.1-44.15:24, et seq.). It contains provisions from both the law and regulations. A table relating provisions of the ordinance to provisions in the law and regulations is included as Attachment I of the Staff Report. In addition, provisions have been included in the ordinance to facilitate compliance with the County’s MS4 permit and incorporate elements of repealed Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage). The ordinance includes nine articles whose key provisions are as follows:

Article 1 General Provisions:

1) Administration. The ordinance is to be administered by the Director of the Department of Public Works and Environmental Services.

2) Exemptions. Exemptions from provisions of the Virginia Stormwater Management Act are incorporated. Only the major exemptions impacting building and construction included in the ordinance are listed here.

- All land disturbing activities equal to or less than 2,500 square feet in area that are not part of a larger common plan of development are exempt.
- Single-family dwellings separately built and disturbing less than 1 acre (*The Board to select a value within an advertised range of range of 2,500 sq. ft. to 1 acre.*) and not part of a larger common plan of development or sale, including: additions to existing single-family detached dwellings; accessory structures to single-family detached dwellings; and demolitions of single-family detached dwellings or accessory structures all subject to

the following (*The Board may select any or all or none of the advertised conditions below.*):

- a) Control measures are not required to address a specific WLA for a pollutant that has been established in a TMDL and assigned to stormwater discharges from construction activities within the watershed; and
- b) The proposed construction meets one of the following conditions:
 - i) Total imperviousness on the lot will be less than 2,500 square feet (*The Board to select a value within the advertised range of range of 1,000 sq. ft. to 5,000 sq. ft. or delete this half of the condition.*) or 18% of the lot area (*The Board to select a value within the advertised range of range of 10 – 50% or delete this half of the condition.*), whichever is greater; or
 - ii) Water quality controls meeting requirements in effect at the time were provided with the original subdivision construction and are currently in place; or
 - iii) The property is served by an existing regional stormwater management facility providing water quality control.

In order to demonstrate compliance with conditions (ii) or (iii) above, an applicant for a land-disturbing permit need only certify that water quality controls were included as part of the approved subdivision plans and have not been removed or that the site drains to an existing regional stormwater management facility providing water quality control.

3) Other laws and regulations. Compliance with the Stormwater Management Ordinance will meet stormwater control requirements of the Chesapeake Bay Preservation Ordinance and the adequate outfall requirements (MS-19) of the Virginia Erosion and Sediment Control Regulations.

4) Approved land-disturbing activities with VSMP permit coverage and grandfathering.

- General Permit Coverage prior to July 1, 2014. If coverage is maintained, land-disturbing activities are not subject to the new requirements for 2 permit cycles (i.e. 10 years).
- Plats and plans including zoning actions approved prior to July 1, 2012, without general permit coverage prior to July 1, 2014, are not subject to the new requirements provided construction is completed prior to July 1, 2019.
- Projects with governmental bonding or debt financing issued prior to July 1, 2012, are not subject to the new requirements.

5) Chesapeake Bay Preservation Act Land-Disturbing Activities. Land-disturbing activities equal to or less than an acre must meet the new requirements for

stormwater management but are not required to obtain VSMP permit coverage unless they are part of a larger common plan of development or sale that would disturb more than one acre of land.

Article 2 General Administrative Criteria for Regulated Land-Disturbing Activities:

- 1) The County may not approve any land-disturbing activity requiring a VSMP permit unless the applicant has provided evidence of VSMP permit coverage.
- 2) A County stormwater permit (This is a local permit separate and distinct from the state VSMP permit.) is required for all non-exempt land-disturbing activities.
- 3) The County stormwater permit is to be consolidated with the erosion and sediment control permit. A consolidated permit is required by the Act.
- 4) A stormwater management plan addressing permanent water quality and quantity controls is required for all non-exempt land-disturbing activities.
- 5) A pollution prevention plan is required for all land-disturbing activities subject to VSMP permit requirements. A pollution prevention plan addresses sources of pollution from the land-disturbing activity not directly related to stormwater such as spillage from refueling stations, wash water, trash collection, etc. The pollution prevention plan is reviewed by DEQ as part of the VSMP permit application and is not reviewed by County staff as part of the land-development review process.
- 6) The stormwater management plan, the erosion and sediment control plan, and the pollution prevention plan are collectively known as the Stormwater Pollution Prevention Plan (SWPP). The County is responsible for enforcement of the VSMP permit and related SWPP during construction inspection.
- 7) Requirements for bonding, long-term maintenance, and construction record drawings (as-builts) are included. These items are already required in connection with site, subdivision, and grading plans proposing public improvements or stormwater management facilities.

Article 3 Fees: See Appendix Q Amendments.

Article 4 Technical Criteria for Regulated Land-Disturbing Activities:

- 1) These criteria apply to all new land-disturbing activities that are not exempt or do not have existing permit coverage or are not grandfathered.
- 2) Water quality design criteria are provided for both new development and redevelopment. The new requirements meet but do not exceed the state minimum criteria except in instances where application of the Water Supply Protection Overlay District phosphorus reduction requirement may be more stringent than the state requirement. Compliance with the water quality design criteria is to be determined

utilizing the Virginia Runoff Reduction Method developed by the state. This methodology is different than what is currently used by the County and its use is mandated under the Regulations.

3) Water quantity control criteria are provided for both channel protection and flood protection, known collectively as adequate outfall. Separate criteria are provided for manmade conveyance systems, natural channels, and restored channels. The minimum state requirements are significantly less stringent than current County requirements except for the extent of downstream review which is more stringent than current County requirements. A slightly modified version of the current County requirements for adequate outfall is being retained along with the County's current detention requirement and the state's extent of downstream review.

4) As required by the Regulations, the ordinance includes a number of offsite compliance options for water quality control. Nutrient credits may be purchased through a nutrient credit exchange for small projects that do not generate large amounts of nutrients or for projects that achieve 75 percent of the required nutrient reduction onsite or for projects that have exhausted possibilities for full compliance onsite.

Article 5 Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria:

1) Article 5 contains the water quality control and adequate outfall requirements to be used with grandfathered projects and projects with existing VSMP permits as of July 1, 2014.

2) The requirements for water quality are what is currently required under the Chesapeake Bay Preservation Ordinance and the PFM and were approved by the Chesapeake Bay Local Assistance Board (which has since been dissolved) as an acceptable alternative to the State's requirements and methodology.

3) The state requirements for adequate outfall (stream channel erosion and flooding) as applied by the current PFM are included.

4) Developers have the option of using the new technical criteria in Article 4 in lieu of the technical criteria in Article 5.

Article 6 Exceptions:

Requirements for the granting of exceptions are directly from the State regulations. These requirements apply to both new and grandfathered projects.

Article 7 Appeals:

This article provides procedures and criteria for appeals of decisions by the Director. Appeals are subject to hearings, which are to be conducted by a hearing officer(s) appointed by the Director.

Article 8 Violations and Penalties:

- 1) This article provides for criminal violations and civil penalties in accordance with the Stormwater Management Act.
- 2) The Board will be asked to approve a suggested list of civil penalty amounts for use in administering these provisions.

Article 9 Illicit Discharges to the Storm Sewer System and State Waters:

- 1) This article establishes prohibitions against discharging to the County storm sewer system and state waters.
- 2) This article replaces Chapters 105 (Pollution of State Waters) and 106 (Storm Drainage) of the County Code which are proposed to be repealed.
- 3) Standards for the inspection of industrial and commercial property discharging to the County MS4 are included.

Chapter 101 (Subdivision Ordinance):

Compliance with the requirements of the Stormwater Management Ordinance has been added to the minimum requirements for new subdivisions.

Chapter 104 (Erosion and Sedimentation Control):

During the 2013 legislative session, the Erosion and Sediment Control Law was re-enacted with regulatory authority and oversight of local programs transferred from the SWCB and DCR to the State Water Control Board and DEQ. The law and associated regulations also integrate erosion and sediment control requirements with stormwater management requirements, including VSMP permitting, and Chesapeake Bay preservation area requirements. The proposed amendments update the regulatory citations, definitions, administrative requirements, and conservation standards consistent with the re-enacted law and regulations. The proposed amendments also explicitly designate the Director of DPWES as responsible for administering the ordinance, incorporate a general right of entry provision for enforcement of the ordinance separate from the existing provisions for inspection related to permits, and incorporate variance provisions.

Chapter 112 (Zoning Ordinance):

Compliance with the requirements of the Stormwater Management Ordinance has been added to the minimum requirements for site plans.

Chapter 118 (Chesapeake Bay Preservation Ordinance):

The Chesapeake Bay Preservation Ordinance implements the Chesapeake Bay Preservation Area Designation and Management Regulations (4VAC50-90 et seq.). The regulations were revised, effective November 21, 2012, to eliminate stormwater management requirements duplicated in the Stormwater Management Program (VSMP) Permit Regulations (4 VAC 50-60 et seq.), and clarify that enforcement of provisions relating to requirements for erosion and sediment control be conducted under provisions of the Erosion and Sediment Control Act. The proposed amendments reflect these regulatory changes. In addition, the Chesapeake Bay Exception Review Committee is being eliminated. This committee, appointed by the Board, was charged with review and approval of exception requests requiring public hearings that were not associated with zoning cases being heard concurrently by the Board. At the time the committee was created in 2003, the number of cases to be heard by the committee was projected to be significantly larger than it has turned out to be. In fact, the committee has averaged three public hearings per year since its inception. As a result, the committee meets on an irregular schedule and there are difficulties in finding citizens willing to serve on the committee. In the opinion of staff, the workload does not justify continuation of the committee. The review and approval of these types of exception requests will be transferred to the Board of Supervisors which is already hearing exception requests associated with ongoing zoning cases.

Appendix Q

Fees for activities related to local stormwater permits and state permits are incorporated into the general fee schedule for plan review and inspection for site and subdivision plans. The proposed amendments to Appendix Q incorporate fees for: Coverage Under the General Permit for Discharges of Stormwater from Construction Activities (\$308) and Permits for Chesapeake Bay Preservation Act Land-Disturbing Activities (\$308); Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities (\$200 - \$700 depending on disturbed acreage); Annual Permit Maintenance Fees (\$20 - \$1,400 depending on disturbed acreage); Modifications/Waivers/Exceptions (\$710); and Review and Inspection of Stormwater Management and BMP facilities (\$500 - \$3,200 by type of facility) with a maximum cumulative total of \$7,500. Fees for state permits will be paid directly to the state.

H. Regulatory Impact:

The proposed Stormwater Management Ordinance is being adopted as required by the Virginia Stormwater Management Act and Regulations. Requirements for water quality and quantity control, currently located in the Public Facilities Manual and Chesapeake Bay Preservation Ordinance, are being consolidated in the new ordinance. Existing prohibitions related to pollution of state waters and discharges into County storm drains in Chapters 105 and 106 of the County Code are being expanded and consolidated in the new ordinance. The new ordinance establishes

more stringent requirements for water quality controls than those currently contained in the PFM and Chesapeake Bay Preservation Ordinance. These requirements meet but do not exceed the minimum requirements of the Virginia Stormwater Management Act and Regulations. The new ordinance retains existing requirements currently in the PFM, with minor modifications, for water quantity control related to stream protection and flooding. These requirements exceed the minimum requirements of the Virginia Stormwater Management Act and Regulations. The new ordinance creates a requirement for a local stormwater permit and a consolidated stormwater and erosion and sediment control permit as required by the Virginia Stormwater Management Act and Regulations. Under the new ordinance and in accordance with the Virginia Stormwater Management Act and Regulations, the County will be responsible for plan review and inspections for the state for VSMP permits and enforcement of VSMP permit violations. Under the Virginia Stormwater Management Act and Regulations, the threshold for the requirement to obtain a state permit has been increased from 2,500 square feet to one acre making it less stringent than current requirements.

In general, the new water quality control requirements will be more difficult to achieve for all development including County projects and result in the construction of more, albeit smaller, controls distributed throughout the project site. This impact is mitigated for land disturbances on existing residential lots by the exception provisions contained in the new ordinance and the option to purchase water quality control credits through a broker system set up by the state. It is unknown at this time if sufficient credits will be available to meet future demand for credits. The regulatory impacts also are mitigated by the provisions set forth in the ordinance for land-disturbing activities that have coverage under a state VSMP permit prior to July 1, 2014, and proposed land-disturbing activities that have County approvals prior to July 1, 2012, both of which are derived directly from the Virginia Stormwater Management Regulations. Projects that have coverage under a state VSMP permit are not subject to the new technical criteria in the proposed Stormwater Management Ordinance provided that construction is completed by July 1, 2024. Grandfathered projects are not subject to the new technical criteria provided that construction is completed by July 1, 2019. The types of projects grandfathered are currently valid proffered rezonings or P district rezonings or other rezonings with a plan of development, special exceptions, special permits, variances, preliminary or final subdivision plats, subdivision construction plans, preliminary or final site plans, or grading plans. In addition, County projects for which funding was obligated prior to July 1, 2012, are grandfathered until July 1, 2019, and County projects for which governmental bonding or public debt financing was issued prior to July 1, 2012, are grandfathered indefinitely.

The proposed PFM amendments are necessary to implement the new Stormwater Management Ordinance and the VSMP Permit Regulations. Requirements for water quality and quantity control, currently located in the PFM and Chesapeake Bay Preservation Ordinance, are being consolidated in the new ordinance. The primary regulatory impact of the PFM amendments is related to the limitations on use and

location of BMPs and, if approved, the maintenance of additional types of BMPs in residential areas by the County.

With respect to the limitations on use and location of BMPs, the limitations are less restrictive than current requirements but more restrictive than what is permitted under the Regulations. Currently, all BMPs must be located on outlots in new residential subdivisions except that some types of BMPs may be located on lots in residential subdivisions creating three or fewer lots with approval by the Director and on existing residential lots and BMPs may not be located in the VDOT right-of-way. Under the proposed amendments, the limit of three lots is being increased to seven lots and some BMPs may be located in the VDOT right-of-way subject to approval by VDOT. In order for BMPs to be located in the right-of-way, an agreement between the County and VDOT, similar to the one currently in place for the Tysons Corner Urban Center, will have to be developed. Staff has begun talks with VDOT but it may take some time to negotiate an acceptable agreement(s).

H. Fiscal Impact:

There is a need for two Code Compliance Investigator positions in FY 2014. Based on the actual increase in constructed BMPs above current ordinance BMP construction levels coupled with increased enforcement efforts, additional positions may need to be requested in future budget submissions. It is also anticipated that additional positions in the County Attorney's office may be needed in the future for enforcement activities. The need for additional maintenance staff will need to be reevaluated if the Board determines that the County should take over maintenance of most new BMP facilities. With respect to plan review and inspection activities, no new staff is being requested at this time.

It is difficult to assess what fiscal impact the addition of new BMP types and changes to the BMP design standards will have on the County, developers, or property owners. The primary fiscal impact is due to the increase in the number of BMPs required to meet the new water quality control requirements in the Stormwater Management Ordinance rather than the design standards for those BMPs. The increase in the number of BMPs per project would increase both design and construction costs.

If the number of BMP types eligible for public maintenance is expanded, the annualized cost for County maintenance of new BMPs added to the inventory of County maintained facilities is estimated to be approximately \$0.6 million versus approximately \$0.25 million under the current system. The costs to the County would increase by this amount every year. In addition, there would be additional costs if the County instituted a conversion program for existing privately maintained residential BMPs to be brought up to acceptable condition and turned over to the County. If all of the existing privately maintained residential BMPs were turned over to the County for maintenance (this likely would take many years), there would be an additional annualized cost estimated at \$3.5 million. Any staffing costs associated with the conversion program would be offset by less enforcement activity. Therefore, the

fiscal impact of a change to the types of BMPs maintained by the County would be approximately \$3.5 million increasing at a rate of \$0.6 million per year from current Stormwater Program funding.

I. Attached Documents:

Attachment A – Chapter 124 (Stormwater Management Ordinance)

Attachment B – Amendments to Chapter 101 (Subdivision Ordinance)

Attachment C – Amendments to Chapter 104 (Erosion and Sedimentation Control)

Attachment D – Amendments to Chapter 105 (Pollution of State Waters)

Attachment E – Amendments to Chapter 106 (Storm Drainage)

Attachment F – Amendments to Chapter 112 (Zoning Ordinance)

Attachment G – Amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance)

Attachment H – Amendments to Appendix Q (Land Development Services Fees)

Attachment I – Table of State Law and Virginia Administrative Code Citations for Provisions in the Stormwater Management Ordinance.

Attachment J – Schedule of Civil Penalties