

## DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

**STAFF REPORT**

## ADDENDUM

- 
- 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

January 28, 2014

Prepared by:

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January 28, 2014

## STAFF REPORT ADDENDUM

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) Regulations (9 VAC 25-870 et seq.).

### A. Recommended Action:

Staff recommends that the Board adopt the new Stormwater Management Ordinance, repeal existing ordinances, and proposed amendments to *The Code of the County of Fairfax, Virginia* as recommended by the Planning Commission with the additional revisions to the new ordinance recommended by staff dated January 28, 2014.

Staff further recommends that the Board:

- Authorize staff to review plans, at the request of an applicant, based on the new Stormwater Management Ordinance and amendments to the Public Facilities Manual (PFM) beginning two months in advance of the effective date. Plans could not be approved under the new Stormwater Management Ordinance and amendments to the PFM prior to the effective date.
- Approve a suggested list of civil penalty amounts for use in administering the violations and penalties provisions of the Stormwater Management Ordinance.

### B. Background:

Subsequent to publishing the original Staff Report on September 10, 2013, the state regulations were republished on September 23, 2013, with an effective date of October 23, 2013, to make them consistent with the numbering sequence assigned to State Water Control Board regulations in the Virginia Administrative Code, as follows: VSMP Regulation (9 VAC 25-870 et seq.); Virginia Erosion and Sediment Control Regulations (9 VAC 25-840 et seq.); and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830 et seq.). On December 17, 2013, the State Water Control Board adopted additional amendments to the VSMP Regulations related to grandfathering, the general permit for discharges from construction sites, and fees. Under the most recent version of the regulations and the general permit adopted by the State Water Control Board on December 17, 2013, all land-disturbing activities equal to or greater than one acre must obtain coverage under the general permit by submitting registration

statements. Land-disturbing activities less than one acre in size that are part of a common plan of development also must obtain coverage under the general permit. However, single-family residences separately built that are part of a larger common plan of development will be covered by the registration statement for the common plan of development and will not have to submit separate registration statements. These amendments necessitate additional changes to the proposed Stormwater Management Ordinance.

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 for review. The deadline for the required submission has been extended from December 15, 2013, to January 15, 2014, and the deadline for final submission of the adopted ordinances and PFM has been extended from April 1, 2014, to May 15, 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). DEQ has recently advised localities that localities also will be responsible for inputting permit registration statements, provided by operators, into the state's online permitting system. Previously, operators were to have access to the online permitting system to input the data and localities would review the data for consistency with submitted plans.

See Agenda Item for full background statement.

### C. Proposed Amendments

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

The advertised amendments to the Stormwater Management Ordinance have been revised twice since authorization. The November 14, 2013, revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Virginia Stormwater Management Program (VSMP) Regulation that became effective on October 23, 2013, and changes developed by staff in consultation with industry to address issues related to the water quantity control requirements. The January 28, 2014, revisions are the result of additional changes to the VSMP Regulation adopted by the State Water Control Board on December 17, 2014, related to grandfathering, the general permit for discharges from construction sites, and fees. The Planning Commission recommendation and the additional changes recommended by staff to comply with the most recent version of the VSMP Regulation have been combined in Revised Attachment A to the Staff Report Addendum dated January 28, 2014.

Significant revisions to the advertised ordinance are listed below.

- Chesapeake Bay Preservation Act Land-Disturbing Activities. Land-disturbing activities equal to or less than one 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. Under the revised general permit adopted by the State Water Control Board on December 17, 2013, a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale is authorized to discharge under the registration statement for the larger common plan of development and is not required to submit a registration statement or the State's portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures encompassing the single-family residence. Multi-family residential construction and non-residential construction disturbing less than one acre and part of a larger common plan of development or sale is required to submit a separate registration statement and the state's portion of the permit fee.

- 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 may be reviewed by County staff as part of the land-development review process. There are no plans for County staff to review pollution prevention plans, during the land-development review process at this time.
- 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. As a result of discussions with industry during the Planning Commission's deliberations, an alternative extent of downstream review based on the County's current requirements is provided for situations where outfalls are adequate and/or certain detention targets exceeding state minimum requirements are met.

#### 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 November 14, 2013,

revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Virginia Erosion and Sediment Control Regulations that became effective on October 23, 2013. These revisions are included as Revised Attachment C dated January 28, 2014.

Chapter 118 (Chesapeake Bay Preservation Ordinance):

The November 14, 2013, revisions, recommended by staff and the Planning Commission, are the result of the renumbering of and minor editorial corrections to the Chesapeake Bay Preservation Area Designation and Management Regulations that became effective on October 23, 2013. The proposed amendments reflect these regulatory changes. In addition, the advertised amendments proposed elimination of the Chesapeake Bay Exception Review Committee. The review and approval of these types of exception requests would be transferred to the Board of Supervisors which is already hearing exception requests associated with ongoing zoning cases. The committee, appointed by the Board, is 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. 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. However, the Planning Commission has recommended that the committee be retained and their workload be monitored. The final amendments recommended by staff and the Planning Commission retain the Exception Review Committee. The final recommended amendments are included as Revised Attachment G dated January 28, 2014.

H. Regulatory Impact:

Under the revised general permit adopted by the State Water Control Board on December 17, 2013, a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale is authorized to discharge under the registration statement for the larger common plan of development and is not required to submit a registration statement or the State's portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures encompassing the single-family residence. Previously, registration statements and state fees were required for such projects. Multi-family residential construction and non-residential construction disturbing less than one acre and part of a larger common plan of development or sale is required to submit a separate registration statement and the state's portion of the permit fee.

H. Fiscal Impact:

See revised fiscal impact statement in Board Agenda Item

I. Attached Documents:

Revised Attachment A – Chapter 124 (Stormwater Management Ordinance)

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

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

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