

Fairfax County Stormwater Management Ordinance Stakeholder Kick-Off Meeting

Fairfax County Government Center Board Auditorium
July 24, 2012, 7:00 p.m.

DRAFT MEETING NOTES

James Patteson, Director, Department of Public Works and Environmental Services welcomed the meeting participants. He expressed thanks to several people that assisted with meeting preparation including John Friedman, Emily Abbott, Cathy Lemmon, Carolyn Weber, and Carol Lamborn. He introduced the importance of the proposed new stormwater management ordinance and its relationship to the Virginia Stormwater Management Regulations, the County's MS4 permit, and existing County ordinances. He stressed that feedback from County partners and stakeholders is a critical part of the ordinance development process and this introductory meeting is the beginning of this process. He presented a timeline showing the public meetings and hearings that are planned before adoption of the new stormwater ordinance.

Stakeholder Process

James introduced Michelle Brickner, Director, Land Development Services, who introduced the agenda for the meeting. She discussed the purpose of the process, which is to gather input on how to comply with the revised Virginia Stormwater Management Regulations. She noted that there are some areas where the County has flexibility or opportunities to improve the program. Helping to guide recommendations to the Board of Supervisors in these areas will be the focus of the stakeholder involvement process. There will be two large meetings: tonight's introductory meeting and a meeting in January to provide an update on how stakeholder input was used in the draft ordinance. There will be two smaller work group meetings scheduled for September 24 and October 17 to discuss the issues in greater detail.

Michelle offered that if there was anyone in attendance that had a specific question and didn't want to wait until after tonight's meeting that they could visit with County staff in the lobby.

Michelle discussed the goals of the stakeholder process:

- Identify issues for discussion and consideration;
- Ensure feedback represents a broad range of County perspectives;
- Keep working groups small and focused to ensure meaningful dialogue; and,
- Achieve consensus where possible and present feedback on identified topics to the Board of Supervisors.

During the small group process, the group will be split into smaller teams to discuss a particular issue and report back to the group for further discussion on that topic. The goal of the County is to keep the small group participation to around 60 people. The County will have to be selective if participation exceeds 60, or if too many representing one interest group volunteer, to keep the group balanced among different perspectives. Michelle presented a draft list of organizations that will be asked to participate in the small group process. Individuals that are interested can self-nominate through the stormwater ordinance web page:

<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>

Overview of Regulations

Michelle introduced Bruce McGranahan, Site Code Research and Development Branch, to provide an overview of the Virginia Stormwater Management Regulations. Bruce presented a timeline for adoption of the County's ordinance to comply with the regulations with a "go-live" date of July 1, 2014. Bruce noted that the land disturbance criteria remain the same: one acre or 2,500 square feet in a Chesapeake Bay Preservation Area. The major impacts on Fairfax County are changes to technical criteria for stormwater management that will require changes to the Code of Fairfax County and the Public Facilities Manual (PFM), as well as changes to plan submittal, review, approval, bonding, inspections, bond release and maintenance policies and procedures. The County will also have other implementation activities to address once the ordinance language is set, including establishing a tracking system, an accounting system, fees, training and a funding and staffing plan.

Bruce reviewed the following key items from the regulations:

Water Quality Requirements: Phosphorus continues to be used as the benchmark pollutant. New development will be limited to 0.41 pounds/acre/year. The Runoff Reduction Method will replace the Simple Method for demonstrating compliance with the new requirements. The main difference between the two methods is that the Runoff Reduction Method considers the entire site and accounts for runoff from impervious, grassed, and forested areas. The Simple Method only addresses the impervious area of the site controlled by a structural stormwater facility. Developers are allowed to use offsets to achieve water quality requirements under certain conditions; however offsets are not allowed for water quantity. These changes will generally result in more stringent requirements and will favor an increase in smaller stormwater control facilities that promote infiltration into the soil.

Water Quantity Requirements: Channel protection is required based on the channel type. The flood protection requirements are situational based on whether there is existing localized flooding. This is less stringent than current County requirements. The sheet flow requirements are similar to current County requirements.

Grandfathering: Plans approved before July 2012 and obtaining a Virginia Stormwater Management Program (VSMP) permit before July 1, 2014 are not subject to the new requirements. Grandfathering ends on June 30, 2019 or when the VSMP permit is terminated.

BMP Clearinghouse: Approved BMPs are more standardized and reflected in the Virginia BMP Clearinghouse. The Clearinghouse approved BMP list includes several BMPs that are not in the current PFM and the ones that are within the PFM have different design and construction specifications.

VSMP Permits: Fairfax County will administer VSMP construction permits during plan review and inspections after July 1, 2014. The Virginia Department of Conservation and Recreation (DCR) is working on an e-permitting system that will allow the developer to apply for the VSMP permit on-line. This system will notify Fairfax County and DCR when an action is required. Users will be able to track the status of applications on-line.

Stakeholder Issues

Bruce introduced David Bulova from AMEC Environment & Infrastructure. AMEC is providing support to the County by assisting with the stakeholder facilitation process. David presented a summary of issues identified by County staff for discussion during the small group work sessions. He noted that this is a preliminary list and that stakeholder input on additional issues is welcome.

Single Family Home Exemptions: The Code of Virginia allows an exemption for single-family properties between 2,500 square feet and one acre. Should Fairfax County provide an exemption, and if so, at what threshold? Another possibility may be to require the purchase of offsets for these properties.

Adequate Outfall and Detention: New detention provisions that eliminate the need for a downstream adequacy review are less stringent than the current PFM. Should the County continue to use the more stringent requirements reflected in the PFM? Are there other ways to achieve the desired results using a methodology other than the one in the current PFM?

BMPs in Residential Areas: New requirements favor implementation of smaller facilities on individual lots. Current County practice is to require that facilities be placed on out-lots. This may create issues and impact lot yield. Should certain facilities be allowed on individual lots? Who would perform maintenance? How would enforcement be handled?

Restrictions on Use of BMPs: The Code of Virginia and the BMP Clearinghouse list types of BMPs that can be used to meet requirements. Several BMPs are different than what is allowed in the PFM. Should the County restrict or prohibit the use of certain BMPs? What criteria should the County use to make this determination?

Facility Inspections by Owners: The regulations require submission of inspection and maintenance reports to the County by BMP operators. Currently, the County inspects facilities once every five years to validate maintenance. What is a reasonable frequency for requiring private operators to provide maintenance reports to the County? Should this vary by BMP type? What should be the enforcement requirements?

Offset Provisions: The Code of Virginia requires the County to allow nutrient offset credits under certain circumstances. The County maintains the ability to allow offsets under other circumstances. What criteria should the County use for allowing offsets? Should it be linked to land use? How much does the County want to encourage or discourage offsets versus on-site facilities?

Question and Answer Discussion

The meeting participants were invited to ask questions or make comment on the proposed ordinance development stakeholder process.

Are there additional stakeholder groups that need to be included in the process? District Councils and District Land Use Committees were specifically identified.

How are new property owners educated about an existing BMP on the property or the fact that their land is within a Resource Protection Area? The maintenance agreement runs with the land but is often overlooked during closing. This is a good issue to discuss in the small group meetings – is there a better process for educating property owners about their responsibilities and land use restrictions? The County currently tracks all BMPs in their system and can send property owners a notice about inspection and maintenance. This is easier with homeowners associations than with individual property owners. Some type of disclosure is required per the Code of Virginia – the County will look into the disclosure requirements further.

What is the economic impact of these changes? The County will be looking closely at the cost of different options and will provide a cost/benefit analysis to the Board of Supervisors. Virginia has some information that will be used as a foundation when looking at costs to the County (for program oversight), the homeowners (for operations and maintenance), and the developers for construction. The County has records on construction costs and will have to research the cost of long-term maintenance.

By-right infill development often results in flooding of neighboring properties. Will the new ordinance address this issue? This issue can be discussed in the small groups as part of single lot exemptions and adequate outfall requirements. It was stated by a participant that developers are not looking at impacts far enough downstream and that there should be a focus on downstream problems and the cumulative impacts of single lot development in the new ordinance.

Another participant agreed with this opinion and presented several examples of infill development where large homes have caused flooding issues for adjacent homes. *The participant recommended that the County look at the cumulative impact of infill development instead of on a lot-by-lot basis.* County staff agreed that this is an important issue and they strive to balance cost/impacts with property rights. If the issue isn't able to be addressed during the initial stakeholder process, it may be deferred to an anticipated "Phase II" of the process. Since there is a regulatory deadline for addressing minimum requirements, the County will take any issues that can't be resolved in the immediate future so that they can be more fully vetted during Phase II.

Another participant recommended that the ordinance include a requirement for infill development to notify adjacent property owners about their plans. Staff noted that currently there is no state enabling authority that would allow this.

How will BMP maintenance be addressed for older BMPs that were not built under the new ordinance? Will funding be provided for maintenance and inspection? The County will consider whether it will make the new maintenance requirements retroactive on older BMP facilities. Funding for maintenance/inspection of individual lot BMPs is a good item for discussion in the work sessions. In the past, the County has discussed requiring the developer to set up a fund for these purposes.

Provide some insight into the Accotink Creek Total Maximum Daily Load (TMDL) lawsuit? Fairfax County and the Virginia Department of Transportation (VDOT) jointly filed a lawsuit against EPA over this TMDL. The state usually develops TMDLs, but EPA took this one over and issued a “flow” TMDL. The flow of stormwater was used as a surrogate for sediment, which was found to be adversely impacting the macroinvertebrates in the stream. The sediment issue identified was primarily due to instream erosion. Fairfax County and VDOT believe that a sediment TMDL would give them more tools to address the problem and that the problems in the stream will not be addressed by flow reduction alone. The lawsuit was filed before issuance of the County’s new Municipal Separate Storm Sewer System (MS4) permit, which would have required the County to comply with the TMDL. Fairfax County is supportive of a program to restore Accotink Creek but wants to develop a program with the best chance of success.

Does the County have authority to control VDOT or the City of Fairfax? No. VDOT and the City of Fairfax are separate from the County. DCR will have oversight of VDOT’s new stormwater management program while the City of Fairfax will need to develop an updated ordinance similar to Fairfax County. Both VDOT and the City of Fairfax also have separate MS4 permits, although they are general permits as opposed to the County’s individual permit which has more extensive requirements. The goal of the MS4 permits is to reduce pollution in the storm sewer system to the maximum extent practicable.

How will the pro-rata program be changed as a result of the new regulations? Will the runoff reduction achieved using the new Runoff Reduction Method be credited in some way in the pro-rata calculations? The pro-rata program addresses water quantity. How the new regulations affect this program is a good issue for discussion by the small work groups.

Who’s responsible for drainage issues caused by road structures? VDOT is responsible for culverts under their roads. The County looks at capacity issues caused by upstream development. A participant noted that construction at the intersection of Hummer Road and Annandale Road has caused drainage issue in the existing housing development. County staff offered to provide additional insight but stated that it appears to be a VDOT issue.

Next Steps

Invitations for the small group meetings will be sent to identified stakeholder organizations. In addition, individuals can self-nominate by approaching staff after the meeting or sending an email through the County's stormwater web page. Information about the stakeholder process and ordinance development can also be found on the stormwater ordinance webpage:

<http://www.fairfaxcounty.gov/dpwes/stormwaterordinance.htm>