



LAND DEVELOPMENT SERVICES
June 25, 2019

STAFF REPORT

PREPARED BY PERMITTING AND CODE ADMINISTRATION DIVISION

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

Proposed Amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance) and Chapter 124 (Stormwater Management Ordinance) of *The Code of the County of Fairfax, Virginia* (County Code) Re: Long-term Maintenance of Stormwater Management Facilities, Illicit Discharges, and Enforcement

Authorization to Advertise

June 25, 2019

Planning Commission Hearing

July 24, 2019

Board of Supervisors Hearing

September 24, 2019 at 4:00 p.m.

Prepared by:

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STAFF REPORT

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors (Board) adopt the proposed amendments as set forth in this Staff Report dated June 25, 2019. Staff also recommends that the Board approve the attached standard maintenance agreements for stormwater management facilities that have been updated to reflect the changes to the Stormwater Management Ordinance and current business practices.

Coordination

The proposed amendments have been prepared by Land Development Services (LDS) and coordinated with the Department of Public Works and Environmental Services (DPWES) and the Office of the County Attorney.

BACKGROUND

The Director of LDS is responsible for administering the Stormwater Management Ordinance. However, some County responsibilities under the ordinance are performed by DPWES and are funded through its budget. These responsibilities include the post-construction stormwater management facility inspection program, which is a requirement of the Virginia Stormwater Management Program (VSMP) Regulation and the County's Municipal Separate Storm Sewer System (MS4) Permit; and the illicit discharge and industrial and high-risk runoff facility inspection programs, which are elements of the County's MS4 Permit. LDS became the administering agency for the Stormwater Management Ordinance when it was created as a separate agency in 2017.

The Director of LDS delegated to the Director of DPWES responsibility for administering the above provisions of the ordinance and processing of violations of those provisions. The amendments will expressly authorize the Director of DPWES to administer portions of the Stormwater Ordinance over which he currently has delegated authority and will align the ordinance with existing lines of business.

The VSMP Regulation requires localities to ensure the long-term functionality of privately owned stormwater maintenance facilities through the use of maintenance agreements. The regulation specifies, among other things, that maintenance agreements must require owners to submit inspection and maintenance reports to the VSMP authority (the County). However, the regulation does not specify how often reports must be submitted or what those reports must include. The maintenance agreements currently used by the County specify the inspection and maintenance reporting requirements, which require owners to submit inspection and maintenance reports annually to the County.

The County proposes to modify the maintenance agreements to allow owners to retain the reports on-site and be available for review by County staff upon request.

Legal action to assess civil penalties is one enforcement method used to obtain compliance with and penalize violations of the Stormwater Management Ordinance. The ordinance requires that civil penalties be filed in circuit court even though the enabling legislation (Virginia Stormwater Management Act, Va. Code §§ 62.1-44.15:24. *et seq.*) allows legal action to be taken in any appropriate court. In some cases, seeking civil penalties in general district court would be more efficient and require less staff time. Therefore, amending the Stormwater Management Ordinance to allow civil penalties to be taken in any appropriate court would provide flexibility to pursue civil penalties in general district court, which will expedite enforcement and reduce staff time to process certain violations.

The density and planting requirements for the establishment and restoration of Resource Protection Area (RPA) buffers under the Chesapeake Bay Preservation Ordinance is being amended to align the ordinance with the Public Facilities Manual (PFM) and state guidance in the *Riparian Buffers Modification and Mitigation Guidance Manual*.

PROPOSED AMENDMENTS

Chesapeake Bay Preservation Ordinance Amendments

The density and planting requirements for the establishment and restoration of Resource Protection Area (RPA) buffers in the Chesapeake Bay Preservation Ordinance are being amended to align with the requirements in the PFM and the required caliper of trees for restoration of RPA buffers is being reduced from 2 inches to 1.5 inches. One-and-one-half inch caliper is the size recommended in the *Riparian Buffers Modification and Mitigation Guidance Manual*. The proposed amendments make editorial and minor revisions including changing “shall” to “will” or “must” or “may” throughout the sections of the ordinance being amended.

Stormwater Management Ordinance Amendments

The proposed amendments authorize the Director of DPWES to administer and enforce specific provisions of the Stormwater Management Ordinance related to the County’s MS4 Permit and long-term maintenance of stormwater management facilities. The ordinance is also being amended to allow legal action to be pursued in any appropriate court. The Board will also be asked to approve two standard maintenance agreements for privately maintained stormwater management facilities that reflect the changes to the ordinance. There is one agreement for facilities located on private property and a second agreement for facilities located in the right-of-way (applicable to the Tyson’s area only). The proposed amendments are described as follows:

- Provide for the Director of DPWES to administer the provisions of Article 9, Illicit Discharges to the Storm Sewer System and State Waters.
- Provide the Director of DPWES with the right-of-entry to perform inspections and the ability to obtain search warrants to perform inspections related to his responsibilities under the ordinance.
- Delete the requirement for maintenance agreements to include a requirement for the owner to submit inspection and maintenance reports on an “annual” basis.
- Provide for an alternative enforcement mechanism in lieu of a maintenance agreement for stormwater management facilities designed to treat stormwater runoff primarily from an individual lot on which the facility is located.
- Transfer responsibility to establish a post-construction inspection program to ensure continuing maintenance of stormwater management facilities from the Director of LDS to the Director of DPWES.
- Require the Director of DPWES to establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities.
- Provide for the Director of DPWES to issue and process violations of §124-2-10 and Article 9 and hear appeals of violations under Article 7.
- Clarifies that discharges in exceedance of limits in a state-issued permit is a violation.
- Make editorial and minor revisions including changing “shall” to “will” or “must” or “may” throughout the sections of the ordinance being amended.

CONCLUSION

The proposed amendments to the Stormwater Management Ordinance will align the ordinance with current lines of business, current business practices, and allow violations to be processed more expeditiously. The proposed amendments to the Chesapeake Bay Preservation Ordinance will streamline the ordinance provisions related to RPA buffer establishment by eliminating the possibility of conflicts with PFM requirements. No new regulatory requirements are proposed with these amendments and there is no fiscal impact on the county.

ATTACHED DOCUMENTS

Attachment A – Amendment to Chapter 118 (Chesapeake Bay Preservation Ordinance)

Attachment B – Amendment to Chapter 124 (Stormwater Management Ordinance)

Attachment C – Maintenance Agreement for Stormwater Management Facilities Located on Private Property

Attachment D – Maintenance Agreement for Stormwater Management Facilities Located in a Public Right-of-Way

**Proposed Amendment to Chapter 118 (Chesapeake Bay Preservation Ordinance)
of
The Code of the County of Fairfax**

1 **Amend Article 3, Land Use and Development Performance Criteria, Section 118-3-**
2 **3, Additional Performance Criteria for Resource Protection Areas, by revising**
3 **paragraph (f), to read as follows:**

4
5 (f) Buffer area establishment: Where buffer areas are to be established, they must
6 ~~shall~~ consist of a mixture of overstory trees, understory trees, shrubs and groundcovers.
7 ~~The density of overstory trees shall be a minimum of 100 trees per acre. The density of~~
8 ~~understory trees shall be a minimum of 200 trees per acre. The density of shrubs shall be~~
9 ~~a minimum of 1089 plants per acre. If seedlings are used instead of container plants, the~~
10 ~~density of trees shall be doubled. Large caliper trees shall not be planted on slopes steeper~~
11 ~~than 2:1. Plant materials shall be randomly placed to achieve a relatively even spacing~~
12 ~~throughout the buffer. The Director may approve the use of seedlings in lieu of container~~
13 ~~or balled and burlaped trees and the use of a woody seed mixture as a supplement to or in~~
14 ~~lieu of individual plants for shrubs and groundcovers. If seedlings are used, the density of~~
15 ~~trees must be doubled. Plants must shall be native to the degree practical and adaptable to~~
16 ~~site conditions. Wetland plantings (including herbaceous plantings) and/or wetland seed~~
17 ~~mix must shall be used where site conditions warrant. Plant materials, plant density, and~~
18 ~~planting techniques must shall be as specified in the Public Facilities Manual.~~

19
20 **Amend Article 9, Violations and Penalties, Section 118-9-1, General Provisions,**
21 **paragraph (d), to read as follows:**

22
23 (d) Restoration of Chesapeake Bay Preservation Areas must shall be performed as
24 necessary to meet the intent of this Chapter, the requirements herein, and the
25 requirements of the Public Facilities Manual. In addition to the plantings required by
26 Section 118-3-3(f) and the Public Facilities Manual, the Director may require that trees
27 illegally removed from Chesapeake Bay Preservation Areas be replaced by other trees of
28 the same or comparable species of equal value and/or be replaced 2 for 1 with ~~2~~ 1.5-inch
29 caliper trees. The value of the replacement trees must shall not exceed the value of those
30 illegally removed as determined by the formula in the latest revision of the "Guide for
31 Plant Appraisal" prepared by the Council of Tree and Landscape Appraisers and
32 published by the International Society of Arboriculture.

**Proposed amendment to Chapter 124 (Stormwater Management Ordinance)
of
The Code of the County of Fairfax**

1 **Amend Article 1, General Provisions, Section 124-1-4, Purpose and Administration, by**
2 **revising it, to read as follows:**

3
4 **Section 124-1-4. - Purpose and Administration.**

5
6 The purpose and intent of this Chapter is to ensure the general health, safety, and welfare of the
7 citizens of Fairfax County and to protect property, state waters, stream channels, and other
8 natural resources from the potential harm of illicit discharges of pollutants and unmanaged
9 stormwater by establishing requirements for managing stormwater and procedures whereby those
10 requirements ~~shall~~ will be administered and enforced. The Director ~~is shall be~~ responsible for the
11 administration of this Chapter except for Article 9 which is administered by the Director of the
12 Department of Public Works and Environmental Services (DPWES). This Chapter establishes a
13 local stormwater management program that ~~is shall be~~ administered in conjunction with the
14 County's MS4 program and erosion and sediment control program.

15
16 **Amend Article 1, General Provisions, Section 124-1-8, Right of Entry, by revising it, to**
17 **read as follows:**

18
19 **Section 124-1-8. Right of Entry.**

20
21 A. The Director, or any duly authorized agent of the Director, may, at reasonable times and
22 under reasonable circumstances, enter any establishment or upon any property, public or private,
23 for the purpose of obtaining information or conducting surveys or investigations necessary in the
24 enforcement of the provisions of the Act and this Chapter. In addition, the Director of DPWES,
25 or any duly authorized agent of the Director of DPWES, may, at reasonable times and under
26 reasonable circumstances, enter any establishment or upon any property, public or private, for
27 the purpose of obtaining information or conducting surveys or investigations necessary in the
28 enforcement of the provisions of §124-2-10 and Articles 7, 8, and 9.

29
30 B. In accordance with a performance bond with surety, cash escrow, letter of credit, any
31 combination thereof, or such other legal arrangement, the Director, or any duly authorized agent
32 of the Director also may enter any establishment or upon any property, public or private, for the
33 purpose of initiating or maintaining appropriate actions that are required by the permit conditions
34 associated with a land-disturbing activity when a permittee, after proper notice, has failed to take
35 acceptable action within the time specified.

36
37 C. If the Director, ~~or any duly authorized agent of the Director,~~ the Director of DPWES, or
38 any duly authorized agent of the Director of DPWES, has been refused access to a property for
39 the purpose of conducting an investigation under this Article, he may obtain a search warrant
40 upon demonstrating, to the satisfaction of any judge or magistrate or other person having the
41 authority to issue warrants, that probable cause exists to support issuance of a search or

1 administrative warrant to conduct an inspection or investigation necessary to carry out the
2 provisions of this Chapter.

3
4 **Amend Article 2, General Administrative Criteria for Regulated Land-Disturbing**
5 **Activities, Section 124-2-10, Long-term Maintenance of Permanent Stormwater**
6 **Management Facilities, by revising it, to read as follows:**

7
8 **Section 124-2-10. Long-term Maintenance of Permanent Stormwater Management**
9 **Facilities.**

10
11 A. Provisions for long-term responsibility for and maintenance of stormwater management
12 facilities and other techniques specified to manage the quality and quantity of runoff are
13 required. For all facilities and techniques intended to be privately maintained, such requirements
14 ~~shall~~ must be set forth in a Private Maintenance Agreement recorded in the Fairfax County land
15 records prior to approval to begin land-disturbing activity. Private Maintenance Agreements
16 ~~shall~~ must, at a minimum:

- 17
18 1. Be submitted in a form acceptable to the Director for review and approval and
19 executed prior to the approval of the stormwater management plan;
- 20 2. Be stated to run with the land;
- 21 3. Provide for all necessary access to the property for purposes of maintenance and
22 regulatory inspections;
- 23 4. Provide for inspections and maintenance and the submission of inspection and
24 maintenance reports to the County ~~on an annual basis~~;
- 25 5. Be enforceable by all appropriate governmental parties;
- 26 6. Ensure that measures could be taken by the County to maintain the stormwater
27 management facilities or perform inspections at the owner's expense should the owner fail to
28 maintain the stormwater management facilities in good working order in accordance with the
29 maintenance specifications in the agreement or perform the periodic inspections required by the
30 agreement;
- 31 7. Provide that in the event the County, pursuant to the agreement, performs work of any
32 nature or expends any funds in performance of said work for labor, use of equipment, supplies,
33 materials, and the like, the owner will reimburse the County for all costs incurred by the County;
34 and
- 35 8. Provide for liens to be placed on the property should the owner fail to reimburse the
36 County for costs incurred by the County.

37
38 B. Upon approval of the Director, Private Maintenance Agreements are not required for
39 stormwater management facilities designed to treat stormwater runoff primarily from an
40 individual residential lot on which they are located, provided it is demonstrated to the
41 satisfaction of the Director that future maintenance of such facilities will be addressed through an
42 enforceable mechanism.

43
44 CB. The Director of DPWES may utilize the inspection reports of the owner of a stormwater
45 management facility as part of an inspection program established in subsection C of this section
46 if the inspection is conducted by a person who is licensed as a professional engineer, architect,
47 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
48 Title 54.1; a person who works under the direction and oversight of the licensed professional

1 engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate
2 certificate of competence from the SWCB.

3
4 DC. The Director ~~shall~~ of DPWES must establish an inspection program that ensures that
5 stormwater management facilities are being adequately maintained as designed after completion
6 of land-disturbing activities. The inspection programs ~~shall~~ must:

- 7
8 1. Be approved by the SWCB;
9 2. Ensure that each stormwater management facility is inspected by the Director of
10 DPWES, or his designee, not to include the owner, except as provided in subsection B of this
11 section, at least once every five years; and
12 3. Be documented by records.

13
14 **Amend Article 2, General Administrative Criteria for Regulated Land-Disturbing**
15 **Activities, Section 124-2-11, Construction Record Drawings, by revising it, to read as**
16 **follows:**

17
18 **Section 124-2-11. Construction Record Drawings.**

19
20 Upon satisfactory completion, inspection and approval of the installation of all required
21 permanent stormwater management facilities, a construction record drawing (a.k.a. as-built) for
22 permanent stormwater management facilities ~~shall~~ must be submitted to the Director for review
23 and approval for conformance with the approved stormwater management plan except as noted
24 herein. Construction record drawings ~~shall~~ must be prepared in accordance with the provisions
25 set forth in the Public Facilities Manual. The construction record drawing ~~shall~~ must be
26 appropriately sealed and signed by a professional registered in the Commonwealth of Virginia,
27 pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia,
28 certifying that the stormwater management facilities have been constructed in accordance with
29 the approved plan. The Director may elect not to require construction record drawings for
30 stormwater management facilities for which maintenance agreements are not required pursuant
31 to § 124-2-10.B

32
33 **Amend Article 7, Appeals, by revising it, to read as follows:**

34
35 **ARTICLE 7.**

36
37 **Appeals.**

38
39 **Section 124-7-1. Right to Administrative Review.**

40
41 A. Any permit applicant, permittee, person subject to state permit requirements under this
42 Chapter, or person subject to an enforcement action under this Chapter who is aggrieved by an
43 action or inaction by the Director pursuant to this Chapter (excluding Article 9) or by the
44 Director of DPWES under Article 9 has a right to an administrative appeal of the Director's or
45 Director of DPWES' decision. The appeal ~~shall take~~ must be in the form of a written request for
46 reconsideration and, upon request of the appellant, an informal hearing. As provided for in this
47 Chapter, the Director or the Director of DPWES may seek an injunction in the absence of an
48 administrative hearing.

1
2 B. The aggrieved party seeking to appeal a decision by the Director or the Director of
3 DPWES shall must submit to the Director or the Director of DPWES as appropriate, within 10
4 days after the date of the challenged decision, a written Notice of Intent to Appeal. The Notice
5 of Intent to Appeal ~~shall~~ must state whether the appellant requests an informal hearing.

6
7 C. Within 21 days after the Notice of Intent to Appeal is submitted to the Director or the
8 Director of DPWES, the appellant ~~shall~~ must submit a written Request for Reconsideration to the
9 Director or the Director of DPWES setting forth the factual, legal, or other bases for the appeal.
10 Failure to timely submit the Request for Reconsideration ~~shall~~ will constitute a waiver of the
11 right to appeal.

12
13 D. An appellant that timely files a Notice of Intent to Appeal with the Director or the
14 Director of DPWES that includes a request for an informal hearing ~~shall~~ must submit a Request
15 for Reconsideration in accordance with subsection C. The informal hearing ~~shall~~ must be held
16 no more than 60 days after the Notice of Intent to Appeal is submitted, unless an extension is
17 agreed upon by the parties. The informal hearing ~~shall~~ will be conducted by the Director or his
18 designee or the Director of DPWES or his designee, and the scope of the appeal ~~shall be~~ is
19 limited to the bases set forth in the Request. The appellant may appear in person or be
20 represented by counsel, and may present any information in support of the appeal.

21
22 E. The Director or the Director of DPWES shall will make a final decision in writing within
23 14 days after either the submission of the request for reconsideration or an informal hearing,
24 whichever is later. The final decision ~~shall~~ will state the facts upon which the decision is based.

25
26 **Section 124-7-2. Appeals of Final Orders.**

27
28 Final decisions of the Director or the Director of DPWES under this Chapter ~~shall be~~ are
29 subject to review by appeal to the Circuit Court of Fairfax County, Virginia, provided that the
30 permit applicant, permittee, or person to whom a final decision is issued files a petition in the
31 Circuit Court of Fairfax County within 30 days of the date of the final decision. Failure to do so
32 ~~shall~~ will constitute a waiver of the right to appeal the final decision. The circuit court ~~shall~~ will
33 conduct its review in accordance with the standards established in Va. Code Ann. § 2.2-4027,
34 and the decisions of the circuit court shall be subject to review by the Court of Appeals.

35
36 **Amend Article 8, Violations and Penalties, Section 124-8-1, General Provisions, Paragraph**
37 **B, by revising it, to read as follows:**

38
39 Upon becoming aware of any violation of any provisions of this Chapter, the Director, or his
40 designee, or the Director of DPWES, or his designee, may issue a verbal warning and request to
41 take corrective action for any such violation to the property owner or the person committing or
42 permitting the same, and may serve a Notice of Violation on the property owner or the person
43 committing or permitting the violation of this Chapter. The Notice of Violation ~~shall~~ must (i)
44 specify the provisions of this Chapter which have been violated, (ii) identify the remedial
45 measures necessary to cure the violation, and (iii) provide a reasonable time in which to remedy
46 the violations. Failure to take steps to comply with a Notice of Violation within the time
47 provided for therein ~~shall~~ will constitute a separate violation of this Chapter.

48

1 **Amend Article 8, Violations and Penalties, Section 124-8-1, General Provisions, Paragraph**
 2 **H, by revising it, to read as follows:**

3
 4 H. The Director may apply to the Fairfax County Circuit Court for injunctive relief to enjoin
 5 a violation or a threatened violation of any provision of this Chapter without the necessity of
 6 showing that an adequate remedy at law does not exist. In addition, the Director of DPWES may
 7 apply to the Fairfax County Circuit Court for injunctive relief to enjoin a violation or a
 8 threatened violation of any provision of Article 9 without the necessity of showing that an
 9 adequate remedy at law does not exist.

10
 11 **Amend Article 8, Violations and Penalties, Section 124-8-3, Civil Penalties, Paragraph C,**
 12 **by revising it, to read as follows:**

13
 14 C. The Director may issue a summons for collection of the civil penalty and the action may
 15 be prosecuted in the appropriate ~~circuit~~ court. Any civil penalties assessed by a court as a result
 16 of a summons issued by Fairfax County ~~shall~~ will be paid into the treasury of Fairfax County,
 17 except where the violator is Fairfax County, or its agent. Such civil penalties paid into the
 18 treasury of Fairfax County are to be used for the purpose of minimizing, preventing, managing,
 19 or mitigating pollution of the waters of the locality and abating environmental pollution therein
 20 in such manner as the court may, by order, direct.

21
 22 **Amend Article 9, Illicit Discharges to the Storm Sewer System and State Waters, Section**
 23 **124-9-1, Purpose, Paragraph D, by revising it, to read as follows:**

24
 25 D. Authorize the Director of DPWES to investigate and enforce violations of this Article.

26
 27 **Amend Article 9, Illicit Discharges to the Storm Sewer System and State Waters, Section**
 28 **124-9-2, Responsibilities of the Director, by revising it, to read as follows:**

29
 30 **Section 124-9-2. Responsibilities of the Director of DPWES.**

31
 32 The Director of DPWES ~~has~~ ~~shall~~ ~~have~~ direct charge over the County MS4, including
 33 responsibility for the operation, maintenance, and administration thereof, and responsibility for
 34 the enforcement of violations of this Article. In the investigation and enforcement of violations
 35 of this Article, the Director of DPWES may exercise any and all authority granted to the Director
 36 under Articles 7 and 8, and may exercise the right of entry set forth in Article 1 for obtaining
 37 information or conducting surveys or investigations necessary in the enforcement of the
 38 provisions of this Article.

39
 40 **Amend Article 9, Illicit Discharges to the Storm Sewer System and State Waters, Section**
 41 **124-9-3, Illicit Discharges to the Storm Sewer System and State Waters, by revising it, to**
 42 **read as follows:**

43
 44 **Section 124-9-3. - Illicit Discharges to the Storm Sewer System and State Waters.**

45
 46 A. It ~~shall be~~ is unlawful for any Person to discharge or deposit, or to cause or allow to be
 47 discharged or deposited any wastes, trash, leaves, grass clippings, soil, oil, petroleum products,
 48 noxious or flammable substances, or any matter causing or adding pollution in any state waters

1 of this County or on any property in this County in any manner so as to allow any such substance
 2 to be washed into state waters by storm or flood water. ~~Nothing in this section shall prohibit~~
 3 ~~¶The discharge or deposit of waste in any substance to state waters in accordance with a state-~~
 4 ~~issued permit is authorized but any exceedance of permit limits is a violation of this subsection.~~
 5 ~~when such discharging has been approved by a state agency~~

6
 7 B. It ~~shall be~~ is unlawful for any Person to discharge or deposit, or to cause or allow to be
 8 discharged or deposited in the County MS4, any wastes, trash, leaves, grass clippings, soil, oil,
 9 petroleum products, noxious or flammable substances, or any matter causing or adding pollution;
 10 provided however, that leaves may be piled at curbs during such seasons and in such areas as
 11 may now or in the future be furnished mechanical leaf collection service. It is the intent of this
 12 provision to prohibit the entry into the County MS4 of any substance, whether solid or liquid,
 13 other than naturally occurring surface or subsurface waters. The discharge or deposit of any
 14 substance to the County MS4 in accordance with a state-issued permit is authorized but any
 15 exceedance of permit limits is a violation of this subsection.

16
 17 C. It ~~shall be~~ is unlawful to connect any plumbing fixtures, drains, appurtenances, or
 18 appliances that discharge any substance other than stormwater into the County MS4.

19
 20 **Amend Article 9, Illicit Discharges to the Storm Sewer System and State Waters, Section**
 21 **124-9-4, Standards for Inspection of Industrial and Commercial Property Discharging to**
 22 **the County MS4, by revising it, to read as follows:**

23
 24 **Section 124-9-4. Standards for Inspection of Industrial and Commercial Property**
 25 **Discharging to the County MS4.**

26
 27 The Director of DPWES must shall develop a program for the routine inspection of properties,
 28 which because of the nature of the industrial or commercial use thereon, present a high risk of
 29 discharging non-stormwater substances to the County MS4 that may, in the opinion of the
 30 Director of DPWES, result in a significant pollutant load. The Director of DPWES will shall
 31 make ~~publicly~~ available the ~~methodology and~~ criteria for ~~including~~ properties in the inspection
 32 program and the basis for selecting a particular property for inspection under this program.



District: _____

Tax Map: _____

**MAINTENANCE AGREEMENT
for
STORMWATER MANAGEMENT FACILITIES
(located on private property)**

THIS AGREEMENT, made this _____ day of _____, _____, by and between _____

Insert Full Name of Owner(s)

hereinafter called "Landowner", and the Board of Supervisors of Fairfax County, Virginia, hereinafter called "County":

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property, more particularly described as

Insert Legal Description of Property

Plan Name

Tax Map Number

as recorded by Deed in the land records of Fairfax County, Virginia, in Deed Book _____ at Page _____, hereinafter called the "Property"; and

WHEREAS, the Landowner is proceeding to build on and develop the Property; and

WHEREAS, Site/Subdivision/Grading Plan Number _____ - _____ - _____ hereinafter called the "Plan" which is expressly made a part hereof, as approved or to be approved by the County, provides for management of stormwater within the confines of the Property; and

WHEREAS, the County and the Landowner agree that the health, safety, and welfare of the residents of Fairfax County, Virginia, require that on-site stormwater quantity and/or quality control facilities, hereinafter called stormwater management facilities, be constructed and maintained on the Property; and

WHEREAS, the County, through the implementation of its Stormwater Management Ordinance and the execution of its Municipal Separate Storm Sewer System Permit, requires the Landowner to ensure that the on-site stormwater management facilities will operate as shown on the Plan; and

WHEREAS, the County desires the ability to inspect the on-site stormwater management facilities shown on the Plan, be able to maintain, repair and replace the facilities should the Landowner fail to do so and be able to recover the expense of any necessary maintenance, repair or reconstruction undertaken.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management facilities shall be constructed by the Landowner in accordance with the design and specifications identified in the Plan.

2. The Landowner shall maintain the stormwater management facilities as shown on the Plan in good working order acceptable to the County and in accordance with the specific maintenance requirements noted on the Plan and/or attached hereto as Attachment A.

3. The Landowner shall inspect the stormwater management facilities in accordance with the inspection qualifications, frequency, and reporting requirements noted on the Plan and/or Attachment A. The purpose of the inspection is to verify that each stormwater management facility and system is being properly maintained, is continuing to perform in accordance with the approved design, and conforms to the Plan and applicable codes. Deficiencies shall be noted in the inspection report. If deficiencies are noted, they shall be promptly corrected, repaired, or replaced by the Landowner.

4. The Landowner shall provide a copy of ~~the~~ an annual inspection and maintenance report of the stormwater management facilities to the County upon request ~~as described on the Plan and/or Attachment A within one year of the date of this Agreement or within one year of the date of bond release of the Plan for bonded plans and annually thereafter.~~

5. The Landowner hereby grants permission to the County, or its authorized agents and employees, to enter upon the Property at reasonable times and in a reasonable manner to inspect, operate, install, construct, reconstruct, maintain, or repair the stormwater management facilities whenever the County deems necessary. Whenever reasonably possible, the County shall attempt to notify the Landowner prior to the inspection. Any notice to the Landowner under this Agreement shall be deemed to have been properly sent when personally delivered or sent first-class U.S. mail to the address of said Landowner as displayed in the County's real property tax assessment records or, alternatively, when notified by electronic mail provided that an acknowledgement of receipt is returned by the Landowner. To avoid imminent endangerment to human health or the environment, any notice to the Landowner shall be deemed waived and the County, or its authorized agents and employees, may immediately begin the required maintenance, operation, construction, reconstruction, and/or repair work.

6. The County shall provide to the Landowner copies of the County's inspection results and of any directive from the County outlining any necessary repairs or maintenance required to the stormwater management facilities including a date by which such necessary repairs or maintenance shall be completed.

7. In the event the Landowner fails to maintain the stormwater management facilities in good working order acceptable to the County and in accordance with the specific maintenance requirements noted on the Plan and/or Attachment A, or as noted in inspection results as set forth in Paragraph 6 above, the County may take whatever steps it deems necessary to maintain said stormwater management facilities. This provision shall not be construed to allow the County to erect any structure of a permanent nature on the Property of the Landowner. It is expressly understood and agreed that the County is under no obligation to maintain or repair said facilities and in no event shall this Agreement be construed to impose any such obligation on the County.

8. In the event the County, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the County upon demand within ten (10) days of receipt of an invoice thereof for all costs incurred by the County hereunder. If the Landowner fails to reimburse the County within sixty (60) days after the receipt of the County's demand for payment, such amount shall be recorded as a lien against the Landowner in the records of Fairfax County, Virginia, and/or the County may also proceed to collect amounts due in any manner not prohibited by law.

9. It is the intent of this Agreement to ensure the proper maintenance of on-site stormwater management facilities by the Landowner provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater drainage.

10. The Landowner, its executors, administrators, assigns, and any other successors in interest, shall indemnify and hold harmless the County and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the County from the construction, presence, existence or maintenance of the stormwater management facilities by the Landowner or the County.

11. In the event a claim is asserted against the County, its agents or employees, the County shall promptly notify the Landowner and the Landowner shall defend at his own expense any suit based on such claim. If any judgment or claims against the County, its agents or employees shall be allowed, the Landowner shall pay all costs and expenses in connection therewith.

12. This Agreement shall be recorded among the land records of Fairfax County, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interest.

IN WITNESS of all of which, the parties hereto have caused this Agreement to be executed under seal on their behalf.

Landowner

Landowner

By: _____
Signature

Signature

(Print or type name and title)

(Print or type name and title)

Address: (type or print) _____

STATE OF _____

COUNTY/CITY OF _____

I, _____, Notary Public in and for the State and County/City aforesaid, do hereby certify that _____ whose name(s) is (are) signed to the foregoing Agreement, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____.

My commission expires: _____

Notary Public

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
Director, Department of Land Development Services

COMMONWEALTH OF VIRGINIA:

COUNTY OF FAIRFAX:

This _____ day of _____, _____, appeared before me in my State and County aforesaid, _____ Director, Department of Land Development Services, and acknowledged signature.

My commission expires: _____

NOTARY PUBLIC

Approved as to form:

Office of the County Attorney



District: _____

Tax Map: _____

**MAINTENANCE AGREEMENT
for
STORMWATER MANAGEMENT FACILITIES
(located in a public right-of-way)**

THIS AGREEMENT, made this _____ day of _____, _____, by and between _____

Insert Full Name of Owner(s)

hereinafter called "Landowner", and the Board of Supervisors of Fairfax County, Virginia, hereinafter called "County":

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property, more particularly described as

Insert Legal Description of Property

Plan Name

Tax Map Number

as recorded by Deed in the land records of Fairfax County, Virginia, in Deed Book _____ at Page _____, hereinafter called the "Property"; and

WHEREAS, the Landowner is proceeding to build on and develop the Property; and

WHEREAS, Site/Subdivision/Grading Plan Number _____ - _____ - _____ hereinafter called the "Plan" which is expressly made a part hereof, as approved or to be approved by the County, provides for management of stormwater flowing from the Property to the public right-of-way; and

WHEREAS, the County and the Landowner agree that the health, safety, and welfare of the residents of Fairfax County, Virginia, require that stormwater quantity and/or quality control facilities, hereinafter called stormwater management facilities, be constructed and maintained within the public right-of-way; and

WHEREAS, the County, in order to implement its Virginia Stormwater Management Program and Municipal Separate Storm Sewer System Permit Program Plan and in accordance with its adopted Stormwater Management Ordinance, requires the Landowner to ensure that the stormwater management facilities within the public right-of-way will be adequately maintained and operate as shown on the Plan; and

WHEREAS, the County must be able to inspect the stormwater management facilities shown on the Plan and desires to be able to maintain, repair and replace the facilities should the Landowner fail do to so and recover the expense of any necessary maintenance, repair or reconstruction undertaken; and

WHEREAS, the Landowner shall be subject to any requirements to notify the County and/or the Virginia Department of Transportation, hereinafter called "VDOT", to secure applicable permits prior to performing work within public right-of-way, to comply with any conditions of said permit(s) and to employ measures necessary to protect the

health, safety, and welfare of persons using the public right-of-way as prescribed by the County, VDOT and/or their authorized agents and employees.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The stormwater management facilities shall be constructed by the Landowner in accordance with the design and specifications identified in the Plan as well as any applicable conditions of a permit to work within the public right-of-way issued by VDOT and/or the County.

2. The Landowner shall maintain the stormwater management facilities as shown on the Plan in good working order acceptable to the County and in accordance with the specific maintenance requirements noted on the Plan and/or attached hereto as Attachment A.

3. The Landowner shall inspect the stormwater management facilities in accordance with the inspection qualifications, frequency, and reporting requirements noted on the Plan and/or Attachment A. The purpose of the inspection is to verify that each stormwater management facility and system is being properly maintained, is continuing to perform in accordance with the approved design, and conforms to the Plan and applicable codes. Deficiencies shall be noted in the inspection report. If deficiencies are noted, they shall be promptly corrected, repaired, or replaced by the Landowner.

4. The Landowner shall provide a copy of ~~the an annual~~ inspection and maintenance report of the stormwater management facilities to the County ~~upon request as described on the Plan and/or Attachment A within one year of the date of this Agreement or within one year of the date of bond release of the Plan for bonded plans and annually thereafter.~~

5. The Landowner hereby grants permission to the County, or its authorized agents and employees, to enter upon the Property at reasonable times and in a reasonable manner should access to the Property be necessary to inspect, operate, install, construct, reconstruct, maintain, or repair the stormwater management facilities within the public right-of-way whenever the County deems necessary. Whenever reasonably possible, the County shall attempt to notify the Landowner prior to the inspection. Any notice to the Landowner under this Agreement shall be deemed to have been properly sent when personally delivered or sent first-class U.S. mail to the address of said Landowner as displayed in the County's real property tax assessment records or, alternatively, when notified by electronic mail provided that an acknowledgement of receipt is returned by the Landowner. To avoid imminent endangerment to human health or the environment, any notice to the Landowner shall be deemed waived and the County, or its authorized agents and employees, may immediately begin the required maintenance, operation, construction, reconstruction, and/or repair work.

6. The County shall provide to the Landowner copies of the County's inspection results and of any directive from the County outlining any necessary repairs or maintenance required to the stormwater management facilities including a date by which such necessary repairs or maintenance shall be completed.

7. In the event the Landowner fails to maintain the stormwater management facilities in good working order acceptable to the County and in accordance with the specific maintenance requirements noted on the Plan and/or Attachment A, or as noted in inspection results as set forth in Paragraph 6 above, the County may take whatever steps it deems necessary to maintain said stormwater management facilities. This provision shall not be construed to allow the County to erect any structure of a permanent nature on the Property of the Landowner. It is expressly understood and agreed that the County is under no obligation to maintain or repair said facilities and in no event shall this Agreement be construed to impose any such obligation on the County.

8. In the event the County, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the County upon demand within ten (10) days of receipt of an invoice thereof for all costs incurred by the County hereunder. If the Landowner fails to reimburse the County within sixty (60) days after the receipt of the County's demand for payment, such amount shall be recorded as a lien against the Landowner in the records of Fairfax County, Virginia, and/or the County may also proceed to collect amounts due in any manner not prohibited by law.

9. It is the intent of this Agreement to ensure the proper maintenance of stormwater management facilities by the Landowner provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater drainage.

10. The Landowner, its executors, administrators, assigns, and any other successors in interest, shall indemnify and hold harmless the County and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the County from the construction, presence, existence or maintenance of the stormwater management facilities by the Landowner or the County.

11. In the event a claim is asserted against the County, its agents or employees, the County shall promptly notify the Landowner and the Landowner shall defend at his own expense any suit based on such claim. If any judgment or claims against the County, its agents or employees shall be allowed, the Landowner shall pay all costs and expenses in connection therewith.

13. This Agreement shall be recorded among the land records of Fairfax County, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interest.

IN WITNESS of all of which, the parties hereto have caused this Agreement to be executed under seal on their behalf.

Landowner
By: _____
Signature

(Print or type name and title)

Landowner

Signature

(Print or type name and title)

Address: (type or print) _____

STATE OF _____

COUNTY/CITY OF _____

I, _____, Notary Public in and for the State and County/City aforesaid, do hereby certify that _____ whose name(s) is (are) signed to the foregoing Agreement, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____.

My commission expires: _____

Notary Public

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
Director, Department of Land Development Services

COMMONWEALTH OF VIRGINIA:

COUNTY OF FAIRFAX:

This _____ day of _____, _____, appeared before me in my State and County aforesaid, _____ Director, Department of Land Development Services, and acknowledged signature.

My commission expires: _____

NOTARY PUBLIC

Approved as to form:

Office of the County Attorney