



CUMBERLAND COUNTY BOARD OF SUPERVISORS

Joint Work Session with Planning Commission Stormwater Management

**Cumberland County Circuit Courtroom A
Cumberland, VA**

**Agenda for:
October 8, 2013**

6:00 p.m.

1. Call to Order / Roll Call
 - a) Board of Supervisors
 - b) Planning Commission

2. Moment of Silence and Pledge of Allegiance

3. Approval of Agenda
 - a) Board of Supervisors
 - b) Planning Commission

Motion
Motion

4. Stormwater Management
 - a) Proposal for Stormwater Management Plan Reviews (pg. 1-2)
 - b) Stormwater Management Draft Ordinance (pg. 3-19)

Information
Information

5. Presentation

Joyce Engineering

Information

6. Adjourn
 - a) Board of Supervisors Regular monthly meeting, October 8, 2013 at 7:00 pm
 - b) Planning Commission Regular monthly meeting, October 21, 2013 at 6:30



Memo

To: Board of Supervisors and Planning Commission

From: Rachel Falkenstein, Planning Director

Date: October 1, 2013

CC: File

**RE: Stormwater Management Joint Workshop
October 8, 2013, 6:00 pm**

Cumberland and the six other counties of Planning District 14 have contracted with Joyce Engineering and Sans Anderson to analyze the viability of a regional stormwater management program and to develop a local ordinance and plans to fund and staff the new program. Localities have a deadline of December 15 to submit final draft funding and staffing plans and final draft ordinances to the Department of Environmental Quality (DEQ). Local programs will take effect on July 1, 2014.

Joyce Engineering will be conducting a joint workshop meeting on October 8 with the Board of Supervisors and Planning Commission to discuss options for Cumberland's local program. They will present projections of future land disturbance projects and program costs as well as options for staffing and funding the program.

Program components will include:

1. Program administration and enforcement (must be done in-house)
2. Plan review (can be handled by a third party)
3. Inspections (can be handled by a third party)

Included in this packet is a proposal from Peter Francisco Soil and Water Conservation District (PFSWCD) to provide plan review services for the County. Currently PFSWCD handles the county's plan review for erosion and sediment control plans.

The County will also be required to adopt a stormwater management ordinance. A draft ordinance is included in the packet for your review.

Attachment

PFSWCD Plan Review Proposal Letter

Draft Stormwater Management Ordinance



PETER FRANCISCO
SOIL AND WATER CONSERVATION DISTRICT
16842 W. JAMES ANDERSON HWY • BUCKINGHAM, VIRGINIA 23921
PHONE (434) 983-7923 • FAX (434) 983-4759

SERVING BUCKINGHAM AND CUMBERLAND COUNTIES



September 30, 2013

Cumberland County
Rachel Falkenstein
P.O. Box 1101
Courthouse Circle
Cumberland, VA 23040

RE: Proposal for Stormwater Management Plan Reviews

Dear Ms. Falkenstein:

The Peter Francisco District would like to propose to your County Administrator and the Cumberland Board of Supervisors our offer to **review** Stormwater Management Plans. Currently, the District reviews E&S plans for the County now. Adding this additional service, would be a collaborative effort from the District.

We offer the County a fee of approximately **\$3,000/year** for services with Stormwater Management. The proposed fee for this year includes training and a minimal number of plans to review. A substantial increase of plans would require the District to revisit with the County any fee changes. The \$3,000 for this year covers our reviewer's training, salary/benefits, rental space, travel time, documentation and follow-up at approximately 15-20 hours on a normal plan at \$50/hour. A complicated or returned plan will require additional hours. In talking with several other soil and water districts, this fee is reasonable.

The District will have one person trained as a reviewer. If our trained reviewer were to leave or be discharged, I cannot guarantee an immediate replacement (due to hiring and training), at which time the County would have to find an alternative reviewer.

If you have any questions, feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Sherry S. Ragland".

Sherry S. Ragland
District Manager

**AN ORDINANCE TO ADOPT REGULATIONS RELATED TO
STORMWATER MANAGEMENT IN ORDER TO PROTECT WATER QUALITY AND
QUANTITY AND TO COMPLY WITH STATE LAW REQUIREMENTS**

Section 1-1. PURPOSE AND AUTHORITY.

- (a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of Cumberland County, Virginia and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from land disturbing activities causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (b) This Ordinance is adopted pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Section 1-2. DEFINITIONS.

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"Administrator" means the Zoning Administrator for Cumberland County who is authorized to delegate duties and responsibilities set forth in this Ordinance to qualified technical personnel, plan examiners, inspectors, and other employees or third-parties.

"Applicant" means any person submitting an application for a permit or requesting issuance of a permit under this Ordinance.

"Best management practice" or *"BMP"* means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

"Board" means the Board of Supervisors of Cumberland County, Virginia.

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on difference schedules.

"Control measure" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"Clean Water Act" or *"CWA"* means the federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution

Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"Department" or *"DEQ"* means the Virginia Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

"General permit" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in 9VAC25-880-1 et seq. of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

"Land disturbance" or *"land-disturbing activity"* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 1-3 (c) of this Ordinance.

"Minor modification" means an amendment to an existing permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Operator" means the owner or operator of any facility or activity subject to regulation under this Ordinance.

"Permittee" means the person to whom the VSMP Permit is issued.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Regulations" means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870-60, as amended.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

"State" means the Commonwealth of Virginia.

"State Board" or *"SWCB"* means the State Water Control Board.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater Management Permit" or "VSMP Permit" means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after evidence of General permit coverage has been provided by the Department.

"Stormwater management plan" means a document or compilation of documents containing materials meeting the requirements of Section 1-6 of this Ordinance.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document or compilation of documents meeting the requirements of Section 1-5 of this Ordinance, and which include at minimum, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in Chapter 54, Article III [Definitions] of the Cumberland County, Virginia Code of Ordinances.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Virginia Stormwater Management Act" or "Act" means Article 2.3 (§62.1-44.14:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Program," "VSMP," or "Stormwater Management Program" means the program established by the County to manage the quality and quantity of runoff resulting from land-disturbing activities in accordance with state law, and which has been approved by the SWCB.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the County.

Section 1-3. STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP Permit has been issued by the Administrator in accordance with the provisions of this Ordinance.
- (b) Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:
 - (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
 - (3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
 - (4) Land disturbing activities that disturb less than one acre of land area, and which are not part of a larger common plan of development or sale that is one acre or greater of disturbance;
 - (5) Discharges to a sanitary sewer or a combined sewer system;
 - (6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
 - (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
 - (8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be

advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the requirements of Section 1-8 of this Ordinance is required within 30 days of commencing the land-disturbing activity.

**Section 1-4. STORMWATER MANAGEMENT PROGRAM ESTABLISHED;
SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.**

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the County hereby establishes a Stormwater Management Program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for such programs promulgated by the State Board for the purposes set out in Section 1-1 of this Ordinance. The Board hereby designates the Zoning Administrator of Cumberland County as the Administrator of the Stormwater Management Program. The program and regulations provided for in this Ordinance shall be made available for public inspection at the Administrator's office.
- (b) No VSMP Permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:
 - (1) A permit application that includes a General permit registration statement which, among other things, certifies that a Stormwater Pollution Prevention Plan (SWPPP) has been prepared in accordance with state law;
 - (2) An erosion and sediment control plan approved in accordance with Article II [Erosion and Sediment Control] of Chapter 34, of the Cumberland County, Virginia Code of Ordinances, also known as the "Cumberland County Erosion & Sediment Ordinance," and:
 - (3) A stormwater management plan that meets the requirements of Section 1-6 of this Ordinance.
- (c) No VSMP Permit shall be issued until evidence of General permit coverage is obtained from DEQ.
- (d) No VSMP Permit shall be issued until the fees required to be paid pursuant to Section 1-15, are received, and a reasonable performance bond required pursuant to Section 1-16 of this Ordinance has been received.
- (e) No VSMP Permit shall be issued unless and until the VSMP Permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved stormwater management plan.
- (f) No grading, building or other local permit shall be issued for a property unless a VSMP Permit has been issued by the Administrator, and the Applicant provides a certification that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit conditions.

- (g) As a condition of permit approval, a construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator upon completion of construction. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. Construction record drawings may not be required for stormwater management facilities for which maintenance agreements are not required pursuant to Section 1-10 (b).

Section 1-5. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) that is required to be prepared before a registration statement for General permit coverage may be submitted to DEQ for approval (as referenced in Section 1-4(b)(1)) shall include the content specified by 9VAC25-870-54, 9VAC25-880-70, and any other applicable regulations including, but not limited to i) a stormwater management plan that meets the requirements of this Ordinance, ii) a County-approved Erosion and Sediment Control plan, and 3.) a pollution prevention plan that meets the requirements of 9VAC25-870-56.
- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP. The SWPPP shall also be amended by the operator, if an inspection reveals that the SWPPP is inadequate to satisfy applicable regulations. All amendments must be approved by the Administrator, as required.
- (c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.
- (d) Construction activities that are part of a common plan of development and disturb less than one acre may utilize a SWPPP template provided by DEQ and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger development project, to the extent permitted by state law.

Section 1-6. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

- (a) The Stormwater Management Plan, required in Section 1-4(b)(3) of this Ordinance, must include the following information and must consider all sources of surface and groundwater flows converted to surface runoff:
 - (1) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;

- (2) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and postdevelopment drainage areas;
- (3) A narrative that includes a description of current site conditions and final site conditions;
- (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
- (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge.
- (6) Hydrologic and hydraulic computations, including runoff characteristics;
- (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 1-7 of this Ordinance.
- (8) A map or maps of the site that depicts the topography of the site and includes:
 - (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
 - (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 1-7 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the

commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.

- (c) Elements of a stormwater management plan that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Section 1-7. REVIEW OF STORMWATER MANAGEMENT PLANS.

- (a) The Administrator shall review stormwater management plans and shall approve or disapprove such plans as follows:

- (1) The Administrator shall determine the completeness of a plan in accordance with Section 1-6 of this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
- (2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
- (3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
- (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.
- (5) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.

- (b) Approved stormwater management plans may be modified as follows:

- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
- (2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

- (c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities once construction is completed. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 1-10 (b).

Section 1-8. TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (b) of this Section.
- (b) Notwithstanding the foregoing, any land-disturbing activity proposed to occur pursuant to
 - i) a plan of development proffered as part of a condition rezoning and approved by the governing body; ii) any other plan of development or site plan approved by the County, including any plan approved pursuant to a rezoning request, a variance request, or a request for a special use permit; iii) an approved final subdivision plat or iv) an approved preliminary plat where the applicant has diligently pursued final plat approval within a reasonable period of time under the circumstances in accordance with § 15.2-2307 of the *Code of Virginia* was approved by the County prior to July 1, 2012, and for which no coverage under the general permit has been issued prior to July 1, 2014, shall be considered grandfathered and shall not be subject to the technical criteria of Part II B [of the Regulations], but shall be subject to the technical criteria of Part II C [of the Regulations] for those areas that were included in the approval, provided that the Administrator, finds that the following criteria apply:
 - (1) The plat includes conceptual drawing(s) sufficient to provide for the specified stormwater management facilities required at the time of approval;
 - (2) The resulting land-disturbing activity will be compliant with the requirements of Part II C [of the Regulations]; and
 - (3) In the event that the approved plat is subsequently modified or amended in a manner such that there is no increase over the previously approved plat in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.
- (c) For local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the Virginia Department of Conservation of Recreation has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the County and shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.

- (d) For land-disturbing activities grandfathered Sections (b) or (c) of this Section, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical requirements of Subsection (a) above.
- (e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC of the Regulations, as adopted by the County in Subsection (b) of this Section.

Section 1-9. EXCEPTIONS TO TECHNICAL CRITERIA.

- (a) In approving a Stormwater Management Plan as set forth in Sec. 1-8 of this Ordinance, the Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided the Administrator finds the following:
 - (1) The exception is the minimum necessary to afford relief;
 - (2) Reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved;
 - (3) Granting the exception will not confer any special privileges that are denied in other similar circumstances, and;
 - (4) The exception requests is not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
- (b) Exceptions to the requirement that the land-disturbing activity obtain a required VSMP Permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director of DEQ.
- (c) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.
- (d) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

Section 1-10. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES.

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:

- (1) Be submitted to the Administrator and the County Attorney for review and approval prior to the approval of the stormwater management plan;
 - (2) Recite that they are intended to "run with the land";
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
 - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.
- (c) If a recorded instrument is not required pursuant to Subsection 1-10 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

Section 1-11. MONITORING AND INSPECTIONS.

- (a) The Administrator, or the District, shall inspect the land-disturbing activity during construction for:
- (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Development, updating, and implementation of a pollution prevention plan; and
 - (4) Development and implementation of any additional control measures necessary to address any TMDL.
- (b) The Administrator may require monitoring and reports from the permittee to ensure compliance with the VSMP Permit and to determine whether the measures required in the permit provide effective stormwater management.

- (c) The Administrator may, at reasonable times and under reasonable circumstances, enter any building or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.
- (d) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any building or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- (e) In accordance with § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP Permit applicant or permittee, or any such person subject to VSMP Permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of such person's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.
- (f) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted pursuant to the County's adopted and State Board approved inspection program, and shall occur, at minimum, once within the first two of completion, and then once every five years thereafter, except as may otherwise be provided for in Section 1-10. The County may utilize the inspection reports of the Owner if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the State Board.
- (g) If the Administrator determines that there is a failure to comply with the conditions of a VSMP Permit, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection (b) of this Section by the Administrator, or the permit may be revoked. The Administrator may pursue enforcement in accordance with Section 1-14 of this Ordinance.
 - (1) If a permittee fails to comply with a notice issued in accordance with subsection (g) above, within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. Such orders shall be issued in accordance with the County's

local enforcement procedures, and shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the County.

- (2) If the Administrator determines that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.
- (3) If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute an injunctive proceeding in accordance with Section 1-14, in addition to any other administrative and/or judicial proceedings initiated.

Section 1-12. HEARINGS

- (a) Any permit applicant or permittee aggrieved by any action of the County taken without a formal hearing, or by inaction of the County, may demand in writing a formal hearing by the Board, or such other local appeals board or designee as may be established by law, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.
- (b) The hearings held under this Section shall be conducted by the Board at a regular or special meeting of the Board or by at least one member of the Board designated by the Chairman to conduct such hearings on behalf of the Board, or by the local appeals body, or the designee at any other time and place authorized.
- (c) A verbatim record and/or a recording of the proceedings of such hearings shall be taken and filed with the Board or the local appeals body or designee. Depositions may be taken and read as in actions at law.
- (d) The Board or its designated member, or the local appeals body, or the designee as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Section 1-13. APPEALS.

Any permit applicant or permittee who is aggrieved by a permit or enforcement decision of the County, is entitled to judicial review thereof, provided an appeal is filed within 30 days from the date of the decision being appealed.

Section 1-14. ENFORCEMENT.

- (a) Any person who violates any provision of this Ordinance or who fails, neglects or refuses to comply with any order of the County shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
- (b) Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:
 - (1) Failing to have a general permit registration;
 - (2) Failing to prepare a SWPPP;
 - (3) Having an incomplete SWPPP;
 - (4) Not having a SWPPP available for review as required by law;
 - (5) Failing to have an approved erosion and sediment control plan;
 - (6) Failing to install stormwater BMPs or erosion and sediment controls as required by this Ordinance and/or state law;
 - (7) Having stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (8) Operational deficiencies;
 - (9) Failure to conduct required inspections, or having incomplete, improper, or missed inspections.
- (c) The County may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
 - (1) With the consent of any person who has violated or failed, neglected or refused to obey any provision of this Ordinance, any condition of a permit or state permit, any regulation or order of the County, the County may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section.
 - (2) Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection (d) of this Section.

- (d) Any civil penalties assessed by a court as a result of a summons issued by the County shall be paid into the treasury of the County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- (e) Notwithstanding any other civil or equitable remedy provided by this section, any person who willfully or negligently violates any provision of this Ordinance, any order of the County, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both.
- (f) Any person who knowingly violates any provision of this Ordinance, any regulation or order of the VSWCB or the County, any condition of a permit or any order of a court as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.
- (g) Any person who knowingly violates any provision of this Ordinance, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.
- (h) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Locality or any provisions of this chapter may be compelled in a proceeding instituted in any appropriate court by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty as set forth in subsection (a) of this Section.
- (i) In any action to enjoin a violation or a threatened violation of the provision of this Ordinance, the County may apply to the appropriate court in any jurisdiction wherein the land lies and is not required to show that an adequate remedy at law does not exist.

1-15. FEES

- (a) Fees for coverage under the general Permit shall be imposed by the County in accordance with Table 1 of the County's Stormwater Management Fee Schedule. Sites purchased for development within a previously permitted common plan of development or sale shall be subject to fees in accordance with the disturbed acreage of the site or sites according to Table 1.
- (b) Fees for permit modifications (not including minor modifications) or transfer of registration statements from the general Permit shall be imposed in accordance with Table 2 of the County's Stormwater Management Fee Schedule. The fee assessed shall be based on the total disturbed acreage of the site, in accordance with Table 2.
- (c) Fees for annual permit maintenance shall be imposed in accordance with Table 3 of the County's Stormwater Management Fee Schedule, including fees imposed on expired permits that have been administratively continued. The maintenance fees shall apply until the permit coverage is terminated.
 - a. General permit coverage maintenance fees shall be paid annually to the County by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.
- (d) No permit application fees will be assessed to:
 - a. Permittees who request minor modifications to permits, however any such permit modification that results in any change to an approved stormwater management plan that requires additional review by the Administrator shall not be exempt pursuant to this section.
 - b. Permittees whose permits are modified or amended at the request of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.
- (e) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.
- (f) The Stormwater Management Fee Schedule shall be adopted by the Board by Resolution, and may be amended by the Board, from time to time, in the same manner, provided that the amount of fees charged shall conform to state law requirements.
- (g) The Administrator shall not review any stormwater management plan for coverage or modification until the fees required by this Section are paid as required by the County.

1-16. Performance Bond.

Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County Attorney, to ensure that measures could be taken by Cumberland County at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If Cumberland County takes such action upon such failure by the Applicant, the County may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated. Notwithstanding the foregoing provisions, at the discretion of the Administrator, a performance bond need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual owner-occupied residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that measures could be taken by Cumberland County at the Applicant's expense to initiate or maintain such facilities.

1-17. Severability.

If any court of competent jurisdiction invalidates any provision of this Ordinance, the remaining provisions shall not be effected and shall continue in full force and effect.