

## **Article 5 Stormwater Management**

**Amended April 9, 2019**

**December 10, 2019**

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## Article 5 Stormwater Management

Pursuant to Code § 62.1-44.15:27, this ordinance is adopted as part of an initiative to coordinate the Town of Warrenton stormwater management requirements with the Town's erosion and sediment control, flood insurance, and flood plain management requirements into a unified program within the Town's Zoning Ordinance, in accordance with the provisions of the Virginia Stormwater Management Act. It is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the Town and those responsible for compliance with these programs.

### 5-1 PURPOSE AND AUTHORITY (Section 9VAC25-870-20, 9VAC25-870-40)

- (a) The purpose of this Ordinance is to ensure the health, safety, and welfare of the citizens of the Town of Warrenton, to protect private and public properties, and to protect the quality and quantity of state waters from unmanaged stormwater runoff through land disturbing activities that may cause unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby legal requirements related to water quality and quantity shall be administered and enforced.
- (b) This ordinance is adopted pursuant to Article 1.1 (§ 62.1-44.15:25 et seq.) of Chapter 6 of Title 62.1 of the Code of Virginia.

### 5-2 DEFINITIONS (9VAC25-870-10)

*See Article 12.*

### 5-3 STORMWATER PERMIT REQUIREMENT; EXEMPTIONS

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority 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 from permitting under this Article, unless otherwise required by law:
  - (1) Permitted surface or deep mining operations and projects, or oil and gas extraction 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 10,000 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, these will require an Agreement-in-Lieu for Erosion and Sediment Control, and may require other permits such as Floodplain, Zoning, etc.
  - (4) Land disturbing activities that disturb less than 10,000 square feet of land area or activities that are part of a larger common plan of development or sale that is one (1) acre or greater of disturbance, for which an approved SWM Plan has already been implemented covering that proposed disturbance, and a VSMP Permit is currently in effect for that common plan of development. Discharges to a sanitary sewer or combined sewer system; although these discharges are prohibited in the Town Code.
  - (5) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
  - (6) 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
  - (7) 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 administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.
- (c) In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff from Chesapeake Bay Preservation Act land-disturbing activities shall be controlled unless otherwise exempt. Chesapeake Bay Act land disturbing activities do not require completion of a registration statement or coverage under the General Permit but shall be subject to the following technical criteria and program administrative requirements in this ordinance and 9VAC25-870-51:
- (1) Erosion and Sediment Control Plan;
  - (2) Stormwater Management Plan;

- (3) Exemptions may be requested;
- (4) Long-term maintenance of stormwater management facilities;
- (5) Water quality design criteria;
- (6) Water quality compliance;
- (7) Channel protection and flood protection;
- (8) Offsite compliance options available;
- (9) Subject to design storm and hydrologic methods, linear development controls, and criteria associated with stormwater impoundment structures or facilities.

**5-4 STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS**

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the Town hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 5-1 of this Ordinance. The Town hereby designates the Community Development Director as the Administrator of the Town of Warrenton VSMP stormwater management program.
- (b) No VSMP authority 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, if such statement is required;
  - (2) An erosion and sediment control plan approved in accordance with Article 4, Erosion and Sediment Control, of the Town Zoning Ordinance; and
  - (3) A stormwater management plan that meets the requirements of Section 5-6 of this Ordinance or an executed agreement in lieu of a stormwater management plan.
- (c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.
- (d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 5-15, are received and a reasonable performance bond required pursuant to Section 5-16 of this Ordinance has been submitted.
- (e) No VSMP authority permit shall be issued unless and until the 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 permit.

- (f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

#### **5-5 STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS**

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit. The SWPPP must include:
  - (1) Approved erosion and sediment control plan;
  - (2) Approved stormwater management plan;
  - (3) Pollution Prevention Plan for regulated land disturbing activities; and
  - (4) Description of any additional control measures necessary to address a TMDL.
- (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.
- (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. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.
- (d) At the discretion of the Administrator, the SWPPP may be waived for projects less than 1 acre and where the proposed new impervious area is less than 10,000 square feet.

#### **5-6 STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN**

- (a) The Stormwater Management Plan, required in Section 5-4 of this Ordinance, must apply the stormwater management technical criteria set forth in Section 5-9 of this Ordinance to the entire land-disturbing activity. Individual lots in new residential, commercial or industrial developments shall not be considered separate land-disturbing activities but shall be considered under a Common Plan of Development. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:

- (1) 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;
- (2) 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, and a Responsible Land Disturber certification;
- (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 5-9 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 5-9 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 § 62.1-44.15:345 of the Code of Virginia. A VSMP authority shall allow offsite options when:
  - (1) Less than five acres of land will be disturbed;
  - (2) The post-construction phosphorous control requirement is less than 10 pounds per year; or
  - (3) The applicant demonstrates to the satisfaction of the VSMP authority that:
    - (i) Alternative site designs have been considered that may accommodate onsite best management practices; and
    - (ii) Onsite best management practices have been considered in alternative designs to the maximum extent practicable; and
    - (iii) Appropriate onsite best management practices will be implemented; and
    - (iv) Full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met onsite. The applicant must demonstrate onsite control of at least 75 percent (75%) of the required phosphorous nutrient reductions. If the applicant is unable to provide 75% onsite control, a waiver may be granted by the VSMP authority subject to review of the applicant's justification to allow the use of offsite credit purchase to exceed 25%.
- (c) Elements of the stormwater management plans 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.
- (d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. 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 are not required for stormwater management facilities for which maintenance agreements are not required pursuant to Section 5-10(b).

- (e) Approved stormwater management plans for residential, commercial and industrial subdivisions govern the development of individual parcels within that plan, throughout the development life of the property even if ownership changes.

#### 5-7 **POLLUTION PREVENTION PLAN; CONTENTS OF PLANS**

- (a) Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
  - (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  - (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
  - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
  - (1) Wastewater from washout of concrete, unless managed by an appropriate control;
  - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

#### 5-8 **REVIEW OF STORMWATER MANAGEMENT PLAN**



- (a) The Administrator or the Public Works Director as the duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
- (1) The Administrator shall determine the completeness of a plan in accordance with Section 5-6 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.
  - (6) Any changes or modifications to the plans initiated by the applicant during the review process (not responses to staff comments) will reset the 60 day calendar review process as of the date of the applicant's request. .
- (b) Approved stormwater 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. 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 5-10 (b).

5-9 **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 Town of Warrenton hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations 9VAC25-870(62-99), as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities], 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) Any land disturbing activity considered grandfathered by the VSMP authority shall be subject to the Part II C (9VAC25-870 (93-99) technical criteria of the VSMP Regulation provided:
  - (1) A proffered or conditional zoning plan, zoning with the a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of the VSMP Regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
  - (2) A state permit has not been issued prior to July 1, 2014; and
  - (3) Land disturbance did not commence prior to July 1, 2014.
- (c) Locality, state and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:
  - (1) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 2, 2012; and
  - (2) A state permit has not been issued prior to July 1, 2014, and

- (3) Land disturbance did not commence prior to July 1, 2014.
- (d) Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the Part II C technical criteria of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.
- (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 criteria of Part II C.
- (f) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.
- (g) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are 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.
  - (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority 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.
  - (2) 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.
- (h) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

5-10 **ADEQUATE DRAINAGE**

- (a) In order to protect and conserve the land and water resources of this Town for the use and benefit of the public, measures for the adequate drainage of surface waters shall be taken and facilities provided in connection with all land development activities.
- (b) Adequate drainage of surface water means the effective conveyance of storm and other surface waters through and from the onsite stormwater management facilities into a(n):
  - (1) natural watercourse, i.e., a stream with incised channel (bed and banks).

- (2) drainage facility of sufficient capacity without adverse impact upon the land over which the waters are conveyed or upon the watercourse or facility into which such waters are discharged, or
- (3) adequate channel as defined in Section 5-2 of these regulations.

### **5-10.1 Minimum Requirements**

- (a) The drainage system must have the hydraulic characteristics to accommodate the maximum expected flow of surface waters for a given watershed, or portion thereof, for the duration and intensity of rainfall, as specified in the Town's Public Facilities Manual (PFM).
- (b) Determination of the size and capacity of the drainage system shall be based on the planned development, existing zoning or existing development, whichever is greater, within the watershed.
- (c) The drainage system shall be designed:
  - (1) To honor natural drainage divides,
  - (2) To account for both off site and on site surface waters,
  - (3) To convey such waters to a natural watercourse, i.e., a natural watercourse at the natural elevation, or an existing or proposed stormwater management facility, and
  - (4) To discharge the surface waters into a natural watercourse at the natural elevation, or into an existing facility of adequate capacity.
- (d) The drainage system shall be designed such that properties over which the surface waters are conveyed, from the development site to discharge point(s), are not subject to increased erosion or increased flooding.
- (e) Concentrated surface waters shall not be discharged on adjoining property, unless an easement expressly authorizing such discharge has been granted by the owner of the affected land or unless the discharge is into a natural watercourse, or other appropriate discharge point as set for the above.
- (f) The owner or applicant/development may continue to discharge storm water which has not been concentrated into a lower lying property if the following three conditions are met:
  - (1) The peak runoff rate after development does not exceed the predevelopment peak runoff rate for the 1-year storm and 10-year storm.
  - (2) The increase in runoff volume caused by the development will not have an adverse impact, such as erosion or flooding, on the lower lying property. Any increase in runoff volume will be analyzed and meet the requirement of the Energy Balance

Equation as defined by the Channel Protection criterion of Part IIB of the new SWM Regulations (9VAC25-870-66 Water Quantity). Sheet flow is to be analyzed in accordance with 9VAC25-870-66.D.

- (g) If the discharge conditions are not met and the discharge may aggravate an existing drainage problem or cause a drainage problem, the applicant/developer must provide a drainage system satisfactory to the Director to preclude an adverse impact upon the adjacent or downstream property. These improvements will be contained within a suitable Drainage Easement.
- (h) Drainage structures shall be constructed in such a manner that they may be maintained at a reasonable cost. Drainage structures and treatment facilities designed for treatment of stormwater runoff from multiple building lots shall not be located on or within an individual building lot or lots, but shall be within commonly-owned area, and shall be located so as to be easily accessed for maintenance purposes.
- (i) If the outfall is into a natural and well defined, stabilized watercourse, the two-year peak flow from the development of the watershed must be at a flow rate and velocity which the watercourse can accept without causing erosion in the streambed or over-bank flooding. Alternatively, if the applicant/developer chooses, the downstream watercourse may be modified so that it can handle the two-year post-development flow, provided, however, that if the applicant/developer choose to install a storm drainage system, the system shall be designed in accordance with these regulations for such systems.
- (j) If off site downstream construction and easements are necessary to obtain an adequate drainage outfall, no plans shall receive final approval until such storm drainage easements, extending to the nearest natural and well defined, adequate, stabilized watercourse, or adequate man-made drainage channel or pipe, have obtained and recorded among the land records of Fauquier County, Virginia.
- (k) Storm sewers shall be discharged into the area least likely to erode. The following should be considered:
  - (1) Generally, it is preferred to discharge at the flood plain limit into an adequate watercourse channel leading to the main stream-bed, rather than disturb the flood plain by extending the storm sewer.
  - (2) If an adequate watercourse channel does not exist, the only alternative is to discharge into the main stream-bed.
  - (3) In either case, energy dissipation devices are required.
- (l) The requirements of Town of Warrenton relating to Erosion and Sedimentation Control, and the further requirements for protection of stream-beds by detention of surface waters,

set forth in these regulations must be satisfied. Additionally, the Stormwater Management Regulations requirements to protect water quality must be met, if applicable.

- (m) All drainage-ways, including overland relief pathways, must be separated from buildings. No building or other permanent structure may be built on or in a storm drainage system, or easement.
- (n) Consideration must be given in the preparation of the plans to preclude adverse impacts resulting from higher rates and volumes of flow that might occur during construction.
- (o) In cases where the drainage plans of a proposed development do not satisfy these minimum requirements because necessary off site facilities or improvements are lacking, the applicant/developer shall delay development until the necessary off site facilities or improvements are constructed or other arrangements are made which are suitable to the Director of Public Works. In such event, the plat or plans, if otherwise satisfactory, will be approved when the requirements of this Article are satisfied. Alternatively, the applicant/developer may choose to supply the offsite facilities that are necessary for adequate drainage.
- (p) The downstream extent of this review shall be to the point at which the total drainage area is at least 100 times greater than the area of the development site in question.

#### 5-11 **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 for review and approval prior to the approval of the stormwater management plan;
  - (2) Be stated 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 5-10 (b), the Administrator, or any duly authorized agent of 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.

## 5-12 MONITORING AND INSPECTIONS

- (a) The Administrator or any duly authorized agent of the Administrator 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 a TMDL, if applicable.
- (b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment 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.
- (c) 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 establishment 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.
- (d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority 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 his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.
- (e) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly

authorized agent of the Administrator pursuant to the Town's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in Section 5-10.

### 5-13 HEARINGS

- (a) Any permit applicant or permittee, or person subject to Ordinance requirements, aggrieved by any action of the Town taken without a formal hearing, or by inaction of the Town, may demand in writing a formal hearing by the Town Board of Zoning Appeals causing such grievance, 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 Town at a regular or special meeting of the Board of Zoning Appeals.
- (c) A verbatim record of the proceedings of such hearings shall be taken and filed with the Board of Zoning Appeals. Depositions may be taken and read as in actions at law.
- (d) The Board of Zoning Appeals or its designated member, 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.

### 5-14 APPEALS

See Section 5-13 – HEARINGS above and Article 11-3.3.10 Appeals of the Town Zoning Ordinance.

### 5-15 ENFORCEMENT

- (a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served 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.
  - (1) 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) or the permit may be revoked by the Administrator.



- (2) If a permittee fails to comply with a notice issued in accordance with this Section 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 Article 11 of the Town Zoning Ordinance. Such orders 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 Administrator. However, if the Administrator finds 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. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 5-13 (c).

- (b) In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Town Zoning Ordinance and/or the Public Facilities Manual.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Fauquier Circuit Court by the Town to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, 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 may constitute a separate offense.
  - (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
    - (i) No state permit registration;

- (ii) No SWPPP;
  - (iii) Incomplete SWPPP;
  - (iv) SWPPP not available for review;
  - (v) No approved erosion and sediment control plan;
  - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
  - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
  - (viii) Operational deficiencies;
  - (ix) Failure to conduct required inspections;
  - (x) Incomplete, improper, or missed inspections; and
  - (xi) Discharges not in compliance with the requirements of Section 4VAC 50-60-1170 of the general permit.
- (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  - (3) 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.
  - (4) Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the Town of Warrenton 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 or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, 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 or a fine of not less than \$2,500 nor more than \$32,500, or both.

## 5-16 FEES

- (a) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with Table 1. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the Applicant shall be subject to fees (“total fee to be paid by applicant” column) in accordance with the disturbed acreage of their site or sites according to Table 1.

**Table 1: Fees for permit issuance**

Fee type	Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable)	Department portion of “total fee to be paid by Applicant” (based on 28% of total fee paid*)
General / Stormwater Management - Small Construction Activity/Land Clearing. (Areas with common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures).	\$290	\$81
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than 5 acres). No registration statement required: must adhere to general permit requirements.	\$209	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	\$2,700	\$756
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952
General / Stormwater Management – Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]	\$4,500	\$1,260
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688

\* If the project is completely administered by the Department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the Department.

- (b) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require

additional review by the Town, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1.

**Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities**

Type of Permit	Fee Amount
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700

- (c) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated.

**Table 3: Permit Maintenance Fees\*\***

Type of Permit	Fee Amount
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500

Type of Permit	Fee Amount
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

\*\*General permit coverage maintenance fees shall be paid annually to the Town, 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) The fees set forth in Subsections (a) through (c) above, shall apply to:
  - (1) All persons seeking coverage under the general permit.
  - (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
  - (3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Stormwater from Construction Activities.
  - (4) Permit and permit coverage maintenance fees outlined under Section 5-15 (c) may apply to each general permit holder.
- (e) No general permit application fees will be assessed to:
  - (1) Permittees who request minor modifications to general permits as defined in Section 5-2 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.
  - (2) Permittees whose general permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.
- (f) 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 Town shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

#### **5-17 PERFORMANCE BOND (9VAC25-870-104.D AND CODE § 603.8(A))**

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 Town, to ensure that measures could be taken by the Town 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 the Town takes such action upon such failure by the Applicant, the Locality 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.

#### **5-18 ADOPTION, AMENDMENTS, AND REPEAL**

This guidance document shall remain in effect until rescinded, amended or superseded.