

May 14, 2014

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, May 14, 2014, at 3:00 p.m. at the Rockingham County Administration Center, Harrisonburg, Virginia. The following members were present:

PABLO CUEVAS, Election District #1  
FREDERICK E. EBERLY, Election District #2  
RICKY L. CHANDLER, Election District #3  
WILLIAM B. KYGER, JR., Election District #4  
MICHAEL A. BREEDEN, Election District #5

Also present:

BRYAN F. HUTCHESON, Sheriff

JOSEPH S. PAXTON, County Administrator  
THOMAS H. MILLER, JR., County Attorney  
STEPHEN G. KING, Deputy County Administrator  
WILLIAM L. VAUGHN, Assistant County Administrator  
JAMES L. ALLMENDINGER, Director of Finance  
CASEY B. ARMSTRONG, Director of Community Development  
ANN MARIE FREEMAN, Director of Court Services  
BARRY E. HERTZLER, Director of Public Works  
JEREMY C. HOLLOWAY, Fire & Rescue Chief  
KATHARINE S. McQUAIN, Director of Parks and Recreation  
TERRI M. PERRY, Director of Technology  
STEPHEN R. RIDDLEBARGER, Director of Human Resources  
RHONDA COOPER, Director of Planning  
LISA K. PERRY, Stormwater Manager  
DIANA C. STULTZ, Zoning Administrator  
TAMELA S. GRAY, Deputy Clerk  
DONALD F. KOMARA, Residency Administrator  
Virginia Department of Transportation  
JEREMY S. MASON, Assistant Residency Administrator  
Virginia Department of Transportation

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**CALL TO ORDER  
INVOCATION  
PLEDGE OF ALLEGIANCE.**

Chairman Cuevas called the meeting to order at 3:02 p.m.

Administrator Paxton gave the Invocation and Community Development Director Armstrong led the Pledge of Allegiance.

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**APPROVAL OF MINUTES.**

On motion by Supervisor Kyger, seconded by Supervisor Eberly and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board approved the minutes of the regular meeting of April 23, 2014 and the recessed meeting of April 30, 2014.

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**TRANSPORTATION DEPARTMENT.**

Mr. Komara introduced Richie Zambrotta, Superintendent at the Verona VDOT headquarters, who is shadowing the VDOT maintenance managers, and Messrs. Komara and Mason.

Mr. Komara advised both Southeast Connector projects are moving along well. Perry Engineering and A&J Development and Excavation are doing a good job on grading.

Mr. Komara reported the Oakwood Drive (Route 704) bridge project is progressing.

VDOT started spot improvements on Bloomer Springs Road (Route 646) and will complete the extension of Martin Miller Road (Route 745) at Montezuma.

Mr. Komara reported Mr. King made a presentation at the Six-Year Primary Road Plan hearing for Interstate, Primary and Urban roads held on April 29, 2014. The meeting was well attended with citizens in favor and opposed to planned projects. Commonwealth Transportation Board member, F. Dixon Whitworth Jr. will attend the MPO meeting on May 15 to reinforce projects and receive suggestions for needed improvements.

Surveying is being performed on Smithland Road (Route 720) for the Interstate 81 bridge replacement. Additional right-of-way was purchased when the interstate was installed but the challenge is the curve at the Cedar Grove United Methodist Church and determining whether to change the connection of Smithland Road (Route 720) back onto North Valley Pike (Route 11). Survey work has also been done to replace the Interstate 81 bridge at Mauzy. Since both bridges are over 50 years old, lower in height and showing deterioration, they need to be repaired or replaced. Mr. Komara indicated the six-year plan includes numerous bridges, including all four bridges on Spotswood Trail (Route 33).

Mr. Komara reported Chairman Cuevas' request for improvements to Rawley Pike (Route 33) is included in the plan. All the funds needed are not currently available for this project but there is enough to begin curve improvements to assist tractor trailers and motorists traveling between Virginia and West Virginia.

Maintenance items include mowing, hauling stone on gravel roads and trimming brush.

A public hearing for the Secondary Road Six-Year Plan to discuss potential improvement projects for roads with route numbers 600 and above will be held during the Board meeting on May 28, 2014. Mr. Komara provided the Board with copies of the proposed Secondary System Construction Program.

He noted several projects were added to the six-year plan since the General Assembly lowered the traffic volume requirement to 200 vehicles per day. Some projects requested by the Board were also included.

Mr. Komara believes Friedens Church Road (Route 682) will be the next major project. The bridge on Friedens Church Road (Route 682) was closed last fall to put additional beams under it, replace the bents and add a new riding surface which will be sufficient for a couple years, but VDOT needs to address the railroad crossing, intersection and bridge together. VDOT is also looking at improving the two-lane section of Friedens Church Road (Route 682) to Friedens Church to possibly move the road away from the church. They were not able to widen the bridge so it continues to be tight for trucks. It will be numerous years before sufficient funding is available to improve the road to Friedens Church. VDOT wants to address the bridge first. Supervisor Kyger noted this road will serve as another inter-loop for travel on the southern side of the County.

In response to a question from Administrator Paxton, Mr. Komara said bridge funds should be available for this phase of the project. Supervisor Kyger noted it is beneficial that Interchange Group, Inc. owns the barn. Mr. Komara said the bridge contractor did not want to address the railroad crossing or North River Road (Route 867) but a meeting will be held to discuss the bridge structure as tractor trailers have hit it twice in the past two years because their GPS's routed them over the bridge.

Supervisor Chandler noted trucks also use the bridge to travel to the sewer authority.

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Mr. Komara requested the Board's consideration for adjustments involving an addition and abandonment as part of the Port Republic Road (Route 253) project.

On motion by Supervisor Kyger, seconded by Supervisor Chandler and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board approved the following resolution:

**Project Adjustments Involving Additions and Abandonments**

The Board of Supervisors of Rockingham County, in regular meeting on the 14th day of May, 2014, adopted the following:

**RESOLUTION**

WHEREAS, the Virginia Department of Transportation has provided this Board with a sketch dated April 18, 2014 depicting the addition and abandonment required in the Secondary System of State Highways as a result of Project 0253-082-744,C-501, which sketch is hereby incorporated herein by reference, and

WHEREAS, the new road serves the same citizens as those portions of the old road identified to be abandoned and those segments no longer serve a public need.

NOW, THEREFORE, BE IT RESOLVED, this Board requests the Commissioner to abandon from the Secondary System of State Highways those portions of old road identified by the sketch to be abandoned, pursuant to Section 33.1-155, Code of Virginia, and

BE IT FURTHER RESOLVED, this Board requests the Virginia Department of Transportation to add to the Secondary System of State Highways those portions of road identified by the sketch to be added, pursuant to Section 33.1-229, Code of Virginia, and

BE IT FURTHER RESOLVED, this Board does hereby guarantee clear and unrestricted rights-of-way and any necessary easements for cuts, fills, and drainage for this street, and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded to the local representative of the Virginia Department of Transportation.

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Supervisor Breeden indicated a citizen requested VDOT consider reducing the speed limit on Slate Road (Route 842) due to the number of children playing in the area. He also noted there have been several accidents at the intersection of Island Ford Road (Route 649) and South East Side Highway (Route 340). He believes the accidents are due to the combination of speed and trucks swinging into the northbound lane of South East Side Highway (Route 340) to avoid the cross arms at the railroad track on Island Ford Road (Route 649). When the trucks swing into the other lane, vehicles traveling north side swipe the trucks. The trucks are unable to use the turn lane because of the railroad arms. Mr. Komara stated there is an extra long crossing arm there that was moved back.

Supervisor Kyger requested a VDOT safety engineer observe traffic issues at the upcoming Turner Ashby High School graduation to develop a solution to the traffic problem before the 2015 graduation. He also requested assistance from the Sheriff's Department and will contact the Bridgewater and Dayton Police Departments to direct traffic. He explained attendees park at John Wayland Elementary School and walk across John Wayland Highway (Route 42), which has no cross walk. Pedestrians also cross Turner Ashby Drive (three-lane road) from Farmers and Merchants Bank.

Supervisor Chandler reminded Mr. Komara of issues he mentioned previously on Spotswood Trail (Route 33) where crossovers were removed, the extension of two arteries of Spotswood Trail (Route 33) near Boyers Road (Route 704), and two driveways. Since funding is tight, he would like to obtain enough funds to at least tar and gravel the first half of Jackson Way (Route 955) from East Side Highway (Route 340) to the railroad track.

Supervisor Cuevas requested moving the line on East Springbrook Road (Route 1421) where eastbound traffic stops at the light so tractor trailers traveling from North Timber Way (Route 259) from Timberville can navigate the turn onto East Springbrook Road (Route 1421). He also requested moving the line, on West Springbrook Road (Route 1421) near the Virginia Poultry Growers Coop so trucks traveling north on South Main Street can turn onto Spring Brook Road (Route 1421) to enter the Virginia Poultry Growers Coop property without going over the curb. Mr. Komara noted feed trucks should use the entrance from South Main Street (Route 42) but he will look into it.

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**CONSIDERATION OF ORDINANCE – “LIMITED OPERATION OF GOLF CARTS WITHIN MASSANUTTEN VILLAGE, VIRGINIA”.**

Administrator Paxton explained Massanutten requested Mountainside Villas Owners Association, Inc. staff be authorized to operate golf carts and utility vehicles on specific portions of certain highways located within Massanutten Village.

Supervisor Breeden said he visited the location and discussed the request with Carter Miller, Massanutten Property Owners Association, Inc. Administrator.

Supervisor Breeden made a motion that the Board approve the ordinance authorizing Mountainside Villas Owners Association, Inc. to use golf carts and utility vehicles on specific portions of certain highways in Massanutten Village.

Attorney Miller noted the motion should include that the Board has considered the speed, volume, and character of the motor vehicle traffic using the highways, and has determined that golf cart and utility vehicle operation in Massanutten, for the limited purposes and upon the portions of those particular highways described in the ordinance, is compatible with state and local transportation plans and consistent with the Commonwealth’s Statewide Pedestrian Policy; and the designation of the highways for golf cart and utility vehicle operation for the limited purposes will not impede the safe and efficient flow of motor vehicle traffic.

The motion was seconded by Supervisor Chandler.

Carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board approved the following ordinance:

**ORDINANCE  
ENACTING  
LIMITED OPERATION OF GOLF CARTS  
WITHIN MASSANUTTEN VILLAGE, VIRGINIA,  
ARTICLE X,  
SECTIONS 11 – 59 THROUGH 11 - 63  
OF THE CODE OF ORDINANCES  
OF  
ROCKINGHAM COUNTY, VIRGINIA**

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

That Article X. LIMITED OPERATION OF GOLF CARTS WITHIN THE MASSANUTTEN COMMUNITY be and hereby is enacted as follows:

Sec. 11-59. - Definitions.

The following terms, wherever used herein, shall have the respective meanings assigned to them unless a different meaning clearly appears from the context:

“Golf cart” means a self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course.

"Highways" means the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" pursuant to the Rockingham County Code of Ordinances.

"Utility vehicle" means a motor vehicle that is (a) designed for off-road use, (b) powered by a motor, and (c) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include riding lawn mowers.

Sec. 11-60. – Authorization. Mountainside Villas Owners Association, Inc. is authorized to operate golf carts and utility vehicles on the portions of those highways located within Massanutten Village, Virginia, described as follows:

- (a) Peak Drive between its intersections with Hotel Drive and Middlecoff Drive;
- (b) Middlecoff Drive between its intersection with Peak Drive and 175 Middlecoff Drive; and
- (c) Demaret Drive between its intersections with Middlecoff Drive and Del Webb Drive.

Sec. 11-61. – Operation Subject to State Law. The operation of golf carts and utility vehicles authorized herein shall be in full compliance with Title 46.2, Chapter 8, Article 13.1, Code of Virginia (1950), as amended (Sec. 46.2 – 916.1 - .3), as it may be further amended from time to time.

Sec. 11-62. – Cost of Signage. Any costs incurred by Rockingham County for installation and maintenance of signs pertaining to the operation of golf carts or utility vehicles as authorized in this Ordinance, upon written request of the County, shall be paid or reimbursed by Mountainside Villas Owners Association, Inc.

Sec. 11-63. - Insurance Required. A driver of a golf cart or utility vehicle operated pursuant to this Ordinance shall be insured during such operation by a motor vehicle owner’s policy for losses, and in such minimum amounts, as set forth in Section 46.2-472, Code of Virginia (1950), as amended.

This ordinance shall be effective from the 14th day of May, 2014.

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## **COUNTY ADMINISTRATOR'S STAFF REPORT.**

The Board received and reviewed Administrator Paxton's staff report dated May 8, 2014, which included a letter from Robert P. Schultze, Director of Virginia Retirement System (VRS), outlining two employer retirement contribution rate options the County can select. While the alternate rate (10.18 percent) would save the County money in the short-term, he and Mr. Allmendinger recommended continuing with the rate certified by the VRS Board of Trustees for the FY 2015-2016 biennium (12.73 percent). Chairman Cuevas noted the certified rate was included in the budget.

On motion by Supervisor Kyger, seconded by Supervisor Eberly and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board approved selecting the certified rate on the resolution provided by the Virginia Retirement System and authorized Chairman Cuevas to sign the Virginia Retirement System resolution.

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Administrator Paxton announced Human Resources Director Riddlebarger will retire effective September 1, 2014. The recruitment process will begin in June to provide time for training. He thanked Mr. Riddlebarger for his contributions, especially in the healthcare area, and his work with employees on a daily basis.

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Administrator Paxton noted staff extensively discussed special-use permit request SUP13-320, Shenandoah Mobile, LLC, PO Box 459, Edinburg 22824 for a 180' monopole telecommunication facility with related support equipment on property located on the southeast side of West Mosby Road (Route 712) approximately 3,350' east of Pike Church Road (Route 701), Election District #2, zoned A-2. Tax Map #123-(A)-121. Property address: 1317 West Mosby Road. He read the following response:

Mr. Chairman, Members of the Board:

Since the submission of the request from Shentel to construct a cellular tower in close proximity to an ECC tower south of the City, County and ECC staff have expressed to Shentel concerns related to two areas – possible interference and the proximity of the proposed tower to the existing ECC tower and equipment building. This past week we received a request from Shentel



requesting that the County grant a waiver to the setback requirements in the zoning ordinance pertaining to tower locations for a location that is within 37' of the County's property line, and approximately 80' and 50' from the existing ECC tower and communications building, respectively. The Chairman also received a letter of opposition to such waiver being approved from Kurt Hodgen, Harrisonburg City Manager and Chair of the Harrisonburg Rockingham Emergency Communications Center Administrative Board, expressing concerns with both the interference and proximity issues.

With regard to potential interference, Shentel has expended a great deal of time working with its consultants to analyze potential interference between the proposed tower and the public safety communication system for our community. Their studies state that analytically there will be no interference to the County's or Department of Homeland Security's communication systems currently located in the area. Quite frankly, we are not contesting those studies, although the ECC has had several instances in the past few years of interference from cellular communication, where despite studies which showed no interference, there have been issues that have compromised the communication system for periods of time. Those issues were resolved but not before the interference caused disruption, which took staff time to rectify the issue. Is potential interference a concern – yes, but not one for which staff can recommend denial of the permit.

However, with regard to the proximity issue, a waiver from the County is required before a special-use permit can be considered because the 180-foot tower is within approximately thirty-seven feet from the County's property line. The required setback for such a tower is 110% of its height, or in this case 198 feet. The reason for the setback requirement is to protect adjacent properties and uses in the event of a tower failure. Shentel's consultant has issued a report noting that, in the event of a failure of the tower, the structure would collapse down on itself within 68 feet of the radius of the proposed tower. The proposed tower is within 85 feet of the base of the existing ECC tower, and more importantly within approximately 50 feet of the closest edge of building housing critical equipment for the communication system.

Rockingham County understands that for Shentel to obtain the optimum operating height for its equipment, and not have to light the proposed structure in accordance with the Federal Aviation Administration (FAA) requirements, Shentel believes that the

tower must be placed in this location; however, the location does not meet the setback requirement in the Rockingham County Zoning Ordinance. The close proximity of the proposed tower to the existing communications building is a very real concern, as tower failure could jeopardize the functioning of this critical communication system and therefore, the significant investment made by the taxpayers of Rockingham County and the City of Harrisonburg. For this reason staff recommends that the Board deny the waiver.

County community development staff, the County Attorney and ECC Director met with the applicant on several occasions to explore options to locate a tower in this area. The County understands the desire for them to provide this important community service. Staff continues to offer to work with Shentel to find an agreeable location. Rockingham County has enjoyed a good relationship of give and take with the local cellular providers, and will continue to work with them to support the expansion of cellular and mobile data for our community. Unfortunately, this specific location gives staff significant concern, as we look to protect the community's investment and the critical emergency services response capability.

Supervisor Eberly stated, after considerable consideration, in his opinion it would be in the County citizens' interest for the Board to deny Shentel's request that the County grant a waiver to the setback requirements in the zoning ordinance pertaining to tower locations.

Supervisor Eberly made a motion, seconded by Supervisor Chandler to deny Shentel's request for a waiver to the setback requirements in the zoning ordinance pertaining to tower locations.

Chairman Cuevas noted he regrets the action the County has to take but agreed it is the best option at this time. He hopes the County can continue to work with providers to find suitable sites to provide services for citizens.

In response to a question from Supervisor Kyger, Administrator Paxton noted there are options available to Shentel near the requested site and by denying the waiver it makes special-use permit 13-320, Shenandoah Mobile, LLC, a non-issue. The special-use request does not need to be rejected by Board, which allows Shentel to find an alternative location and not be locked out for a year.

Supervisor Kyger noted private sector providers offer an important public service to citizens because cell phones are widely used by citizens and vital to public safety service. He hopes there is a solution that will work for everyone.

Supervisor Eberly indicated he supports 4-G service, which the special-use permit request would have provided.

Carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board denied Shentel's request that the County grant a waiver to the setback requirements in the zoning ordinance pertaining to tower locations.

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Administrator Paxton advised staff met with vendors interested in submitting a proposal for the Community-Based Corrections Plan & Facility Planning Study. There is much work to be accomplished by Sheriff Hutcheson and Mrs. Freeman to complete the study. Staff will work with a review panel to interview offerors and recommend a consultant to the Board at the June meeting.

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Administrator Paxton noted the May 28, 2014 Board meeting coincides with the first day of the Rockingham 2020 Work Session, scheduled for May 28 through May 30, 2014. He reviewed the itinerary for the work session and indicated a number of School Board members will attend. He advised Public Safety is the largest area of concern moving forward.

Administrator Paxton stated there is a lot of information to cover in three days. Key issues identified in the session will be brought before the Board in mid-July to discuss in preparation for budgets for the next one to five years. The Work Session will provide Board members with information to assist them in determining the future direction for the County.

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In response to a question from Chairman Cuevas regarding who would be involved in the Community-Based Corrections Plan & Facility Planning Study, Administrator Paxton explained that after the County selects a consultant, Captain Steve Shortell from the Sheriff's Department and Ann Marie Freeman will be the primary staff contacts to work with the firm to assemble the information. A draft report will be provided to staff first, then the Community Criminal Justice Board, the Board and City Council, and lastly to the Department of Corrections.

Chairman Cuevas indicated he thinks it is important for Captain Shortell, Mrs. Freeman and Sheriff Hutcheson to participate as much as possible in the interviews with the offerors as structure needs to be provided for the process to work smoothly. Administrator Paxton responded the intent is for these individuals to be part of the

selection committee.

Chairman Cuevas also requested he and Vice-Chairman Breeden be included in the selection of the Director of Human Resources. He noted the 2020 Work Session will be several days of intensive information sharing and asked that the points discussed be summarized for review later.

Administrator Paxton noted the Board will be provided with advance information regarding the 2020 Work Session by the end of next week.

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**DEPUTY COUNTY ADMINISTRATOR'S STAFF REPORT.**

The Board received and reviewed Mr. King's staff report dated May 8, 2014.

Chairman Cuevas stated the Public Works Committee requested Mr. King and Administrator Paxton schedule a tour for the Board to visit the Reservoir Street and Southeast Connector projects.

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**ASSISTANT COUNTY ADMINISTRATOR'S STAFF REPORT.**

The Board received and reviewed Mr. Vaughn's staff report dated May 14, 2014.

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**FINANCE DIRECTOR'S STAFF REPORT.**

Mr. Allmendinger did not submit a written report.

Chairman Cuevas reported he was invited to participate in a meeting with the media, delegates and other representatives from Richmond. He plans to decline the invitation because he has local work to do. He will inform them he appreciates it when they do not involve themselves in land use issues on the local level so he prefers not to involve himself in their work.

Supervisor Kyger noted the Virginia Association of Counties (VACo) is putting together a crisis sheet in the event a state budget is not approved and the state government shuts down on July 1, 2014. This sheet will indicate items local governments have to maintain by law. He suggested Administrator Paxton meet with state-funded departments that provide crucial services to develop a contingency plan that addresses basic public safety needs for citizens.

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**HUMAN RESOURCES DIRECTOR'S STAFF REPORT.**

Mr. Riddlebarger reported Human Resources and Finance staff are steadily working on implementation of the MUNIS payroll system which is a powerful program.

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**PUBLIC WORKS DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mr. Hertzler's staff report dated May 14, 2014.

Mr. Hertzler reported the landfill usually fills two box containers each day. During the Rockingham County Clean-up Days on April 18 and 19, 2014, they collected seven containers on Saturday and nine on Sunday. They also received 17 tons of tires. During the Household Hazardous Waste Collection Day held in partnership with the City on April 19, 2014, 166 cars came through to dispose of paint, solvents and fertilizer.

Mr. Hertzler reported he and Mrs. Freeman visited Power Dam Road (Route 651) and determined VDOT will need to take care of the excavation of trash via mechanical means. Supervisor Breeden hopes the Sheriff can address the trash disposal issue at this location by apprehending the violators.

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**COMMUNITY DEVELOPMENT DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mr. Armstrong's staff report dated May 14, 2014. He noted a request for proposal (RFP) for telecommunication consulting services will be advertised with a deadline date of May 30, 2014. Administrator Paxton explained the RFP is for the consultant that assists with tower site reviews.

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Ms. Cooper reported staff met with landowners of R-5-zoned parcels in the Timberville area and asked them to express their interest in having their land rezoned to A-2 which aligns more closely with the current use of the properties. Landowners holding the majority of the land area support rezoning their property to A-2. If the Board concurs, the next step is for the Board to initiate the rezoning request and forward it to the Planning Commission for a public hearing, followed by a public

hearing before the Board of Supervisors.

Chairman Cuevas indicated staff was aware of zoning issues on parcels of land near Plains Elementary School and the American Legion. Additional parcels came to the Board's attention when Sentara RMH requested a rezoning for a medical clinic adjacent to Timberville. Staff has been in consultation with the Town of Timberville and the landowners to explain the reason for recommending the zoning change. If the Town of Timberville wishes to annex that area in the future, they can exercise agreements they have with the County.

On behalf of Chairman Cuevas, on motion by Supervisor Chandler, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board authorized staff to submit the request to rezone parcels on the south and east side of Timberville from R-5 to A-2 to the Planning Commission.

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#### **TECHNOLOGY DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mrs. Perry's staff report dated May 2014.

In response to a question from Chairman Cuevas, Mrs. Perry noted the new payroll system will be implemented in January 2015. The County has initiated paperless purchase orders, she said.

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#### **FIRE AND RESCUE CHIEF'S STAFF REPORT.**

The Board received and reviewed Chief Holloway's staff report dated May 2014. Chief Holloway showed a video of a fire that started in mulch and ran up the exterior wall of a duplex into the attic. The smoke detectors did not initially activate since the fire was on the exterior of the structure. He noted fire stops required by the County helped save the residents and kept the fire from spreading to the adjoining duplex. The fire was caused by discarded smoking material.

Fire and Rescue asks people to be mindful when discarding smoking materials, particularly during this time of year when there is a lot of humidity to assist the fire in spreading. They are also educating citizens about outdoor wire lighting and suggested citizens practice multiple escape routes from their home in case there is a fire.

Supervisor Kyger noted shrubbery and trees are also combustible and indicated it is safer to have grass near a home. He requested the media help educate citizens how to be safe. He said there are also more fires along the highway during this time

of year due to motorists discarding cigarettes. Supervisor Kyger reported the State Fire Marshal indicated a person who throws a smoking material out of a vehicle can be charged with discharging an incinerated device which is a felony.

Chairman Cuevas asked the Directors to determine the financial impact of items they request during their work session presentations by providing benefits and the financial impact to citizens.

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**PARKS & RECREATION DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mrs. McQuain's staff report dated May 2014.

She advised Bart Bridges from Recreation and James May from Community Development will graduate from the Harrisonburg - Rockingham Chamber of Commerce Leadership program on May 15, 2014.

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**COURT SERVICES DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mrs. Freeman's staff report dated May 14, 2014.

Chairman Cuevas thanked Mrs. Freeman for her work with the litter control programs as it makes a positive impact on the County.

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**COMMITTEE REPORTS.**

AIRPORT

Administrator Paxton advised he and Supervisor Kyger received an email from Michael Stoltzfus at Dynamic Aviation. Staff will schedule a meeting between Mr. Stoltzfus and the Secretary of Technology's office to establish a partnership since there is a new state initiative dealing with areas in which Dynamic Aviation is involved.

In response to a comment from Chairman Cuevas, Administrator Paxton noted the reported addition of Frontier Airlines at some airports does not affect Shenandoah Valley Regional Airport.

### CENTRAL SHENANDOAH PLANNING DISTRICT COMMISSION (CSPDC)

Supervisor Chandler reported the Central Shenandoah Planning District Commission now oversees the transportation network in Staunton and Waynesboro.

### CHAMBER OF COMMERCE

Supervisor Chandler advised Farmers and Merchants Bank Crossroads Branch is hosting a Business After Hours on May 15, 2014, and Valley Fest will be held on May 24, 2014.

### FINANCE

Mr. Allmendinger reported the department received five responses from the Request for Proposal (RFP) for investment services. Three of the proposals appear to be viable from a cost perspective and he would like the three vendors to present their proposals to the Finance Committee. Administrator Paxton indicated staff will try to schedule the presentations during the first week of June. Mr. Allmendinger hopes to award contracts to two or more firms during the June 18, 2014 Board Meeting, with an effective date of July 1, 2014.

Chairman Cuevas requested bullet points highlighting important information from the proposals be provided to the Finance Committee.

### MASSANUTTEN REGIONAL LIBRARY

Supervisor Eberly advised the library committee is working on their budget.

### METROPOLITAN PLANNING ORGANIZATION (MPO)

A meeting will be held May 15, 2014.

### PUBLIC WORKS

The Board received and reviewed a committee report from Mr. King which indicated the following responses were received for the Request for Proposals (RFP) for appraisal services and title exams for the Reservoir Street Project:

1. A proposal for Title Exams only was submitted by Fidelity National Title Group at a price of \$1,200 per parcel.
2. The Berkley Group (Drew Williams) submitted a turn-key proposal for all the services, including the use of three subcontractors. The proposal includes:



- Nine (9) appraisals to be performed by Real Property Consultants at \$3,000 per parcel for a total of \$27,000 and three (3) Basic Acquisition Reports at no cost
- Twelve (12) appraisal reviews to be performed by Appraisal Review Specialists at \$1,250 per parcel for a total of \$15,000
- Twelve (12) title exams to be performed by West View Title Agency at \$175 per parcel for a total of \$2,100
- Twelve (12) offer packages to be prepared by the Berkley Group at \$100 per package for a total of \$1,200. While this service was not requested in the RFP, staff believes there is value in having an offer package in accordance with VDOT's Right of Way acquisition guidelines that can then be provided to property owners.

Staff requested the Board authorize initiating a contract with the Berkley Group to complete this work at a cost not to exceed \$45,300.

On motion by Supervisor Breeden, seconded by Supervisor Chandler and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board authorized staff to enter into a contract with the Berkley Group for appraisal services and title exams for the Reservoir Street Project at a cost not to exceed \$45,300.

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Mr. Hertzler's committee report indicated Public Works received the following bids for the Three Springs Water Treatment Plant filter upgrade building package:

Lantz Construction Company	\$294,178
Stone Hill Construction Inc.	\$299,982

Funding is included in the current budget. Staff recommended the low bid of \$294,178 submitted by Lantz Construction Company.

On motion by Supervisor Breeden, seconded by Supervisor Eberly and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board awarded the bid for the Three Springs Water Treatment Plant filter upgrade building package to Lantz Construction Company at a cost of \$294,178.

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Public Works received the following bids for the Albert Long Park utilities casing installation:

Vendor	Base Cost	Additional for Rock Bore
DLB Inc.	\$124,500	\$775 per linear foot
Snyder Environ	\$156,660	\$240 per linear foot

Funding will be divided equally between the Albert Long Park fund and the Water/Sewer Distribution fund. Due to the difference in rock pricing, the Snyder Environ price could be advantageous if more than 60 linear feet of rock is encountered in the 300 linear feet of bore. Therefore, staff recommended approval of the Snyder Environ bid of \$156,660 with an additional \$240 per linear foot of rock.

On motion by Supervisor Breeden, seconded by Supervisor Chandler and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board awarded the bid for the Albert Long Park utilities casing installation to Snyder Environ at a cost of \$156,660 with a clause for additional rock at \$240 per linear foot.

#### SOCIAL SERVICES

Supervisor Breeden advised the foster care appreciation dinner is scheduled on May 22, 2014 and he is unable to attend.

#### VIRGINIA ASSOCIATION OF COUNTIES (VACo) LIAISON

Supervisors Kyger noted most of the discussion during the recent VACo meeting related to the state budget issue and actions local government can take.

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#### **COMMITTEE APPOINTMENTS.**

Chairman Cuevas noted he is searching for a Community Services Board member from District 1.

Supervisor Breeden noted Carolyn Breeden does not wish to serve another term on the Blue Ridge Committee for Shenandoah Park Relations due to her husband's health issues.

Administrator Paxton indicated Central Shenandoah Planning District Commission appointments are not determined by district. Supervisor Chandler will check with Grottoes Town Council members regarding their interest in serving.

Administrator Paxton noted Karen Barnes' position on the Community Services Board does not need to be filled by a citizen from a particular district since there are currently two other committee members from District 3. Virginia statute requires one-third of the appointments to the Community Services Board be identified consumers, former consumers, or family members of consumers or former consumers; at least one of whom shall be a consumer receiving services. Administrator Paxton advised that Ms. Barnes has a family member who receives services. Community Services Board Executive Director Whitmore indicated the committee currently meets all the guidelines but it would be beneficial if the new appointee or a member of their family receives services from the Community Services Board.

Chairman Cuevas informed Supervisor Chandler the District 3 appointee to the Economic Development Authority needs to have a financial background. Supervisor Breeden suggested asking Henry Hawkins to serve on this committee.

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**RECESS.**

At 4:30 p.m., Chairman Cuevas declared the meeting recessed for dinner.

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**OPEN EVENING SESSION OF MEETING.**

Chairman Cuevas opened the evening session of the Board Meeting at 6:00 p.m.

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**INTRODUCTION OF STUDENTS.**

Students from Turner Ashby High School introduced themselves to the Board.

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**PUBLIC HEARING - SPECIAL-USE PERMIT.**

At 6:01 p.m., Chairman Cuevas opened the public hearing and Ms. Stultz reviewed the following special-use permit:

- SUP14-040 Jeffrey & Sarah Ward, 9057 Leroy Road, Grottoes 24441 for a residence involving a non-family division of land on property located on the southeast side of Leroy Road (Route 605) approximately 1850' south of Bingham Road (Route 668), Election

District #3, Tax Map #159-(A)-4B, zoned A-1.

Administrator Paxton questioned whether the plat accurately depicts how the property will be subdivided. Ms. Stultz believes the property line will follow the road and the applicant will own all the property on one side of the road.

The applicants were present. Mr. Ward indicated he and his wife grew up in the area and decided to return “home” when he retired from the Air Force in February 2014.

Mrs. Ward explained the property in the request is part of a family farm which belonged to her great grandparents. When they died, her parents purchased the property and her sister built a home on the property. Mrs. Ward’s sister no longer lives there but wants to keep the remainder of the property for agricultural use. Mrs. Ward noted she and her husband’s desire is to live on this family farm to be near her grandfather and parents who live nearby.

No one spoke in opposition to the request.

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Chairman Cuevas closed the public hearing at 6:09 p.m.

Supervisor Chandler noted this is a transfer of part of a family farm to a family member. The residue of the property will remain in agriculture and most of the land in the vicinity belongs to Mrs. Ward’s family, he said.

On motion by Supervisor Chandler, seconded by Supervisor Kyger, and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board, subject to the following conditions, approved SUP14-040, Jeffrey & Sarah Ward, 9057 Leroy Road, Grottoes 24441 for a residence involving a non-family division of land on property located on the southeast side of Leroy Road (Route 605) approximately 1850’ south of Bingham Road (Route 668), Election District #3, Tax Map #159-(A)-4B, zoned A-1:

Conditions:

1. Use shall be located in substantial accordance to plot plan submitted with the application.
2. Any residence placed on the residual parcel shall comply with the Statewide Building Code and the proper permits shall be obtained.
3. Prior to construction of a residence on the residual parcel, permits shall be obtained from the Health Department for sewage.

4. For construction of a residence on the residual parcel, all VDOT requirements for a private entrance shall be met. Permits shall be obtained from VDOT prior to construction of any new entrance.
5. Neither the existing residence nor a new residence on the residual parcel shall be used for rental purposes.
6. A residence constructed on the residual parcel shall not be occupied until a certificate of occupancy is issued by the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

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#### **PUBLIC HEARING – ORDINANCE AMENDMENT.**

Chairman Cuevas opened the ordinance amendment public hearing at 6:10 p.m. and Mr. Armstrong reviewed the following proposed ordinance amendment:

- OA14-076      Amendment to the Management of Post Construction Stormwater Runoff Ordinance, Chapter 6C of the Rockingham County Code. The Board will consider repealing and re-enacting Chapter 6C to comply with new state requirements.

Mr. Armstrong reported approval of the requested ordinance amendment will bring the County Code into compliance with new state model regulations. As Mr. Armstrong indicated during a presentation provided to the Board on January 8, 2014 entitled “New Stormwater Management Regulations”, there are significant changes from the old regulations.

The biggest changes specifically address a larger volume of water and treating the quality of water to a higher degree. The regulations are built around a principle called environmental site design to fit the development site to the natural terrain in a better manner.

He reminded the Board there are currently 11 different tasks, seven of which the Department of Environmental Quality (DEQ) handles and four covered by the County. Under the proposed regulations, all the responsibilities (daily functions) fall on the locality, with DEQ auditing the locality. The County is taking on a massive responsibility, Mr. Armstrong said.

The County can currently receive a plan and turn it around in two weeks. Under the new regulations it could take four weeks for plan review, permit issuance and completion of the process. Currently the construction inspection process for stormwater management is once every four weeks. The proposed regulations require

an inspection every two weeks and no more than 48 hours after a rainfall. To accomplish this process, a dedicated stormwater inspector is needed. Currently, the County keeps records with their erosion control files. The new regulations will be difficult to track as a dedicated database and new permit tracking system is needed. All stormwater facilities will be referenced in Geographic Information Systems (GIS) and locations will be recorded in the database. Ongoing inspections will be required after the sites are finished. Fees will be roughly \$150,000 a year for commercial, agricultural and residential development.

In response to questions from Supervisors Kyger and Eberly, Mr. Armstrong explained the County does not currently charge a residential stormwater maintenance permit fee. Under the new regulations citizens will be charged \$290 for each building permit for a single-family home. Agricultural fees will be charged on a per acre basis for the disturbed area, which constitutes any land that is cleared, graded, filled, cut or compacted. Tiling, planting and harvesting are exempt because they are farm terms. If a new road is constructed on the site, it is covered under the plan so the applicant will be charged for the road, but the “development area” is considered the disturbed building area.

The estimated implementation cost for the County will be \$124,000 for two full-time employees, operating supplies and a vehicle.

A rough draft of the model ordinance was submitted to the DEQ in January. On April 30, 2014, an official notice of the County’s intent to take over this program was sent to DEQ. The implementation date is July 1, 2014.

In response to a question from Supervisor Eberly, Mr. Armstrong noted the DEQ will receive 28 percent of the fees to perform one-tenth of the work. The DEQ will conduct an audit of the County’s programs once every three years to monitor efficiency and ensure permits are issued when needed. This fee will also cover education of County employees and assistance with plans. The County will receive 72 percent of the fees.

In response to a question from Chairman Cuevas, Mr. Armstrong confirmed the General Assembly allows a locality to forgo a portion of the state fee, which the County plans to do by not charging the 28 percent on agricultural or residential property.

Mr. Armstrong advised that by July 1, 2014, Lisa Perry will be the Certified Stormwater Management Program Administrator to review and inspect under the new regulations.

Administrator Paxton suggested Ms. Perry provide a report three months after the program is instituted to advise the Board of the activity, impact and issues related to the program in case the Board needs to request the General Assembly make

legislative changes.

Chairman Cuevas asked that staff inform citizens this program is mandated by the State to protect neighbors and the Chesapeake Bay. He asked that the fees be explained so people do not think this is a form of taxation or attempt to raise money.

Supervisor Kyger suggested the new regulations be discussed in an information session on the radio show. If the public is informed and educated, they will be less resistant to change, he said. Administrator Paxton informed Mr. Armstrong the next radio show is June 3, 2014.

No public attendees spoke regarding the ordinance amendment.

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Chairman Cuevas closed the public hearing at 6:25 p.m.

On motion by Supervisor Kyger, seconded by Supervisor Chandler and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CHANDLER - AYE; CUEVAS - AYE; EBERLY - AYE; KYGER - AYE; the Board adopted the following Amendment to the Management of Post Construction Stormwater Runoff Ordinance, Chapter 6C of the Rockingham County Code, to be effective. July 1.

**ORDINANCE REPEALING  
AND RE-ENACTING  
CHAPTER 6C,  
SECTIONS 6C- 1 THROUGH 6C – 18,  
OF THE CODE OF ORDINANCES  
OF  
ROCKINGHAM COUNTY, VIRGINIA**

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

That Chapter 6C, Management of Post Construction Stormwater Runoff, Sections 6C – 1 through 6C – 18, be and hereby is repealed and re-enacted as follows:

**Sec. 6C-1: PURPOSE AND AUTHORITY**

- A. The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of Rockingham County and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater; including protection from land disturbing activities causing degradation of

properties, water quality, stream channels, and other natural resources. The physical, chemical, biological, and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved. All control measures used shall be employed in a manner that minimizes impacts on receiving state waters.

- B. Additionally, this ordinance is to provide a framework for the administration, implementation, and enforcement of the Virginia Stormwater Management Act (VSM Act) and to delineate the procedures and requirements to be followed in connection with state permits issued by Rockingham County, the VSMP authority, pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act and while at the same time providing flexibility for innovative solutions to stormwater management issues.
- C. Authority is granted to Rockingham County under the Stormwater Management Act and the County is authorized pursuant to §§ 62.1-44.15:27 to adopt regulations that specify standards and procedures for VSMP registration and permitting, to establish standards for stormwater management for land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources. Rockingham County shall administer this ordinance to all areas of Rockingham County, including incorporated townships within county boundaries, excepting the Town of Bridgewater. This ordinance is adopted pursuant to Article 2.3 (§§ 62.1-44.15:24 et. seq.), Chapter 3.1 of the Code of Virginia and shall become effective July 1, 2014.

#### **Sec. 6C-2: DEFINITIONS**

- A. 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:



*“Accelerated erosion”* means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

"Act" means the Virginia Stormwater Management Act, Article 2.3 (§ [62.1-44.15:24](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Administrator" means the VSMP authority including the Rockingham County staff person or department responsible for administering the VSMP on behalf of the locality.

*“Agreement in Lieu of a Stormwater Plan”* means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

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

"Approval authority" means the Virginia State Water Control or its designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

*“Aquatic bench”* means a ten- to fifteen-foot-wide bench around the perimeter of a permanent pool that ranges in depth from zero (0) to twelve (12) inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"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

*"Bio-retention basin"* means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, and ground cover), planting soil, and sand bed, and into the in-situ material.

*"Board"* means the State Water Control Board

*"Channel"* means a natural or manmade waterway.

*"Common plan of development or sale"* means a contiguous area where separate and distinct construction activities may be taking place at different times and/or with separate applicants.

*"Comprehensive stormwater management plan"* means a plan, which may be integrated with other land use plans or regulations, which specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

*"Construction activity"* means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

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

*"Co-operator"* means an operator of a state permit that is only responsible for state permit conditions relating to the discharge for which it is the operator.

*"Clean Water Act" or "CWA"* means the federal Clean Water Act (33 USC § 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.

*"Constructed wetland"* means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

“*County*” means Rockingham County, Virginia.

"*CWA and regulations*" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"*Department*" means the 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 nonagricultural or non-silvicultural purposes. The regulation of discharges from development, for purposes of these regulations, does not include the exemptions found in 9VAC25-870-300.

“*Developer*” means a person who undertakes land disturbance activities

"*Direct discharge*" means the discharge of a pollutant.

"*Director*" means the Director of the Department of Environmental Quality or his/her designee.

"*Discharge*" when used without qualification, means the discharge of a pollutant.

“*Discharge of a pollutant*” means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

“*Drainage area*” means a land area, water area, or both from which runoff flows to a common point.

*"Drainage easement"* means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

*"Effluent limitation"* means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

*"Effluent limitations guidelines"* means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

*"Environmental Protection Agency"* or "EPA" means the United States Environmental Protection Agency.

*"Erosion and sediment control plan"* means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

*"Existing state permit"* means for the purposes of this chapter a state permit issued by the board and currently held by a state permit applicant.

*"Existing source"* means any source that is not a new source or a new discharger.

*"Facilities or equipment"* means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

*"Flood fringe"* means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes, but is not limited to, the flood or floodway fringe designated by the Federal Emergency Management Agency.

*"Flooding"* means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

*"Floodplain"* means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not

limited to, the floodplain designated by the Federal Emergency Management Agency.

"*Flood-prone area*" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"*Floodway*" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100- year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes, but is not limited to, the floodway designated by the Federal Emergency Management Agency

"*Hazardous substance*" means any substance designated under the Code of Virginia or 40 CFR Part 116 (2000) pursuant to § 311 of the CWA.

"*Hydrologic Unit Code*" or "*HUC*" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"*Impervious cover*" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, compacted gravel, or surfaces composed of material that significantly impedes or prevents natural infiltration of water into soil.

"*Infiltration*" means the process of percolating stormwater into the subsoil.

"*Inspection*" means an on-site review of the project's compliance with the permit or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Act and this chapter.

"*Jurisdictional wetland*" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophilic vegetation. To be determined by overseeing agency, such as Army Corps of Engineers and Virginia Department of Environmental Quality.

"*Karst area*" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"*Karst features*" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"*Land disturbance*" or "*land-disturbing activity*" means a manmade change to the land surface that potentially changes its runoff characteristics, including but not limited to clearing, grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse. Except that the term shall not include those exemptions specified in § 62.1-44.15:34 C of the Code of Virginia.

"*Large construction activity*" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

"*Layout*" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"*Linear development project*" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"*Locality*" means a county, city, or town.

"*Localized flooding*" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"*Main channel*" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"*Maintenance agreement*" means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

"*Major facility*" means any facility or activity classified as such by the regional administrator in conjunction with the board.

"*Major modification*" means, for the purposes of this chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

"*Manmade*" means constructed by man.

"*Maximum daily discharge limitation*" means the highest allowable daily discharge.

"*Maximum extent practicable*" or "*MEP*" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"*Minor modification*" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 22.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments 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 general permit modification or amendment does not substantially alter general 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.

"*National Pollutant Discharge Elimination System*" or "*NPDES*" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"*Natural channel design concepts*" means the utilization of engineering analysis based on fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"*Natural stream*" means a tidal or non-tidal watercourse that is part of the natural topography. It could maintain a continuous flow, a seasonal flow, or a weather dependent flow during the year and characteristics can include irregular cross-sections, sometimes a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams. This includes perennial, intermittent, ephemeral, and headwater streams.

"*New source*," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"*Nonpoint source pollution*" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff

"*Off-site facility*" means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

"*On-site facility*" means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.



"*Operator*" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

"*Overburden*" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"*Owner*" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"*Peak flow rate*" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"*Percent impervious*" means the impervious area within the site divided by the area of the site multiplied by 100.

"*Permit*" or "*VSMP Authority Permit*" means an approval to conduct a land-disturbing activity issued by the County for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after general permit coverage has been obtained.

*"Permittee"* means the person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

*"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.

*"Point of discharge"* means a location at which concentrated stormwater runoff is released.

*"Point source"* means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

*"Pollutant"* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well is used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

*"Pollutant discharge"* means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

*"Pollution"* means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state

waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"*Postdevelopment*" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

"*Predevelopment*" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

"*Prior developed lands*" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land- disturbing activity.

"*Proposed state permit*" means a state permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed state permit is not a draft state permit.

"*Qualified personnel*" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the board in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 9VAC25-870-10 or a combination of ESC and SWM qualifications from these two areas.

"*Recharge*" means the replenishment of underground water reserves

"*Recommencing discharger*" means a source that recommences discharge after terminating operations.

"*Redevelopment*" means the process of developing on land that has been previously developed with impervious structure, and may or may not have been developed with stormwater management consideration.

"*Regional (watershed-wide) stormwater management facility*" or "*regional facility*" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience development.

"*Regional (watershed-wide) stormwater management plan* or "*regional plan*" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

"*Revoked state permit*" means, for the purposes of this chapter, an existing state permit that is terminated by the board before its expiration.

"*Riparian buffer*" means a natural, unmanaged area of trees, shrubs, grasses, or a combination thereof, that is:

1. At least fifty (50) feet in width from the crest stream top
2. Adjacent to wetland areas or state waters (including, but not limited, to perennial, ephemeral, headwater, and intermittent streams);
3. Functions to maintain the integrity of stream channels, wetlands, and shorelines, and
4. Reduces the effects of upland sources of pollution through the infiltration of runoff and filtering of pollutants. A managed lawn adjacent to state waters does not constitute a riparian buffer. The riparian buffer is measured landward (horizontal distance) from the crest/top of the stream bank on both sides of the stream.

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

"*Runoff coefficient*" means the fraction of total rainfall that will appear at a conveyance as runoff.

"*Runoff*" or "*stormwater runoff*" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"*Runoff characteristics*" include maximum velocity, peak flow rate, volume, and flow duration.

"*Runoff volume*" means the volume of water that runs off the site from a prescribed design storm.

"*Schedule of compliance*" means a schedule of remedial measures included in a state permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"*Severe property damage*" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"*Significant materials*" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under §101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"*Single jurisdiction*" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"*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. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"*Site hydrology*" means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"*Small construction activity*" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common

plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"*Source*" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"*State*" means the Commonwealth of Virginia.

"*State application*" or "*application*" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the County.

"*State permit*" means an approval to conduct a land-disturbing activity issued by the State in the form of a state stormwater individual permit or coverage issued under a state general permit. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act and this chapter. State permit does not include any state permit that has not yet been the subject of final board action, such as a draft state permit or a proposed state permit.

"*State project*" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state- supported institutions of higher learning.

"*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 conveyance system*" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"*Stormwater discharge associated with construction activity*" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"*Stormwater management facility*" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"*Stormwater management plan*" means a document(s) containing material for describing methods for complying with the requirements of the VSMP or this chapter.

"*Stormwater Pollution Prevention Plan*" or "*SWPPP*" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"*Stop work order*" means an order issued which requires that all construction activity on a site be stopped.

"*Stormwater retrofit*" means a stormwater management practice designed for an existing development site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

"*Stormwater runoff*" means flow on the surface of the ground, resulting from precipitation

"*Subdivision*" means the same as defined in Chapter 16, Article 1 of the Rockingham County Subdivision Ordinance. (P.C. Ord. No. 5-87, (part), 4-22-87; P.C. Ord. No. 04-06, 6-23-04).

"*Surface waters*" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or



- c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

*"Total dissolved solids"* means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

*"Total maximum daily load" or "TMDL"* means the sum of the individual wasteload allocations for point sources, load allocations (LAs) 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.

*"Toxic pollutant"* means any pollutant listed as toxic under § 307(a) (1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

*"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit"* means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

*"Virginia Stormwater Management Act"* means Article 2.3 (§ [62.1-44.15:24](#) 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 and that is jointly created by the department and the Virginia Water Resources Research

Center subject to advice to the director from a permanent stakeholder advisory committee.

"*Virginia Stormwater Management Handbook*" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"*Virginia Stormwater Management Program*" or "*VSMP*" means a program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"*Virginia Stormwater Management Program authority*" or "*VSMP authority*" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, the Department of Environmental Quality. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § [62.1-44.15:31](#), electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § [15.2-5102](#).

"*Wasteload allocation*" or "*wasteload*" or "*WLA*" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"*Water quality standards*" or "*WQS*" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ [62.1-44.2](#) et seq. of the Code of Virginia), the Act (§ [62.1-44.15:24](#) et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"*Watercourse*" means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

"*Watershed*" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"*Wetlands*" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (subject to 50' riparian buffer requirements).

"*Whole effluent toxicity*" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

### **Sec. 6C-3. APPLICABILITY**

- A. This ordinance will apply to all land-disturbing activities greater than one acre, or are located within a greater plan of development and/or redevelopment activities unless otherwise exempt in §62.1-44.15:34 Code of Virginia.
- B. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. A registration statement is not required for detached single-family home construction under 5 acres, within or outside of a common plan of development or sale, but such projects must adhere to the requirements of the general permit. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any permit application within 60 days after it has been determined by the VSMP authority to be a complete application. The VSMP authority may either issue project approval or denial and shall provide written rationale for the denial. The VSMP authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any approval, the VSMP authority may also require an applicant, excluding state and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or

such other legal arrangement acceptable to the VSMP authority, to ensure that measures could be taken by the VSMP authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions that may be required of him by the permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such action upon such failure by the applicant, the VSMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. 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. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

**Exemptions:**

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 for the purposes of 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. Land disturbing activities that disturb less than one acre of land that are not part of a larger common plan of development or scale that is one acre or greater of disturbance
4. 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
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
  8. Land-disturbing activities conducted 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 6C-3.A is required within 30 days of commencing the land-disturbing activity.
- C. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, except as provided in § 10.1-603.3 K of the Code of Virginia, and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.
- D. 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.

#### **Sec 6C-4: TECHNICAL CRITERIA FOR REGULATING 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, Rockingham County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, 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 Section 6C-3.
- B. Time Limits and Grandfathering
1. Beginning with the General Permit for Discharges of Stormwater from Construction Activities issued July 1, 2009, all land-disturbing activities

that receive general permit coverage shall be conducted in accordance with the Part II B or Part II C technical criteria in place at the time of initial state permit coverage and shall remain subject to those criteria for an additional two permit cycles, except as provided for in subsection D of 9VAC25-870-48. After the two additional state permit cycles have passed, or should state permit coverage not be maintained, portions of the project not under construction shall become subject to any new technical criteria adopted since original state permit coverage was issued. For land-disturbing projects issued coverage under the July 1, 2009 state permit and for which coverage was maintained, such projects shall remain subject to the technical criteria of Part II C for an additional two state permits.

- C. Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the Locality as being equivalent thereto, was approved by the Locality 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 by the Administrator 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 such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the Locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. In the event that the Locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan 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.
1. Until June 30, 2019, 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 Department has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by Rockingham County and shall not be subject to the technical requirements of Part II B of the Regulations, but shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.
  2. For land-disturbing activities grandfathered under this Subsection, 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 6C-4.A above.

- D. 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 Locality in Subsection 6C-4.B above.
- E. 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.
- F. Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

**Sec. 6C-5: STORMWATER MANAGEMENT PROGRAM: SUBMISSION AND APPROVAL OF PLANS**

- A. No permit shall be issued by the County until the following items have been submitted to and approved by the County as prescribed herein:
  - 1. A permit application that includes a general permit registration statement;
  - 2. An erosion and sediment control plan approved in accordance with the Rockingham County Erosion and Sediment Control Ordinance (Ord. No. 82-2, 1-11-82; P.C. Ord. No. 02-02, 2-13-02) and
  - 3. A stormwater management plan that meets the requirements of Section 6C-7
  - 4. Until the required E&S and stormwater fees (per Section 6C-18) have been paid
  - 5. 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 plan.

6. A permit will not be issued until evidence of general permit coverage has been obtained by the County.
- B. No grading, building or other local permit shall be issued for a property unless a VSMP permit has been approved and issued by the County.
- C. Stormwater management plans that are approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.

#### **Sec. 6C-6: STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS**

- A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.
- B. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law, Rockingham County's Erosion and Sediment Control Ordinance (Ord. No. 82-2, 1-11-82; P.C. Ord. No. 02-02, 2-13-02), and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the County in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
- C. A stormwater management plan consistent with Section 6C-7 of this Ordinance must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the County.
- D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.
- E. In addition to the requirements of subsections A through D of this section, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, additional



control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board-approved TMDL.

- F. The stormwater pollution prevention plan must address the following requirements, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:
1. Control stormwater volume and velocity within the site to minimize soil erosion;
  2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
  3. Minimize the amount of soil exposed during construction activity;
  4. Minimize the disturbance of steep slopes;
  5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
  6. Provide and maintain natural buffers, at least 50 feet, around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;
  7. Minimize soil compaction and, unless infeasible, preserve topsoil;
  8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Dormant areas exceeding six months will require permanent stabilization. Permanent stabilization must be completed within 7 days of final grade and will be required to maintain proper sediment controls until vegetated. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the County; and
  9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
- G. 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 and that has not been previously addressed in the SWPPP. The SWPPP must be maintained 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.

**Sec. 6C-7: STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN**

- A. A stormwater management plan shall be developed and submitted to the County. The stormwater management plan shall be implemented as approved or modified by the County and shall be developed in accordance with the following:
1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.
  2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- B. A complete stormwater management plan shall include the following elements:
1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post development 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;
  3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the County, the information provided and documented during the review process that addresses the current 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 into which the facility will discharge;
  6. Hydrologic and hydraulic computations, including runoff characteristics; Anything designed in Rockingham County will need to use the karst adjustment factor, unless a geotechnical study has been performed.
  7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
  8. A map or maps of the site that depicts the topography of the site and includes:
    - a. All contributing drainage areas;

- b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
  - c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
    - i. The County reserves the right to require soil testing to be performed, especially where historic data is not applicable due to previous grading and development on the property
  - d. Current land use including existing structures, roads, and locations of known utilities and easements;
  - e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
  - f. The limits of clearing and grading, and the proposed drainage patterns on the site;
  - g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
  - h. 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;
9. Individual grading and stormwater plans for each parcel/lot in a greater plan of development
    - a. To include, but not limited to, grading and installation of proper conveyance channels (ditches, drainage ways and easements) intended to direct flow to permanent stormwater BMPs within the common plan of development
    - b. These should include minimum bottom floor, basement, and/or crawl space elevations to eliminate future flooding and drainage issues
  10. If an operator intends to meet the requirements established in 9VAC25-870-63 or 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and
  11. Payment of the fee is required with the submission of a stormwater management plan to the County, the fee and the required fee form in must have been submitted in full.
- 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 County in accordance with 9VAC25-870-108 and 9VAC25-870-112. 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.

#### **Sec. 6C-8: POLLUTION PREVENTION PLAN; CONTENTS OF PLANS**

- A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall 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.

#### **Sec. 6C-9: REVIEW OF A STORMWATER MANAGEMENT PLAN**

- A. The Administrator or designee shall review and approve or disapprove stormwater management plans.
  - 1. The County reserves the right to hire a third party to review plans, as deemed necessary.

- B. The Administrator or designee shall review and approve or disapprove a stormwater management plan according to the following criteria:
  - 1. The Administrator or designee shall determine the completeness of a plan in accordance with 9VAC25-870-55, and shall notify the applicant of any determination, within 15 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.
    - a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
    - a. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.
    - b. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.
    - c. The Administrator or designee shall review, within 45 calendar days of the date of resubmission, any plan that has been previously disapproved.
  - 2. 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 chapter and of the County. Where available to the applicant, electronic communication may be considered communication in writing.
  - 3. If a plan meeting all requirements of this chapter and of the County's is submitted and no action is taken within the time specified above, the plan shall be deemed approved.
- C. Each approved plan may be modified in accordance with the following:
  - 1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator or designee. The Administrator or designee shall have 60 calendar days to respond in writing either approving or disapproving such requests.
  - 2. Based on an inspection, the Stormwater Management Program Administrator or designee may require amendments to the approved stormwater management plan to address any

deficiencies within a time frame set by the stormwater program administrative authority.

- D. The Administrator or designee shall require evidence of any applicable state and federal permit coverage, prior to providing approval to begin land disturbance.
- E. The Administrator or designee shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with 9VAC25-870-55.

#### **Sec.6C-10: BONDING**

- A. Prior to the issuance of a land-disturbing permit, the permittee shall submit a bond estimate to the County for approval. Upon approval the permittee shall, in accordance with section 6B-6, subsection (f) of the Rockingham County Erosion and Sediment Control Ordinance (Ord. No. 82-2, 1-11-82; P.C. Ord. No. 02-02, 2-13-02), execute a bond including both Erosion & Sediment Control and stormwater measures. This bond shall not be released until final stabilization has been achieved, all permanent stormwater management facilities have been installed, and a construction record drawing has been submitted, along with a maintenance agreement, for each permanent stormwater management facility. 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. This guidance document shall remain in effect until rescinded, amended or superseded.
- B. The performance bond is to ensure that measures could be taken by the 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 the County 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

#### **Sec. 6C-11: DUTY TO RETAIN OR ESTBALISH RIPARIAN/ STREAM BUFFER**

- A. Except for the activities pertaining to the management of a riparian/stream buffer identified in section Sec. 6C-11.E, any land subject to this article and each stormwater management/BMP plan shall provide for riparian/stream buffers for the purposes of retarding runoff, preventing erosion, filtering

nonpoint source pollution from runoff, moderating stream temperature, and providing for the ecological integrity of stream corridors and networks, as provided herein:

1. If the development is located within a development area or an area of infill and redevelopment, riparian/stream buffers shall be retained if present and established where they do not exist on any lands subject to this article containing perennial or intermittent streams, and/or non-tidal wetlands contiguous to these streams. The riparian/stream buffer shall be no less than fifty (50) feet wide on each side of such perennial or intermittent streams and contiguous non-tidal wetlands, measured horizontally from the edge of the non-tidal wetlands, or the top of the stream bank if no wetlands exist.
  2. If the development is located within a water supply protection area, riparian/stream buffers shall be retained if present and established where they do not exist on any lands subject to this article containing perennial or intermittent streams, non-tidal wetlands contiguous to these streams, and flood plains. The riparian/stream buffer shall extend to whichever of the following is wider:
    - a. Fifty (50) feet on each side of perennial or intermittent streams and contiguous non-tidal wetlands, measured horizontally from the edge of the non-tidal wetlands, or the top of the stream bank if no wetlands exist; or
    - b. The limits of the flood plain.
- A. Each riparian/stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.
- B. Each riparian/stream buffer required to be retained or established pursuant to section 6C-11(A) shall be managed as provided herein:
1. In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the riparian/stream buffer, indigenous vegetation shall be preserved to the maximum extent possible. The target vegetative cover in the riparian/stream buffer shall be an indigenous riparian forest with ground cover, shrub, and tree canopy layers. Removal of vegetation in the riparian/stream buffer shall be allowed only as provided in subsections (ii) and (iii).
  2. Within twenty-five (25) feet of the top of the stream bank and on land classified as non-tidal wetland:
    - a. Indigenous riparian vegetation shall be preserved or allowed to evolve by natural succession where it does not exist;
    - b. Dead, diseased, and dying trees may be removed;
    - c. Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential

- problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;
  - d. Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
  - e. Pathways shall be constructed so as to effectively control erosion; stormwater channels shall be constructed to prevent erosion.
3. Beyond twenty-five (25) feet from the top of the stream bank and outside of non-tidal wetlands:
- a. Dead, diseased, and dying trees may be removed;
  - b. Silvicultural thinning may be conducted based upon the best available technical advice of a professional forester;
  - c. Trees may be pruned or removed as necessary to provide limited sight lines and vistas, provided that if trees are removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff;
  - d. Trees six (6) inches in diameter or greater at breast height shall be preserved;
  - e. Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
  - f. Pathways and stormwater channels shall be constructed to effectively control erosion.
- C. The following types of development shall not be required to retain, establish or manage a riparian/stream buffer, provided that the requirements of this section are satisfied:
- 1. The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the state department of transportation, and their appurtenant structures, which are accomplished in compliance with the erosion and sediment control law or an erosion and sediment control plan approved by the state soil and water conservation board.
  - 2. The construction, installation, and maintenance by public agencies of water and sewer lines, including water and sewer lines constructed by private interests for dedication to public agencies, provided that:
    - a. To the extent practical, the location of such water or sewer lines shall be outside of all riparian/stream buffer areas;
    - b. No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and
    - c. All such construction, installation, and maintenance of such water or sewer lines shall comply with all applicable federal, state and local requirements and permits and be conducted in a manner that



protects water quality.

- D. If otherwise authorized by the applicable regulations of the zoning ordinance, the following types of development shall be allowed in a riparian/stream buffer, provided that the requirements of this article are satisfied:
1. A building or structure which existed on the date of adoption of this chapter may continue at such location.
  2. On-site or regional stormwater management facilities and temporary erosion and sediment control measures, provided that:
    - a. To the extent practical, as determined by the program authority, the location of such facilities shall be outside of the riparian/stream buffer;
    - b. No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility, as determined by the program authority;
    - c. The facilities are designed and constructed so as to minimize impacts to the functional value of the riparian/stream buffer and to protect water quality; and
    - d. Facilities located within a flood plain adhere to flood plain regulations of the county and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value, according the standards of this article, during flood conditions.
  3. Water-dependent facilities; water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archaeological activities; provided that all applicable federal, state and local permits are obtained.

#### **Sec. 6C-12: INSPECTIONS**

- A. The County may enter any establishment or 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.
- B. 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.

- C. Pursuant to § 10.1-603.12:2 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.
- D. The County 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.
- E. The County inspection program ensures that stormwater management facilities are being adequately maintained as designed and per the signed maintenance agreement (per Section 6C-13 of this ordinance) after completion of land-disturbing activities. Inspection programs shall:
  - 1. Ensure that each stormwater management facility is inspected by the County every 6 months, except as provided in subsections C and D of this section
  - 2. Be documented by records.
- F. The County may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section 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 board.
- G. If a recorded instrument is not required pursuant to 9VAC25-870-112, the County shall develop an educational outreach for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located and may include periodic inspections or other method targeted at promoting the long-term maintenance of such facilities.

**Sec. 6C-13: LONG-TERM MAINTENANCE OF PERMANENT  
STORMWATER  
FACILITIES**

- A. The County 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 (maintenance agreement) in the local land records prior to general permit termination or earlier as required by the County and shall at a minimum:
1. Be submitted to the County for review and approval prior to the approval of the stormwater management plan;
  2. Be stated to run with the land and be recorded with the deed:
    - a. Subsequent owners are responsible for continuing the maintenance per the approved maintenance agreement
    - b. Maintenance agreements are a living document to be carried out in perpetuity.
  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 County; and
    - a. The owner of the facility will provide written inspection reports at a minimum of every six months to the County.
  5. Be enforceable by all appropriate governmental parties.
- B. At the discretion of the County, 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 County that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the County.
1. If a recorded instrument is not required by this Subsection 6C-13.B, the County 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 County
  2. Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the County, at minimum, at least twice a year.

**Sec. 6C-14: ENFORCEMENT**

- A. If the County determines that there is a failure to comply with the VSMP authority permit conditions (§62.1-44.15:37 A of the Code of Virginia) 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:
1. Informal and formal administrative enforcement procedures will include:
    - a. Verbal warnings and inspection reports;
    - b. Notices of corrective action;
    - c. Consent special orders and civil charges (§62.1-44.15:25 and §62.1-44.15:48 of the Code of Virginia)
    - d. Notices to comply (§62.1-44.15:37 of the Code of Virginia), notice of permit requirement, and stop work orders
      - i. 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. If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the County 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.
    - e. Such orders shall become effective upon creation of the order and contact, whether verbally or written has been made. If via mail, the person will be contacted via certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by a County agent. However, if the County 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 County may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 6C-14.C
    - f. In addition to any other remedy provided by this Ordinance, if the County 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 Subsection 6C-14.C

- g. 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 the Rockingham County Circuit Court by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
  - h. Special orders (§62.1-44.15:25 of the Code of Virginia);
  - i. Emergency special orders ((§62.1-44.15:25 of the Code of Virginia )and
  - j. Public notice and comment periods for proposed settlements and consent special orders pursuant to 9VAC25-870-660.
  - k. 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.
3. Civil and criminal judicial enforcement procedures will include:
- a. Schedule of civil penalties in accordance with §62.1-44.15:48 of the Code of Virginia;
  - b. Criminal penalties in accordance with §62.1-44.15:48 of the Code of Virginia and
  - c. Injunctions in accordance with §62.1-44.15:42, §62.1-44.15:25, and §62.1-44.15:48 of the Code of Virginia
- B. The County shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and local ordinances.
- C. Pursuant to §62.1-44.15:48 of the Code of Virginia, the County shall use the following schedule of civil penalties for enforcement actions. The court has the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with §62.1-44.15:48 of the Code of Virginia. Such violation may reflect the degree of harm caused by the violation. The court may take into account the economic benefit to the violator from noncompliance. Such violations include, but are not limited to:
- 1. No state permit registration;
  - 2. No SWPPP;
  - 3. Incomplete SWPPP;
  - 4. SWPPP not available for review;
  - 5. No approved erosion and sediment control plan;
  - 6. Failure to install stormwater BMPs or erosion and sediment controls;

7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
  8. Operational deficiencies;
  9. Failure to conduct required inspections;
  10. Incomplete, improper, or missed inspections.
  11. Discharges not in compliance with the requirements of Section 9VAC25-880-76 of the General Permit.
- D. Pursuant to §62.1-44.15:25 of the Code of Virginia, authorization to administer a VSMP program shall not remove from the board the authority to enforce the provisions of the Act and attendant regulations.
- E. The department may terminate state permit coverage during its term and require application for an individual state permit or deny a state permit renewal application for failure to comply with state permit conditions or on its own initiative in accordance with the Act and this chapter.
- F. Pursuant to §62.1-44.15:49 of the Code of Virginia, civil penalties recovered by a locality's VSMP authority shall be paid into the treasury of the locality in which the violation occurred and are 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.
- G. The department may provide additional guidance concerning suggested penalty amounts in its Stormwater Management Enforcement Manual.

#### **Sec. 6C-15: HEARINGS**

- A. Any permit applicant or permittee, or person subject to Ordinance requirements, aggrieved by any action of Rockingham County taken without a formal hearing, or by inaction of Rockingham County, may demand in writing a formal hearing by the Rockingham County Board of Supervisors causing such grievance, provided a petition requesting such hearing is filed with the County within 30 days after notice of such action is given by the County.
- B. The hearings held under this Section shall be conducted by Rockingham County Board of Supervisors at a regular or special meeting of the Rockingham County Board of Supervisors, or by at least one member of Rockingham County Board of Supervisors designated by the Rockingham County Board of Supervisors to conduct such hearings on behalf of the Rockingham County Board of Supervisors at any other time and place authorized by the Rockingham County Board of Supervisors

- C. A verbatim record of the proceedings of such hearings shall be taken and filed with the Rockingham County Board of Supervisors. Depositions may be taken and read as in actions at law.
- D. The Rockingham County Board of Supervisors or its designated member, as the case may be, shall have power to issue subpoenas and subpoena *duces tecums*, 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.

#### **Sec. 6C-16: EXCEPTIONS**

- A. The County may grant exceptions to the provisions of Part II B or Part II C (9VAC25-870). An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter 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.
- B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.
- C. Under no circumstance shall the County grant an exception to the requirement that the land-disturbing activity obtain required state permits, nor approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part II C (9VAC25-870-146 et seq.) of this chapter.
- D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 9VAC25-870-69 have been considered and found not available.
- E. A record of all exceptions granted shall be maintained by the County in accordance with 9VAC25-870-126.

**Sec. 6C-17: APPEALS**

- A. Final decisions of the plan-approving authority concerning violations of this chapter shall be subject to review by the Rockingham County Board of Supervisors provided an appeal is filed by the permittee within thirty (30) days from the date of any written decision by the authority.
- B. Final decisions of the governing body concerning violations of this chapter shall be subject to review by the court of record of Rockingham County, provided an appeal is filed within thirty (30) days from the date of any written decision by the governing body.

**Sec. 6C-18: FEES**

- A. Fees to cover costs associated with implementation of a VSMP are hereby imposed.
- B. Fee Schedule  
 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 9VAC25-870-700 through 9VAC25-870-830 **[NOTE: Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with land-disturbing activities as well as state program oversight costs.] Fees shall be paid in full at time of VSMP permit application.**

**9VAC25-870-820:**

<b>Fee type: General / Stormwater Management - Small Construction Activity/Land Clearing</b>	<b>Total fee to be paid by applicant (includes both VSMP authority and DEQ portions where applicable)</b>
Areas within common plans of development or sale with land-disturbance acreage less than one acre	\$290.00
<b>Single family homes</b> within or outside a common plan of development or sale with land-disturbance of less than one acre	\$209.00
<b>Single family homes</b> within or outside a common plan of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres	\$209.00



Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres	\$2,700.00
<b>Agricultural</b> projects with land-disturbance acreage equal to or greater than one acre and less than five acres	\$1,944.00
Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres	\$3,400.00
<b>Agricultural</b> projects with land-disturbance acreage equal to or greater than five acres and less than 10 acres	\$2,448.00
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	\$4,500.00
<b>Agricultural</b> projects with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres	\$3,240.00
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	\$6,100.00
Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres	\$9,600.00

**9VAC25-870-825 Modification or transfer for individual permits**

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by the board. If the state permit modifications result in changes to stormwater management plans that require additional review by the County, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the state permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820. No modification or transfer fee shall be required until such board-approved programs exist. No modification fee shall be

required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects.

<b>General / Stormwater Management – Small Construction Activity/Land Clearing</b>	Fee
Areas within common plans of development or sale with land disturbance acreage less than one acre	\$20.00
Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres	\$200.00
Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres	\$250.00
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	\$300.00
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	\$450.00
Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres	\$700.00

**9VAC25-870-830 STATE PERMIT MAINTENANCE FEES**

The following annual permit maintenance fees apply to each state permit identified below, including expired state permits that have been administratively continued. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the state permit coverage is terminated, and shall only be effective when assessed by the County, including the department when acting in that capacity that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects.

<b>General / Stormwater Management – Small Construction Activity/Land Clearing</b>	Fee
Areas within common plans of development or sale with	\$50.00

land- disturbance acreage less than one acre	
Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres	\$400.00
Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres	\$500.00
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	\$650.00
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	\$900.00
Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres	\$1,400.00

- C. 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. Rockingham County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

This ordinance shall be effective from the 1st day of July, 2014.

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**ADJOURNMENT.**

Chairman Cuevas declared the meeting adjourned at 6:26 p.m.

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Chairman