

## **ORDINANCE NO. 23-17(1)**

AN ORDINANCE TO AMEND CHAPTER 17, WATER PROTECTION OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 17, Water Protection is hereby reordained and amended as follows:

### **By Amending:**

- Sec. 17-207 Fees for land disturbing activities subject solely to the VESCP
- Sec. 17-208 Fees for land disturbing activities under VSMP
- Sec. 17-209 Fees; payment
- Sec. 17-401 VSMP permit application; form and content
- Sec. 17-402 Erosion and sediment control plans, and agreements in lieu of a plan; form and content
- Sec. 17-422 Construction record drawing; submittal
- Sec. 17-423 Release of surety
- Sec. 17-1005 Fees

### **By Removing:**

- Sec. 17-210 Fees; incomplete and late payments

## **Chapter 17. Water Protection**

### **Article II. Submittal, Review and Action**

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#### **Sec. 17-207 - Fees for land disturbing activities.**

Fees for any land disturbing activity subject solely to the VESCP are as provided in County Code Chapter 1, Article 5.

#### **Sec. 17-208 - Fees for land disturbing activities under VSMP.**

Fees for any VSMP permit application are as provided in County Code Chapter 1, Article 5.

#### **Sec. 17-209 Fees; payment.**

Each owner must pay the fees as provided in County Code Chapter 1, Article 5.

**Chapter 17. Water Protection**  
**Article IV. Procedure for Submitting, Reviewing and Acting on Applications; Post-Approval Rights and Obligations**

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**Sec. 17-401 - VSMP permit application; form and content.**

Any owner whose proposed land disturbing activity is subject to the VSMP must submit an application for a VSMP permit that includes all of the following, in the form required by the administrator:

- A. *Application form.* A completed application on an application form provided by the administrator, signed by the owner.
- B. *Fees.* All applicable fees required by County Code Chapter 1, Article 5 and the applicable fee form.
- C. *Registration statement.* A complete and accurate registration statement, if such a statement is required, from the operator on the official form provided by the Virginia Department of Environmental Quality in order to apply for general permit coverage. The registration statement must be signed by the owner in accordance with 9VAC25-870-370 and 9VAC25-880-70. A registration statement is not required for construction of a detached single-family dwelling within or outside of a common plan of development or sale, provided that the project complies with the requirements of the general permit.
- D. *Erosion and sediment control plan.* An erosion and sediment control plan satisfying the requirements of sections 17-402.
- E. *Stormwater management plan.* A stormwater management plan satisfying the requirements of sections 17-403 or an executed agreement in lieu of a stormwater management plan.
- F. *Pollution prevention plan.* A pollution prevention plan satisfying the requirements of section 17-404.
- G. *Stormwater pollution prevention plan.* A stormwater pollution prevention plan satisfying the requirements of section 17-405.
- H. *Mitigation plan.* A mitigation plan satisfying the requirements of section 17-406 if land disturbing activity is proposed within a stream buffer under section 17-604.
- I. *Requested variations or exceptions.* A request for any variation or exception as provided in sections 17-407 and 17-408.
- J. *Construction record drawings.* Construction record drawings if existing stormwater management facilities are used, satisfying the requirements of section 17-422.

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 23-17(1), 12-6-23)

State Law reference— Va. Code § 62.1-44.15:34; 9VAC25-870-59, 9VAC25-870-370, 9VAC25-880-70.

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**Sec. 17-402 - Erosion and sediment control plans, and agreements in lieu of a plan; form and content.**

Any owner whose proposed land disturbing activity is subject to the VSMP, or is subject solely to the VESCP, must submit an erosion and sediment control plan for review that includes the following, in the form required by the administrator:

- A. *Application form.* A completed application on an application form provided by the administrator, if the land disturbing activity is subject only to the VESCP and a VSMP permit is not required.

B. *Fee.* The fee required by County Code Chapter 1, Article 5, if the land disturbing activity is subject only to the VESCP, and a VSMP permit is not required.

C. *Elements of plan.* Except as provided in subsection (D), an erosion and sediment control plan that contains all of the following elements:

1. *Temporary and permanent controls.* The specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the administrator deems to be reasonably adequate, considering the nature and extent of the proposed land disturbing activity, implementing appropriate erosion and sediment control best management practices and satisfying the requirements of 9VAC25-880-70, Part II(A)(2). All control measures required by the plan must be designed and installed in accordance with good engineering practices.
2. *Maintenance responsibilities.* A statement describing the maintenance responsibilities of the owner to ensure that the land disturbing activity will satisfy the purposes and requirements of this chapter.
3. *Technical criteria.* The technical criteria required by section 17-500.
4. *Identification of land disturber.* Identify the person holding a certificate of competence required by Virginia Code § 62.1-44.15:54, who will be in charge of and responsible for carrying out the land disturbing activity.
5. *Additional information.* Additional information required by the administrator as determined to be necessary for a complete review of the plan.
6. *Certification.* A certification on a form provided by the administrator and signed by the owner stating that all requirements of the approved plan will be complied with.

D. *Agreement in lieu of a plan.* Notwithstanding subsection (C), if the land disturbing activity is for the purpose of establishing or modifying a single family dwelling unit, the administrator may allow an agreement in lieu of a plan for the land disturbing activity required for constructing the dwelling; provided:

1. *Eligibility.* The single family dwelling unit is on an individual lot of one acre or less which is not subject to an active erosion and sediment control plan or is not part of a common plan of development or sale. Additionally, the following requirements apply:
  - a. An agreement in lieu of a plan must be accompanied by a Critical Resources Plan.
  - b. Land disturbance associated with diverting, restoring or otherwise disturbing the channel of a stream or where there is a probability of sediment being deposited into state waters or on to adjacent properties is not eligible and requires an erosion and sediment control plan.
2. *Other factors to be considered by administrator.* In determining whether to allow an agreement in lieu of a plan under this section, the administrator will consider the potential threat to water quality and to adjacent land resulting from the land disturbing activity, and whether the land disturbing activity is within the mountain overlay district identified in the Comprehensive Plan. The administrator, at its sole discretion, may require additional information or may not accept an agreement in lieu of a plan where necessary to protect downstream properties or the environment.
3. *Contents and form of the agreement in lieu of a plan.* The contents of any agreement in lieu of a plan will be established by the administrator, and they must: (i) be sufficient to ensure that the purposes and requirements of the

VESCP, including the requirements of 9VAC25-880-70 , Part II(A)(2) are satisfied; and (ii) identify the person in charge of and responsible for carrying out the land disturbing activity and holding a valid certificate of competence for that task. The form of the agreement is subject to review and approval by the County attorney.

4. *Effect of agreement in administration of the VESCP.* Except as provided in subsection (C) and section 17-500 pertaining to the content and technical criteria applicable to erosion and sediment control plans, all other references in this chapter to an erosion and sediment control plan include an agreement in lieu of a plan, and the County and the owner will have all of the rights, responsibilities and remedies set forth in this chapter as though the agreement in lieu of a plan was an erosion and sediment control plan.

(§ 17-203: § 19.3-11, 2-11-98; § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-87, 12-11-91, 3-18-92; Code 1988, §§ 7-3, 7-4, 19.3-11; § 17-203, Ord. 98-A(1), 8-5-98; Ord. 01-17(1), 7-11-01; Ord. 09-17(1) , 8-5-09, effective 9-5-09) (§ 17-205: § 7-4, 6-18-75, § 6, 10-22-75, 4-21-76, 11-10-76, 3-2-77, 4-17-85, 2-11-87, 12-11-91, 3-18-92; § 19.3-13, 2-11-98; Code 1988, §§ 7-4, 19.3-13; § 17-205, Ord. 98-A(1), 8-5-98; Ord. 01-17(1) , 7-11-01; § 17-402, Ord. 14-17(1) , 5-7-14, effective 7-1-14; Ord. 21-17(1) , 4-21-21, effective 9-1-21; Ord. 23-17(1), 12-6-23)

State Law reference— Va. Code § 62.1-44.15:55; 9VAC25-840-60, 9VAC25-870-400, 9VAC25-880-70, 9VAC25-890-40.

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**Sec. 17-422 - Construction record drawing; submittal.**

When construction of any permanent stormwater management facility is completed, a construction record drawing for the permanent stormwater management facility shall must be submitted for review and action as follows:

A. *Submittal of drawing to the administrator.* Each construction record drawing must be submitted by the owner to the administrator.

B. *Fee.* The applicable fee for review and action on the construction record drawing required by County Code Chapter 1, Article 5, must be paid when the drawing is submitted.

C. *Form and style.* The construction record drawing must satisfy the minimum requirements of the form and style of a construction record drawing as provided in the Design Standards Manual.

D. *Signature and certification.* The construction record drawing must be appropriately sealed and signed by a professional registered in the State, certifying that the stormwater management facility has been constructed in accordance with the approved plan.

E. *Required measurements and calculations.* If the construction record drawing shows any changes from the approved plan, including changes to any features of the facility, including, but not limited to, outlet structures, elevations, available volumes, plantings, spillways, and materials, the owner must also submit all as-built measurements and calculations necessary to demonstrate compliance with all applicable regulations. Any other technical requirements of the construction record drawing will be as provided in the Design Standards Manual.

F. *Determination of completeness, review and action.* The procedure for the review and action on a construction record drawing will be as provided in sections 17-409 and 17-410, as applicable, provided that the failure of the administrator to act within

any time provided in those sections may not be deemed to be approval of the construction record drawing.

G. *Required amendments.* If the as-built stormwater management facility does not comply with all applicable regulations, the owner must make all required changes to the facility in order to comply with the regulations and the administrator may require that the approved stormwater management plan be amended as provided in section 17-417(A).

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 23-17(1), 12-6-23)

State Law reference— 9VAC25-870-55.

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**Sec. 17-423 - Release of surety.**

Any surety required by this chapter will be released as follows:

- A. *Partial release.* In order for any surety to be partially released:
  - 1. *Request by owner.* The owner must submit a statement to the administrator on a form provided by the administrator that adequate stabilization of the land disturbing activity has been achieved, and pay the fee for a partial release required by County Code Chapter 1, Article 5.
  - 2. *Response by administrator.* Within 30 days after receipt of the statement required by subsection (A)(1), the administrator will provide written notice to the owner that responds to the request in one of the following ways: (i) grant the partial release, if an inspection of the project by a certified inspector confirms that the requirements for partial release are satisfied; or (ii) inform the owner that an inspection of the project by a certified inspector confirms that the requirements for partial release are not satisfied and identify any specified defects, deficiencies or further conservation action required.
  - 3. *Release.* If the administrator grants the partial release as provided in subsection (A)(2), the surety will be partially released within 60 days after receipt of the request required by subsection (A)(1). The amount of the release will be based upon the percentage of stabilization accomplished determined by the inspection.
- B. *Full release.* In order for any surety to be fully released:
  - 1. *Request by owner.* The owner must submit a statement to the administrator on a form provided by the administrator and pay the fee for a full release required by County Code Chapter 1, Article 5. For any surety required in conjunction with an erosion and sediment control plan, the owner must state that adequate permanent stabilization of the land disturbing activity has been achieved. For any surety required in conjunction with a VSMP permit, the owner must state that the requirements of the permit have been satisfied.
  - 2. *Response by administrator.* Within 30 days after receipt of the statement required by subsection (B)(1), the administrator will provide written notice to the owner that responds to the request in one of the following ways: (i) grant the full release, if an inspection of the project by a certified inspector confirms that the requirements for full release are satisfied; or (ii) inform the owner that an inspection of the project by a certified inspector confirms that the requirements for full release are not satisfied and identify any specified defects, deficiencies or further conservation action required.

3. *Release.* If the administrator grants the full release as provided in subsection (B)(2), the surety will be fully released within 60 days after receipt of the request required by subsection (B)(1).

C. *Maintenance.* Prior to the release of the performance security or bond, the developer must either (1) transfer the maintenance responsibilities of the stormwater management facilities to a Property Owners Association or (2) provide the County with a maintenance security.

1. Requirements for Transfer of Maintenance Responsibilities to the Property Owners Association (POA). To transfer the maintenance responsibilities of stormwater management facilities to a Property Owners Association, a developer must:
  - i. Submit acceptable record drawings.
  - ii. Obtain an acceptable final inspection of the stormwater management facility by the County.
  - iii. Transfer the necessary property to the POA.
  - iv. Organize and hold a meeting attended by the developer, the County and members of the POA; and provide evidence to the County that each member of the POA was provided prior notice of the meeting. The meeting must be held at a place and time convenient for members of the POA.
  - v. Provide a copy of the recorded documents establishing the Property Owners Association to the County.
  - vi. Provide the County with evidence that the Property Owners Association is funded. Minimum funding will be based on the following schedule:  
1—20 lots = \$1,000.00  
21—50 lots = \$1,500.00  
51 and over = \$1,500.00 + \$30.00 per lot over 50
2. Requirements for Posting Maintenance Security.
  - i. The County will require a maintenance guaranty in the amount of 20 percent of the construction costs of the stormwater management facility.
  - ii. The maintenance security must contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the permittee in accordance with the approved stormwater management plan.
  - iii. If the County takes such action upon such failure by the permittee, the County may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

D. The maintenance agreement and security will be the responsibility of the permittee or owner until such time as the permittee or owner provides the County with the necessary requirements for Transfer of Maintenance Responsibilities to the Property Owners Association as outlined above in subsection (C)(1).

(§ 17-207: § 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; § 17-207, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-306: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-30, 2-11-98; Code 1988, §§ 19.1-7, 19.3-30; § 17-306, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective

9-5-09; § 17-423, Ord. 14-17(1) , 5-7-14, effective 7-1-14; Ord. 21-17(1) , 4-21-21, effective 9-1-21; Ord. 23-17(1), 12-6-23)

State Law reference— Va. Code §§ 62.1-44.15:34; 62.1-44.15:57.

**Chapter 17. Water Protection**  
**Article X. Groundwater Assessments**

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**Sec. 17-1005 - Fees.**

Each owner seeking approval of a tier assessment required by this article must pay a fee as provided by Albemarle County Code Chapter 1, Article 5.

(§ 17-405, Ord. 04-17(1), 12-8-04, effective 2-8-05; § 17-1005, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 23-17(1), 12-6-23)

State Law reference— Va. Code §§ 15.2-2241(9), 36-98.

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of six to zero, as recorded below, at a regular meeting held on December 6, 2023.



Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Andrews	<u>Y</u>	___
Mr. Gallaway	<u>Y</u>	___
Ms. LaPisto-Kirtley	<u>Y</u>	___
Ms. Mallek	<u>Y</u>	___
Ms. McKeel	<u>Y</u>	___
Ms. Price	<u>Y</u>	___