

A regular meeting of the Board of Supervisors of Albemarle County, Virginia, was held on June 5, 2024, at 1:00 p.m. in Lane Auditorium, County Office Building, 401 McIntire Road, Charlottesville, Virginia.

BOARD MEMBERS PRESENT: Mr. Jim H. Andrews, Mr. Ned Gallaway, Ms. Beatrice (Bea) J.S. LaPisto-Kirtley, Ms. Ann H. Mallek, Ms. Diantha H. McKeel, and Mr. Mike O. D. Pruitt.

ABSENT: None.

OFFICERS PRESENT: County Executive, Jeffrey B. Richardson; County Attorney, Steve Rosenberg; Clerk, Claudette K. Borgersen; and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. Call to Order. The meeting was called to order at 1:00 p.m., by the Chair, Mr. Andrews.

Mr. Andrews said the opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website, on the Board of Supervisors homepage and on the Albemarle County calendar.

Mr. Andrews introduced the officers present and Albemarle County Police Department Officers Paul Quillon and Dana Reeves.

Mr. Andrews welcomed the kindergarten class from Murray Elementary School.

Agenda Item No. 2. Pledge of Allegiance.
Agenda Item No. 3. Moment of Silence.

Agenda Item No. 4. Adoption of Final Agenda.

Ms. McKeel **moved** to adopt the final agenda. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Agenda Item No. 5. Brief Announcements by Board Members.

Ms. Mallek announced that Senator Marsden was starting an energy task force. She said that she planned to attend the following day, listening in and representing VACo (Virginia Association of Counties) as well as the County, and would report back next week. She said this was somewhat an attempt to find some middle ground to prevent the issues faced last year in the General Assembly due to the takeover of all local government decision-making. She said that she hoped that Senator Marsden would lead something useful.

Ms. Mallek said that on June 27, the High Growth Coalition would meet in Culpeper. She requested everyone inform Ms. Borgersen if they wished to attend so she could register people and announce the number attending. She said that housing and land use were expected to be major topics for that meeting as well.

Ms. LaPisto-Kirtley announced that on Tuesday, June 11, the Economic Development Authority (EDA) would be holding a joint City-County EDA meeting from 4:00 p.m. to 6:00 p.m. at City Space.

Mr. Pruitt announced that he recently attended his first full-size, full-school graduation as a Supervisor, which was at Monticello High School. He said that it was thrilling, and he wished to congratulate all the graduates in their community, including those from the university, high schools, and lower grades. He said that furthermore, at their last meeting, they had addressed concerns about traffic during times when their town size temporarily increases. He said that he had made a lighthearted joke about being cautious on the road for his mom, who was not confident driving.

Mr. Pruitt said that it turned out he had joked about the wrong person, as his father's car was totaled by a reckless driver in Scottsville. He expressed gratitude to Chief Jenkins and his team at the Scottsville Town Police for their diligence and hard work. He said that he had the pleasure of attending the 65th anniversary celebration of the Scottsville Branch JMRL (Jefferson-Madison Regional Library), which was the oldest operating branch in their County. He said that it was a lovely event with Mayor Smith's folk band performing. He thanked everyone involved.

Mr. Pruitt said that lastly, he wanted to note that it was extremely hot outside and that this condition was intrinsically dangerous for humans. He said that to minimize exposure to heat, one should try to limit outdoor activities during the hottest parts of the day. He said that wearing a hat when working outdoors could also help prevent skin cancer.

Ms. McKeel said that in reference to Mr. Pruitt's point, as a retired nurse, she wanted to emphasize that wearing hats that cover one's ears was important, especially for people with short hair. She said that graduations for the three high schools took place over the last ten days, with approximately 1,000 students graduating in separate ceremonies. She said that it was exciting to see the young people who graduated and were recognized for their achievements.

Ms. McKeel said that today's meeting featured ideas presented by Murray Elementary School students on how to make Albemarle County more fair, fun, and kid-friendly. She said that these suggestions included building a water park, creating more conveniently located playgrounds, and establishing a children's garden. She expressed her appreciation for the kindergartners and young people from Murray Elementary who joined them that day.

Ms. McKeel said that last night, the Virginia Department of Transportation held a public information session at the Holiday Inn on Emmet Street or Route 29 North. She said that the event aimed to gather public input on the proposed roundabout at District Avenue areas and Cedar Hill Road, near the Stonefield Movie Theater along Hydraulic Road. She stated that the deadline for providing input was Friday, June 14, and people could either fill out an online survey or send their comments to john.rose1@vdot.virginia.gov. She said that if anyone faced difficulties in accessing the survey, they could reach out to Albemarle County for assistance.

Mr. Andrews congratulated the recent graduates of Albemarle County educational institutions. He noted that people outside during the hot weather should keep in mind that chiggers and ticks were common during the summer.

Ms. Mallek said that on the desk to her right, there were materials from Veterans Services. She suggested obtaining one of those resources and sharing this information with any veterans they knew. She said that the materials pertained to new coverages, qualifications, and eligibility for various Veterans Services programs.

Ms. Mallek said that concerning the weather, she requested that heat checks be conducted for their neighbors. She said there were many older and very young residents in their area who often struggled to maintain a comfortable temperature. She kindly asked others to check on those individuals nearby to ensure their well-being. She said that reflecting on the derecho experience would help them determine the appropriate actions moving forward.

Agenda Item No. 6. Proclamations and Recognitions.
Item No. 6.a. Resolution of Appreciation for Richard Hewitt.

**Resolution of Appreciation
for
Richard Hewitt**

- WHEREAS,** Richard Hewitt has been a strong supporter of the Albemarle County community over many years, and recently retired from many years of formal service on the Police Citizen's Advisory Committee, including several years as Chair; and
- WHEREAS,** Richard Hewitt has also been a long-time supporter of the Police Foundation and supports a variety of events that support the community and local law enforcement; and
- WHEREAS,** Richard Hewitt was instrumental in the development at the former-JC Penney property of the COVID-19 vaccination center and most recently the Public Safety Operations Center, which is a state-of-the-art facility that houses the County's Fire Rescue and Police operations and logistics, allowing them to maintain the fleet of emergency vehicles, managing logistics for personnel, and substantially increase their ability to streamline operations and enhance the services provided to the community; and
- WHEREAS,** Richard Hewitt has provided quality, affordable space for Albemarle County Public Schools' High School Center I and for administrative departments, which has resulted in cost savings over several years, freeing capital capacity for other County priority investments; and
- WHEREAS,** in numerous ways Richard Hewitt has shown his commitment and stewardship to our business community by enabling businesses to grow their operations in affordable office space, which supports career-ladder jobs and allows them to pay a sustainable wage.

NOW, THEREFORE, BE IT RESOLVED, that we, the Albemarle County Board of Supervisors, do hereby commend Richard Hewitt for his significant contributions to our community and extend a heartfelt "Thank You" for his years of service to the residents of Albemarle County.

BE IT FURTHER RESOLVED, that a copy of this Resolution be spread upon the minutes of this meeting of the Albemarle County Board of Supervisors as a lasting testament to the esteem in which Richard Hewitt is held by this Board.

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Ms. LaPisto-Kirtley **moved** that the Board adopt the Resolution of Appreciation for Richard Hewitt and read the resolution aloud. Ms. McKeel **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.

NAYS: None.

Mr. Richard Hewitt accepted the proclamation and thanked the Board for the kind words. He said that he had spent ten years as a member of the Police Citizens Advisory Committee, which had meant a great deal to him. He said that he had enjoyed the relationships with other members, supervisors, staff, and the three chiefs during his tenure. He said that the community was fortunate to have such talent in public policing. He said that he was happy to be able to raise two wonderful children and now two grandchildren. He said that he would not trade anything for it. He said that he truly felt grateful as a citizen.

Ms. Mallek said that she was so glad to be able to recognize Mr. Hewitt and his family today. She said that they had known each other since their children were little, and it had been a wonderful generation of commitment he had made to Albemarle County. She said that she was glad that he could be a grandpa, which was the best of all.

Ms. Mallek said that in addition to the items mentioned in the resolution, she was grateful for all the efforts made by Mr. Hewitt to built-to-suit spaces at Comdial, now called Seminole Place, where those startups, research businesses, and schools were able to create family-sustaining jobs. She said that she remembered taking her campers to visit the various businesses that were there such as the artificial wetlands people. She said that his decades-long support for the Seminole Volunteer Fire Company, Station 8, and the construction of the Wood Slaughter Training Building had been crucial for all fire companies in their part of the County.

Ms. Mallek said that there was also his significant support for the local health department during a very challenging time. She said that the vaccination site he helped establish was the second most widely used in the Commonwealth, providing a secure, comfortable space for thousands of people, including herself, to receive vaccinations. She thanked Mr. Hewitt for being an articulate advocate for their County and for being himself. She said that they looked forward to seeing more of him in the future.

Ms. LaPisto-Kirtley said that Mr. Hewitt was truly a testament to what the community was all about, which was service to the community and helping people. She said that she had never encountered a businessperson such as himself who had been so committed to helping everybody, especially public safety, Police, Fire, and even during COVID-19, what he did for them there. She said that he had helped so many people and probably saved a lot of lives also in doing that, and he had done things selflessly, because that was what someone did for their community.

Ms. LaPisto-Kirtley said that she truly admired and respected him, as she thought they all did. She said that because he had done so much, he truly was a pillar of what community service was and what people should be doing for their community to help everybody. She said that this resolution of appreciation was just a small token of the gratitude they had for him; he deserved so much more. She said that he had their undying commitment. She thanked Mr. Hewitt for everything he had done for them.

Mr. Gallaway said that it has been a pleasure getting to know Mr. Hewitt over the years since they first met. He said that they initially met during a car deal before any of their professional collaborations. He said that he appreciated that he was direct, to the point, and willing to engage in meaningful conversations. He said that this quality was especially valuable when working with someone who was dedicated to the community like himself. He said that his business and the quality of work he provided had a significant impact on local companies and the economy.

Mr. Gallaway said that his commitment to the community extended beyond his professional life through his volunteerism, particularly in public safety. He said that his passion for creating a good place to live for others drives both his business work and volunteer efforts. He thanked him for everything he has done for Albemarle County, the County schools, and the citizens of Albemarle. He expressed his sincere appreciation for Mr. Hewitt's energy and dedication.

Mr. Pruitt acknowledged that he had not known Mr. Hewitt for as long as some of his fellow board members. He said that however, over the past year, he had consistently been impressed with his insights and expertise whenever they had spoken. He noted that he must be doing something right when multiple Board members were eager to read the proclamation recognizing Mr. Hewitt's contributions, demonstrating the high regard he was held in by his peers. He said that this respect extended beyond the boardroom and was also felt among staff and the public, making him a vital part of the community.

Mr. Pruitt said that his involvement went beyond his role on the advisory board and his professional capacity. He said that all his volunteer work throughout his time in the community showcased a genuine commitment to local government, which was becoming increasingly rare these days. He said that this type of dedication may not be as flashy or attention-grabbing as other forms of engagement, but he undoubtedly made a lasting impact through his actions. He thanked Mr. Hewitt for all his hard work.

Ms. McKeel said that Mr. Hewitt effectively connected the importance of safety in the community with strong education, which were two essential components for a thriving and vibrant community. She

said that his connections were beautifully made, allowing them to make those connections as well. She said that she attended a meeting at the new space at Seminole Place for Albemarle County Public Schools facilities during the week. She said that Centre 1 was located there, and they had moved from their previous location at Albemarle to Lambs Lane campus.

Ms. McKeel said that the space was impressive, and everyone was delighted because they now had offices with walls and a designated area for their computers, which was highly appreciated. She said that she also wanted to highlight that she remembered when they were trying to establish separate pay scales for safety officers, including Fire and Rescue, Police, Sheriffs, and ECC (Emergency Communications Center) staff. She said that he and the foundation had worked tirelessly to help them get those pay scales approved and provided an explanation to the community about their significance. She expressed her appreciation to him for his help in that regard. She said that for all the many things he had done for them, she thanked him.

Mr. Andrews said that while Mr. Hewitt was stepping down from the Police Citizens Advisory Committee, he hoped there would be other ways in which he would continue to contribute to the community. He thanked him for all of his service.

Item No. 6.b. Proclamation Recognizing Pride Month

Proclamation Celebrating LGBTQ Pride Month

WHEREAS, Lesbian, Gay, Bisexual, and Transgender Pride Month (LGBT Pride Month) is celebrated annually in June to commemorate the catalyst event of the 1969 Stonewall riots and works to achieve equal justice and equal opportunity for lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) Americans; and

WHEREAS, on April 11, 2020, the Virginia Values Act was signed into law, making Virginia the first state in the South to protect LGBTQ people from discrimination in their daily lives, including discrimination in housing, public and private employment, public accommodations, and access to credit; and

WHEREAS, Albemarle County's stated mission is to enhance the well-being and quality of life for all citizens through the provision of the highest level of public service consistent with the prudent use of public funds; and

WHEREAS, the Board of Supervisors is committed to supporting through its actions and its partnerships the promotion of an equitable and inclusive Albemarle County that allows all members of our community to grow and thrive; and

WHEREAS, LGBTQ individuals have shaped, advanced, and enriched the fabric of Albemarle County and our nation by making immense contributions to all areas of life, including government, business, arts and sciences, medicine, law enforcement, technology, and the military.

NOW, THEREFORE, BE IT PROCLAIMED, that we, the Albemarle County Board of Supervisors, continue to affirm our commitment to our stated mission to enhance the well-being and quality of life of all the members of our community and recognize with pride the rich cultural diversity and contributions of lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) residents to the vibrancy of Albemarle County.

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Ms. Pruitt **moved** that the Board adopt the Proclamation Recognizing Pride Month and read the resolution aloud. Ms. LaPisto-Kirtley **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Mr. Nick Hutchins, President of Charlottesville Pride Network, thanked the Board for inviting him to accept the proclamation that day. He thanked the Board for recognizing Pride, which Virginia celebrated both in June and September, when a lot of cities in the Commonwealth had local festivals. He thanked the wonderful staff of the Albemarle County Office of Equity and Inclusion (OEI) for their support and partnership. He said that he also wanted to thank Mr. Pruitt for showing that being open about his identity was not only good for the soul but also allowed for better view of service to others through the wider aperture of human experience.

Mr. Hutchins thanked the Board for their dedication in creating a community that everyone can be proud of. He said that National Pride Month commemorated the anniversary of the uprising at Stonewall in 1969, was widely credited as the catalyst for the modern LGBTQ rights movement. He said that the first Pride was indeed a riot, a phrase commonly used among LGBTQ activists. He said that while he was not calling for a riot today, it was important to recognize their significance.

Mr. Hutchins said that in a speech given in 1968 amid a year of unrest that many had likened to the protests and student-led movements that have sprouted up across the country this year, Dr. Martin Luther King Jr. stated, "A riot is the language of the unheard." He said that Pride served as a megaphone announcement to demand that people hear them. He said that Pride was a rainbow strobe light aimed at eyes that turned away. He said that the Pride from 1969 until today declared that they were here. He said that this spirit, whether at a protest or at a festival, remained deeply ingrained within the context of Pride.

Mr. Hutchins acknowledged that they had been fortunate enough to celebrate more Pride festivals than Pride protests in recent years; however, they could not recognize their future without honoring the past, without honoring the brave people who grabbed a megaphone in the streets so that individuals like him could speak at a microphone in a government building. He expressed gratitude once again for this honor. He invited each attendee, and everyone present to attend their very own Charlottesville Pride Festival, which was scheduled for September 7 at the Ting Pavilion.

Ms. Mallek thanked Mr. Hutchins for all the work that he and other community members did, because all of their voices were needed across the spectrum to make their community the very best place it could be for everyone.

Ms. LaPisto-Kirtley thanked Mr. Hutchins for attending. She said that it was truly an honor to present this proclamation, because it was so important to ensure they included everyone. She said that the fact that Mr. Hutchins was here to accept this proclamation, read by Mr. Pruitt, was something they should be very proud of. She said that she would be in attendance at the festival this year.

Mr. Gallaway thanked Mr. Hutchins for being with them today. He said that the supervisors who had been here for a long time knew the history of this proclamation, and getting its way to not only have a vote but to a vote for the support that would be there. He said that he had made comments in the past to their staff regarding what it meant for the Board to stand behind that, but today he would like to focus on the young people in their school division who belonged to the LGBTQ community. He said that there was an environment nationally that was not the most accepting, especially for their trans children. He said that it should be recognized, and those students must know that the Board had their support as well.

Mr. Gallaway requested Mr. Brookins send this proclamation to the school division, specifically to school principals, to share with students and parents in this community, as long as the Board did not object to that. He said that he also wanted to recognize the great work of the Trevor Project, which he had come to know well, and if there were students out there feeling like they needed a place to go and did not have a person they felt comfortable reaching out to, they could visit [trevorproject.org](https://www.trevorproject.org) to connect with someone through text, phone call, or online chat for support. He requested that this resource be shared along with the proclamation.

Mr. Pruitt said that when celebrating Pride and Pride Day, he had to resist being a "doomer" and avoid talking about the threats manifesting on the horizon against the LGBTQ community. He said that his fiancé recently was watching a viral Tik Tok about the TV show King of Queens. He said that the show had been on until very recently, and people were now revisiting it and remarking on how homophobic the content of the show was. He said that he recalled growing up in rural Appalachian South Carolina and being terrified of the environment of his school, which was an acutely unsafe environment in many ways.

Mr. Pruitt said that they had a whole room full of kids present today whom he presumed did not feel that way for the most part, which was something worth recognizing. He said that it should be recognized that they had a whole generation of kids who did not feel that terror while growing up in a similar community. He said that there was a whole generation of kids who would see shows like King of Queens and would be confused by the outdated attitudes displayed on screen. He said that they had evolved away from homophobic sentiments very quickly, and that was a joyful development. He said that Pride was a celebration of blazing a new world.

Mr. Pruitt said that he and his fiancé were talking about a lot of wedding-related stuff, and with every part of it, they were creating an entirely new system. He said that they were talking about what to do about their last names and how to create their liturgies from scratch. He said that they were creating an entirely new system and future through love and acceptance. He said that some may view this as a combative development, but it was really a creative process, and people were so excited to see what the world looked like when they were driven by love and acceptance rather than being driven by hate.

Ms. McKeel said that she wanted to thank the school division for their willingness and acceptance of their children, and Mr. Gallaway's comments extended beyond that sentiment as well. She said that as the representative of Jefferson Area Board for Aging (JABA), she wanted to provide some statistics from the National Resource Center on LGBTQ Aging. She said that nationally, there were 3 million people identifying as LGBTQ over the age of 50. She said that these individuals were twice as likely to be single or living alone and 35% were likely to worry that they would need to hide their identity to access housing. She said that this was shocking.

Ms. McKeel said that 53% percent of them felt isolated from others. She said that this suggested that they should ensure, while going through all the ordinances and community events, that they focus on these issues because seniors were experiencing isolation, living alone, fewer family members to provide support, and those same feelings that seniors had, the LGBTQ community also experienced. She thanked Mr. Hutchins for bringing this forward and looked forward to September.

Mr. Andrews said that there was consensus from the Board to share this proclamation with the schools as well as the resources from the Trevor Project. He said that he appreciated the suggestions. He said that 1969 was over 50 years ago, and Virginia only made some legislative progress in 2020, so it had been a long time coming. He said that he hoped they were making progress, and while they could celebrate their diversity with proclamations, it was essential they move forward with actions as well. He thanked Mr. Hutchins for being present and representing the community.

Item No. 6.c. Proclamation Recognizing National Gun Violence Awareness Day

NATIONAL GUN VIOLENCE AWARENESS DAY

- WHEREAS,** every day, more than 120 Americans are killed by gun violence, alongside more than 200 who are shot and wounded, and on average, there are nearly 18,000 gun homicides every year, and Americans are 26 times more likely to die by gun homicide than people in other high-income countries; and
- WHEREAS,** Virginia has 1,121 gun deaths every year, with a rate of 12.8 deaths per 100,000 people, and has the 36th highest rate of gun deaths in the US, and localities across the nation, including Albemarle County, are working to end the senseless violence with evidence-based solutions; and
- WHEREAS,** protecting public safety in the communities they serve is the local government’s highest responsibility, and support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from people with dangerous histories. Local officials and law enforcement officers know their communities best and are the most familiar with local criminal activity and how to address it, and are best positioned to understand how to keep their citizens safe; and
- WHEREAS,** gun violence prevention is more important than ever as we see an increase in firearm homicides and nonfatal shootings across the country, increased calls to domestic violence hotlines, and an increase in gun violence; and
- WHEREAS,** anyone can join this campaign by pledging to wear orange on June 7th, the first Friday in June in 2024, to help raise awareness about gun violence. By wearing orange, Americans will raise awareness about gun violence, honor the lives of gun violence victims and survivors, renew our commitment to reduce gun violence, pledge to do all we can to keep firearms out of the wrong hands, and encourage responsible gun ownership to help keep our children safe.
- NOW, THEREFORE, BE IT PROCLAIMED,** that we, the Albemarle County Board of Supervisors, do hereby recognize the first Friday in June as National Gun Violence Awareness Day and encourage all residents to support their local communities’ efforts to prevent the tragic effects of gun violence and to honor and value human lives.

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Ms. Mallek **moved** that the Board adopt the Proclamation Recognizing National Gun Violence Awareness Day and read the resolution aloud. Mr. Pruitt **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Ms. Rachel Kessler Palm said that she was a volunteer with the Charlottesville/Albemarle Group of Moms Demand Action for Gun Sense in America. She thanked the Board for taking the time to recognize Wear Orange, which took place from June 7 through June 9 of this year. She said she was honored to be in the company she was in for today’s proclamations. She said that she would provide some information about Wear Orange. She said that it was an event that honored communities affected by gun violence. She said that every day, more than 120 people are shot and killed, and hundreds more were wounded and traumatized in the United States. She emphasized that this happened every day.

Ms. Palm reiterated that 120 people being shot and killed and hundreds more wounded and traumatized daily was unacceptable, especially considering the group present behind her. She said that as incidents of gun violence had increased, so has the energy surrounding the movement to end it. She said that she was proud to be part of this movement and their goal of building a future free from gun violence. She thanked the Board for their support.

Ms. Mallek thanked everyone present for their efforts in bringing this issue forward. She said that this helped them understand where they can do more to provide safety for their citizens of all ages, particularly addressing the emotional damage done by fear. She said that five years ago, someone entered this room with his weapon and many attendees left the room rather than give their public comment in the same room as that person. She said that this was an example of the kind of daily experience people had that increased their anxiety to a degree that led to other health issues as well. She said that she appreciated all the work of law enforcement, but she hoped that legislators would continue

to do their jobs as well. She thanked Ms. Kessler Palm for all of her work.

Ms. LaPisto-Kirtley said that perhaps this was the beginning of the nation realizing that there were too many guns, which were too easily accessible, and too many victims of violent crimes. She said that hopefully, there can be progress, and there may be a future where there are fewer guns. She said that she hoped there would be fewer killings and murders, as even innocent children had even killed each other with unsecured guns. She said that this was just the beginning, and she honored the victims who had suffered due to too many guns. She expressed her gratitude for the organization's support of responsible gun ownership. She said that very responsible ownership would be essential in helping to eliminate this problem.

Mr. Gallaway said that he appreciated that the resolution discussed ending senseless violence with evidence-based solutions. He said that the gun debate often led people to dig their heels in and argue, which did not help. He said that at the local level, they could make ordinances for their spaces but were usually not involved in the national debate. He said that their HART team (Human Services Alternative Response Team) was a good example of this approach. He said that if an organization or department within their jurisdiction was legally allowed to carry a gun and had the responsibility of how to discharge it when needed, they had an approach to policing in this County that said they would not go there first even if it was justified.

Mr. Gallaway said that all of the training and work required to get to that mentality led him to believe that this was hopeful. He said that it was similar to their school division where they had a socio-emotional learning approach. He said that they could not just put this on people with mental health issues, as it would be a gross misunderstanding of the issues. He said that they must question what was behind a human being getting into such a moment of crisis that they felt they had to reach for a weapon and inflict harm on others. He said that they must question what broke down before they got to that point.

Mr. Gallaway said that the things they could do in Social Services, the school division, and all of their departments when they interacted with community members, even if it was just lending an ear, could be years ahead of avoiding a situation that could turn out in a way that led to gun violence. He said that he did not mean to undervalue the gun debate or people's opinions on it, but they must stay committed to the things they did to help their community members get through when they needed it and be there for them, so they had a way to cope and did not feel that a different outcome was necessary.

Mr. Pruitt said that he wanted to echo some of the sentiments from the other Board members. He mentioned a powerful moment from an episode of West Wing that highlighted the culture war surrounding gun ownership. He said that a young conservative in the show pointed out that sometimes people hate the individuals who own guns rather than the guns themselves, which resonated with him.

Mr. Pruitt said that he appreciated Moms Demand Action for bringing nuance and energy to the conversation as an organization. He said that their advocates had been able to disentangle complex issues, which he found deeply impressive and commendable. He acknowledged that when discussing gun safety, there were policies that everyone agreed on if people would actually listen. He said that Moms Demand Action's work in getting people to listen because this was a crisis, a national epidemic under addressed by policy and those in positions of responsibility.

Mr. Pruitt said that he attended some of their meetings as well as others where they began by asking who has been impacted by gun violence or knows someone who had. He said that in their country, almost every hand would go up, regardless of age range, even among school children. He said that they lived in a country where ministers in progressive churches were taught what to do when someone enters with a gun during a service. He said that clearly, they were confronting a national epidemic. He thanked Ms. Kessler Palm for her work.

Ms. McKeel thanked Ms. Kessler Palm for being present. She said that their HARTS team served as a prime example of the efforts being made in the community to provide support for residents. She said that it was clear, and most people would concur, that the United States lacked safety nets for its citizens. She said that as a result, gun violence, poor mental health, and homelessness had become severe issues. She said that other countries did not face these problems because they provided safety nets for their citizens through elected representatives who believed in supporting communities.

Ms. McKeel said that she hoped they could start discussing these topics from different perspectives. She said that for example, the situation in public schools regarding how children were trained to deal with potential gun violence was concerning. She expressed caution when stating this occurred in public schools because, as everyone knew, not everything was the same across the country. She said that nonetheless, they needed to find ways to create safety nets for all the factors contributing to gun violence.

Mr. Andrews thanked Ms. Kessler Palm for being here. He acknowledged that this topic was not an easy one to discuss. He agreed with the comments made by his fellow supervisors and wished to see progress on this issue. He said that he recognized that there was more agreement among them than their current progress indicated. He said that it was essential to ensure that their voices were heard, and he appreciated Ms. Kessler Palm being here to help make that happen. He concurred that while the focus was on the numbers, further research should be conducted, and this matter should be treated as a public health issue. He said that the statistics included both self-harm and harm inflicted upon others. He thanked Ms. Kessler Palm for raising awareness about this topic.

Ms. Mallek said that much of their work was legislative, and she believed that legislature is all about building bridges. She mentioned that there was a lot of agreement on certain aspects. She said that for instance, she knew a 92-year-old retired soldier consistently discussing the need for training due to his personal experience with someone who purchased a weapon but did not know how to unload it after loading it. She said that the purchaser received a stern lecture from him about the importance of storing the weapon safely and getting lessons on its use and protection. She said that this highlighted significant gaps in training and management, which they could address and make progress on.

Agenda Item No. 7. From the Public: Matters on the Agenda but Not Listed for Public Hearing or on Matters Previously Considered by the Board or Matters that are Pending Before the Board.

Ms. Adrienne Eichner said that wanted to thank Paul Quillon for his service and expressed her sympathy about his father. She said that she would like to apologize for her attitude during the previous meeting. She said that it was not clear on the website, the Clerk's Office, through email, or through her phone call with the Chair as to how the meetings were run. She said that her anger had been misplaced as she began to understand the positive contributions made by those present. She said that she wanted to discuss the affordable housing voucher program, which had a 10-year waiting list. She asked why they continued to sign up people for such a lengthy waitlist when there were already individuals who had been granted housing.

Ms. Eichner said that only 15% of the Rio Point building would be designated as affordable housing, with only 49 out of 328 apartments priced at \$568 per month for five years. She emphasized that this was not sufficient. She noted that similar affordable housing projects, such as Section 8 on Monticello Road, had been discontinued without replacement, making the situation even more dire. She said that regarding UVA's purchase of residential homes in Albemarle County, she sought clarification on whether this was happening and expressed her concerns about the potential negative consequences for neighborhood safety.

Ms. Eichner said that lastly, she wanted to address the issue of Rivanna's uncleaned solid waste, which continued to emit a foul smell between Charlottesville and Keswick. She stated that it was advised to only eat one fish per month from any local waterway unless it was trout, and that the Ruritans had informed her that water was being bleached for consumption purposes.

Agenda Item No. 8. Consent Agenda.

Ms. McKeel **moved** to approve the consent agenda. Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Item No. 8.1. Proposed Revised Charge for the Solid Waste Alternatives Advisory Committee.

The Executive Summary forwarded to the Board states that the Solid Waste Alternatives Advisory Committee (SWAAC) was established by the Board of Supervisors at its March 9, 2016, meeting as a standing advisory committee. The SWAAC's charge is to develop sustainable materials management policies for consideration by the Board, with a focus on public education and engagement related to waste reduction, materials reuse, recycling and composting, greenhouse gas reduction, and waste disposal.

At the Board's February 21, 2024, meeting, the Board discussed a letter sent by the SWAAC Chair to Chair Andrews requesting the Board's concurrence to develop a revised charge, to better reflect the work of this public body. The Board concurred and requested that staff review the proposed charge draft and provide any feedback to the SWAAC as it finalized a draft. At its meeting April 11, 2024, the SWAAC reviewed and approved the draft committee charge statement (Attachment A).

The SWAAC seeks to revise the committee's charge as follows:

- Remove the requirement of conducting "thorough budgetary and impact analyses," given the voluntary nature of the committee and the lack of expertise in such analysis, instead maintaining a simpler requirement to provide "relevant analyses" in support of recommendations;
 - Limit greenhouse gas reduction considerations to emissions related to sustainable materials management;
 - Adjust the member requirements, including
 - replacing the requirement for a professional engineer with a requirement for a sustainability subject matter expert; and
 - adding one to two non-voting youth representatives, serving an eight-month term.
- These changes are based on an interest to diversify the perspectives on the committee and engage a younger pipeline of potential members.
- Broaden the scope of possible recommendations on programs;
 - Shift from a requirement of engagement of Rivanna Solid Waste Authority, City of Charlottesville, and Albemarle County Public Schools staff to intentional collaboration.
 - Expand the description of the departments that might provide staff support to the committee;

- Adjust the scope of staff support; and
- Provide a high-level summary of FOIA requirements

Staff recommends that the Board adopt the revised SWAAC charge (Attachment A).

By the above-recorded vote, the Board adopted the revised SWAAC charge (Attachment A):

Solid Waste Alternatives Advisory Committee

Revised (2024) Charge Statement, Goals, Membership, and Organization

Introduction

On October 7, 2015, the Albemarle County Long Range Solid Waste Solutions Advisory Committee – a temporary body appointed by the Board of Supervisors (Board) to identify best practices for the management of solid waste in Albemarle County – submitted its final report to the Board. The report included a recommendation for the creation of a standing committee to advise the Board and a dedicated staff person to support the committee's work.

On March 9, 2016, the Board established the Solid Waste Alternatives Advisory Committee (Committee) and approved an initial charge statement. This revised charge reflects current thinking by Board representatives and County staff on expectations of the Committee and available County resources based on the committee's several years of service.

Charge

The Albemarle County Solid Waste Alternatives Advisory Committee (SWAAC) is a standing advisory committee to the Albemarle County Board of Supervisors. The establishment of this Committee is consistent with the County's Comprehensive Plan, the organizational vision of Albemarle County, and the Regional Solid Waste Management Plan facilitated by the Thomas Jefferson Planning District Commission. The Committee will provide general information to the Board in a semi-annual update, including a summary of sustainable materials management (SMM) issues being considered by the Committee and a rolling, six-month work plan. The Committee may provide review and input on actions proposed by the County that contain a solid waste/ SMM component, will submit specific policy recommendations to the Board as they are developed, and will support recommendations with relevant analyses of the recommended policy implementation. Policy development will focus on longer range planning that considers the role of climate change actions, including greenhouse gas reductions; public education strategies for SMM activities that are current or are planned for future implementation; equitable access to SMM services in the County; evaluation of regional opportunities for programs; and recommending metrics for use in evaluating and validating the effectiveness of SMM activities and programs.

Topics for consideration by the Committee include:

- public education and outreach
- materials reuse
- waste disposal
- waste and litter reduction
- recycling and composting
- greenhouse gas reduction as it relates to SMM
- Ivy MUC waste collection and transfer operations (master planning and recycling plan)
- compliance with state reporting requirements
- information needs to support long-term planning and climate action plan

As and when appropriate, the Committee may develop recommendations for additional programs and services.

Membership

The Committee will consist of up to 12 voting members appointed by the Board of Supervisors with appropriate background, experience, and interest in furthering sustainable materials management in Albemarle County and the region. Appointments will be based on Board and staff recommendations, nominations from community and business groups, and individual applications. Members will be added to this Committee through the normal Board appointment process.

Length of Term: Appointments will be for four-year terms with a maximum duration of service limited to eight years. The voting members of the Committee will include at least the following representation:

- one or more - sustainability subject matter expert(s)
- one or more - technical expert(s) in any solid waste management-related field

- one or more – representative(s) with public policy interest/experience
- at least four - Albemarle County residents
- at least two - local business community members

The Board of Supervisors will appoint the Board member serving on the RSWA Board of Directors and one other member of the Board of Supervisors to serve as liaisons to the Committee.

The Board of Supervisors will also appoint one non-voting youth representative to serve a minimum of eight months.

In addition, the Committee will seek active collaboration with representatives of local partner agencies with shared missions, including (but not limited to) the Rivanna Solid Waste Authority, the University of Virginia, the City of Charlottesville, and the Thomas Jefferson Planning District Commission. The County's Department of Facilities & Environmental Services (or its equivalent successor) will provide staff support to the Committee, including:

- communicating with the Clerk of the Board of Supervisors about changes in Committee membership
- reserving meeting rooms and securing any necessary equipment (projector, phone)
- developing and maintaining a website specific to the Committee to facilitate information to share and document Committee agendas, decisions, and recommendations
- working with officers to develop and revise work plans and set meeting agendas
- as time and resources are available, researching issues, preparing materials, and communicating with others to inform Committee discussions and implement Board-approved recommendations
- informing, supporting, and ensuring the Committee's compliance with the Virginia Freedom of Information Act.

Organization

The Committee will elect a Chair, a Vice-chair, and a Secretary for one-year terms. Meetings will be held approximately once per month or as otherwise agreed to by the Committee, with the date and time of the meetings kept relatively constant. Additional meetings may be called by the Chair. All SWAAC Committee meeting dates and times will be publicized. All meetings will be open work sessions, where the general public is invited to attend to listen and observe only, unless public participation is deemed appropriate by the Chair. No quorum is necessary to discuss business that is before the Committee, but no vote or action may be taken unless a quorum is present. A majority of the voting members of the Committee constitutes a quorum. Decisions will be made, if possible, by an indication of general consensus among the Committee members present. Staff will not participate as decision makers. When this method does not serve to establish a clear direction, the Chair will call for a roll-call vote. When an agreement cannot be achieved on an issue, business will proceed and the Secretary will document and present minority positions for the Board of Supervisors' consideration. Facilitation will be provided in those instances when it is considered beneficial in helping the Committee achieve its stated purposes.

FOIA

Among other requirements, the Virginia Freedom of Information Act requires that public bodies (including SWAAC):

- give at least three working days' notice prior to meetings,
- make proposed agendas, packets, and meeting materials available for public inspection,
- hold open public meetings (unless properly exempted as closed), and
- take minutes at all open meetings.

See *Virginia Code* § 2.2-3707 for additional details and requirements.

Item No. 8.2. Resolution of Intent to Address Clean Earth Fill and Inert Waste Activities.

The Executive Summary forwarded to the Board states that when the Board approved the current fill and waste regulations on September 16, 2020, it requested a review of the impact of those regulations once they were implemented. On November 15, 2023, staff provided a clean earth fill and inert waste program update to the Board (Attachment A). This update included information about applications and complaints received to date, as well as suggestions for ordinance amendments resulting from input received. Of the three options provided, the Board endorsed having staff engage with interested parties and generate recommendations for modifications to the regulations. The Board consensus included maintaining environmental, health, and other protections within the existing regulations, such as prevention of ponding for mosquito breeding, and control against contaminants.

Staff developed an engagement process (Attachment B), which identifies a broad list of external and internal customers, agencies, and jurisdictions, and proposes multiple opportunities for input at

different times in the ordinance amendment process. Staff will return to the Board in a work session with the framework of revised regulations, prior to public hearings.

Staff will assess budgetary impacts and bring them forward with any future zoning ordinance amendment(s).

Staff recommends that the Board adopt the Resolution of Intent, provided as Attachment C.

By the above-recorded vote, the Board adopted the Resolution of Intent (Attachment C):

**RESOLUTION OF INTENT
ZONING TEXT AMENDMENT
CLEAN EARTH FILL AND INERT WASTE ACTIVITIES**

WHEREAS, pursuant to Albemarle County Code § 18-4.3.1, fill and waste areas are permitted in all zoning districts, subject to the regulations of Albemarle County Code § 18-5.1.28; and

WHEREAS, fill and waste activities may facilitate agriculture; and

WHEREAS, the disposal of fill and waste is necessary to accommodate development in the County; and

WHEREAS, the use of rural land for fill and waste areas may be inconsistent with the Comprehensive Plan; and

WHEREAS, the placement of fill and waste may cause increased traffic on rural roads that may be inadequate to accommodate increased traffic; and

WHEREAS, it is desired to review and amend Albemarle County Code § 18-4.3.1, § 18-5.1.28, and other appropriate sections to address impacts and administration of clean earth fill and inert waste activities.

NOW, THEREFORE, BE IT RESOLVED that for purposes of public necessity, convenience, general welfare, and good zoning and development practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending Albemarle County Code § 18-4.3.1, § 18-5.1.28, and any other relevant section(s) of the Zoning Ordinance deemed appropriate to achieve the purposes described herein.

Item No. 8.3. Secondary Six-Year Plan Hard-Surfacing Rural Roads Resolutions.

The Executive Summary forwarded to the Board states that Each spring, the Board of Supervisors approves the Secondary Six-Year Plan (SSYP), which includes funds dedicated to paving unpaved roads in the County under the Rural Rustic Road (RRR) paving program. This program is the preferred approach of both Albemarle County and the Virginia Department of Transportation (VDOT) for paving low-volume roads. The goal of the SSYP is to retain the traditional rural lane ambience, while also improving the road surface within the current right-of-way. A 'chip and seal' or asphalt surface is used to pave the existing alignment and width of the road for minimal disturbance.

The process for identifying and prioritizing RRR paving projects in Albemarle is defined in the Unpaved Road Policies and Review Process (Attachment A). When a paving priority is advanced, funds are allocated to the road and the road becomes a project in the SSYP following the spring public hearing. Adjacent landowners are notified by letter and given an opportunity to comment at the spring public hearing or to County Community Development Transportation staff. Following that, the Board may choose to designate the road as an RRR by Resolution. Once a road is designated, VDOT initiates the paving process.

Following the Board's direction at the May 18, 2022 public hearing, projects now require two-thirds (2/3) support from directly impacted homeowners along the segment of road to be paved. Starting in January 2024, residents were notified by mail of the potential projects on their roads and asked to provide feedback either by email, phone, or in person. For projects that already had demonstrated two-thirds support, impacted homeowners were simply notified and given the opportunity to provide feedback. For projects that still required the two-thirds support, impacted homeowners were directed to reach out to staff to voice their support for, or opposition to, the proposed paving.

The following road segments are fully-funded for RRR paving in FY 25, if designated as Rural Rustic Roads by the Board of Supervisors:

-- The 0.24-mile segment of Route 805, Henderson Lane, from Route 29 to the end of the road. (Attachment B)

-- A 1.62-mile segment of Route 713, Glendower Road, from 0.35 miles north of Route 712 to 1.97 miles north of Route 712, and a 1.33-mile segment of Route 713, Glendower Road, from 0.07 miles east of Route 20 to 1.40 miles east of Route 20. (Attachment C)

Before paving these roads under the RRR program, VDOT requires that the governing body

adopt a resolution designating the roads as Rural Rustic Roads.

Notification letters were sent to affected homeowners following the April 5 Work Session. Not all the roads received either two-thirds support or one-third opposition from impacted homeowners, as detailed below. Henderson Lane and Glendower Road were the two roads that successfully met the two-thirds support threshold.

Road	% Supported	# Supported	# Opposed	# No Response	Affected Owners
Rte. 805 Henderson Lane	100	9	0	0	9
Rte. 713 Glendower Road	68	15	5	2	22
Rte. 707 Blair Park Road	60	3	0	2	5
Rte. 856 Burton Lane	25	4	0	12	16
Rte. 711 Burton Road	40	2	0	3	5
Rte. 813 Starlight Road	60	3	0	2	5

Adoption of these resolutions would have no impact on the County budget. These resolutions would authorize VDOT to expend state funds on a project for which the Board has previously recommended state funds be allocated through the SSYP.

Staff recommends the Board adopt the attached resolutions (Attachments B and C) to designate the segments of Henderson Lane and Glendower Road specified above as Rural Rustic Roads.

By the above-recorded vote, the Board adopted the attached resolutions (Attachments B and C) to designate the segments of Henderson Lane and Glendower Road specified above as Rural Rustic Roads:

**RESOLUTION TO DESIGNATE ROUTE 805, HENDERSON LANE,
AS A RURAL RUSTIC ROAD**

WHEREAS, Virginia Code § 33.2-332 permits the hard-surfacing of certain unpaved roads deemed to qualify for designation as Rural Rustic Roads; and

WHEREAS, any such road must be located in a low-density development area and have no more than 1,500 vehicles per day; and

WHEREAS, the Board of Supervisors of Albemarle County, Virginia desires to consider whether the 0.24-mile segment of Route 805, Henderson Lane, west of Route 29, should be designated a Rural Rustic Road; and

WHEREAS, the Board is unaware of any pending development that will significantly affect the existing traffic on this road; and

WHEREAS, the Board believes that this road should be so designated due to its qualifying characteristics; and

WHEREAS, this road is in the Board’s six-year plan for improvements to the secondary system of state highways.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby designates the 0.24-mile segment of Route 805, Henderson Lane, west of Route 29, a Rural Rustic Road, and requests that the Resident Engineer for the Virginia Department of Transportation concur in this designation; and

BE IT FURTHER RESOLVED, the Board requests that the 0.24-mile segment of Route 805, Henderson Lane, west of Route 29, be hard-surfaced and, to the fullest extent prudent, be improved within the existing right-of-way and ditch-lines to preserve as much as possible the adjacent trees, vegetation, side slopes, and rural rustic character along the road in their current state; and

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

* * * * *

**RESOLUTION TO DESIGNATE ROUTE 713, GLENDOWER ROAD,
AS A RURAL RUSTIC ROAD**

WHEREAS, Virginia Code § 33.2-332 permits the hard-surfacing of certain unpaved roads deemed to qualify for designation as Rural Rustic Roads; and

WHEREAS, any such road must be located in a low-density development area and have no more than 1,500 vehicles per day; and

WHEREAS, the Board of Supervisors of Albemarle County, Virginia desires to consider whether a 1.62-mile segment of Route 713, Glendower Road, from 0.35 miles north of Route 712 to 1.97 miles north of Route 712, and a 1.33-mile segment of Route 713, Glendower Road, from 0.07 miles east of Route 20 to 1.40 miles east of Route 20, should be designated a Rural Rustic Road; and

WHEREAS, the Board is unaware of any pending development that will significantly affect the existing traffic on this road; and

WHEREAS, the Board believes that this road should be so designated due to its qualifying characteristics; and

WHEREAS, this road is in the Board's six-year plan for improvements to the secondary system of state highways.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle County Board of Supervisors hereby designates two segments of Route 713, Glendower Road: (i) a 1.62-mile segment, from 0.35 miles north of Route 712 to 1.97 miles north of Route 712, and (ii) a 1.33-mile segment, from 0.07 miles east of Route 20 to 1.40 miles east of Route 20, as a Rural Rustic Road, and requests that the Resident Engineer for the Virginia Department of Transportation concur in this designation; and

BE IT FURTHER RESOLVED, the Board requests that two segments of Route 713, Glendower Road (i) a 1.62-mile segment, from 0.35 miles north of Route 712 to 1.97 miles north of Route 712, and (ii) a 1.33-mile segment, from 0.07 miles east of Route 20 to 1.40 miles east of Route 20, be hard-surfaced and, to the fullest extent prudent, be improved within the existing right-of-way and ditch-lines to preserve as much as possible the adjacent trees, vegetation, side slopes, and rural rustic character along the road in their current state; and

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

Agenda Item No. 9. **Action Item:** SE202400005 320 Home Port Lane Homestay.

The Executive Summary forwarded to the Board states that the applicants are requesting a special exception for a homestay at 320 Home Port Lane.

Accessory Structure. Pursuant to County Code § 18-5.1.48(d), the applicants are requesting authorization under County Code § 18-5.1.48(c)(2)(ii) to use an accessory structure built after August 7, 2019 for a homestay use on a parcel of five acres or more in the Rural Areas zoning district.

Please see Attachment A for full details of staff's analysis and recommendations.

Staff recommends that the Board adopt the attached Resolution (Attachment F) to approve the proposed special exception to authorize the use of an accessory structure built after August 7, 2019 for a homestay use at 320 Home Port Lane.

Ms. Lea Brumfield, Senior Planner II in the Department of Community Development, said that this special exception pertained to an accessory structure at 320 Home Port Lane, which sought permission for use as a homestay. She said that the parcel size was 6.93 acres and was zoned Rural Areas (RA) within the Samuel Miller District. She said that the property contained a single-family dwelling built around 1908, along with multiple outbuildings such as a large shed, a greenhouse, and smaller outbuildings. She said that the parcel had three development rights, one of which was being used for the existing single-family dwelling, while two remained unused. She explained that by right, the 6.93-acre property could rent up to five guest sleeping spaces within a single-family dwelling or an already existing accessory structure.

Ms. Brumfield said that the applicants were requesting permission for a homestay in an accessory structure built after August 7, 2019. She said that since the owners resided on the parcel and it met setback requirements, the use itself was permitted by right. She stated that the only exception required was for the new structure. She said that if the special exception were approved, the owners would then apply for a homestay zoning clearance. She said that during this process, the structure used for the homestay would undergo inspections for building and fire safety.

Ms. Brumfield said that additionally, the owners would notify their neighbors by providing them with the contact information of their responsible agent, who could be contacted in case of any disturbances or emergencies related to the homestay. She said that the property was currently in compliance with all zoning and taxation requirements. She said that due to construction concerns, the applicants had already applied for a building permit for a 1,000-square-foot, two-bedroom accessory structure. She said that the permit came in during March, and construction had commenced following the building permit approval.

Ms. Brumfield explained that if the special exception was not approved, the structure could not be used for the homestay, and they agreed to still use it for their own personal use. She stated that the applicants confirmed that the structure was being built to meet homestay setbacks. She said that the presented view of the house from the front showed the single-family dwelling on the left, while the location of the homestay structure currently under construction was to the right behind the work truck in view. She said that the photo taken from the top of the hill, looking down at the accessory structure proposed for the homestay use, displayed the foundation being laid.

Ms. Brumfield said that the photo was taken from near the property boundary, and looked back towards the single-family dwelling, which was located behind all the trees. She said that the next photo was taken from behind the structure's construction site, showing the vegetative screening between the site and the nearest neighboring parcel. She said that the fill shown in the picture was still construction fill, which would primarily be used to backfill the foundation when it was completed. She said that the vegetation used was a mix of deciduous and evergreen trees.

Ms. Brumfield said that also, Code Compliance Officer Matt Chow measured the distance of the foundation at well over the 25-foot required setbacks for homestays. She said that to summarize this application, the request was for an accessory structure built after August 7, 2019, to be used as a homestay. She said that the parcel was 6.93 acres in size and retained two unused development rights, which may be used to build additional residences or to subdivide the parcel in future. She said that since this request is for use of an accessory structure, the development rights remained unaffected by this request.

Ms. Brumfield explained that the accessory structure itself was a by-right construction, which is why they are permitted to build it as of now. She said that had it been built before August 7, 2019, the structure would have been permitted to be used as a homestay, also by right. She said that as such, looking at the use of the structure built after August 7, 2019, staff did not believe there would be any impacts to the surrounding neighborhood, general public health, safety, or welfare. She said that the homestay use itself was a by-right accessory use to the primary dwelling on the parcel and was therefore considered consistent with the comprehensive plan.

Ms. Brumfield said that due to the size of the parcel and the proposed size of the structure, with a footprint of about 500 square feet, the structure proposed was consistent with the structures in the surrounding neighborhood. She stated that, due to the nature of special exceptions, which ran with the land, they were looking at this use based on the property itself and the greater context of the neighborhood, not the individual landowners. She said that therefore, staff recommended the provided motion on the slide to adopt the resolution.

Ms. Mallek asked if the existing structures on the property could be renovated and utilized as a homestay rather than the newly built structure.

Ms. Brumfield said that there was nothing included in the ordinance about renovating existing structures, and in this particular situation, the existing structures were unsuitable for homestay use.

Ms. LaPisto-Kirtley asked if the new building would not be considered a residence because it lacked a kitchen.

Ms. Brumfield said that a certificate of occupancy would allow residents to stay there, but it was not a dwelling because it did not have a kitchen. She said that the building code was a separate issue.

Mr. Pruitt said that he understood the accessory structure would not have a kitchen in order to retain the development rights, but he would like to know if the accessory dwelling would have toilets.

Ms. Brumfield replied that yes, it would.

Mr. Andrews **moved** to adopt the attached Resolution (Attachment F) to approve the proposed Special Exception SE202400005 320 Home Port Lane. Ms. Mallek **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

**RESOLUTION TO APPROVE SE2024-00005
320 HOME PORT LANE HOMESTAY**

WHEREAS, upon consideration of the Memorandum prepared in conjunction with the SE2024-00005 320 Home Port Lane Homestay application and the attachments thereto, including staff's supporting analysis, any comments received, and all of the relevant factors in Albemarle County Code §§ 18-5.1.48 and 18-33.9, the Albemarle County Board of Supervisors hereby finds that in this case, the applicable requirement would not forward the purposes of the Zoning Ordinance or otherwise serve the public health, safety, or welfare, and that the requested special exception:

- (i) would not cause adverse impacts to the surrounding neighborhood;
- (ii) would not cause adverse impacts to the public health, safety, or welfare;

- (iii) would be consistent with the Comprehensive Plan and any applicable master or small-area plan(s); and
- (iv) would be consistent in size and scale with the surrounding neighborhood.

NOW, THEREFORE, BE IT RESOLVED, that in association with the 320 Home Port Lane Homestay, the Albemarle County Board of Supervisors hereby approves a special exception to authorize the use of an accessory structure built after August 7, 2019 for a homestay use on Parcel 05700-00-00-03900.

Agenda Item No. 10. **Action Item:** Recommendations for the Affordable Housing Investment Fund.

The Executive Summary forwarded to the Board states that, since Fiscal Year 2019, Albemarle County has maintained a Housing Fund to support housing initiatives that further the County's strategic and housing goals, which were adopted by the Board on July 7, 2021.

In October 2016, Albemarle County and Habitat for Humanity of Greater Charlottesville entered into a public-private partnership for the redevelopment of the Southwood Mobile Home Village. Since that time, the County has invested more than \$9 million in the redevelopment project, including \$1,050,000 in Community Development Block Grant funds, \$675,000 to support the rezoning application, \$3,200,000 in county revenue and property tax rebates through the 2019 Performance Agreement, and \$1,500,000 to support the long-term (30-year) affordability of 14 units of affordable housing.

During the FY 2025 non-profit funding application process, Habitat submitted a request for \$1.49 million Capital Improvement Program funding for the Southwood Phase II Redevelopment: Sewer/Septic Improvement project (Attachment A).

On February 28, 2024, the U.S. Department of Housing and Urban Development (HUD) released a Notice of Funding Availability entitled the Preservation and Reinvestment Initiative for Community Enhancement (PRICE) Competition. Habitat is actively pursuing grant funding of up to \$54 million through the grants two funding streams. One of the funding streams, the PRICE Replacement Pilot, requires a match of non-federal funds equal to at least 50 percent of the grant award. Habitat is seeking \$10 million under the PRICE Replacement Pilot grant.

On May 10, 2024, Habitat submitted a written request for a portion of those matching funds. The request includes utilizing the recommended \$1.4 million of the CIP request, and an additional \$1.5 million from the Housing Fund Reserve for the required funding match (Attachment B).

After reviewing both funding requests, and based on discussions with the Office of Finance and Budget, staff recommends funding both requests through the FY 2025 Affordable Housing Investment Fund balance in the following amounts:

1. Southwood Phase II: Sewer/Septic Improvement project: \$1,400,000
2. PRICE Replacement Pilot: \$1,100,000

Approval of these funds will provide Habitat with \$2,500,000 in confirmed matching grant funds for the HUD PRICE Replacement Pilot grant application. Disbursement of \$1.1 million dollar match funding will be contingent upon Habitat being awarded grant funding.

If approved, the Affordable Housing Investment Fund balance will be reduced by a total of \$2,500,000 from the unprogrammed fund balance of \$2,593,910. If approved, the Affordable Housing Investment Fund would have an available balance of \$93,910 that can be used to support other housing projects. Approval of the allocation of these funds is contingent upon subsequent Board approval of the related appropriation also on the June 5, 2024, agenda.

Staff recommends that the Board approve the funding requests from Habitat for Humanity of Greater Charlottesville.

Ms. Stacy Pethia, Assistant Director of Housing, said that she would be presenting recommendations for the Affordable Housing Investment Fund. She said that to avoid confusion with the Housing Assistance Fund, staff renamed the Housing Fund Reserve to the Affordable Housing Investment Fund, AHIF for short. She said that the request came from Habitat for Humanity of Greater Charlottesville and pertained to the Southwood Project Phase 2.

Ms. Pethia said that the proposal consisted of two parts: one was for a septic-to-sewer project, and the other was for matching grant funds for a U.S. Department of Housing and Urban Development (HUD) grant application. She said that the funding range covered a wide spectrum of housing needs but specifically targeted 60% to 80% AMI (Area Median Income) categories for affordable homeownership or rental housing. She said that in Fiscal Year 2023, Habitat submitted an application for the non-profit capital improvement program grant awards in the amount of \$1.49 million. She said that the request was to use the funds to remove the remaining 50 septic tanks within Southwood Phase 2 and replace them with semi-permanent water and sewer lines. She said that it was not recommended for funding back in 2023 due to insufficient funds in the housing fund (AHIF). She said that staff now recommended funding \$1.4 million of the request, considering the balance of the housing fund. She said that additionally, staff

recommended expanding the use of these funds to include site remediation and construction of affordable housing.

Ms. Pethia said that in terms of the grant matching funds, Habitat was applying for a grant through the HUD. She said that they were seeking approximately \$47.6 million in grant funding to cover a wide variety of activities in the park. She said that there were really two main funding tracks to that: the Preservation Reinvestment Initiative for Community Enhancement (PRICE) grant and the replacement pilot grant. She said that the PRICE grant covered the preservation or revitalization of mobile home communities, while the replacement pilot grant worked to replace aging manufactured mobile homes with new affordable housing.

Ms. Pethia said that the total grant requests would be \$47.6 million. She said that the main PRICE grant did not require a match, but it was highly recommended. She said that they were seeking funding for the replacement pilot grant track, which staff recommended allocating \$1.1 million out of their \$1.5 million request. She said that both requests aligned with several County policies and the Strategic Plan, such as the goal of quality of life in promoting a vibrant community with economic and recreational opportunities that serve all community members. She said that they also aligned with objectives in Housing Albemarle related to preservation and expansion of communities and affordable housing.

Ms. Pethia said that staff recommended fully funding both requests at the amount requested. She said that the final disbursement of funds would depend on the approval of the appropriations that staff would bring back later that evening. She said that disbursement of the \$1.1 million in matching funds would only occur if the HUD grant was awarded to Habitat; otherwise, those funds would remain in the housing fund for future use.

Ms. Mallek said she was confused because she thought the funding was not going to be contingent upon another grant. She said perhaps she was conflating the two different policies but that she thought the intent was to keep the work moving and that was why they were accelerating the funding so they did not have to wait another year.

Ms. Pethia said that the \$1.4 million that staff was recommending so they could do the septic and sewer project, site remediation, and home construction would be awarded no matter what, grant or no grant. She said it was the \$1.1 million in matching funds that would only be awarded if the grant was given.

Ms. Mallek said that money would be useful to them regardless of if they receive the grant since there was certainly a need. She said that was not the current proposal but perhaps something the Board could change, if they wanted to. She said she would be in favor of this change.

Ms. Mallek said in the staff report it read that the County had provided \$9 million. She asked if Ms. Pethia could identify where the cash was and what had been delivered to date because she thought it was something less than that.

Ms. Pethia said yes, \$9 million was the total amount of funding from a variety of funding including funds from the County, property tax rebates, CDBG (Community Development Block Grant), and other grants they have received that the County has had to apply for. She said they count all of that as County funding because by using those funds and grants for Southwood, they are not able to use them for other County projects.

Ms. Mallek asked the Board to remember and consider that five or so years previous, the County and the Board were all-in on supporting these 400+ families who have lived here for decades. She asked them to keep that in mind and accelerate the dollars so they could keep the heavy equipment moving, the permits active, and not make these people wait even longer.

Ms. LaPisto-Kirtley asked for clarification regarding the "semi-sewer and water."

Ms. Pethia said that there would be a combination of permanent sewer lines and semi-permanent sewer lines. She said that this was because the objective was to serve families who had not yet moved to new housing. She said that they needed to reside in those trailers for the subsequent seven to ten years until new housing was constructed for them. She said that they could not continue living on failing septic systems. She said that when the future villages were built, the semi-permanent lines would be replaced; however, they lasted for a considerable time, so if they did not require relocation and replacement, they could remain in place.

Ms. LaPisto-Kirtley clarified that while the \$1.4 million would be used for the septic and sewer project, site remediation, and construction and that the \$1.1 million would only be funded if Habitat was awarded the grant from HUD.

Ms. Pethia said that was correct. She said that the funds would be put back in the housing fund for future use, and Habitat could request funding assistance later on. She said that the request was very specific for the grant matching funds.

Mr. Gallaway said that he would appreciate it if the details of the \$9 million in total funding be provided in the future so that they would be kept aware of all components. He asked if the \$1.1 million in matching funds would be used for other types of work than the sewer project.

Ms. Pethia said that it would be used for both the sewer project and other work on the site.

Mr. Gallaway asked what the plan would be when other requests from the housing fund came in the future.

Ms. Pethia said that they would examine each request separately, and if they could provide any assistance, staff would return to the Board with their recommendations.

Mr. Galaway said he had some concerns, but he was not sure they were relevant to the vote that day. He said he was sure there was shared disappointment about how much the Board was able to put into the housing fund, now being called the Housing Investment Fund. He said now that the incentives program is out, there is a tool that could help them with this, so it is not all on housing staff. He said most of the Board members voted on this when they voted on Housing Albemarle. He said he was referring to the trust fund and the structure that was supposed to go around that. He said if they had that, it would be more in alignment with how they deal with Economic Development projects, where they have all of the analysis behind a project and how it ranks against other projects before they fund them.

Mr. Gallaway expressed concern that the proposals they had received were focusing on immediate needs without there being a way to view the long-term solutions for housing. He said they do not do Economic Development projects that way. He said fulfilling this request would deplete almost the entirety of the housing fund. He said that they must find a different process of analysis in understanding how to carefully invest in affordable housing in the future so that there was not so much pressure with specific requests.

Mr. Gallaway said that otherwise, they would be making these kinds of decisions without comparative or data-driven evidence that suggested that the return would be proper. He said that he was committed to this project; however, he had concerns about making it contingent on the matching funds. He said he agreed with Ms. Mallek that they needed consistency to keep things moving at the best pace. He said that he wondered if it was a wise approach to be utilizing staff time for these types of requests for matching funds, especially if they might come back later just to make the request for funding again and use more staff time on a similar request that wasn't based on

Mr. Pruitt said that he appreciated the point about the County being the but-for cause of the \$9 million funds; however, CDBG monies were different from AHIF. He said that he would like a breakdown of both types of funds because it influenced how they thought about disbursements. He agreed with Mr. Gallaway that there should be a transition toward a more formalized process to avoid one-off situations such as this. He said that it would also be easier when dealing with larger pools of money and looking at other compelling projects.

Mr. Pruitt noted that Habitat's issue was not a lack of funds but the timing of their availability. He said that delays caused significant problems as they moved people into new homes and repaired existing ones. He expressed uncertainty about making this grant contingent because everyone had an appetite for dispersing this money. He said that when they were putting money into the housing fund and determining its amount, he expected then that it would mostly go toward Habitat's needs and obligations in the next year.

Mr. Pruitt said that they all went in with that expectation and understood their specific set of needs. He said that therefore, he was not sure if a contingency requirement would serve their partnership well. He said that if they disagreed with his stance or had alternative program projects requiring schedule changes, he would welcome those comments. He said that comparative projects were difficult due to the lack of a good metric for them. He said that however, he would briefly discuss federal program management and evaluation.

Mr. Pruitt said that when learning about federal program evaluation in an MPA (Master of Policy Management) program, one key factor that stood out was the leverage rate, meaning how many dollars spent versus how many returned. He said that his research focused on the Appalachian Regional Commission, which had a normal grant-making project leverage rate of four to one, considered good for federal dollars. He said that the impact, when discussing the housing trust fund, predicted a ten to one leverage rate, which was ambitious but potentially achievable. He said that Premier Circle achieved an eight to one leverage rate, which was very good.

Mr. Pruitt said that Southwood currently had a 15 to one leverage rate, which was almost unachievable in other projects. He suggested that while there was not a comparative breakdown of project ratings, Southwood was a good dollar spent compared to others due to its strong brand ID, diversified revenue streams, and unique grant eligibility. He said that this resulted in a high return on investment for every dollar spent. He asked if there were scheduled that needed to be changed in terms of how the Housing Trust Fund would be planned for disbursements over the next year.

Ms. Pethia said no, it would come down to how they write the agreement.

Ms. McKeel said that she agreed that this process must be more strategic in its outlook as they moved forward. She said that the goal was to maximize the impact of their budget on affordable housing across all projects. She said that establishing metrics would be beneficial for clarity. She said that they were currently in June 2024, discussing the remaining funds in their housing budget for the upcoming cycle starting July 1. She said that with limited resources, they must recognize that their goals for housing next year would depend on this budget. She said that she wanted to remind everyone that the next

budget cycle might be more challenging than the previous one due to existing Board commitments.

Ms. McKeel said that their commitments would affect the upcoming budget cycle, making it even more crucial to focus on strategic actions and prioritize efforts in affordable housing. She suggested obtaining a different perspective might be beneficial. She concurred with determining how much money had been spent on Southwood could be perplexing since they often questioned where the current investments stood. She said that it would be advantageous to present this information each time they addressed these matters. She said that a significant amount of funds had been allocated for in-kind services which were not accurately accounted for.

Ms. McKeel said that she was not requesting an accounting of those services; rather, she wished to remind everyone that over the years, while working on the Southwood project, staff members had provided numerous in-kind services deserving recognition. She noted that Ms. Pethia mentioned a few times that this was what they had the funding to afford. She said that she wondered where they would get additional funding if they were to adjust any parameters. She asked what they were not funding in order to do this project.

Ms. Pethia it could be any number of things not funded. She said that they had not partnered with AHIP for a while, so that would involve housing rehabilitation projects remaining unfunded. She said that she knew there were some rental housing projects upcoming. She said that one of those was with Piedmont Housing Alliance and their partnership with the University of Virginia and their Affordable Housing Initiative. She said that those were two things that came to mind. She said that considering the balance of the housing fund, they did not want to leave it entirely empty for potential emergencies or unexpected situations in affordable housing units or apartment buildings that required immediate attention. She said that therefore, they determined allocating \$2.5 million from the fund to this project was appropriate and feasible.

Ms. McKeel asked if Mr. Richardson had anything he would like to add regarding this matter.

Mr. Richardson said that Ms. Dimock and her team had indicated to him that it was time to spend some time with the Board, separate from today, discussing a broader topic about affordable housing and their investments. He said that Habitat was a significant partner with Albemarle County, and they had been for most of the time he had been here with Albemarle County government, which was approaching seven years. He said that Ms. Dimock had indicated that they should spend some time with the Board, probably later this summer, broadening the discussion about where they had been and what they had been doing and talking more broadly.

Mr. Richardson said that this would be as they moved into their early fall discussions about capital programs and as they began to plan for Fiscal Year 26. He said that Mr. Jacob Sumner had also been a part of those discussions, and the staff was aware of what the Board had talked about in the past regarding dedicated funding and significant ongoing funding for affordable housing. He said that staff was aware of the Board's interest there and Ms. Dimock did an excellent job bringing this to the broader staff's awareness as well.

Mr. Richardson said that regarding the tieback to the matching grant, he would like to remind the Board that several years ago, the Board challenged the staff to look where local dollars could leverage money from outside of Albemarle County and make that a point of emphasis. He said that this had been done across various departments, most notably with community development and infrastructure grants for transit. He said that the discussion was meant to be a placeholder for a more in-depth conversation later this summer, likely after July 17, 2024.

Ms. McKeel said she appreciated that and looked forward to that discussion. She said she thought it was important because that discussion might help them be more than just reactive. She said they had 8 pages of unfunded projects and requests that year in the budget cycle.

Mr. Andrews noted that many of the same questions had arisen during the discussion. He said that it appeared there was a consensus that, in the future, they needed a better understanding of the \$9 million. He said that he believed they required a clearer comprehension of the status of the various allocations to date and whether they had been paid out or were contingent upon other factors. He acknowledged that they currently had this funding at their disposal, which was highly leveraged and therefor was something he thought they should be supporting.

Mr. Andrews said that it was also important to consider the missing aspects and potential future projects. He said they should already have a sense of possible projects that could arise within six to 12 months. He said that it would be unfortunate if they could not fund some additional projects in the same area. He said that there had been some discussion regarding whether to keep contingency on the matching funds, so he would ask if the Board would like to weigh in on that issue further.

Ms. Mallek stated that she would definitely support an award for use, even though she believed that a successful grant application would be advantageous. She said that she found the cash allocation crucial regardless. She said that there was a perfect storm over the last few years with delays in sewer projects due to State approvals and other factors, which slowed down the sale of lots and consequently reduced money for the building project. She said that while acknowledging concerns about costs and expenditure, keeping heavy equipment moving to prepare lots for sale was essential to increase market rate house sales and boost funds for relocating residents from trailers into units that had already been designed.

Ms. Mallek said that this had been a high priority for her because delaying projects increased expenses. She said that she would support allocating more funds to keep the project on track. She said that additionally, accountability for all related projects should be maintained, not just one. She said that it was necessary to know about other projects when discussing this issue. She said that she looked forward to broader discussions and hoped that \$2.5 million could be allocated into the cash pot to catch up on delays and return to building 50 units per year instead of the current 15.

Ms. LaPisto-Kirtley asked if there was a date known for the grant award.

Ms. Pethia said that she would estimate September or October for when the grant was awarded, but she was unsure because the grant deadlines had been changed multiple times.

Ms. LaPisto-Kirtley said she loved the project but that it was concerning that they would only have \$93,910 in the housing fund left after the disbursement of these funds. She said that the unknowns of the future made planning very difficult with such limited funds. She said that she was in favor of staff's recommendation because they could award the \$1.1 million at a later date if it was not used for the HUD grant. She said that she trusted staff's analysis that this amount was what the County could afford.

Mr. Gallaway asked if there was a way to commit the \$1.1 million to the grant, but if the grant was not awarded, then the Board would immediately decide the use of the funding at that time, in order to prevent there being a three-to-four-month process of Habitat applying for the funds again. He said by September or October, they would have a better idea of what projects this one would be competing against and could act appropriately.

Mr. Pruitt said that he would still lean in favor of removing the contingency altogether. He said that the proposal seemed to come with the collective understanding that this was still a project they were excited about and money they would probably still be willing to allocate. He said that it was worth considering that it was so late in the budget cycle that they would already be allocating this money for almost the entire cycle regardless.

Mr. Pruitt said that he was not clear on how much added utility they thought there would be. He said that they had recently discussed managing their own meeting backlogs, and he was unsure of the value of having an additional hearing on what this funding could be used for when they already knew its purpose. He said that he wanted to ensure Habitat could continue meeting their process milestones, but he also believed that managing both Board and staff time effectively was best served by avoiding the contingency.

Mr. Pruitt said that he would like to speak to the possibility of a project applying during a three-month window in fall. He said that this would be the only thing preserving the funding for. He said there was little chance it would be more compelling than this. He said that if a competing project arose at that point with leverage similar to Southwood and value per County dollar, he expected they could identify alternative budget options. He said that such an unprecedented hypothetical project seemed unlikely. He said that he was unsure if the alternative they were trying to preserve was compelling or even existed. He said that to use their time efficiently and ease Habitat's job, they should proceed with what they all seemed to agree they would do eventually anyway.

Ms. McKeel said that she was supportive of staff's recommendation. She requested Ms. Pethia research how to address Mr. Gallaway's suggestion.

Mr. Andrews said that he supported staff's recommendation as well. He said that he would like to see how quickly it could be addressed. He asked if Mr. Rosenberg had anything he would like to add to this discussion. He said that it appeared there was no consensus to remove the contingency.

Mr. Rosenberg asked Ms. Pethia if she or Mr. Dan Rosenzweig knew if there was anything about the removal of the condition, or contingency as it had been referred to, that would disqualify these funds as the match funds for that grant. He said that he was unsure if there were specifics about the grant program itself that would disqualify the funds if they were made available outright to Habitat without any type of condition or contingency.

Ms. Pethia said that the replacement pilot grant necessitated a match, and the match funds must be specified for that project alone. She said that staff members were drafting a letter for the County Executive to sign, which specified that those funds would be utilized specifically for the grant. She said that this approach would strengthen their application if the funds were approved in that manner. She said that if they did not receive the award, staff could easily return at a future Board meeting to discuss alternative options.

Ms. Pethia said that the grant had a strong possibility of being awarded for this project, which fit very well into the rubric for the application. She said that Habitat and staff were confident about their chances, so she felt that the \$1.1 million would likely be used for that. She said that if for some reason they were not awarded that replacement pilot grant, it would be easy for staff to return to the Board, which they would do as soon as they had an answer.

Mr. Gallaway said that even without the contingency, the funds would still be locked until the grant award was determined. He said that removing the contingency did not imply that they would release those funds sooner; instead, it meant that even if the contingency was lifted, the funds would remain

inaccessible until the grant award was known. He said that he wanted to make this clear so no one thought the funds would be released regardless of whether the contingency was present or not.

Ms. Mallek asked if the Board would consider a specific date to be included in the motion to ensure the funds were available at the appropriate time.

Ms. Pethia said that Habitat would require a commitment letter from the County to be submitted alongside their grant application. She said that the commitment letter must specifically state that the \$1.1 million was intended as matching funds for the PRICE Replacement Pilot Grant Request. She said that if the Board decided to make this commitment, they should keep those funds until HUD announced the grant awards. She said that once HUD informed everyone about who received a grant and who did not, staff could promptly provide information regarding the next steps.

Ms. McKeel **moved** the Board of Supervisors to approve the following use of funds in the County's Affordable Housing Investment Fund, as proposed for Habitat for Humanity of Greater Charlottesville's Southwood Phase II Redevelopment project, subject to the conditions detailed in the related executive summary: 1) \$1.4 million for infrastructure (including the Sewer/Septic Improvement Project proposed by Habitat), site remediation, and the construction of affordable homes; and 2) \$1.1 million for the PRICE Replacement Pilot. Ms. Mallek **seconded** the motion

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Mr. Gallaway clarified that there would be another discussion among the Board about the \$1.1 million in funds if it was not awarded as part of the PRICE grant. He said he just wanted to clarify that it was the intention of the Board that the matter be brought back before them promptly if the grant was not awarded.

Multiple members of the Board expressed agreement.

Agenda Item No. 11. **Discussion Item:** Fire-Rescue Foundation Discussion.

The Executive Summary forwarded to the Board states that, at the Board's February 28, 2024 meeting, Supervisor LaPisto-Kirtley proposed the County's partnership in an initiative to establish a fire rescue foundation to support the County's Fire Rescue Department. At that time, the Board requested staff share the scale of resources that would be required to support such an initiative, including preparation and negotiation of a memorandum of agreement with the to-be-formed foundation and ongoing maintenance of the relationship between the County and the foundation. The County Attorney offered to reach out to the potentially impacted departments to collect that information, which is attached to this executive summary (Attachment A).

Attachment A provides an overview of the staff resources to create and maintain a positive working relationship with a fire rescue foundation, detailing the level of time and effort they expect to be necessary from the respective departments to support the initiative.

At this time, there are no significant budget impacts anticipated.

Staff recommends that the Board discuss and provide direction whether the County will support the County's partnership in the proposed initiative to establish a fire rescue foundation by preparing and negotiating a memorandum of agreement with the foundation.

Mr. Steve Rosenberg, County Attorney, said that there were materials available in the agenda package, including an executive summary and an attachment related to a request made by the Board during their meeting on February 28 when this topic was previously discussed. He said that this request pertained to obtaining information about the resources necessary for the County's partnership with a to-be-formed charitable foundation in support of the Fire Rescue Department.

Mr. Rosenberg said that he volunteered at that previous meeting to gather data from three departments: the Fire Rescue Department, the Department of Finance and Budget, and his own office. He said that the purpose was to determine the initial investment of time required for negotiating and finalizing a memorandum of understanding or agreement, as well as the ongoing annual time commitment needed to maintain the relationship between the County and the foundation.

Mr. Rosenberg said that the executive summary attachment outlined the time commitments. He said that the Fire Rescue Department anticipated minimal setup time, with an annual ongoing requirement of eight hours. He said that the Department of Finance and Budget estimated that they would dedicate 10 to 15 hours for the initial startup of the foundation, while yearly ongoing efforts would require 5 to 10 hours. He said that in his office, the primary focus would be on the initial setup, which would take approximately 10 to 15 hours.

Mr. Rosenberg said that he wanted to emphasize, as he had attempted previously, that this was not a matter of whether the Board would approve the establishment of the foundation. He said that this

was not within the jurisdiction of this Board. He said that what was before them was whether the County wished to collaborate with a group seeking to form a foundation in order to join discussions with another group proposing to create a foundation to support the County's Fire Rescue Department.

Mr. Rosenberg said that he believed there was no formal action required from the Board at this time. He said that if the Board agreed that this was an acceptable amount of time to proceed, they would engage with the organizers of the foundation and negotiate a Memorandum of Understanding. He said that this document would then be presented back to the Board for official approval at a later date, similar to how it had been done for the Parks Foundation currently in place between the County and the foundation.

Ms. Mallek said it sounded like it was not in their purview to determine how they wanted to do this and that it sounded like the MOA (Memorandum of Agreement) was coming back to the Board afterwards.

Mr. Rosenberg said that it was not up to the Board whether to establish a foundation. He said the foundation would be a separate legal entity formed by any group of incorporators in compliance with State law. He said the County Board of Supervisors does not have the authority to preclude a group of interested citizens from forming a foundation to support activities of the County.

Ms. Mallek clarified that the contents of the MOA would be within their purview, when they got to that point.

Mr. Rosenberg agreed.

Ms. Mallek said that she appreciated the information gathered but mentioned a lack of correspondence regarding the foundations supporting volunteer agencies. She said that Chief Eggleston might have this information. She said that there had been agencies raising funds for facilities and firehouses for 50 to 100 years. She asked how they would participate or not participate in fundraising and how they would be impacted or not by the new initiative.

Mr. Dan Eggleston, Chief of Fire Rescue said that he sensed some concerns regarding how this foundation would coexist with other volunteer departments within their 501(c)3 organization. He said that the previous chiefs were spoken to one-on-one, and his perspective was presented at the last FEMS (Fire and EMS) Board meeting. He said that in his opinion, the foundation would not directly compete with existing nonprofit agencies but could complement them.

Chief Eggleston said that for instance, the foundation could fund a banquet for ACFR career staff, which had been impossible due to procurement rules up until now. He said that he felt confident that this foundation could benefit the entire Fire Rescue system by funding initiatives outside their current preview. He said that after his presentation, there were no significant concerns or questions raised, so he felt confident that they could navigate through this successfully.

Ms. Mallek said that sounded like she was on the wrong page regarding the size of the effort. She said that each of these volunteer groups had been searching for large foundations to provide hundreds of thousands of dollars for multi-million-dollar projects. She said that the category for this was not what she was concerned about; it was more about consumables and operational expenses.

Chief Eggleston said that in his opinion, it would not replace what was currently happening. He said that for instance, with Western Albemarle, that was the only one he was aware of had a foundation specifically targeted for their building. He said that this would not replace or even compete in that particular situation.

Ms. LaPisto-Kirtley asked if Chief Eggleston could address the advantages of establishing a foundation instead of having small donations go to the County and then be returned.

Chief Eggleston stated that was a good point. He said that when he was asked to assess the annual time commitment to support the foundation, he was unsure about determining the time required for Fire Rescue since in some respects it would reduce their staff time. He said they received numerous small to medium donations from residents throughout the year. He said that these donations necessitated compiling all those checks and creating an appropriation, which the Board then approved amending this funding to their budget. He said that if these donations could be deferred to a foundation, it would save a considerable amount of staff time by eliminating the need to handle smaller checks. He said that it would be a significant advantage for them. He said that they could inform residents that if they wished to donate to contribute to the foundation supporting the Fire Rescue system.

Ms. LaPisto-Kirtley said that at present, the Police Foundation had the capability to raise funds and acquire different items not supplied by the County, thereby enhancing what the County did not offer. She said that in contrast, the Fire Rescue Department currently lacked this ability.

Chief Eggleston said that they were somewhat limited in terms of how they could use funds to benefit particular aspects of the department. He said that one unmet need was that they could not hold promotional ceremonies for staff due to procurement regulations. He said that furthermore, their system required specialty training in areas such as electric vehicles and battery storage, as well as solar installations. He said that they would love to fund some training for everyone, as it would be beneficial for everyone. He said that it was outside of their normal process, so supporting these initiatives from the

foundation could be helpful.

Mr. Gallaway said that if there was a group interested and willing that wanted help then he would want to be on the same page as them as far as an MOA.

Mr. Pruitt said they had attended a business conference as a Board recently and when the keynote speaker was given a commemorative prize she leaned into the mic and said, "I like getting free things" and then walked away. He said that was what this felt like to him. He said there was money on the table and all it would take to get it was 10-15 hours of staff time and, to him, that was basically free.

Ms. McKeel said that she believed the foundation could complement some of the volunteer efforts currently existing in the County. She said her questions would come when they got to the governance model and it sounded like that was not on the table at the moment, nor would it be.

Ms. LaPisto-Kirtley said it would be very similar to the Police foundation.

Mr. Andrews said he was also supportive and there was consensus from the Board to proceed with this effort.

Mr. Rosenberg said that with the consensus of the Board, they would engage with the foundation organizers to negotiate a Memorandum of Agreement or Memorandum of Understanding. He said that they would bring it back to the Board for consideration at a later date.

Mr. Andrews said that there was consensus from the Board to proceed to Item 13 before taking their recess and then holding Item 12.

Agenda Item No. 13. **Presentation:** Board-to-Board, A Quarterly Report from the Albemarle County School Board to the Albemarle County Board of Supervisors.

Ms. Judy Le, Chair of Albemarle County School Board, said that she was joined by School Board Vice Chair Kate Acuff and would be presenting their board-to-board presentation today. She said that she would begin by discussing their social media class action lawsuit. She said that on March 28, they unanimously voted to join a class action lawsuit against major social media platforms such as Instagram, Facebook, TikTok, and Snapchat.

Ms. Le said that they were concerned about the addictive nature and deceptive practices of these platforms, which had led to severe mental health issues among their students, including anxiety, depression, eating disorders, and suicidal thoughts. She said that this situation has imposed significant costs on their schools in terms of both financial resources and student well-being. She said that the slides could provide more details about the lawsuits.

Ms. Le said that they aimed to recover resources spent on mental health care and hold these companies accountable. She said that their broader goal was to push for changes that would better protect their children. She said that their School Division Attorney, Josiah Black, would oversee their involvement in the litigation. She said that they believed this action supported their current initiatives and helped create a safer environment for their students. She said that another issue they had recently taken up in terms of safety was Safe Firearm Storage.

Ms. Le said that in February, the Board took action to promote Safe Firearm Storage addressing both mental and physical health in their community. She said that by taking this proactive step, they aimed to prevent gun-related tragedies in their community. She said that with more than 4 million children in America living with loaded, unsecured firearms, they felt compelled to act. She said that at their January 25 meeting, At-Large Representative Allison Spillman highlighted that gun violence was the leading cause of death among children in the United States.

Ms. Le said that on February 8, they unanimously approved the resolution directing staff to send a letter to families emphasizing the significance of secure firearm storage. She said that this resolution aligned with state and federal initiatives promoting firearm safety. She said that the full resolution could be found on their website and offered to send it out if requested. She said that she would next discuss the new reading curriculum, which had been approved for kindergarten through fifth-grade students to be implemented in the next school year.

Ms. Le said that the chosen program, HMH Into Reading Virginia, was selected by an adoption committee of over 60 members, including teachers, administrators, parents, and others, due to its inclusiveness and effectiveness. She stated that Assistant Superintendent for Instruction Dr. Chandra Hayes had emphasized the importance of professional learning for successful implementation. She said that they had introduced the new curriculum to their educators earlier in the spring and would provide ongoing professional development throughout the summer and the next school year.

Ms. Le stated that there were several other proposals set to be adopted within the next school year, and they had already procured all necessary materials. She said that teachers already had online access to it. She said that the purpose of this curriculum was to address achievement gaps highlighted in SOL results for many years. She explained that while adopting the new curriculum, they had also implemented UFLI (University of Florida Literacy Intervention), an intervention program aimed at closing those gaps. She said that although the current year's SOL scores were not yet finalized, the incoming

data showed they were making some gains in closing those gaps.

Ms. McKeel asked if the Board of Supervisors could assist with the class action lawsuit.

Mr. Josiah Black, School Division Counsel, stated that at present, he was unaware of any method through which the Board of Supervisors could assist them directly. He said that the school division had the authority to act as the plaintiff in the class action lawsuit. He said that they appreciated the support and assured that they would keep everyone updated about the legal proceedings. He said that if there came a time when they needed help, guidance, or assistance, he promised not to hesitate in reaching out to them. He said that he personally believed it was very important they take action on the matter.

Mr. Black stated that social media, technology, and devices had become an epidemic among young people, causing really troubling mental health concerns. He said the big challenge in the litigation would be to show causation. He said they knew there was harm, pervasive use, and deceptive practices, but linking them together and proving causation in court would be the main challenge. He said that a committee had been established to work throughout the summer, focusing on ways to improve the enforcement of the no cell phone policy during instructional time. He acknowledged the challenge posed by the children's ability to stay one step ahead in that regard, but it was a high priority for them.

Mr. Andrews proposed the Board take its recess for 15 minutes while they wait for Ms. Acuff to arrive.

Recess. The Board recessed its meeting at 3:25 p.m. and reconvened at 3:39 p.m.

Agenda Item No. 13. **Presentation:** Board-to-Board, A Quarterly Report from the Albemarle County School Board to the Albemarle County Board of Supervisors, ***continued.***

Ms. Kate Acuff, Vice Chair of the Albemarle County School Board, said that she would discuss two points regarding school-related subjects. She said that first she would provide information regarding their two new schools. She said that secondly, she would discuss their work toward environmental sustainability. She said that these topics were interrelated since they had two new buildings going up in the next couple of years.

Ms. Acuff stated that the Board had approved two new schools, and their design plans were approved by the School Board last month. She said that she would provide a brief overview; detailed packets with 80 slides were available but not necessary today. She said that High School Center 2 was designed to serve 400 students daily in 60,000 square feet, expandable to 90,000 square feet and 600 students if needed. She said that it was highly adaptable for various student cohorts in their career learning communities that they would be developing across the County.

Ms. Acuff said that the three learning communities housed there were hospitality and tourism with a level one culinary arts kitchen; business, entrepreneurship, and innovation; and math, engineering, and sciences which would be the new version of their MESA program. She said that redesigning their high school experience would allow juniors and seniors from all high schools to attend these courses in different careers at this facility. She said that this center would be located diagonally adjacent to Albemarle High School on the Lambs Lane campus and would replace the 70-year-old building services facility.

Ms. Acuff said that if one was turning into the driveway at Hydraulic, Albemarle High School would be to the right, Center 2 to the left, and the Blue Ridge Mountains would provide a lovely backdrop. She said that the building site itself was slightly lower than street level, so it would not be obtrusive. She said that they could still enjoy views while in traffic near Albemarle High School. She said that the next slide provided another view of this building, showing the front entrance and primarily two stories of classrooms.

Ms. Acuff said that there was a subfloor, a lower story where they would house their data center that they had been trying to relocate for several years. She said that the two single-story structures were part of the building in the front; one was primarily administrative while the other would house meeting rooms and the culinary arts center. She said that as one would enter the building, the culinary arts department would be located to the right, and there was a large common area ahead. She said that if more detailed images are desired, as she mentioned, there were slide decks with over 80 photographs of these spaces, which she could send to the Board.

Ms. Acuff said that the next slide was showcasing their southern feeder pattern elementary school, set to be constructed on the site previously known as Founder's Place, which the Board of Supervisors had deeded the land to the school division. She said that the new facility would be a 72,500 square foot structure, accommodating up to 500 students and featuring approximately 30 classrooms or breakout rooms. She explained that it was designed as their first upper-level elementary school. She said focus groups with teachers and community members preferred this layout. She said that grades pre-K through second will remain at Mountain View Elementary.

Ms. Acuff said the overhead view showed that all of their schools are situated between Avon Street Extended and Scottsville Road. She said that the new elementary school was in the center, with Monticello High School at the top right of the slide and Mountain View Elementary School to its left. She

said the properties almost touch but do not quite, and they were trying to find solutions with neighboring property owners to create a path, which would be ideal.

Ms. Acuff said that the front view with a drop-off zone was shown on the next slide, followed by a view of the main lobby. She said that students would work on artwork for the stairwell, and the school had three levels of classrooms. She said that currently its capacity was planned to be a double classroom, but there were double doors to slide shut, allowing for just one classroom.

Ms. Acuff said that in terms of both projects, they approved the plans and design development last month. She said that construction documents were being developed now, with bidding and negotiations scheduled for September through December. She said that they hoped to break ground or at least start demolishing the existing building by the end of the year, with a projected opening for the 2026-27 school year. She said that this was exciting because they had not built a new school in 22 years, and much had changed in their understanding of educational space and environmental impact.

Ms. Acuff said that the advisory committee for the School Board's environmental sustainability focused on consolidating all work related to environmental impact and initiatives while aligning with County's climate action plan goals. She said that the four main categories were transportation and land use, buildings and renewables, sustainable materials, landscape natural resources and agriculture. She said that as an educational enterprise, they also incorporated environmental studies, climate awareness, and action into their education of children and curriculum.

Ms. Acuff said that provided was a breakdown of how they coordinated the climate action plan in their goals. She said that focusing on buildings, they aimed for net-zero energy-efficient upgrades to all buildings, net-zero-ready new schools, and solar panels on all school buildings. She said that some efforts already underway included electric school buses and photoelectric cells installed on Scottsville Elementary School addition in 2022. She said that they had implemented conservation mowing on their 750 acres of properties to eliminate mowing on steep slopes and ditches, increasing habitat for insects, small birds, and other wildlife. She said that signage had been put up to explain the importance of these efforts.

Ms. Acuff stated that this reduction in CO2 emissions improved erosion and stormwater quality, as well as noise pollution due to constant mower operation. She said that finally, they had a federal Department of Energy grant to support their sustainability efforts. She said that one initiative included installing sustainability monitors at some schools to educate students about environmentally important issues, such as watersheds.

Ms. Acuff said that furthermore, they developed dashboards on their website for all 24 existing schools and the next two schools as well. She said that these dashboards allowed them to monitor energy and water utilization, as well as greenhouse gas emissions. She stated that they were also considering adding solar composting and transportation information to these sites. She said that in terms of sustainability in their existing buildings, they had added a 30,000 square foot addition to Crozet Elementary School two years ago. She said that this addition, along with half of the original building, was converted to geothermal energy, which was quite beneficial. She said that in the first full year of geothermal energy use at the school, despite increasing its size by a third, energy consumption remained flat. She said that this indicated they were moving in the right direction.

Ms. Acuff said that they also considered the County's climate action plan and the state law that enacted the High Performance Building Act in 2021, which required all new public buildings to be designed, constructed, verified, and operated in compliance with the High Performance Building Certification Program. She said that LEED, from the Green Building Council, stood for Leadership in Energy and Environmental Design and required new structures to have EV charging infrastructure and a feature that measures energy consumption and carbon emissions.

Ms. Acuff said that the School Board modified their building policy to a sustainable construction policy in September, incorporating the Virginia High Performance Building Act and setting goals for all new buildings. She said that they must be LEED silver or better, net zero ready, and electric only, with no on-site fossil fuel combustion. She said that the schematic of Center 2 showed various sustainability features built into the planning, which were also in effect at the southern feeder pattern elementary school.

Ms. Acuff said that these included roof overhangs for shading, LEED silver certification, vehicle electric charging, geothermal heating and cooling systems. She said that there was also ample natural light, windows that opened, low-flow plumbing fixtures, a cafeteria area with views of Carter Mountain, and a U-shaped building design with a center courtyard and outdoor learning space.

Ms. LaPisto-Kirtley asked if there was consideration for planting pollinator-friendly plants in the conservation areas on school campuses.

Ms. Acuff said that the plan was to have wildflowers and native plants in those areas. She said that they began with 15% of the properties to be un-mowed and were going to slowly increase that size over time. She said that reducing the mowing would promote natural plants to grow in those areas.

Mr. John Coles, Environmental Program Manager, stated that regarding mowing reduction, their objective was for 15% of all non-athletic field mowed grass to undergo conservation mowing. He said that last year, they managed to achieve around 20%, and this year, they aimed to increase it even more. He

said that they had made some progress towards achieving that goal and hoped to discover additional opportunities to keep moving forward.

Mr. Gallaway asked if the northern feeder pattern elementary school would be an upper elementary school like the southern feeder pattern elementary school.

Ms. Acuff said that they had not made a decision on that yet.

Mr. Gallaway asked if the School Board had finalized their budget in accordance with the state's budget.

Ms. Acuff said yes.

Mr. Gallaway asked how much of the remaining \$10 million gap the state was able to fund.

Ms. Acuff said that she believed it was about \$4.6 million.

Mr. Gallaway said that he would be interested in receiving information on how the school was dealing with the gap and what the final numbers were in terms of the previously proposed budget and the finalized budget.

Ms. Acuff said that that information could be provided to the Board. She said that one thing they did was freeze some new hires. She said that they were able to fund the four core programs that they wanted to continue, although one was cut back a bit. She said that they closed the funding gap and the overall budget was a few million dollars less than previously proposed.

Mr. Gallaway said that part of the reason why the funding was difficult to determine was due to the uncertainty of funding at the state level. He said that he would appreciate having more information about the details of the budget decisions that were made to close that funding gap.

Ms. Acuff said that they were continuing to make adjustments in accordance with the state estimates for funding and newly identified efficiencies.

Mr. Gallaway stated that earlier he had requested that the Pride Month Proclamation be shared with the school division so that their LGBTQ students were made aware of the support of their local government. He said that along with that, he had requested they share resources related to the Trevor Project for students as well.

Mr. Pruitt asked if Mountain View Elementary would be transitioning to being a kindergarten through 2nd grade school because the new southern feeder pattern elementary school would be upper elementary grades.

Ms. Acuff said that was correct.

Mr. Pruitt asked if the career focus areas for High School Center 2 had been finalized.

Ms. Acuff said that there would be three career pathways. She said that one was entrepreneurship and innovation in business, the second was hospitality, which included culinary and tourism. She said that the third pathway was a continuation of MESA's strengths in math, engineering, and science. She said that it was two years until opening the doors. She said that the space was flexible, so if one area was not functioning well, it could be easily modified.

Mr. Pruitt asked if efforts were being made to link curriculums with either federal Department of Labor curricula and certificate pathways or industry-sponsored certificate pathways. He asked for confirmation that these actions led to recognized credentials within the industry.

Ms. Acuff said yes. She said that she could follow up with further details on that matter.

Agenda Item No. 12. **Presentation:** Strategic Plan Performance Reporting Program.

The Executive Summary forwarded to the Board states that the current strategic plan was adopted on October 19, 2022, by the Board of Supervisors. The plan has six goals with identified objectives for the Board of Supervisors, staff, and partners to use as priorities while work planning for FY24-FY28. The first year of this plan is currently in progress.

Staff will present and review performance measurement programming in development for reporting progress on the current strategic plan. This work supports the business operating principle that we shall collect and evaluate performance measures. The Strategic Plan Execution Analysis & Reporting (SPEAR) program was established at the beginning of FY24 with the primary goal of tracking the progress and identifying areas of success and those in need of improvement. Each fiscal year department leadership, with guidance and directions from the Board of Supervisors, creates an annual work plan to track and monitor progress. The performance and strategic planning division collaborates with departments in establishing metrics, setting yearly targets, tracking, and reporting. The fiscal year data will be gathered in July 2024 and final reports will be shared with the Board of Supervisors, staff, and the community in August 2024.

There is no budget impact associated with this item.

Staff recommends that each Board member share feedback and ask questions on the development of the data and program in advance of the final report.

Ms. Kristy Shifflett, Chief Operating Officer, said that she was present to discuss a new work effort at the County. She said that staff had been working on this for a year in response to the Board's Operating Guidelines, which emphasized strategic priorities and progress reports on productivity. She said that an effort had been made to consolidate work around the Strategic Plan, led by the Performance and Strategic Planning (PSP) Division of the County Executive's Office. She said PSP aimed to provide the Board with information about the organization's progress towards its goals.

Ms. Shifflett noted the importance of understanding metrics and their associated behaviors for both staff and leadership. She stated that they were working internally to build awareness and understanding of how each metric fit into the big picture, including why and how they were measuring something and its relevance to performance. She said that the goal was to improve accountability by tracking progress towards Strategic Plan goals. She said that this would lead to better decision-making through access to data on performance and progress. She said that the Board and staff could then make more informed decisions about resource allocation and prioritization of initiatives.

Ms. Shifflett emphasized the importance of increased transparency, which would help build trust within the community. She said that lastly, tracking progress towards goals would allow them to identify areas for improvement and take action to improve community outcomes. She said that to achieve these objectives, they had developed a program called SPEAR (Strategic Plan Execution and Reporting) Program, which would help move the organization forward in executing its Strategic Plan.

Ms. Shifflett said that in order to establish metrics, they were collaborating with each local government department to determine what progress would be made towards their goal and the objectives within that fiscal year. She said that by focusing on actions taking place within the fiscal year, they could be more accountable to the annual report. She said that they would set yearly targets for each metric, discussing its value and how it contributes to the desired outcome by the end of the fiscal year.

Ms. Shifflett said that they would track these metrics throughout the year on a quarterly basis and offer status reports to the Board as requested. She said that their goal was to ensure that the Board and community understood the intentionality behind this program. She said that the process began with the adoption of the Strategic Plan in October 2022, followed by collaborative work within financial planning and budget work sessions. She said that in April 2023, they started working with departments to identify objectives and determine what work each department would be doing to achieve those goals. She said that they also discussed how to create measurable metrics that result in outcomes the community care about.

Ms. Shifflett said that they implemented quarterly reporting, which Albemarle County was practicing. She said that it required a significant amount of staff education on annual planning, work planning, staff activities, as well as metrics and data translation. She said that they had completed their third round of reporting, which included quarter three metrics and a draft report. She said that she shared this information in anticipation of those reports coming together and being provided to the Board as a final report in August. She said that they intended to publish this data on their website and provide it to their community.

Ms. Shifflett said that additionally, there would be two types of reports: a summary highlighting major milestones and activities for each goal, focusing on what their community members care about most; and a more detailed report with extensive data for those who were interested in diving deeper into the information. She said that for their FY 24-28 Strategic Plan, they aimed to provide the Board with more insight into the work being done, going beyond budget requests and seeking new revenue. She said that this was about utilizing the staff and capacity they have to improve efficiency and achieve desired outcomes.

Ms. Mallek asked if staff had specifics about the types of categories they would be looking at in the final report or within departments.

Ms. Shifflett said that concerning the Strategic Plan, there were six main goals. She said that there were objectives identified within each of those six goals. She said that they would be meeting with every department to discuss each objective individually, inquiring about the work being carried out during the current year to advance that objective further. She said that the departments then established metrics to assess the progress and performance of those tasks or items.

Ms. LaPisto-Kirtley commended the work they had done so far and said she would look forward to the final report.

Mr. Gallaway asked if they had defined measures that would be tracked.

Ms. Shifflett said yes.

Mr. Gallaway asked if departments would be planning their activities based on the roadmap to get to the goal by the date specified, such as June 30 of the following fiscal year.

Ms. Shifflett said that was the intention. She said that they identified what should be completed by June 30, and the data should be informing them of their progress and their relative success. She said that they could then make choices based on the data about redirecting staff, focusing differently, or determining if it was something out of their control. She said that this information would be presented to the Board.

Mr. Gallaway said that this probably worked very well for objective goals and data. He asked if some of the strategic planning goals were subjective in a manner that if that made it difficult to measure the effects of their actions. He asked how they were handling qualitative data, such as it pertained to subjective strategic goals such as quality of life, education, and learning.

Ms. Shifflett stated that their goal was to provide both qualitative and quantitative data. She said that some elements might be challenging to quantify numerically, such as community engagement. She explained that they began with this report and hoped to enhance it annually while incorporating feedback from the Board. She said that their departments had been producing reports, collecting data, and statistics for an extended period, which would continue. She stated that this initiative aimed to provide the County with a centralized location for significant endeavors, including some similar data points or metrics seen previously but categorized differently. She stated that the public-facing report would concentrate on what the government was doing for the community, the more qualitative data, while the data metrics report would be added alongside it with the quantitative data.

Mr. Gallaway said that it would be beneficial if this data could be included in budget town halls as well since the budget is driven by the Strategic Plan.

Mr. Pruitt said he was excited about this and that it was always a major inflection point in an impact-focused organization when they attempt to quantify their mission into granular, achievable, recurring goals. He said he realized that it was also a challenging prospect and appreciated the work that went into this and the learning process involved. He said he hoped that the Board would be able to fight their own urges to interfere with the learning process and that the final product would maintain a level of granularity. He said the more generalized the output for something like this could be, the more community engagement would be general as well.

Ms. McKeel said this was great. She said she would love to see something simpler separated out for the public that was easy to digest along with a more detailed report. She said she loved to see the efficiencies since that is what she heard about the most from the public who would ask her to “tell us about the efficiencies you have created with our tax dollars.” She said she would be really interested in this in the context of informing the public.

Mr. Andrews said he had been involved with organizations that had done strategic plans before, but he would really commend the leadership in Albemarle County for their exemplary adherence to a focus on the Strategic Plan. He asked if this data would be incorporated into the community annual report.

Ms. Shifflett said that there were numerous reporting mechanisms in place. She explained that CAPE (the Communications and Public Engagement Office) and her team, along with herself, would be working together to improve them. She said that she could not say that it would replace all current methods, but it would support and enhance the existing processes. She said that it should be another tool that could be included in the community report.

Mr. Richardson said that if they would recall back to the most recent budget process, they ran out of financial resources before they ran out of opportunities and problems. He said that this Board, with staff help, Mr. Sumner and his team, looked at options for generating additional financial resources, and they earmarked that into safety and well-being. He said that they had really nice performance data that informed their decision.

Mr. Richardson said that HART (the Human Services Alternative Response Team) was a good example, where they basically doubled that footprint, and they had had that team in action for just less than a year, and the data was compelling. He said that traditionally, departments had been measuring and providing reports to this Board; however, this was not tied directly to the strategic plan. He said that they were trying to get better at it. He said that he agreed with Ms. Shifflett’s comment about the intention to keep this information in a prominent spot on their website where people can find it.

Mr. Richardson said that they also wanted to translate that into this was where their tax dollars would go. He said that it should be easy to read, easy to see, and hopefully easy to understand. He said that the page that Mr. Gallaway referenced from their budget town halls, public safety had long been skilled at measuring their actions, considering the risk and liability involved. He said that their budgets revealed numerous performances and benchmarks that mattered. He said that social services, connected to state requirements, also had significant reporting obligations.

Mr. Richardson said that other departments were still learning this process, working through the strategic plan with Mr. Shifflett’s office to align with Board expectations. He said that this had been an evolutionary process for their team, and they were now in a good position. He said that many local governments did not undertake such evaluations, as they may reveal areas needing attention or clarity in

management. He said that this information informed their understanding of where management focus should be and could guide future budget discussions. He commended Ms. Shifflett's team and their departments for embracing this challenging path.

Ms. Shifflett said that many department staff had collaborated with her team to develop this approach. She said that she wanted to recognize a key contributor, Mr. Gabe Giacalone, Senior Performance Management Analyst and statistician. She said that he developed SPEAR, and she appreciated his efforts in supporting their team and community.

Mr. Andrews said there was consensus from the Board to proceed with Matters from the Board before continuing with their other meeting items.

Agenda Item No. 23. From the Board: Committee Reports and Matters Not Listed on the Agenda.

Ms. Mallek said that she would report on a couple of recent meetings. She stated that the Local Government Advisory Committee of the EPA (U.S. Environmental Protection Agency) met in D.C. on May 21. She said that they discussed various updates, but the primary focus was on cybersecurity challenges across the United States, particularly concerning water utility systems. She said that 70% of the tested systems failed due to preventable issues like password sharing and failure to remove credentials for former employees. She said that it had given her a new appreciation for their ACIT (Albemarle County Information Technology) practice things, which they recently received an email about conducting their annual checkup. She stated her appreciation for the staff's and the County's efforts in improving this process every year. She noted that federal standards were forthcoming, so they would be ahead of the game due to their early planning.

Ms. Mallek said that she would like to share some topics with them. She said that if any interested them, they should let her know and she would provide more information. She said that there was an upcoming committee on reducing plastic pollution, and other committees included climate communications and environmental justice, which were longstanding.

Ms. Mallek said that federally, water systems may be restructured, but the details were unclear. She said that this could lead to regionalization challenges for communities with varying investments. She said that a future concern was materials management and new standards for handling waste from solar panels, lithium batteries, and plastics. She said that previous Board decisions on reducing plastic usage would remain relevant in this context.

Mr. Gallaway said at the MPO (Metropolitan Planning Organization) meeting that they approved and advanced the Long-Range Transportation Plan. He said that the MPO endorsed the County's SMART SCALE applications as well as advancing the SMART SCALE applications related to Barracks Road and other projects. He said that the MPO mentioned that there were some changes at the state level that went into effect on July 1 for electronic meeting policies. He said that these changes allowed more meetings to be conducted electronically. He requested that they inform their boards and commissions of these updates since they followed the same state policies.

Mr. Pruitt noted that early voting was ongoing with ten more days remaining. He said that the final day for early voting would be on a Saturday, June 15. He stated that in their district, congressional primaries could often be dispositive, so it was very important that they voted in their primary elections.

Ms. McKeel said that she had attended the Grove dedication, being a member of the Chamber of Commerce. She said that the Grove was located in McIntire Park. She said that more space became available after the golf park was removed. She said that to reach the Grove from the skate park parking area, one must cross the railroad bridge and head left. She said that it was situated between a 150-year-old oak tree and served as a community gathering place and a monument recognizing community leadership in Albemarle County and the City of Charlottesville. She said that the Grove was built by a group of private citizens in partnership with the Chamber of Commerce and the City of Charlottesville.

Ms. McKeel said that visitors could see the list of recipients who had received awards at the location, some of whom were still alive while others had passed away. She said that many names would be recognizable as they come from both Albemarle and Charlottesville communities. She said that Juan Diego Wade, one of the recipients, delivered a special speech during the event and dedication. She encouraged everyone to visit the Grove, whether accompanied by their dog, grandchildren, or alone. She said it was an excellent place to know about.

Ms. McKeel said that she also attended the Go Cook graduation, which was part of Antwon Brinson's Culinary Concepts. She said that the program taught people to be cooks and focused on workforce readiness, entrepreneurship, and culinary mastery, making it an important initiative in their community. She said that the program provided opportunities for individuals who had never had a skill set or this specific opportunity before. She said that the program sometimes included inmates from ACRJ (Albemarle Charlottesville Regional Jail) who were on home incarceration to teach them a new life skill. She said that she attended this year's graduation. She said that she just wanted to support the program despite there being no Albemarle County graduates, and it was really great to meet the five graduates that were there.

Ms. McKeel said that she and Ms. Wall needed to provide a full update regarding their trip to

Champaign-Urbana, which was outstanding. She said that they went to look at their transit system because they were utilizing hybrid electric as well as hydrogen fuel cell cells to operate their bus system. She said that their university system was double the size of the University of Virginia, with around 59,000 students.

Ms. McKeel said that they provided transit for the university, greater community, and public middle school and high school. She said that they had a track record of around 10 years of doing this, producing their own hydrogen and possibly shipping some of it in. She said that they were looking at offering another trip in the fall, hoping to get the University of Virginia to join them, as well as City officials. She encouraged the Board members to think about joining the second group. She said that it was a great way to create a transit system, perhaps under the umbrella of their regional transit authority, providing transportation in a really clean, efficient way.

Non-Agenda Item. **Presentation:** Real Estate Tax Bill Printing Issue.

Mr. Richardson said, if the Board approved, he would like Mr. Sumner to provide an update to the Board regarding the community's tax bill notices.

Mr. Jacob Sumner, Chief Financial Officer, said that he appreciated the Board's attention as he would like to discuss their current real estate tax bills. He said that the real estate and personal property bills were recently mailed out; however, there was an issue with the real estate bills. He explained that both the vendor and bill format had changed this season, leading to a mapping error where some information went to the wrong place on the tax bill. He said that consequently, the tear-off portion of the bill mistakenly displayed the full year's tax as the amount due instead of just the first half. He said that this confusion may especially affect those paying directly rather than through escrow and mortgage companies.

Mr. Sumner said that to address this issue, they were reissuing real estate tax bills with corrected amounts. He said that by the end of this week, new tax bills for real estate would be mailed out to the community. He said that they would look slightly different because they wanted a visual difference between the one with the error in the stub and the correct one. He said that they will be printed on yellow paper, creating a clear distinction between the error and the stub. He stated that they included language in red on the corrected tax statement, indicating that it was the appropriate one to use.

Mr. Sumner said that they also included a flyer in the mailing to explain what happened, why there was a second mailing for tax bills, and provided additional information on how to contact the Department of Finance and Budget, specifically the Revenue Administration Office. He stated that they were ready to answer any questions from their community members regarding the bill and encouraged them to reach out if they had any confusion. He apologized for any confusion this may have caused but hoped that reissuing the bills and mailing them back out to the community would result in correct paper documents being in hand.

Mr. Andrews asked what percentage of tax bills were sent out in printed format.

Mr. Sumner said that they print all real estate tax bills and send them to their taxpayers. He explained that those with taxes paid through mortgage companies or escrow did not need to send their own funds. He stated that the payment was made via the mortgage company, and the fee was processed there. He said that for record-keeping purposes, they had documentation and records for property owners, including a paper statement and an online digital option if they preferred it.

Mr. Pruitt asked if they had encountered anyone who claimed their escrow or mortgage company had paid the full tax bill.

Mr. Sumner said that he had not received anything directly. He said that he knew that they possessed more abilities with mortgage companies to send data feeds. He said that they were sharing digital information with the mortgage firms, ensuring its accuracy. He said that if there were any queries or concerns, he encouraged community members to contact them; they actively welcomed clarification requests. He said that the email and phone number for the department were available on tax bills and their website. He said that the Revenue Administration Office would be able to directly address those questions.

Ms. LaPisto-Kirtley said she had received at least 2-4 emails regarding this issue. She asked Mr. Sumner if his office had received many complaints or questions.

Mr. Sumner said the phone calls they have received have been more about the usual questions and that very few were about the stub itself.

Ms. McKeel said she had received a handful of questions related to the stubs herself. She said the mail delivery in their area had improved somewhat but there were still challenges. She said she had received at least one call from someone who had not received their bill yet. She suggested that the County should give a press release to ask the community to contact the County if they had not received their bill in the mail, they did not get a late fee.

Agenda Item No. 14. Closed Meeting.

At 4:50 p.m., Mr. Pruitt **moved** that the Board go into Closed Meeting pursuant to Section 2.2-3711(A) of the Code of Virginia:

- Under subsection (1), to discuss and consider appointments to various boards and commissions including, without limitation, Economic Development Authority, Historic Preservation Committee, JAUNT Board of Directors, Jefferson Area Community Criminal Justice Board, Jefferson-Madison Regional Library Board of Trustees, Police Department Citizens Advisory Committee, Region Ten Community Services Board, Pantops Community Advisory Committee, and Village of Rivanna Community Advisory Committee

Ms. LaPisto-Kirtley **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Agenda Item No. 15. Certify Closed Meeting.

At 6:00 p.m., Mr. Pruitt **moved** that the Board of Supervisors certify by a recorded vote that, to the best of each supervisor's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting, were heard, discussed, or considered in the closed meeting.

Ms. McKeel **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Agenda Item No. 16. Boards and Commissions.

Item No. 16. a. Vacancies and Appointments.

Ms. McKeel **moved** that the Board accept the following for their Boards and Commissions vacancies and reappointment list:

- **Appoint** Mr. Nicholas Pilipowskyj to the JAUNT Board to fill an unexpired term ending on September 30, 2025.
- **Reappoint** Ms. Kaki Dimock to the Jefferson Area Community Criminal Justice Board with said term to expire June 30, 2027.
- **Reappoint** Mr. Michael Powers to the Jefferson Madison Regional Library Board with said term to expire June 30, 2028.
- **Appoint** Mr. David Norford to the Pantops Community Advisory Committee with said term to expire on June 30, 2026.
- **Appoint** Ms. Bonnie Brewer, Ms. Donna Price, and Ms. Nicole Hall to the Police Department Citizens Advisory Committee with said terms to expire on March 5, 2026.
- **Reappoint** Ms. Maureen Deane to the Police Department Citizens Advisory Committee with said term to expire on March 5, 2026.
- **Reappoint** Ms. Mary Katherine King to the Region Ten Community Services Board with said term to expire on June 30, 2027.
- **Appoint** Ms. Stephanie Shobe, Mr. Howard Hottinger, Ms. Theresa Stevens-Reines, and Mr. Edward "Doug" Earle to the Village of Rivanna Community Advisory Committee with said terms to expire on March 31, 2026

Ms. Mallek **seconded** the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

Agenda Item No. 17. From the County Executive: Report on Matters Not Listed on the Agenda.

There was no report from the County Executive.

Agenda Item No. 18. From the Public: Matters on the Agenda but Not Listed for Public Hearing or on Matters Previously Considered by the Board or Matters that are Pending Before the Board

There were no speakers.

Agenda Item No. 19. **Public Hearing: Fiscal Year 2024 Budget Amendment and Appropriations.**

The Executive Summary forwarded to the Board states that Virginia Code §15.2-2507 provides that any locality may amend its budget to adjust the aggregate amount to be appropriated during the fiscal year, as shown in the currently adopted budget provided. However, any such amendment which exceeds one percent of the total expenditures shown in the currently adopted budget must be accomplished by first publishing a notice of a meeting and holding a public hearing before amending the budget. The Code section applies to all County funds, i.e., General Fund, Capital Funds, E911, School Self-Sustaining, etc.

The cumulative total of the Fiscal Year 2024 (FY 24) appropriations itemized below is \$12,576,972. Because the cumulative amount of the appropriations exceeds one percent of the currently adopted budget, a budget amendment public hearing is required.

Mission - To enhance the well-being and quality of life for all community members through the provision of the highest level of public service consistent with the prudent use of public funds.

The proposed increase of this FY 24 Budget Amendment totals \$12,576,972. The estimated expenses and revenues included in the proposed amendment are shown below:

PROPOSED FY 2023-24 BUDGET AMENDMENT

<u>ESTIMATED REVENUES</u>		
Local Revenues	\$	3,656,311
State Revenues	\$	528,030
General Fund Balance	\$	3,347,941
Other Fund Balances	\$	5,044,690
TOTAL ESTIMATED REVENUES	\$	<u>12,576,972</u>
 <u>ESTIMATED EXPENDITURES</u>		
General Fund	\$	2,093,850
Special Revenue Funds	\$	7,516,595
Emergency Communications Center Fund	\$	147,153
Capital Funds	\$	1,900,000
Debt Funds	\$	919,374
TOTAL ESTIMATED EXPENDITURES	\$	<u>12,576,972</u>

The budget amendment is comprised of a total of 16 separate appropriations, eight of which have already been approved by the Board of Supervisors.

- One appropriations approved 1/17/2024
- Four appropriations approved 3/20/2024
- Two appropriations approved 4/3/2024
- One appropriation approved 5/1/2024
- Eight appropriations requests for approval on June 5, 2024 as described in Attachment A.

After the public hearing, staff recommends that the Board adopt the attached resolution (Attachment B) to approve the appropriation for local government projects and programs, as described in Attachment A.

Appropriation #2024035

Sources:	Local Revenue	\$2,000,000
	General Fund's Fund Balance	3,347,941
	School Reserve Fund's Fund Balance	3,768,731
	Capital Funds' Fund Balance	(2,000,000)
Uses:	General Fund	\$1,347,941
	School Reserve Fund	3,768,731
	Housing Fund	\$2,000,000

Net Change to Appropriated Budget:
\$7,116,672

Description: Pursuant to the information shared with the Board of Supervisors and the School Board, and the direction from the Board of Supervisors during the FY 25 budget development process, this request is to appropriate \$3,347,941 of FY 23 General Fund year-end undesignated funds, \$3,768,731 of FY 23 School Reserve Fund year-end undesignated funds, and \$2,000,000 in interest revenue from revised FY 24 revenue projections, for the following uses,.

- \$5,116,672 to the Health Fund, including the following:

- County government share of \$926,302 for a one-time infusion to shore up fund balance and \$421,639 for health care clinic start-up costs.
- Public Schools share of \$2,589,864 for a one-time infusion to shore up fund balance and \$1,178,867 for health care clinic start-up costs.
- \$2,000,000 to the Capital Budget. There is a corresponding reduction in the planned use of fund balance of this fund in FY 24. This funding is programmed to support the Adopted FY 25 – 29 Capital Improvements Program.
- \$2,000,000 to the Housing Fund. This funding will add to the Housing Fund Reserve, bringing that total to \$2,593,910. The programming of this funding will be discussed with the Board of Supervisors as part of the June 5, 2024 regular Board meeting. The balance of the Housing Fund remaining at the end of FY 24 will be recommended to be re-appropriated to FY 25.

Appropriation #2024036

Sources:	Proffer Funds' Fund Balance	\$ 768,941
	Capital Funds' Fund Balance	(695,342)
	Housing Fund's Fund balance	
		(73,599)
Uses:	None in FY 24	\$0
Net Change to Appropriated Budget:		\$0

Description:
This request is to appropriate \$768,941 from Proffer Funds' fund balances for the following uses.

- \$695,342 to the Capital Budget in support of the Darden Towe Athletic Fields Rebuild and Biscuit Run Park. There is a corresponding reduction in the planned use of fund balance of this fund in FY 24. This reduction in the planned use of fund balance is programmed to support the Adopted FY 25 – 29 Capital Improvements Program.
- \$73,599 to the Housing Fund. There is a corresponding reduction in the planned use of fund balance of this fund in FY 24. The balance of the Housing Fund remaining at the end of FY 24 will be recommended to be re-appropriated to FY 25.

Appropriation #2024037

Sources:	Capital Funds' Fund Balance	
	Public Schools Debt Service Fund	
		\$919,374 \$722,421
Uses:	County Government Debt Service Fund	
	Public Schools Debt Service Fund	
		\$1,641,795 (\$722,421)
Net Change to Appropriated Budget:		\$919,374

Description:
This request is to appropriate \$919,374 in the Capital Funds' fund balance and \$722,421 from the Public Schools Debt Service fund to the County Government Debt Service fund to pay for costs related to the Fall 2023 Debt issuance. This recommended use of fund balance and change in amount per debt service fund was considered in the context of the Adopted FY 25-29 Capital Improvement Plan.

Appropriation #2024038

Sources:	Local Revenue	\$500,000
	State Revenue	\$376,250
Uses:	CSA Fund	\$876,250
Net Change to Appropriated Budget:		\$876,250

Description:
This request is to appropriate \$376,250 in state revenue and \$500,000 in interest revenue from revised FY 24 revenue projections, to the Children Services Act (CSA) Fund. The purpose of CSA is to provide high quality, child-centered, family-focused, cost effective, community-based services to high-risk youth and their families. The CSA Fund exists due to a 1993 Virginia Law that provides for the pooling of 8 specific funding streams used to purchase services for high-risk youth. These funds are returned to the

localities with a required state/local match and are managed by local interagency teams. The state reimbursement rate depends on the service provided.

Because of the historical volatility in year-to-year CSA expenditures, a fund balance exists in this fund to provide a designated funding source if needed in order to mitigate additional General Fund or School Fund costs in the event that expenditures are projected to exceed the budget and/or are unable to be reimbursed as much as projected by state revenue. The FY 24 CSA projection is anticipated to exceed the budget primarily due to an increase in expenditures for both mandated and non-mandated programs.

Appropriation #2024039

Sources:	Local Revenue	\$600,000
	State Revenue	\$55,865
Uses:	Fire Rescue Department	\$655,865
Net Change to Appropriated Budget:		\$655,865

Description:

This request is to appropriate \$655,865 in additional Fire Rescue revenue:

- \$600,000 in Emergency Medical Services (EMS) cost recovery revenue collected above the amount budgeted, to fund the administrative and operational costs associated with running the additional EMS calls.
- \$55,865 in State Fire Service Program revenue for which the State budget amount was not known until after the adoption of the FY24 budget to be allocated for related Fire Rescue costs.

Appropriation #2024040

Sources:	Local Revenue	\$214,174
Uses:	Opioid Settlement Fund	\$214,174
Net Change to Appropriated Budget:		\$214,174

Description:

This request is to appropriate \$214,174 in local revenue from the National Opioid Settlement. This includes \$118,743 from the Walmart settlement, \$32,451 from the Walgreens settlement, \$12,185 from the TEVA settlement, \$16,995 from the CVS settlement, \$13,482 from the Allergan settlement, and \$20,318 from the distributors settlement. The Opioid Settlement Special Revenue Fund will be used to support opioid abatement programming based on eligible uses and requirements and funds will be released based on programming proposals approved by the County Executive.

Appropriation #2024041

Sources:	Local Revenue	\$95,665
	State Revenue	\$51,488
Uses:	Emergency Communications Center Fund	\$147,153
Net Change to Appropriated Budget:		\$147,153

Description:

The Charlottesville-UVA-Albemarle County Emergency Communications Center (ECC), an entity where the County serves as fiscal agent, requests to appropriate \$147,153 from the Emergency Communications Center Fund's for revenues received above initial budgeted amounts for FY 24 operational expenses for equipment and work force stabilization measures.

Appropriation #2024042

Sources:	Local Revenue	\$60,041
Uses:	Vehicle Replacement Fund	\$60,041
Net Change to Appropriated Budget:		\$60,041

Description:

This request is to appropriate \$60,041 in insurance recovery revenue to the Vehicle Replacement Fund to be used toward the purchase of replacement vehicles for the Police Department.

Mr. Ryan Davidson, Deputy Chief of Budget, said that this item’s purpose was to hold a public hearing and take action on amending the FY 24 Budget. He said that the Virginia Code required a public hearing before making any changes to the budget when the total amount of funding change exceeded 1% of the currently adopted budget, which was applicable in this case. He said that the budget amendment under discussion was approximately \$12.6 million. He said that out of this amount, around \$2.6 million had been approved by the Board as part of prior appropriations, as outlined on the screen above with the dates. He said that an additional \$9.8 million was being considered for approval that night

Mr. Davidson said that Attachment A provided more details about these appropriations, as well as prior agendas from the dates displayed on the previous slide. He said that \$7.5 million in special revenue funds consisted of housing fund, health and family care, low-income treatment for urban residents, and emergency use funds. He said that \$2.8 million in capital and debt funds for both the County government and public schools related projects and debt expenses.

Mr. Davidson said that general fund operating appropriations of \$2.1 million included facility and environmental services, fire rescue, and a general fund transfer to healthcare. He said that finally, approximately \$150,000 in revenue updates were proposed for the ECC fund. He said that staff recommended that after the Board held the public hearing, they adopt the Resolution as included in Attachment B.

Mr. Andrews opened the public hearing and asked the Clerk if there were any speakers signed up. Hearing none, he closed the public hearing and brought the matter back before the Board.

Ms. McKeel **moved** that the Board adopt the Resolution (Attachment B) to approve the FY24 Budget Amendment and Appropriations as described in Attachment A. Ms. Mallek **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

**RESOLUTION TO APPROVE
ADDITIONAL FY 2024 APPROPRIATIONS**

BE IT RESOLVED by the Albemarle County Board of Supervisors:

- 1) That the FY 24 Budget is amended to increase it by \$12,576,972;
- 2) That Appropriations #2024035; #2024036; #2024037; #2024038; #2024039; #2024040; #2024041; and #2024042 are approved;
- 3) That the appropriations referenced in Paragraph #1, above, are subject to the provisions set forth in the Annual Resolution of Appropriations of the County of Albemarle for the Fiscal Year ending June 30, 2024.

* * * * *

APP#	Account String	Description	Amount
2024035	4-1000-99000-493000-935201-9999	SA2024035 Fund Balance to Housing Fund	\$2,000,000.00
2024035	4-1000-94000-499000-999960-9999	SA2024035 Fund Balance to Health Fund for Infusion (\$926,302) and clinic start up (\$421,639)	\$1,347,941.00
2024035	3-1000-99000-352000-510100-9999	SA2024035 Housing Fund, Health Fund Infusion/Clinic Start Up	\$3,347,941.00
2024035	4-5801-94000-499000-999999-9999	SA2024035 GF Fund Balance to Housing Fund	\$2,000,000.00
2024035	3-5801-99000-351000-512004-9999	SA2024035 GF Fund Balance to Housing Fund	\$2,000,000.00
2024035	3-1000-99000-315000-150101-9999	SA2024035 Interest income to CIP	\$2,000,000.00
2024035	4-1000-99000-493000-939102-9999	SA2024035 Interest income to CIP	\$2,000,000.00
2024035	3-9010-99000-351000-512074-9999	SA2024035 GF Interest income to CIP	\$2,000,000.00
2024035	3-1005-99000-352000-510100-9999	SA2024035 School Reserve to Health Fund	\$3,768,731.00
2024035	4-1005-99000-493000-930000-9999	SA2024035 School Reserve to Health Fund	\$3,768,731.00
2024036	4-8589-99000-493010-930239-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$32,305.00
2024036	3-8589-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$32,305.00
2024036	4-8573-99000-493010-930239-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$35,477.00
2024036	3-8573-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$35,477.00
2024036	4-8574-99000-493010-930239-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$5,817.00
2024036	3-8574-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$5,817.00
2024036	3-5801-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Housing Fund	-\$73,599.00
2024036	3-5801-99000-351000-512110-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$32,305.00

2024036	3-5801-99000-351000-512095-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$35,477.00
2024036	3-5801-99000-351000-512096-9999	SA2024036 SA2024036 Proffers to Housing Fund	\$5,817.00
2024036	4-8580-93010-493010-930010-9999	SA2024036 SA2024036 Proffers to Darden Towe Fields	\$6,000.00
2024036	3-8580-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Darden Towe Fields	\$6,000.00
2024036	4-8586-93010-493010-930010-9999	SA2024036 SA2024036 Proffers to Darden Towe Fields	\$201,520.00
2024036	3-8586-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Darden Towe Fields	\$201,520.00
2024036	4-8592-93010-493010-930010-9999	SA2024036 SA2024036 Proffers to Biscuit Run	\$375,209.00
2024036	3-8592-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Biscuit Run	\$375,209.00
2024036	4-8548-93010-493010-930010-9999	SA2024036 SA2024036 Proffers to Biscuit Run	\$17,687.00
2024036	3-8548-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Biscuit Run	\$17,687.00
2024036	4-8591-93010-493010-930010-9999	SA2024036 SA2024036 Proffers to Biscuit Run	\$94,925.00
2024036	3-8591-99000-352000-510100-9999	SA2024036 SA2024036 Proffers to Biscuit Run	\$94,925.00
2024036	3-9010-99000-352000-510100-9142	SA2024036 SA2024036 Proffers to Darden Towe Fields	-\$207,520.00
2024036	3-9010-99000-351000-512097-9142	SA2024036 SA2024036 8580 Proffers to Darden Towe Fields	\$6,000.00
2024036	3-9010-99000-351000-512101-9142	SA2024036 SA2024036 8586 Proffers to Darden Towe Fields	\$201,520.00
2024036	3-9010-99000-352000-510100-9810	SA2024036 SA2024036 Proffers to Biscuit Run	-\$487,821.00
2024036	3-9010-69000-351000-512055-9810	SA2024036 SA2024036 8586 Proffers to Biscuit Run	\$375,209.00
2024036	3-9010-99000-351000-512088-9810	SA2024036 SA2024036 8548 Proffers to Biscuit Run	\$17,687.00
2024036	3-9010-99000-351000-512108-9810	SA2024036 SA2024036 8591 Proffers to Biscuit Run	\$94,925.00
2024037	4-9910-95000-495000-920091-9999	SA2024037 SA2024037 Debt Expenditure	\$1,641,795.00
2024037	3-9010-99000-352000-510100-9999	SA2024037 SA2024037 Transfer from Capital to Debt Service + SA2024035 GF Interest income to CIP	-\$1,080,626.00
2024037	4-9010-93010-493010-930013-9999	SA2024037 SA2024037 Transfer from Capital to Debt Service	\$919,374.00
2024037	3-9910-51000-351000-512024-9999	SA2024037 SA2024037 Transfer from Capital to Debt Service	\$919,374.00
2024037	3-9900-51000-351000-512004-9999	SA2024037 SA2024037 Transfer from 9900 to 9910	-\$722,421.00
2024037	4-9900-95000-495000-999999-9999	SA2024037 SA2024037 Transfer from 9900 to 9910	-\$722,421.00
2024037	3-9910-51000-351000-512004-9999	SA2024037 SA2024037 Transfer from 9900 to 9910	\$722,421.00
2024037	4-1000-99000-493000-939901-9999	SA2024037 SA2024037 Reduce GFT to School Debt Service	-\$722,421.00
2024037	4-1000-99000-493000-939902-9999	SA2024037 SA2024037 Increase GFT to LG Debt Service	\$722,421.00
2024038	3-5320-51100-352000-510100-9999	SA2024038 Use of fund balance to cover local costs	\$500,000.00
2024038	3-5320-51100-324000-240109-9999	SA2024038 Reimbursed funds from the state	\$376,250.00
2024038	4-5320-51110-453400-581001-9999	SA2024038 Anticipated additional mandated expenditures	\$802,100.00
2024038	4-5320-51110-453400-581002-9999	SA2024038 Anticipated additional non-mandated expenditures	\$4,150.00
2024038	4-5320-51110-453400-581010-9999	SA2024038 Anticipated additional local only expenditures	\$70,000.00
2024039	3-1000-33001-316000-160402-9999	SA2024039 EMS Billing Revenue Increase	\$600,000.00
2024039	3-1000-33001-324000-240317-9999	SA2024039 State Fire Service Program Revenue	\$55,865.00
2024039	4-1000-33700-432000-345410-9999	SA2024039 EMS - Digitech Billings	\$51,879.00
2024039	4-1000-33500-432000-601000-9999	SA2024039 Public Safety Supplies	\$43,062.00
2024039	4-1000-33500-432000-120000-9999	SA2024039 Fire Rescue Overtime	\$560,924.00
2024040	3-5811-99000-318001-189946-9999	SA2024040 National Opioid Settlement Payment Walmart	\$118,743.24
2024040	3-5811-99000-318001-189947-9999	SA2024040 National Opioid Settlement Payment Walgreens	\$32,450.87
2024040	3-5811-99000-318001-189948-9999	SA2024040 National Opioid Settlement Payment Teva	\$12,184.93
2024040	3-5811-99000-318001-189949-9999	SA2024040 National Opioid Settlement Payment CVS	\$16,994.87
2024040	3-5811-99000-318001-189945-9999	SA2024040 National Opioid Settlement Payment Allergan	\$13,482.57
2024040	3-5811-99000-318001-189940-9999	SA2024040 National Opioid Settlement Payment Distributor	\$20,317.79
2024040	4-5811-99000-499000-999999-9999	SA2024040 CONTINGENCY FUNDS	\$214,174.27
2024041	3-4100-32100-315000-150101-9999	SA2024041 Interest on bank deposits above budgeted amount	\$29,417.89
2024041	3-4100-32100-315000-150207-9999	SA2024041 Sale of salvage/surplus	\$11,191.00
2024041	3-4100-32100-319000-190380-9999	SA2024041 COVID recovery	\$55,056.32
2024041	3-4100-32100-324000-240055-9999	SA2024041 VDEM ESINET partial reimbursement	\$51,487.76
2024041	4-4100-32110-435600-110000-9999	SA2024041 ECC - Salaries-Regular	\$100,000.00
2024041	4-4100-32110-435600-610200-9999	SA2024041 ECC - Furniture & fixtures for offices and training space	\$47,152.97
2024042	4-7200-31100-412560-800500-9999	SA2024042 Police Totaled Vehicle Replacement	\$60,041.00
2024042	3-7200-99000-341000-410800-9999	SA2024042 Police Totaled Vehicle Insurance Funds	\$60,041.00

Agenda Item No. 20. **Public Hearing: ZMA202300012 Holly Hills.**

PROJECT: ZMA202300012 Holly Hills

MAGISTERIAL DISTRICT: Rivanna

TAX MAP/PARCEL(S): 046000000028A0; 046000000028B0; 046000000028I0;

046000000028J0; 046000000028K0; 046000000028E0; 046000000028F0; 046000000028L0

LOCATION: Property on the east side of U.S. Route 29; from the southeast corner of Route 29 and S. Hollymead Drive, to a point approximately 1,100 feet south of that intersection.

PROPOSAL: Rezone eight parcels to allow a maximum of 410 residential units.

PETITION: Request to rezone a total of approximately 30.821 acres from the R-1 Residential Zoning District, which allows residential uses at densities up to one unit/acre, to PRD Planned Residential Development, which allows residential (maximum of 35 units/acre) with limited commercial uses. A maximum of 410 dwelling units is proposed, at a gross density of approximately 13.3 dwelling units/acre and a net density of approximately 20 dwelling units/acre. The dwelling units are proposed to be a mixture of single-family attached units and multi-family units. Associated request for a special exception to waive the requirement for setbacks.

ZONING: R-1 Residential – 1 unit/acre

OVERLAY DISTRICT(S): AIA – Airport Impact Area; EC – Entrance Corridor Overlay District;

Steep Slopes – Managed; Steep Slopes – Preserved

PROFFERS: No

COMPREHENSIVE PLAN: Urban Density Residential – residential (6.01 – 34 units/ acre); supporting uses such as religious institutions, schools, commercial, office and service uses.

Privately Owned Open Space; Environmental Features – privately owned recreational amenities and open space; floodplains, steep slopes, wetlands, and other environmental features. In the Community of Hollymead in the Places29 Master Plan area.

The Executive Summary forwarded to the Board states that, at its meeting on April 9, 2024, the Planning Commission (PC) voted 5:0 to recommend approval of ZMA202300012 for the reasons stated in the staff report. There was no public comment during the public hearing. Attachments A, B, and C are the PC staff report, action letter, and meeting minutes.

In addition to the rezoning request, the applicant has requested a special exception (SE202300044) to County Code § 18-4.19, which requires a 15-foot setback for each story of buildings that begin above 40-feet in height or for each story above the third story. The PC was not required to act on the proposed special exception.

The Applicant has requested that the setback requirements be waived to allow a zero setback for buildings that are up to four stories in height. (Attachment A5) This waiver would be applicable to multifamily buildings that would be no more than four stories or 48 feet in height. Buildings would be at least 100 feet from the entrance corridor along Route 29 North. Internal to the site, building envelopes are arranged with significant separations of 50 feet to 100 or more feet for multifamily buildings.

County Code § 18-8.2(b)(3) requires certain findings for the granting of a waiver or modification in a planned development. It does not appear that this requested waiver would have a negative impact on the human scale and experience and pedestrian orientation, given the proposed location of buildings and building height limit of 48 feet. Therefore, staff supports the required findings and recommends approval of the special exception request.

Staff recommends that the Board adopt both the attached Ordinance to approve the zoning map amendment (Attachment D) and the attached Resolution to approve the special exception request (Attachment E).

Ms. Rebecca Ragsdale, Planning Manager, said that this was a rezoning proposal for Holly Hills, which also included a special exception not requiring a public hearing but necessitating action from the Board. She said that she would give a brief presentation to summarize the staff report's highlights and orient everyone to the property if they were unfamiliar with it. She said that the property was located on the east side of Route 29, situated to the north of Archer North development and surrounded by Hollymead and Forest Lakes. She said that it encompassed approximately 30 acres and would rezone the parcel from R1 to Planned Residential District (PRD), allowing up to 410 units.

Ms. Ragsdale said that the properties were mostly wooded, with a single-family residence on one of them. She said that they were situated between the existing neighborhoods mentioned earlier and the future neighborhood to the south. She said that the next slide displayed the current zoning map, indicating recently approved residential development or established residential neighborhoods like Hollymead and Forest Lakes. She said that it showed that this area was currently zoned R1 but recommended as urban density residential in the Comprehensive Plan, allowing up to 36 dwelling units per acre.

Ms. Ragsdale said that in this case, they proposed 410 units, resulting in about a gross density of 13 units per acre. She said that the next slide displayed the application plan, which was required by ordinance for PRD developments. She said that it showed the major elements described in the staff report, including the location of buildings, building envelopes, primary public road access points with a new entrance off Route 29, which would essentially be an extension of Archer from Brookhill into Archer

North to connect this neighborhood.

Ms. Ragsdale said that there were also some emergency access points such as one to South Hollymead Drive and other cul-de-sacs within Hollymead. She noted that there were some anticipated future interconnections to the property that were not a part of this rezoning application. She said that given the environmental features such as preserved and managed slopes and streams, there was approximately 40% open space, and a system of trails was proposed along with amenity areas included in terms of the development.

Ms. Ragsdale stated that she mentioned the 40% because the planned residential district's minimum was 25%. She said that this covered the major points of the plan, and that the applicant had a presentation as well that may answer some of the Board's questions. She said that provided was an illustrative plan, which was an example of how the development could look. She said that in terms of consistency with the comprehensive plan neighborhood model principles, staff did not have any concerns. She said that there were no transportation concerns indicated.

Ms. Ragsdale said that as they could see, there was anticipation of a combination of different housing types. She said that with the step back request, there was also a special exception that she would explain. She said that the special exception, which was one that they saw quite often, was to waive or modify the setback requirement. She said that the requirement was on the screen there for each story that began above 40 feet or the third story, they must step back 15 feet. She said that staff recommended approval of these requests for four-story buildings.

Ms. Ragsdale said that they looked at the design layout of the site and then because it was a special exception, they looked at it on a case-by-case basis. She said that in this case, it was for four-story multifamily buildings that are anticipated to be no taller than 48 feet, and staff had no concerns with that. She said that staff recommended both approval of the rezoning and the special exception request. She said that the Planning Commission recommended approval of the rezoning. She stated that they were not required to make a motion on the special exception and there were no public comments at the Planning Commission.

Mr. Andrews asked what concerns staff considered when analyzing a special exception.

Ms. Ragsdale said that they typically adhered to the neighborhood model principle of design, buildings and spaces of human-scale. She said that the Planning Department considered whether a four-story building required a setback in terms of height. She explained that they aimed to avoid canyon effects and out-of-scale buildings for pedestrians by minimizing setbacks. She said that ultimately, they examined proposed building heights and setbacks alongside the neighborhood model principle to determine if spatial enclosure was affected adversely.

Mr. Andrews opened the public hearing. He asked the Clerk if there were any speakers from the public signed up.

Ms. Borgersen said no, there were not.

Ms. McKeel read the rules of procedure for an applicant speaking during a public hearing.

Mr. Steve Blaine said that he was representing the applicants for this item. He said that the applicants were a joint venture between Stony Point Development Group and Dominion Realty Partners. He said that Michael Campbell from Dominion Realty was present, along with the rest of their team, in case anyone had questions. He said that the earlier image Ms. Ragsdale displayed, featuring the application plan, was crucial as it served as their governing document.

Mr. Blaine said that as the project progressed and became more detailed, any future site plans or subdivisions would have to conform to this application plan. He said that Ms. Ragsdale also mentioned that the housing types plan included four-story apartments and townhouses. He said that the light tan area in the image represented where the apartment buildings would be constructed. He said that he had a graphic prepared to show a possible scenario later on.

Mr. Blaine explained that placing less dense townhouses closer to established neighborhoods was a deliberate design choice, which seemed well received by the community. He said that the plan underwent significant changes from its initial design phase before filing for rezoning. He said that they met with Hollymead Owners Association and Forest Lakes leadership multiple times, as well as hosting a well-attended community meeting in January at Places 29. He said that the feedback they received early on highlighted concerns about traffic coming from the project into adjacent neighborhoods.

Mr. Blaine said that in response, they promised both communities that access to South Hollymead Drive via Reuben Lane and access to Derby Lane would be restricted for emergency use only. He said that the other feedback they received focused on buffers. He said that, as seen in the dark green strip surrounding the neighborhoods, there was a 20-foot natural buffer, primarily consisting of wooded areas. He said that they planned to maintain this buffer in addition to adding a 10-foot landscaped buffer in those specific areas. He said that these changes were well received. He said that the main access point was off of 29, which referred to the future Archer Avenue.

Mr. Blaine stated that they were pleased to announce that groundbreaking for the southern portion had started today on the RST property, now called Archer North. He said that the next image on

the slide showed more context; in the large light gray area was Brookhill, and looking north to the RST property and to Holly Hills showed the existing and proposed multi-use paths. He said that they already had good pedestrian opportunities with the development of Brookhill, which would have sidewalks and a path leading up to Ashwood Boulevard. He said that this route could continue through the RST property and into the Holly Hills property.

Mr. Blaine stated that the light blue line indicated a multi-use path within Forest Lakes and Hollymead communities, and they had an opportunity to connect to these paths as well. He said that the yellow line, which he would discuss in more detail shortly, was a future path designed specifically for elementary school students and their parents to walk to Hollymead Elementary School, which was located nearby. He said that the next slide had information obtained from the staff report. He said that it showed the larger context of the project's proximity to the school. He said that the provided scenario demonstrated where the buildings would be situated.

Mr. Blaine emphasized that townhouse units would be adjacent to established communities, while apartment buildings would be more central and along Route 29. He said that a 100-foot setback from Route 29 would be maintained, as called for in the Places 29 Master Plan. He explained further that the yellow line was an opportunity to develop a trail for Forest Lakes, Hollymead, and the new development, providing a concept of what they are prepared to do. He said that they also had a special exception; Section 4.19 required a 15-foot stepback for buildings over three stories.

Mr. Blaine stated that they believed these images supported the staff's finding that this was an appropriate location for four-story buildings without a stepback. He said that he had observed that the ordinance might have more exceptions than rules but acknowledged that there were locations where it was suitable, which made this action appropriate. He said that the next slide depicted the view coming down Route 29 southbound to the east and then the entrance below. He said that also provided was another perspective from northbound to the right towards the east, which they hoped would support the special exception.

Ms. Mallek asked if they would be planning to replace any plants in the buffer if they died.

Mr. Blaine said that yes, there was a note in the application plan that stated where needed, they would augment the landscaping, so it conformed to the landscaping standards in the site plan.

Ms. LaPisto-Kirtley asked if they were planning on installing sidewalks along Archer throughout the development.

Mr. Blaine confirmed that was correct.

Mr. Gallaway said that referring to the site plan, the multi-use path was located along Archer Avenue. He asked if they would have sidewalks along the areas other than Archer.

Mr. Blaine said that was correct.

Mr. Gallaway said that that information was not on the key for the site plan. He said that he was wondering what the residents north of Archer would have in terms of accessing the multi-use path on Route 29 north and if they would have sidewalks.

Mr. Blaine said that they would have the multi-use path.

Mr. Gallaway asked if that multi-use path was the only pedestrian infrastructure on the whole site.

Mr. Blaine said no, there was a multi-use path along Archer Avenue, but there were sidewalks throughout the site. He said that this detail was typically not included in application plans, but they certainly would be required in the site plan.

Mr. Gallaway asked if all the public roads and travel ways would have sidewalks.

Mr. Blaine confirmed that was correct.

Mr. Gallaway asked if there would be crosswalks to help people access the multi-use paths across Archer. He said since this was a new street network from Polo Grounds Road, so they did not know what was going to occur yet.

Mr. Blaine said that they would address that at the site plan stage, but they wanted to promote safety in the communities.

Mr. Gallaway said that he assumed VDOT would have some say regarding pedestrian crossings.

Mr. Blaine confirmed that was correct.

Mr. Gallaway asked if the included phrase "VDOT expanded stormwater management facility" meant that there was currently a stormwater facility that would be expanded to meet the needs of the new development. He asked who owned the responsibility of the facility once this development was completed.

Mr. Blaine said that he believed it was within the right-of-way.

Mr. Scott Collins, Collins Engineering, said that it was the same situation concerning the property below Brookhill. He said that the scenario involved a pre-existing stormwater management facility owned by VDOT, which Brookhill Development had taken over and improved upon. He said that they added landscaping around it, making it distinct from other facilities along Route 29 and Berkmar.

Mr. Collins said that in that case, the developers installed better fencing and took ownership of the facility. He said that VDOT released it to the community, making it part of the HOA's responsibility. He said that the HOA has been maintaining it effectively, as relying on VDOT for maintenance was not always ideal. He stated that they envisioned a similar scenario for this facility as well and had already discussed it with VDOT.

Mr. Gallaway asked if a new stormwater management facility would be installed or if the second one already existed.

Mr. Collins said that all of them were proposed at this point.

Mr. Gallaway asked if the setbacks only applied to the buildings internal to the site. He asked if all the buildings would be four stories.

Mr. Collins said that most of the apartments would consist of three stories or three stories and a basement. He said that however, they exceeded the 30-foot height limit, so they all had the request for relief from the setback requirement. He said that some of the other townhouse units may also be higher than the 30 feet limit.

Mr. Gallaway said that he noticed some public feedback mentioned concerns about construction using the emergency access points. He asked if there had been a response or reaction to those concerns or were there plans for using the emergency access points, such as over on Derby. He asked if all of them would be entering off of Route 29.

Mr. Collins said that they would not be using the emergency access points for construction vehicles. He confirmed that yes, they would be entering and exiting off Route 29.

Mr. Andrews asked if the emergency access routes were fully accessible for bikes and pedestrians.

Mr. Collins said yes.

Mr. Andrews said that regarding the yellow line leading to the school, he would like to know the name of the property and the developments there.

Mr. Blaine said that it was property owned by Forest Lakes and Hollymead HOA, so their permission was required. He stated that they intended to collaborate with these associations as they appeared receptive to the idea. He said that the project was initiated due to observations that while having a sidewalk and pathway up to Derby Lane was beneficial, there were no sidewalks on Derby Lane itself. He said that children would have to walk in the street when using it. He explained that this alternative seemed sensible for keeping pedestrians off the street and providing a pathway.

Mr. Andrews said that he agreed with Mr. Gallaway that crosswalks may be required for the pedestrian paths in the development.

Ms. Mallek expressed concern that the Foothills Crossing area presented significant pedestrian dangers due to its rolling nature and the placement of crosswalks just below the crests. She said that any measures taken on paper in advance could help mitigate these issues for new residents. She stated that this current situation had persisted for ten years with 40 mile per hour traffic, making it difficult to see individuals pushing strollers over hills.

Mr. Pruitt said if the developers come away with any tips on how to get two HOAs to work together and build a trail then he would be interested in hearing them.

Mr. Gallaway asked if there would be discussion with VDOT about adding crosswalks along Archer and when that would happen in the process. He said he already knew the process to get sidewalks when the street network was already in place.

Ms. Ragsdale said that, as Mr. Blaine had pointed out, this would be a consideration taken into account by VDOT, the transportation staff, and the reviewers when evaluating road plans and site plans.

Mr. Gallaway said that it was important they consider the installation of crosswalks as part of the initial planning efforts rather than retroactively.

Ms. LaPisto-Kirtley commended the developers for working with the community and making changes based on their feedback.

Mr. Andrews closed the public hearing and brought the matter back before the Board for discussion or a motion.

Ms. LaPisto-Kirtley **moved** the Board of Supervisors to adopt the Ordinance attached to the staff report as Attachment D, to approve the Zoning Map Amendment ZMA202300012. Ms. McKeel **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

ORDINANCE NO. 24-A(11)
ZMA 2023-00012

**AN ORDINANCE TO AMEND THE ZONING MAP FOR
PARCELS 04600-00-00-028A0, 04600-00-00-028B0, 04600-00-00-028E0, 04600-00-00-028F0,
04600-00-00-028I0, 04600-00-00-028J0, 04600-00-00-028K0, AND 04600-00-00-028L0**

WHEREAS, an application was submitted to rezone Parcels 04600-00-00-028A0, 04600-00-00-028B0, 04600-00-00-028E0, 04600-00-00-028F0, 04600-00-00-028I0, 04600-00-00-028J0, 04600-00-00-028K0, and 04600-00-00-028L0 from R-1 Residential to Planned Residential Development (PRD); and

WHEREAS, on April 9, 2024, after a duly noticed public hearing, the Planning Commission recommended approval of ZMA 2023-00012;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Albemarle, Virginia, that upon consideration of the transmittal summary and staff report prepared for ZMA 2023-00012 and their attachments, including the Project Narrative last revised December 18, 2023 and the information presented at the public hearings, any written comments received, the material and relevant factors in Virginia Code § 15.2-2284 and County Code § 18-19.1, and for the purposes of public necessity, convenience, general welfare, and good zoning practices, the Board hereby approves ZMA 2023-00012 with the Project Narrative entitled "Holly Hills Zoning Map Amendment Application Narrative," last revised on December 18, 2023.

Ms. LaPisto-Kirtley **moved** the Board of Supervisors adopt the Resolution (Attachment E) to approve the Special Exception SE202300044. Ms. Mallek **seconded** the motion.

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

RESOLUTION TO APPROVE SE2023-00044
HOLLY HILLS STEPBACK WAIVER

WHEREAS, upon consideration of the staff reports prepared for SE2023-00044 Holly Hills Stepback Waiver and the attachments thereto, including staff's supporting analysis, any comments received, and all relevant factors in Albemarle County Code §§ 18-4.19, 18-8.2, and 18-33.9, the Albemarle County Board of Supervisors hereby finds that the proposed waiver:

- (i) would be consistent with the intent and purposes of the planned development district under the particular circumstances, and satisfy all other applicable requirements of County Code § 18-8;
- (ii) would be consistent with planned development design principles; and
- (iii) would not adversely affect the public health, safety, or general welfare.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby approves a special exception to waive the 15-foot stepback requirement of County Code § 18-4.19.5 on Parcels 04600-00-00-028A0, 04600-00-00-028B0, 04600-00-00-028E0, 04600-00-00-028F0, 04600-00-00-028I0, 04600-00-00-028J0, 04600-00-00-028K0, and 04600-00-00-028L0.

Agenda Item No. 21. **Public Hearing: WTA2024-00001 Amendments to Water Protection Ordinance and Associated Fee Schedule.** To receive comments on proposed ordinances to conform the County's Water Protection Ordinance (County Code Chapter 17) and fee schedule (County Code Chapter 1, Article 5) to the mandates of the new Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.), Virginia Erosion and Stormwater Management Regulation (9VAC25-875), and amended state regulations on the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880), each of which takes effect July 1, 2024. These proposed ordinances would repeal County Code Sections 17-208, 17-302, 17-303, 17-810, and 17-903, and would amend County Code Sections 17-503, 17-101, 17-102, 17-103, 17-104, 17-105, 17-200, 17-201, 17-202, 17-203, 17-204, 17-205, 17-207, 17-211, 17-300, 17-301, 17-304, 17-305, 17-306, 17-400, 17-401, 17-402, 17-403, 17-404, 17-405, 17-407, 17-408, 17-410, 17-411, 17-413, 17-415, 17-416, 17-417, 17-418, 17-419, 17-421, 17-422, 17-423, 17-424, 17-500, 17-501, 17-502, 17-600, 17-602, 17-701,

17-800, 17-801, 17-802, 17-803, 17-804, 17-805, 17-806, 17-808, 17-809, 17-811, 17-813, 17-814, 17-900, 17-901, 17-902, and 17-904, among others, by replacing existing references to the Virginia Erosion and Sediment Control Program (VЕСP) and the Virginia Stormwater Management Program (VSMP) (and the documents and processes associated with each) with references to the new consolidated Virginia Erosion and Stormwater Management Program (VESMP) (and its associated documents and processes). The proposed ordinances would also incorporate updated state regulations on the General VPDES Permit for Discharges of Stormwater from Construction Activities. The proposed ordinances would also make non-substantive clarifications and have a delayed effective date of July 1, 2024.

The Executive Summary forwarded to the Board states that The County is one of several Virginia localities subject to an MS4 (Municipal Separate Storm Sewer System) permit which are required to implement the erosion and stormwater management regulations of the State Water Control Board (SWCB). In 2016, the General Assembly enacted the Virginia Erosion and Stormwater Management Act (VESMA) to replace the existing Virginia Erosion and Sediment Control Program (VЕСP) and Virginia Stormwater Management Program (VSMP) with a combined VESMP. However, the Act had a delayed effective date, pending the SWCB's adoption and approval of implementing regulations. The SWCB only recently approved and adopted the new combined Virginia Erosion and Stormwater Management (VESM) Regulation. The Final VESM Regulation was published on December 4, 2023, in the Virginia Register of Regulations, Volume 40 Issue 8, and becomes effective July 1, 2024.

The County must now incorporate the new combined program in the County Code. To match the new state law, the proposed ordinance amendments would likewise become effective July 1, 2024.

The proposed Water Protection Ordinance amendments (Attachment A) incorporate the new combined VESM Regulation. Though the proposed amendments would largely mirror State regulations, where applicable, more stringent County-specific regulations have been carried-over to the proposed new ordinance, including the following:

1. A reduced land disturbance threshold of 10,000 square feet for stormwater management (SWM) [§ 17-300], except for exempt activities [§ 17-301], which are largely state-mandated. The Department of Environmental Quality (DEQ) default SWM threshold is one acre.
2. Time restrictions on development to qualify as an exempt activity for constructing a farm road [§ 17-300].
3. The requirement for streamside management zones (SMZs) for a forestal activity to remain an exempt activity [§ 17-301].
4. The requirement for stream buffers throughout the County when a regulated land disturbing activity occurs, including intermittent streams within rural areas [§§ 17-600 et. seq]. The Chesapeake Bay Preservation Act (CBPA) does not require buffers within Albemarle County and requires buffers only on perennial streams within CBPA designated areas (east of I-95).
5. Exclusion of erosion and sediment control measures from stream buffers, where feasible, and where not feasible, removal and restoration prior to project completion [§ 17-604].
6. The requirement for the developer to transfer maintenance responsibilities of stormwater management facilities to a property owner's association or to post a maintenance bond prior to release of the bond [§ 17-423].

In addition to combining the regulations, staff is recommending the following clarifications:

- Revise § 17-301(F) and § 17-303(B) to clarify when an SMZ is required. Consistent with exemptions established in Virginia Code § 10.1-1163(B), staff proposes clarifying that SMZs are required only for activities that remain regulated as a forestal activity.
- Specify that a County-issued Land Disturbance Permit, not just a DEQ general permit, is also a prerequisite to commencing a regulated land disturbing activity [§ 17-417].
- Eliminate applicants' ability to obtain default approval without administrative review [§ 17-410(G)], which is neither best practice nor enabled under state law.

Combining the regulations would also require terminology changes to the Water Protection Fees in Chapter 1, Article 5 [§ 1-503] of the County Code (Attachment B) to replace references to the VЕСP and VSMP programs. These changes would not affect the number or amount of any fees. Please also note that on December 6, 2023, as part of a comprehensive re-structuring of Community Development fees, the Board previously approved amendments to certain sections in Chapter 17 and the addition of Chapter 1, Article 5, both with delayed effective dates of July 1, 2024. Except where noted, those previously approved amendments would be unaffected and would still take effect July 1.

Except where needed to track new terminology, the pending ordinances do not propose substantive changes to the existing stream buffer provisions in Chapter 17, Article 6. Proposed substantive amendments to County stream buffers will be addressed in the forthcoming Riparian Buffer Overlay District (RBOD) project, which remains under staff review.

The proposed changes are not expected to have an impact on the administration or execution of the County's water protection program.

The proposed ordinances would have a delayed effective date of July 1, 2024.

For reference, unmarked versions of the Chapter 17 (water protection) and Chapter 1 (fee schedule) ordinances are attached as Attachments C and D, respectively.

Combining the VESCP and VSMP programs into the VESMP program and adopting the proposed amendments are not expected to have an impact on the budget.

Staff recommends that the Board adopt the proposed ordinances (Attachments A and B), each with an effective date of July 1, 2024.

Mr. Frank Pohl, County Engineer and Water Protection Ordinance Program Administrator, said that he would be presenting proposed amendments for the WPO and its associated fee schedule for the Board's consideration. He clarified that despite mentioning one presentation, there would be two separate motions for voting, each concerning a different ordinance. He said that if approved by the Board, both ordinances would have a delayed effective date of July 1, 2024.

Mr. Pohl said that before delving into the details of the proposed amendments, he would provide a brief background on the current County Ordinance, which was modeled and adopted in 2014 to adopt the Virginia Erosion and Sediment Control Program Regulations and the Virginia Stormwater Management Program Regulations. He said that in 2016, the General Assembly enacted the Virginia Erosion and Stormwater Management Program (VESMP), a combined regulation of those two other regulations. He said that although a date was not established at that time to implement the new regulation, in December last year, they adopted the regulation with a delayed effective date of July 1, 2024.

Mr. Pohl said that this decision was made to give local jurisdictions ample time to adopt these changes themselves, which was why they were gathered that evening. He said that the consolidation of the regulations led to various changes, which he categorized into two groups: non-regulatory or clerical changes and regulatory changes (clarifications and procedural changes). He said that he would give examples of the non-regulatory or clerical changes: updating, deleting, and adding definitions; updating section titles; updating the fee schedule; and eliminating references to the old programs. He said it also included combining sections and modifying associated language with the code to reflect the consolidation of the programs. He said that they also modernized the code by modifying the language. He said that for instance, they changed "he" to "administrator" and replaced "shall" with "will," "must," or "may." He said that these changes were not done for all sections; they were only done for the sections that changed or required amendments.

Mr. Pohl said that the next category of changes included regulatory changes, clarifications, and procedures. He said that on the screen were the identified changes in this category. He said that under current state law, land disturbances greater than one acre associated with a single-family home must meet water quality and quantity requirements. He said that water quality addresses nutrient reductions, while water quantity addresses channel erosion and flood protection. He said that however, under the new law, the threshold for water quantity was lowered to 10,000 square feet. He said that the water quality threshold remained at one acre. He said that this change would affect applicants but that an agreement in lieu of a plan was allowed for stormwater, which was the water quality and quantity threshold for any activity associated with this construction of a single-family home. He said that this was at the discretion of the administrator.

Mr. Pohl said that there was also an agreement in lieu of an erosion and sediment control plan for up to one acre in the County ordinance. He said that the second item concerned streamside management zones (SMZ), which applied to forestry activities. He said that forestry activities were exempt from management if SMZs were provided, consistent with the Chesapeake Bay Preservation Act.

Mr. Pohl said that for those who may not know what a streamside management zone was, it was a 50-foot buffer along a stream with limitations on the amount of clearing that can be performed within that buffer. He said that the current ordinance required SMZs; however, they were correcting the code to make it clear that SMZs were only required for activities wishing to remain exempt as a forestry activity. He said that the third item aimed to remove the ability to obtain default approval of an application plan without administrative review.

Mr. Pohl said at that time there was a provision which automatically approved plans after a specified time had passed. He said that the practice was not considered best practice, nor was it enabled under state law. He said that the fourth item clarified that a County land disturbance permit was required. He said that although it seemed clear in the ordinance, it needed to be explicitly stated but that it did not change how permits were issued or how staff performed their work. He said that item five included other administrative procedural changes and clarifications, such as requiring SWPPP (Storm Water Pollution Prevention Plan) revisions at the job site, which was already mandated by state policies and guidance from DEQ (Virginia Department of Environmental Quality). He said that additionally, there would be a provision to address repeat erosion and sediment control failures or violations on a particular project.

Mr. Pohl said that before moving on to questions, he wanted to state that an updated ordinance was provided to the Board that day on a blue piece of paper with corrections to § 17.811(A)4(B), inspections by the administrator under the VESMP. He said that the update corrected the inspection frequency for regular erosion and sediment control inspections from monthly to biweekly, which aligned with the current ordinance and new regulations. He said that this was an oversight during the preliminary editing of the ordinance.

Ms. Mallek said she would like clarification on a couple of items and to see if it was within the County's authority to change them or not. She said that she had received citizen comments about the

proposed exemptions for wash water and firefighter foam used at airports and other locations, particularly regarding oil spills at gas stations that were supposedly allowed to be washed down into the river. She asked if they had any authority to improve those situations.

Mr. Pohl said that currently, the exemptions were based on the state's list of exemptions. He said that if they wanted to change those exemptions, they would need approval from DEQ.

Ms. Mallek asked if the Board could pursue that as separately with DEQ and then make changes to the ordinance in the future.

Mr. Pohl confirmed that was correct.

Ms. Mallek said that regarding agricultural roads, she received comments from residents about a person installing a farm road without proper drainage, crossing streams, and behaving differently than one in an approved subdivision. She said that then they wanted to return shortly and ask for an exemption for the now-existing road. She asked if it was something they had authority to strengthen or change the timeframe, or should it be addressed as a separate action.

Mr. Pohl said that change would have to be a separate process from that night, but the Board could propose that to DEQ.

Ms. LaPisto-Kirtley said that on page 2, item five referred to "excluding erosion and sediment control measures from stream buffers, where feasible and where not feasible, and removing and restoring them when not feasible prior to project completion." She asked if Mr. Pohl could clarify the meaning behind that item.

Mr. Pohl said that Ms. LaPisto-Kirtley was referring to the erosion and sediment control measures in § 17-604. He said that this was a carryover from the current ordinance, with no proposed changes. He said that it had been moved from § 603 to § 604 in 2021. He said that § 603 did not require mitigation, while § 604 did.

Ms. LaPisto-Kirtley said that this item was listed in the executive summary, so she was wondering what had changed.

Mr. Pohl clarified that the item was not changing, so perhaps he should not have included it in the executive summary. He said that these were higher standards in their ordinance, which were not changing but he wanted to emphasize them. He said that the executive summary was of the requirement and not the actual regulation.

Ms. LaPisto-Kirtley said that she understood. She said that the wording was confusing to her.

Mr. Pohl said that if a project must impact the area within the outer 50 feet of a buffer, then there would be ample space to place erosion and sediment control measures outside of the buffer for the project. He said that there may be a project where this was not possible; in such cases, an allowance permitted the first 50 feet to be impacted for that measure. He explained that it must be removed and restored after construction was completed.

Mr. Andrews said that he wanted to clarify the requirements of land distribution permits and their impact on certain activities. He asked if these permits applied to agriculture-based activities that were not included in the language. He said that he was uncertain about how stream management zones affected agriculture compared to forestal activities. He said that they were informed that streamside management zones did not apply to agriculture but did apply to forestal activities. He asked about any exceptions for land disturbance permits that might exist.

Mr. Pohl said that there were no exceptions to the streamside management zone, nor to the permit requirements.

Mr. Andrews asked if that was true for agriculture.

Mr. Pohl said that agriculture was exempt, which was a state exemption. He stated that forestry is exempt under state law, and Albemarle County had adopted a higher standard requiring streamside management zones and best management practices for erosion and sediment control measures in the County if they wished to remain exempt under forestry. He said that it was clarified that the streamside management zone did not apply because Virginia law did not apply that to agricultural or pasture conversions. He said that to make this clear, staff rearranged the wording to indicate that it also did not apply to converting to a pasture, which was an agricultural activity.

Ms. Mallek asked if Mr. Pohl had ever experienced a temporary conversion of pasture before the land was turned into a subdivision, or if it was pretty straightforward the way things tend to go along.

Mr. Pohl said that the conversion to pasture was based on what they tell you they are doing. He said that there were no two-year limits or other thresholds in state law for confirming that activity. He said that if the County receives an affidavit from the owner, then they must recognize that affidavit.

Ms. Mallek clarified that they were not allowed to demand an affidavit, they must accept what was provided.

Mr. Pohl confirmed that was correct.

Mr. Andrews opened the public hearing and asked the Clerk if there were any speakers. Hearing none, he closed the public hearing and brought the matter back before the Board for additional comments or a motion.

Mr. Pruitt asked if the motion before them incorporated the changes to the ordinance that were presented at the meeting.

Mr. Steve Rosenberg, County Attorney, confirmed that the changes were included in the motion.

Ms. Mallek **moved** the Board of Supervisors to adopt the Ordinance to amend Chapter 17 (Attachment A), as amended by the revised Section 17-811 dated May 31, 2024 with an effective date of July 1, 2024. Mr. Pruitt **seconded** the motion

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

ORDINANCE NO. 24-17(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. 17-100	Authority.
Sec. 17-101	Purposes.
Sec. 17-102	Applicability.
Sec. 17-103	Land disturbing activity prohibited without approved plan and permit; responsibility.
Sec. 17-104	Assumptions.
Sec. 17-200	Designation of program authority.
Sec. 17-201	Designation of program administrator; powers and duties; express designations.
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Sec. 17-802	Duty to maintain the functional performance of storm drainage systems and streams.
Sec. 17-803	Duty to maintain general permit, stormwater pollution prevention plan, and other documents onsite.
Sec. 17-804	Duty to inspect and take corrective action.
Sec. 17-805	Duty to provide information pertaining to discharges and compliance.
Sec. 17-806	Duty to report discharges or noncompliance.
Sec. 17-808	Duty to stabilize denuded areas with permanent vegetation within nine months after commencing land disturbing activity.
Sec. 17-809	Right of administrator to enter to obtain information, conduct surveys, or in accordance with a performance bond.
Sec. 17-811	Inspections by the administrator under the VESMP.
Sec. 17-813	Monitoring and sampling equipment by the administrator on VPDES permitted facilities.
Sec. 17-814	Third party complaints regarding impacts from land disturbing activities.
Sec. 17-900	Notice to comply.
Sec. 17-901	Failure to comply with notice; revocation; order to stop work, enforcement.
Sec. 17-902	Stop work orders; procedure.
Sec. 17-904	Remedies.

By Removing:

Sec. 17-208	Fees for land disturbing activity under VSMP.
Sec. 17-302	Land disturbing activities subject to the VSMP.
Sec. 17-303	Land disturbing activities exempt from the VSMP.
Sec. 17-810	Inspections by the administrator under the VESCP.
Sec. 17-903	Remedies under the VESCP.

CHAPTER 17. WATER PROTECTION

ARTICLE I. GENERAL

[Section 17-100 to remain unchanged]

Sec. 17-101 Authority.

Articles I through IX of this chapter are adopted pursuant to the authority conferred by the Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), as authorized by Virginia Code § 62.1-44.15:27, the regulations implementing the Virginia Erosion and Stormwater Management Act in 9VAC25-830 through 9VAC25-890, as applicable, including the general Virginia Pollutant Discharge Elimination System permit for discharges from the County's small MS4, and Virginia Code § 62.1-44.15:73, which is a part of the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 *et seq.*).

(§ 7-1, 6-18-75, § 2, 2-11-87, 3-18-92; § 19.2-3, 6-19-91, § 3; § 19.3-2, 2-11-98; Code 1988, §§ 7-1, 19.2-3, 19.3-2; § 17-101, Ord. 98-A(1), 8-5-98; Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:73; 9VAC25-830 through 9VAC25-890.

Sec. 17-102 Purposes.

The purposes of this chapter are to:

- A. *Protect public health, safety, and welfare.* Protect the health, safety, and general welfare of the citizens of the County and the Commonwealth of Virginia.
- B. *Protect quality and quantity of State waters from unmanaged stormwater.* Protect the quality and quantity of State waters from the potential harm of unmanaged stormwater and soil erosion, sediment deposition and nonagricultural runoff by requiring control measures that will maintain, protect and improve the water quality and quantity of receiving State waters.
- C. *Protect property and natural resources.* Prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources resulting from a land disturbing activity.
- D. *Reduce pollution and illicit discharges to protect water quality.* Establish a comprehensive program to manage sources of stormwater. Runoff from lands modified by human activities can harm surface water resources by, among other things, changing natural hydrologic patterns, increasing runoff velocity, and by elevating pollutant concentrations and loadings. Runoff may contain or

mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

- E. *Sustainability of groundwater resources.* Promote the long-term sustainability of groundwater resources.
- F. *Implement State laws.* Implement the applicable parts of the State Water Control Law (Virginia Code § 62.1-44.2 *et seq.*), including the Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*), as required by Virginia Code § 62.1-44.15:27, and the regulations implementing the Virginia Erosion and Stormwater Management Act in 9VAC25-830 through 9VAC25-890, as applicable, and as required thereby, including the general Virginia Pollutant Discharge Elimination System permit for discharges from the County's small MS4, and to provide for the proper administration and enforcement of this chapter.

(§ 7-1, 6-18-75, § 2, 2-11-87, 3-18-92; § 19.1-4, 9-29-77, art. I, § 1, 7-11-90; § 19.2-2, 6-19-91, § 2; § 19.3-3, 2-11-98; Code 1988, §§ 7-1, 19.1-4, 19.2-2, 19.3-3; § 17-102, Ord. 98-A(1), 8-5-98; Ord. 04-17(1), adopted 12-8-04, effective 2-8-05; Ord. 07-17(1), 2-14-07; Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:2; 9VAC 25-875-970.

Sec. 17-103 Applicability.

This chapter, or the applicable parts thereof, applies to:

- A. *Land disturbing activity within the County and the Town of Scottsville.* Any land-disturbing activity within the County and within the Town of Scottsville, including that portion of the Town of Scottsville located within the County of Fluvanna, to which the VESMP applies under this chapter and under State and Federal law.
- B. *Erosion impact areas.* Any land identified by the administrator as an erosion impact area within the County and the Town of Scottsville, to which the parts of this chapter pertaining to erosion and sediment control, including the requirement for the submittal and approval of an erosion and sediment control plan.
- C. *Stream buffers.* Any area within the County and the Town of Scottsville designated as a stream buffer under this chapter.
- D. *Permanent stormwater management facilities.* Any areas served by a public permanent stormwater management facility.
- E. *Discharges, connections and dumping.* All activities that cause or allow to be caused direct or indirect illicit discharges, illicit connections, and the prohibited dumping of refuse and pollutants, or that negatively impede the flow capacity of the County's MS4 or State waters.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33, 62.1-44.15:34, 62.1-44.15:73; 9VAC25-890-40.

Sec. 17-104 Land-disturbing activity prohibited without approved plan and permit; responsibility.

No owner may engage in land-disturbing activity subject to this chapter, or allow land-disturbing activity to occur, on its property, until:

- A. *Soil erosion control and stormwater management plan approved.* The owner has submitted to the administrator an ESM plan for the land disturbing activity, the administrator has reviewed and approved the plan, and all other prerequisites to engaging in land-disturbing activity have been satisfied, as provided in section 17-400 *et seq.*; and
- B. *Permit approved.* The owner has submitted to the administrator an application for a land-disturbance permit to conduct land-disturbing activity, the administrator has reviewed the plan and approved the permit, and all other prerequisites to engaging in land-disturbing activity have been satisfied, as provided in section 17-400 *et seq.*

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:34; 9VAC25-890-40.

Sec. 17-105 Assumptions.

The administration of the requirements of this chapter is assumed to comply with the County's obligations under its MS4 permit, that the control measures and best management practices approved by the administrator in conjunction with any ESM plan or land-disturbance permit are effective based upon current control technologies and best management practices. It also is assumed that control technologies and best management practices are constantly being refined and improved and, as a result, the requirements of State law, this chapter, and the Design Standards Manual will be responsive to these refinements and improvements in administering this chapter.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-970.

[Sections 17-106 through 17-108 to remain unchanged]

ARTICLE II. ADMINISTRATION

Sec. 17-200 Designation of program authority.

The County of Albemarle, Virginia, is hereby designated the program authority (the "program authority") for the purpose of administering the Virginia Erosion and Stormwater Management Program ("VESMP") within the County and the Town of Scottsville. In addition, to further administer the VESMP:

- A. *Agreements.* The County may enter into agreements or contracts with DEQ, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections.
- B. *Cooperation with state and federal agencies.* The County may cooperate and enter into agreements with any state or federal agency in connection with the requirements for land disturbing activities.

(§ 7-9, 4-21-76, 2-11-87, 3-18-92; § 19.3-6, 2-11-98; Code 1988, §§ 7-9, 19.3-6; § 17-105, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; § 17-200, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:50.

Sec. 17-201 Designation of program administrator; powers and duties; express designations.

The County Engineer is hereby designated the program administrator (the "administrator") for the purpose of administering this chapter. The administrator has the powers and duties to administer and enforce the VESMP, and to exercise all powers and perform those duties of the program authority as provided in this chapter. In addition, the following officers and employees are hereby designated specific tasks in order to assist the administrator in administering this chapter:

- A. *Plan reviewers and inspectors.* County employees qualified under section 17-202 and under State law are designated to act as certified plan reviewers and certified inspectors under the VESMP.
- B. *Administrator for post-construction stormwater management facilities and best management practices.* The director of the County's Department of Facilities and Environmental Services is hereby designated to administer the VESMP for post-construction stormwater management facilities and best management practices.
- C. *Administrator for the County's MS4 permit and MS4 program plan.* The director of the County's Department of Facilities and Environmental Services is hereby designated as the administrator of the County's MS4 permit in order to ensure compliance therewith, and to develop and administer the County's MS4 program plan.

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

State law reference – Va. Code § 62.1-44.15:27.

Sec. 17-202 Administrator, plan reviewers and inspectors; certificates of competence.

The administrator, any person reviewing VESMP plans, and each person conducting project inspections under either the VESMP, must hold a valid certificate of competence for the classification of the task to be performed, or its equivalent, as provided in 9VAC25-875-380 *et seq.* The administrator and any other person may hold certificates for more than one classified task.

For purposes of program compliance reviews and evaluations by DEQ, the enrollment of persons in certification programs is deemed to meet the certification requirements as provided in 9VAC25-875-420.

(§ 7-9, 4-21-76, 2-11-87, 3-18-92; § 19.3-6, 2-11-98; Code 1988, §§ 7-9, 19.3-6; § 17-105, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; § 17-202, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:30; 9VAC25-875-380 *et seq.*

Sec. 17-203 Administrator; reporting and recordkeeping.

The administrator, on behalf of the authority, shall report and keep records as follows:

- A. *Reporting.* On a fiscal year basis (July 1 to June 30), the administrator shall report to DEQ by October 1 of each year in a format provided by DEQ the following information:
 - 1. *Permanent stormwater management facilities completed.* Information, not previously reported to DEQ through other reporting requirements, on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
 - 2. *New land disturbing activities.* A listing of each land disturbing activity for which a plan has been approved by the County;
 - 3. *Enforcement actions.* The number and type of enforcement actions during the fiscal year; and
 - 4. *Exceptions granted.* The number of exceptions granted during the fiscal year.
- B. *Recordkeeping; period to retain.* The administrator shall keep records in accordance with the following:
 - 1. *Project records.* Project records, including approved ESM plans, shall be kept for three (3) years after permit termination or project completion.
 - 2. *Inspection records.* Stormwater management facility inspection records shall be documented and retained for at least five (5) years from the date of inspection.
 - 3. *Construction record drawings.* Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.
 - 4. *Registration statements.* All registration statements submitted in accordance with section 17-401 shall be documented and retained for at least three (3) years after the date of project completion or permit termination.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-180.

Sec. 17-204 Rules of construction.

This chapter protects paramount public interests and will be liberally construed to effectuate its several purposes. In addition to the rules of construction set forth in Albemarle County Code § 1-102, the following rules of construction apply to the construction of this chapter, unless the application would be contrary to the purposes of this chapter or the context clearly indicates otherwise:

- A. All references to any statute, regulation, guideline, handbook, manual or standard are to that statute, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this chapter, and includes any amendment thereafter or reissue in a subsequent edition.
- B. All references to the “administrator” include, in the appropriate context, a certified plan reviewer, certified inspector, or any other person designated to act under this chapter.
- C. All references to the “owner” include, in the appropriate context, the applicant, the permittee, the operator.
- D. All references to the “County,” when referring to physical territory in articles I through IX of this chapter, include the physical territory of both the County of Albemarle and the Town of Scottsville.
- E. All references to “this chapter,” when used in articles I through IX, are referring to articles I through IX.
- F. The word “days” means calendar days, unless otherwise expressly provided.
- G. All distances and areas will be measured in a horizontal plane unless otherwise expressly provided.
- H. The word “current” means the point in time at which a matter is under consideration and will not mean the date of adoption of the most recent amendment to this chapter.

- I. The word “maintain” or “maintenance” also includes, repair, replace and reconstruct.
- J. All provisions requiring that improvements be designed or constructed to prescribed standards, or otherwise comply with applicable standards, refer to the minimum standard and nothing in this chapter prohibits an improvement from exceeding the standard.
- K. Any word or phrase used in this chapter that is not defined in section 17-205 will be defined as it is in the VESMA (Virginia Code § 62.1-44.15:24 *et seq.*) and in the applicable regulations in 9VAC25-830 through 9VAC25-890. If the word or phrase is not defined therein, the meaning of the word or phrase will be defined as it is in other chapters of this Code and if it is not defined therein, by resort to other sources determined to be appropriate.

(2-11-98; Code 1988, § 19.3-4; § 17-103, Ord. 98-A(1), 8-5-98; § 17-204, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:27.

Sec. 17-205 Definitions.

The following definitions apply in the administration of this chapter:

Administrator. The term “administrator” means the County Engineer.

Agreement in lieu of a plan. The term “agreement in lieu of a plan” means a written contract between the County and the owner that specifies methods that must be implemented to comply with the requirements of the VESMA in the construction of a single-family residence, in lieu of an ESM plan.

Agricultural land. The term “agricultural land” means land used for horticulture, viticulture, silviculture, or other gardening that may involve the tilling of soil for the raising of crops; the keeping of livestock and/or poultry; and/or agricultural industries or businesses, such as, but not limited to, orchards, fruit packing plants, dairies, nurseries or wayside stands.

Agricultural road. The term “agricultural road” means a road or portion of a road that is constructed exclusively for access to agricultural land and is located on or serves a lot that is not the subject of a pending or approved preliminary or final plat, initial or final site plan, zoning map amendment to a non- agricultural zoning district, or a special use permit for a use or activity not directly related to agriculture.

Amendment to approved plan. The term “amendment to approved plan” means an owner-requested change to an approved plan or to land-disturbance permit conditions.

Applicant. The term “applicant” means any person submitting an ESM plan for approval in order to obtain authorization to commence a land-disturbing activity.

Application. The term “application,” as used in Article IV, means an application for a land-disturbance permit.

Best management practice (BMP). The term “best management practice” or “BMP” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

- A. "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.
- B. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

Board. The term “Board” means the State Water Control Board, unless the context indicates that the term refers to the board of supervisors.

Bypass. The term “bypass” means the intentional diversion of waste streams from any portion of a treatment facility.

Certified inspector. The term “certified inspector” means an employee or agent of the County who: (i) holds a certificate of competence from the State Water Control Board in the area of project inspection; or (ii) is enrolled in the State Water Control Board’s training program for project inspection and successfully completes the program within one year after enrollment.

Certified plan reviewer. The term “certified plan reviewer” means an employee or agent of the County who: (i) holds a certificate of competence from the State Water Control Board in the area of plan review; (ii) is enrolled in the State Water Control Board’s training program for plan review and successfully completes

the program within one year after enrollment; or (iii) is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (Virginia Code § 54.1-400 *et seq.*) of Chapter 4 of Title 54.1 of the Virginia Code, or a professional soil scientist as defined in Virginia Code § 54.1-2200.

Certified program administrator. The term “certified program administrator” means an employee or agent of the County who: (i) holds a certificate of competence from the State Water Control Board in the area of program administration; or (ii) is enrolled in the State Water Control Board’s training program for program administration and successfully completes the program within one year after enrollment.

Channel. The term “channel” means a natural stream or manmade waterway.

Clean Water Act (CWA). The term “Clean Water Act” or “CWA” means the federal Clean Water Act (33 U.S.C. § 1251 *et seq.*), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

Common plan of development or sale. The term “common plan of development or sale” means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

Construction activity. The term “construction activity” means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

Contiguous nontidal wetlands. The term “contiguous nontidal wetlands” means nontidal wetlands that lie within or adjacent to a stream channel or within the floodplain of that stream channel so that there is a hydrologic connection between the stream and the wetland, and that include impoundments of water along a natural stream channel.

Control measure. The term “control measure” means any best management practice (BMP) or stormwater facility, or other method used to minimize the discharge of pollutants to State waters, or otherwise restrict or alter the hydraulics of stormwater flow and discharge.

Dam. The term “dam” means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

Denuded. The term “denuded” means land that has been physically disturbed and no longer supports vegetative cover.

Department or DEQ. The terms “Department” or “DEQ” mean the Department of Environmental Quality, unless the context indicates that the term refers to a County department.

Design Standards Manual. The term “Design Standards Manual” means the manual developed and maintained by the administrator that includes, among other things, the technical criteria required under the VESMP, and best management practices.

Development. The term “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 stormwater management, does not include the exclusions found in 9VAC25-875-860.

Development area. The term “development area” means any portion of the County designated as such in the Comprehensive Plan.

Dike. The term “dike” means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; a levee.

Discharge. The term “discharge,” when used without qualification, means the discharge of a pollutant.

Discharge of a pollutant. The term “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to State waters from any point source, and 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 the State, the County, 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; provided that this definition does not include an addition of pollutants by any indirect discharger.

Diversion. The term “diversion” means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

Drainage area. The term “drainage area” means a land area, water area, or both from which runoff flows to a common point or boundary.

Environmental Protection Agency (EPA). The term “Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.

Erosion and sediment control plan. The term “erosion and sediment control plan” means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan must contain all major conservation decisions and all information deemed necessary by the VESMP authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area. The term “erosion impact area” means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into State waters; provided that the area of land is not a lot or parcel of ten thousand (10,000) square feet or less used for residential purposes or a shoreline where the erosion results from wave action or other coastal processes.

ESC. The term “ESC” means erosion and sediment control.

ESM plan. The term “ESM plan” means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

Facility or activity. The term “facility or activity” means any point source or treatment works treating domestic sewage or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the VESMP.

Floodplain. The term “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 one hundred (100) year flood or storm event, and includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency on a Flood Insurance Rate Map.

General permit. The term “general permit” means a permit authorizing a category of discharges under the CWA and the VESMA within a geographical area.

Hazardous substance. The term “hazardous substance” means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to section 311 of the Clean Water Act.

Illicit discharge. The term “illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or general permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-875-970(D)(2)(c)(3).

Inspection. The term “inspection” means an onsite review of a project’s compliance with an approved ESM plan, an approved land-disturbance permit, the general permit, this Chapter, and any applicable design criteria, or an onsite review to obtain information or conduct surveys or investigations necessary for the implementation or enforcement of this chapter.

Intermittent stream. The term “intermittent stream” means a natural stream or portion of a natural stream that has a defined bed and defined banks within which water flows in response to precipitation, through near surface groundwater flow, or from springs, and which is not a perennial stream.

Land disturbance or land disturbing activity. The term “land disturbance” or “land disturbing activity” means a manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

Land-disturbance approval. The term “land disturbance approval” means an approval (including a land-disturbance permit) allowing a land-disturbing activity to commence issued by the VESMP authority after the requirements this chapter have been met.

Large construction activity. The term “large construction activity” means construction activity, including clearing, grading and excavation resulting in the disturbance of five (5) acres or more of total land area; provided that the disturbance of less than five (5) acres of total land area is a large construction activity if it is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) 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. The term “layout” means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

Main channel. The term “main channel” means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

Man-made. The term “man-made” means constructed by a person.

Maximum extent practicable (MEP). The term “maximum extent practicable” or “MEP” means the technology-based discharge standard for MS4s established by CWA § 402(p) and that 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, that evolves over time as urban runoff management knowledge increases. As such, the County's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, and other practices, procedures, and requirements, to attain compliance with water quality standards.

Minimize. The term "minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

Mitigation plan. The term "mitigation plan" means a plan that meets the requirements of section 17-406 that describes how encroachments into a stream buffer will be mitigated through runoff treatment, revegetation, the addition of extra buffer areas, or other appropriate best management practices. A mitigation plan may be a component of a land-disturbance permit or an ESM plan.

Municipal separate storm sewer. The term "municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system (MS4), including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains: (i) owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to State law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters; (ii) designed or used for collecting or conveying stormwater; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works.

Municipal separate storm sewer system (MS4). The term "municipal separate storm sewer system" or "MS4" means the same as the term "municipal separate storm sewer" is defined in Virginia Code § 62.1-44.3.

Natural channel design concepts. The term "natural channel design concepts" means the utilization of engineering analysis and 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 bankfull bench and its floodplain.

Natural stream. The term "natural stream" means a tidal or nontidal watercourse that is part of the natural topography, that usually maintains a continuous or seasonal flow during the year, and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales are not considered natural streams; however, channels designed using natural channel design concepts may be considered natural streams.

Necessary infrastructure. The term "necessary infrastructure" means components of a site development necessary for the protection of the public health, safety, or welfare, and environmental features and they include, but are not limited to, drainage channels, structures and facilities, best management practices, access roads for emergency vehicles, and access roads in order to maintain stormwater management facilities or water-dependent facilities, or both.

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

Nontidal wetlands. The term "nontidal wetlands" means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the EPA pursuant to section 404 of the Clean Water Act and its implementing regulations.

Nutrient credit. The term "nutrient credit" or "credit" means a nutrient credit certified pursuant to Virginia Code § 62.1-44.19:12 *et seq.*

Operator. The term "operator" means the owner or operator of any facility or activity subject to regulation under this Ordinance. 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 an SWPPP for the site or other permit or land-disturbance permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

Other rural land. The term "other rural land" means any portion of the County that is designated Rural Area in the Comprehensive Plan but that is not within a water supply protection area.

Outfall. The term "outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances that connect segments of the same stream or other surface waters and are used to convey surface waters.

Owner. The term “owner” means the same as that term is defined in Virginia Code § 62.1-44.3. For a regulated land-disturbing activity that does not require a permit, “owner” also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

Peak flow rate. The term “peak flow rate” means the maximum instantaneous flow from a prescribed design storm at a particular location.

Perennial stream. The term “perennial stream” means any stream that is depicted as a continuous blue line on the most recent United States Geological Survey 7.5 minute topographic quadrangle maps (scale 1:24,000), which is determined by the program authority to be perennial following a site-specific evaluation using the guidance entitled “Determinations of Water Bodies with Perennial Flow,” dated September 2003, issued by the Chesapeake Bay Local Assistance Department, or which is delineated as a perennial stream by the United States Army Corps of Engineers, the Virginia Department of Environmental Quality, or under the Virginia Water Protection program. or MS4.

Permittee. The term “permittee” means the person to whom the County or DEQ has issued a permit.

Person. The term “person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

Plan of development. The term “plan of development” means the process for site plan or plat review to ensure compliance with Virginia Code § 62.1-44.15:74 and this chapter which is required as a precedent to clearing, grading, or other land disturbing activity on a site or the issuance of a building permit.

Plat. The term “plat” means a preliminary or final plat, or a plat for any other class of subdivision as provided in the Subdivision Ordinance.

Point of discharge. The term “point of discharge” means a location at which concentrated runoff is released.

Point source. The term “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 or agricultural stormwater runoff.

Pollutant. The term “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; provided that this term does not mean: (i) sewage from vessels; or (ii) 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 State Water Control Board and if it determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

Pollution. The term “pollution” means the alteration of the physical, chemical or biological properties of any State waters as will or is likely to create a nuisance or render the waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (a) 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 that by itself is not sufficient to cause pollution, but that, in combination with such alteration of or discharge or deposit to State waters by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into State waters; and (c) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are “pollution” for the purposes of this chapter.

Pollution prevention plan. The term “pollution prevention plan” means a plan that meets the requirements of section 17-404 for implementing pollution prevention measures during construction activities and that details the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. A pollution prevention plan is a component of a land-disturbance permit.

Post-development. The term “post-development” means the conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

Pre-development. The term “pre-development” means the conditions that exist at the time that plans for the land development activity are submitted to the authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, and similar acts), the existing conditions at the time prior to the commencement of the land-disturbing activity establish pre-development conditions.

Program. The term “program” means the Virginia Erosion and Stormwater Management Program.

Qualified personnel. The term “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.

Regulations. The term “regulations,” when referring to State regulations, means those regulations implementing the VESMA in 9VAC25-830 through 9VAC25-890.

Runoff. The term “runoff” means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

Runoff characteristics. The term “runoff characteristics” includes maximum velocity, peak flow rate, volume, flow duration, and any other measure of the nature of the discharge.

Runoff volume. The term “runoff volume” means the volume of runoff that runs off the site from a prescribed storm event.

Sediment basin. The term “sediment basin” means a temporary impoundment built to retain sediment and debris that is formed by constructing an earthen embankment with a stone outlet.

Sewage disposal system. The term “sewage disposal system” means a sewerage system or treatment works composed of a facility or combination of facilities constructed for the transport or treatment, or both, of domestic, commercial or industrial sewage, but not including plumbing, fixtures, lateral pipes from a dwelling unit to a septic tank, lateral pipes from a dwelling unit to a publicly owned sewerage facility, or publicly owned facilities for the transport or treatment, or both, of sewage.

Site. The term “site” means the land or water area composed of one or more parcels 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.

Small construction activity. The term “small construction activity” means:

- A. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than ten thousand (10,000) square feet, and less than five (5) acres, or a land disturbance of less than ten thousand (10,000) square feet 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 ten thousand (10,000) square feet and less than five (5) 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. DEQ may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five (5) acres where stormwater controls are not needed based on an approved TMDL that addresses the pollutant(s) of concern or, for nonimpaired 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 DEQ that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of [9VAC25-31-1020](#), all certifications submitted in support of the waiver must be submitted electronically by the owner or operator to DEQ in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of [9VAC25-31](#) is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of [9VAC25-31](#), permittees may be required to report electronically if specified by a particular permit; or
- B. Any other construction activity designated by either DEQ or the EPA’s 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.

Soil erosion. The term “soil erosion” means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

Soil erosion control and stormwater management plan. The term “soil erosion control and stormwater management plan,” commonly referred to as the erosion control and stormwater management plan, or “ESM plan” means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of

aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this chapter.

Source. The term “source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

Stabilized. The term “stabilized” means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

State. The term “State” means the Commonwealth of Virginia.

State Water Control Law. The term “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. The term “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction, including wetlands.

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

Stormwater conveyance system. The term “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, and includes a man-made, natural, or restored stormwater conveyance system described as follows:

- A. *Man-made stormwater conveyance system.* The term “man-made stormwater conveyance system” means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems.
- B. *Natural stormwater conveyance system.* The term “natural stormwater conveyance system” means the main channel of a natural stream and the flood-prone area adjacent to the main channel.
- C. *Restored stormwater conveyance system.* The term “restored stormwater conveyance system” means a stormwater conveyance system that has been designed and constructed using natural channel design concepts, and they include the main channel and the flood-prone area adjacent to the main channel.

Stormwater detention. The term “stormwater detention” means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream stormwater conveyance system.

Stormwater discharge. The term “stormwater discharge” means a discharge of runoff from sites where one or more of the following are located: (i) land disturbing activities including, but not limited to, clearing, grading, or excavation; (ii) construction materials or equipment storage or maintenance including, but not limited to, fill piles, borrow area, concrete truck washout, fueling; or (iii) other industrial stormwater directly related to the construction process including, but not limited to, concrete or asphalt batch plants.

Stormwater management facility. The term “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. The term “stormwater management plan” means a plan that meets the requirements of section 17-403 containing information for describing methods for complying with the applicable requirements of this chapter, and that typically contains two major components: (i) measures addressing stormwater detention for water quantity and discharge characteristics impacts; and (ii) measures addressing nutrient loadings and water quality. A stormwater management plan is a component of a land-disturbance permit.

Stormwater pollution prevention plan (SWPPP). The term “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. An SWPPP required under the VESMP for construction activities must identify and require the implementation of control measures, and must 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.

Stream buffer. The term “stream buffer” means an area of land at or near a tributary streambank or nontidal wetland, or both, that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes that may result in significant degradation to the quality of State waters.

Streamside Management Zone. The term “streamside management zone” means an area of reduced management activity on both sides of the banks of perennial and intermittent streams and bodies of open

water where extra precaution is used in carrying out forest practices to protect bank edges and water quality.

Subdivision. The term “subdivision” means the same as defined in the Subdivision Ordinance.

Subdivision Ordinance. The term “Subdivision Ordinance” means the subdivision regulations of the County of Albemarle, Virginia codified in Chapter 14 of the Albemarle County Code.

Surface waters. The term “surface waters” means: (i) 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; (ii) all interstate waters, including interstate wetlands; (iii) 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 that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or that are used or could be used for industrial purposes by industries in interstate commerce; (iv) all impoundments of waters otherwise defined as surface waters under this definition; (v) tributaries of waters identified in subdivisions (i) through (iv) of this definition; and (vi) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions (i) through (v) of this definition; provided that waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act and the law, are not surface waters, and surface waters do not include prior converted cropland as determined by the EPA.

Ten-year storm. The term “ten-year storm” means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten (10) years, and which also may be expressed as an exceedance probability with a ten (10) percent chance of being equaled or exceeded in any given year.

Total maximum daily load (TMDL). The term “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, and which can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

Town of Scottsville. The term “Town of Scottsville” means all of that territory within the incorporated boundaries of the Town of Scottsville, Virginia, located within the County of Albemarle, Virginia and the County of Fluvanna, Virginia.

Twenty-five year storm. The term “twenty-five year storm” means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in twenty-five (25) years, and which also may be expressed as an exceedance probability with a four (4) percent chance of being equaled or exceeded in any given year.

Upset. The term “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology based general permit effluent limitations because of factors beyond the reasonable control of the operator; provided that the term does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Virginia Erosion and Stormwater Management Act (VESMA). The term “Virginia Erosion and Stormwater Management Act” or “VESMA” means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.

Virginia Erosion and Stormwater Management Program (VESMP). The term “Virginia Erosion and Stormwater Management Program” or “VESMP” means a program established by the VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program includes such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

Virginia Erosion and Stormwater Management Program authority (VESMP authority). The term “Virginia Erosion and Stormwater Management Program authority”, “VESMP authority”, or “Program authority” means the County of Albemarle, which has been approved by DEQ to operate the VESMP. Within the boundaries of the County of Albemarle and the Town of Scottsville, the County is the VESMP authority.

Virginia Erosion and Stormwater Management Regulation (Regulation). The term “Virginia Erosion and Stormwater Management Regulation” or “Regulation” means 9VAC25-875-10 et seq., as may be amended from time to time.

Virginia Stormwater BMP Clearinghouse. The term “Virginia Stormwater BMP Clearinghouse” means a collection that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the VESMA and associated regulations.

Virginia Pollutant Discharge Elimination System (VPDES) permit or VPDES permit. The term “Virginia Pollutant Discharge Elimination System (VPDES) permit” or “VPDES permit” means a document issued by

DEQ 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.

Wasteload allocation (WLA) or wasteload. The term “wasteload allocation”, “WLA” or “wasteload” 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, and is a type of water quality-based effluent limitation.

Water-dependent facility. The term “water-dependent facility” means a development that cannot exist outside of the stream buffer and must be located on the shoreline because of the intrinsic nature of its operation and which include, but are not limited to: (i) the intake and outfall structures of power plants, sewage treatment plants, water treatment plants, and storm sewers; (ii) public water-oriented recreation areas; and (iii) boat docks and ramps.

Water quality technical criteria. The term “water quality technical criteria” means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

Water supply protection area. The term “water supply protection area” means those areas of land within the County that are within the watershed of a public water supply reservoir or water supply intake, and those areas consist of all land within the County that drains naturally to the South Fork Rivanna Reservoir, Beaver Creek Reservoir, Totter Creek Reservoir, Sugar Hollow Reservoir, Ragged Mountain Reservoir, the North Fork Rivanna River intake, and to any impoundment or water supply intake designated in the future by the board of supervisors as a public water supply reservoir.

Watershed. The term “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; provided that in karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

Wetlands. The term “wetlands” means those areas that are inundated or saturated by surface water 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, and which generally include swamps, marshes, bogs, and similar areas.

Written notice. The term “written notice” means a written communication from the administrator that is delivered either mailed by first class mail, personal delivery, or, if consented to by the owner in writing, in conjunction with submitting an application or otherwise, by fax or email.

Zoning Ordinance. The term “Zoning Ordinance” means the zoning regulations of the County of Albemarle, Virginia codified in Chapter 18 of the Albemarle County Code.

(§ 7-2, 6-18-75, § 4, 7-9-80, 2-11-87, 3-18-92, § 19.1-5, 9-29-77, art. I, § 2, 9-13-78, 7-11-90, 8-3-94; § 19.2-4, 6-19-91; § 19.3-5, 2-11-98; Code 1988, §§ 7-2, 19.1-5, 19.2-4, 19.3-5; § 17-104, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; Ord. 08-17(1), 2-6-08; Ord. 08-17(3), 8-6-08; § 17-205, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

State law reference – Va. Code § 62.1-44.15:24; 9VAC25-875-20.

[Section 17-206 to remain unchanged]

Sec. 17-207 Fees for land disturbing activity. [effective 7/1/2024]

Fees for any land disturbing activity are as provided in County Code Chapter 1, Article 5.

(§ 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; § 19.3-17, 2-11-98; Code 1988, §§ 7-4, 19.3-17; § 17-209, Ord. 98-A(1), 8-5-98; Ord. 98-17(1), 11-11-98; Ord. 02-17(1), 7-3-02; Ord. 08-17(3), 8-6-08; Ord. 11-17(1), 10-5-11; § 17-207, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(2), 4-21-21, effective 7-1-21; Ord. 23-17(1), 12-6-23, effective 7-1-24)

State law reference – 9VAC25-875-1290 *et seq.*

Sec. 17-208 [Repealed]

Sec. 17-209 Fees; payment. [Previously amended 12/6/2023, effective 7/1/2024]

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

(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, effective 7-1-24)

State law reference – Va. Code § 62.1-44.15:36; 9VAC25-875-1290 *et seq.*

Sec. 17-210 [Previously repealed 12/6/2023, effective 7/1/2024]

Sec. 17-211 Review of administrator’s action; judicial review.

Any person aggrieved by an action or inaction of the administrator may request that the County review the action or inaction and may thereafter request judicial review of the County's final decision, as provided herein:

1. *Actions that may be reviewed.* Any of the following actions by the administrator may be reviewed: (i) the disapproval of an ESM plan or land-disturbance permit; (ii) the approval of an ESM plan or land-disturbance permit with conditions to which the owner objects; (iii) the disapproval of a variance or exception; (iv) any determination made under sections 17-300 through 17-306; (v) any general permit decision made by the administrator; (vi) any enforcement decision made by the administrator; (vii) the failure of the administrator to act within the time periods required by this chapter; and (viii) the approval of an ESM plan or land-disturbance permit where the issue is compliance with 9VAC25-875-560(19).
2. *Standing.* Any owner who is an applicant, permittee, operator, or any other person subject to general permit requirements under the VESMP who is aggrieved by any action or inaction under subsections (A)(i) through (vii) has standing to seek review under this section. Any downstream owner who is aggrieved by an action under subsection (A)(viii) has standing to seek review under this section.
3. *Request for hearing and time in which to make request; contents.* Any person who has standing under subsection (B) (hereinafter, the "appellant") may request in writing that the County conduct a hearing, provided that the request is filed with the clerk of the board of supervisors:
 1. within thirty (30) days after the date of notice of the action, when review is sought under subsections (A)(i) through (A)(vi);
 2. within thirty (30) days after the date by which the administrator was required to act but failed to do so, when review is sought under subsection (A)(vii); or
 3. within thirty (30) days after the date of the administrator's approval of the ESM plan or land-disturbance permit, when review is sought under subsection (A)(viii).

The request must specify the grounds for the appeal. The thirty (30) day period within which the hearing is held will not begin unless and until the request specifies the grounds for the appeal.

1. *Conduct of hearing.* The hearing will be conducted as follows:
2. *Hearing officer.* The hearing before the County will be conducted by the Director of Community Development, who will act as the hearing officer for the County.
3. *When the hearing will be held.* The hearing will be held within thirty (30) days after receipt of the petition requesting a hearing. The hearing will be held on a date and at a time at which both the appellant and the administrator may be present. At the request of the appellant, the hearing officer may extend the hearing date beyond the thirty (30) day period. The failure of the hearing officer to conduct the hearing within the thirty (30) day period or any extension thereof does not divest the hearing officer of jurisdiction to consider the appeal.
4. *Evidence and law.* When reviewing the administrator's action or inaction, the hearing officer will consider relevant and material laws and evidence presented by the owner, the administrator, and any other person as the hearing officer deems to be necessary for a complete review of the matter.
5. *Record.* The record of the hearing will be composed of relevant files, a recording of the hearing, and other writings. The recording of the hearing will be transcribed only if judicial review of the decision is sought under subsection (F).
6. *Decision.* The hearing officer will make a final decision within forty-five (45) days after the hearing is concluded. The hearing officer may affirm, reverse, or modify the action of the administrator, or may take any action the administrator failed to take. The decision will be in writing and state the date of the decision and the reasons for the decision. Notice of the hearing officer's decision will be provided to the administrator and to the appellant.
7. *Judicial review.* A final decision by the hearing officer under this section may be subject to judicial review, provided that an appeal is filed by the person aggrieved in the circuit court within thirty (30) days after the date of the hearing officer's written decision. Judicial review will be conducted as provided in Virginia Code § 62.1-44.15:46.

(§ 17-210: § 7-7, 6-18-75, § 9, 2-11-87, 3-18-92; § 19.3-18, 2-11-98; Code 1988, §§ 7-7, 19.3-18; §17-210, Ord. 98-A(1), 8-5-98) (§ 17-311: 2-11-98; Code 1988, § 19.3-35; § 17-311, Ord. 98-A(1), 8-5-98; § 17-211, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:46; 9VAC25-875-160.

ARTICLE III. APPLICABILITY OF THE VESMP TO A LAND DISTURBING ACTIVITY OR A SITE CONDITION

Sec. 17-300 Land disturbing activities and site conditions subject to the VESMP.

The following land disturbing activities and site conditions are subject to the VESMP, requiring the owner to comply with all applicable requirements of the VESMP in this Chapter and under state law:

- A. *Land disturbance of 10,000 square feet or more.* Any land disturbance of ten thousand (10,000) square feet or more, including the harvesting of forest crops, unless the activity is exempt under section 17-301.
- B. *Land disturbance of less than 10,000 square feet; common plan of development or sale.* Any land disturbance of less than ten thousand (10,000) square feet if the disturbance is part of a common plan of development or sale whose total land disturbance will exceed ten thousand (10,000) square feet, unless the activity is exempt under section 17-301.
- C. *Erosion impact area.* The administrator determines that a site is an erosion impact area under section 17-304, regardless of whether the activity resulting in the condition is otherwise exempt under section 17-301.
- D. *Agricultural road included within a plan of development.* The administrator determines that any previously constructed agricultural road, exempt at the time of its construction under section 17-301, is no longer exempt because the owner submitted an initial site plan, preliminary plat, any other subdivision plat, or special use permit for a use or activity not directly related to agriculture, for the site on which the agricultural road is located, and: (i) the initial site plan, subdivision plat, or special use permit application was submitted within twenty-four (24) months after construction of the agricultural road began; and (ii) the administrator determines that the dimensions and alignment of the agricultural road substantially correspond to the dimensions and alignment of a road proposed on the plan, plat, or any document submitted as part of the special use permit application.

(§ 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; § 17-200, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; § 17-300, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-70.

Sec. 17-301 Land disturbing activities exempt from the VESMP.

- A. Notwithstanding any other provisions of the VESMA, the following activities are not required to comply with the requirements of the VESMA unless otherwise required by federal law:
 - 1. *Minor land-disturbing activities.* Minor land disturbing-activities, including home gardens and individual home landscaping, repairs, and maintenance work;
 - 2. *Connections.* Installation, maintenance, or repair of any individual service connection;
 - 3. *Public utility lines.* Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided that the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
 - 4. *Conventional onsite sewage systems.* Installation, maintenance, or repair of any septic tank line or drainage field for a conventional onsite sewage system unless included in an overall plan for land-disturbing activity related to construction of the building to be served by the septic tank system;
 - 5. *Mining, oil and gas operations and projects.* Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Virginia Code;
 - 6. *Agricultural, horticultural, and forestal activities.* Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including 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; or as additionally set forth by the State Water Control Board in regulations. However, this exemption does not apply to the harvesting of forest crops unless the area on which the harvesting occurs either (a) is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 *et seq.*) of Title 10.1 of the Virginia Code and harvesting is conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry in its “Virginia’s Forestry Best Management Practices for Water Quality,” including the implementation of Streamside Management Zones or (b) is converted to bona fide agricultural or improved pasture use as described in Virginia Code § 10.1- 1163(B);

7. *Posts and poles.* Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 8. *Railroad improvements.* Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
 9. *Emergency work.* Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP must be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of 9VAC25-875-530 is required within 30 days of commencing the land-disturbing activity; and
 10. *Discharges not from land-disturbing activity.* Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.
- B. Notwithstanding any other provisions of the VESMA, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:
1. *Reclamation of abandoned property.* Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
 2. *Project maintenance.* Routine maintenance 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 re-establishment of existing associated ditches and shoulders is deemed routine maintenance if performed in accordance with this subsection;
 3. *Discharges.* Discharges from a land disturbing activity to a sanitary sewer or a combined sewer system.
 4. *Agricultural roads.* The construction of agricultural roads unless and until a plan of development is submitted and the road is no longer exempt as provided in section 17-300(D).

(§ 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; § 17-200, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; § 17-301, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

State law reference – 9VAC25-875-90.

Sec. 17-302 [Repealed]

Sec. 17-303 [Repealed]

Sec. 17-304 Determining the status of a land disturbing activity or a site condition.

The administrator has the authority to determine:

- A. *Whether an activity is subject to this chapter.* Whether an activity is a land disturbing activity and, if it is so, whether it is subject to or exempt from the VESMP.
- B. *Whether an erosion impact area exists.* Whether an erosion impact area exists on a site.
- C. *Whether an agricultural road is part of a plan of development.* Whether a road is an agricultural road and whether it is part of a plan of development under section 17-300(D).

- D. *Related offsite land disturbing activity.* When a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, whether: (i) the offsite activity should be considered as being part of the proposed land disturbing activity; or (ii) to require the owner to provide proof of an approved erosion and sediment control plan if the owner asserts that the offsite activity is already covered by an approved erosion and sediment control plan, and to require that the owner certify that the plan will be implemented in accordance with applicable erosion and sediment control requirements in this chapter.
- E. *Adjacent offsite land disturbing activity.* When a land disturbing activity or plan requires land disturbing activity on adjacent or abutting property, whether: (i) the owner of the adjacent or abutting property must be a signatory on the application; or (ii) to require a recorded easement and agreement for the offsite land disturbing activity before further land disturbing activity occurs, or in the case of a proposed plan, prior to further review or approval.

(§ 17-200: § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-8, 2-11-98; Code 1988, §§ 7-3, 19.3-8; § 17-200, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08) (§ 17-201: 2-11-98; Code 1988, § 19.3-9; § 17-201, Ord. 98-A(1), 8-5-98) (§17-202: § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-10, 2-11-98; Code 1988, §§ 7-3, 19.3-10; § 17-202, Ord. 98-A(1), 8-5-98; § 17-304, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-15.44:27.

Sec. 17-305 Notice of determination regarding status of land disturbing activity or site condition.

The administrator shall provide notice to the owner of any determination under section 17-304(A) that a proposed land disturbing activity is subject to this chapter where an owner asserts that the activity is exempt, any determination under section 17-304(B) that an erosion impact area exists, or any determination under section 17-304(C) that an agricultural road is now subject to the erosion and sediment control requirements, as follows:

- A. *Notice.* Upon making a determination, the administrator shall immediately inform the owner of the determination. The notice may either be informal, by the administrator speaking to the owner by telephone or in person, or a written notice. The written notice shall:
1. state the basis for the determination;
 2. instruct the owner to submit an erosion and sediment control plan for review and approval; and
 3. for determinations pertaining to erosion impact areas or agricultural roads, state the date by which the plan shall be submitted.
- B. *When written notice required.* If informal notice as provided in subsection (A) is first provided to the owner and the owner either requests written notice or fails to comply with the informal notice, the administrator shall then provide written notice to the owner as provided in subsection (A).

(§ 17-201: 2-11-98; Code 1988, § 19.3-9; § 17-201, Ord. 98-A(1), 8-5-98) (§17-202: § 7-3, 6-18-75, § 5, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-10, 2-11-98; Code 1988, §§ 7-3, 19.3-10; § 17-202, Ord. 98-A(1), 8-5-98; § 17-305, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-15.44:27.

Sec. 17-306 Owner's obligation upon receipt of notice of determination.

Upon receipt of the notice provided by the administrator under section 17-305, the owner must act as follows:

- A. *Determination that land disturbing activity is subject to the VESMP.* If the administrator determines that a land disturbing activity is subject to the VESMP, under section 17-304(A) or (C), the owner must immediately comply with the applicable requirements of this chapter and the applicable requirements of this chapter will be immediately enforced.
- B. *Determination that an erosion impact area exists.* If the administrator determines that an erosion impact area exists under section 17-304(B), the owner must: (i) not permit any portion of that land to remain in a condition so that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes, or ponds; and (ii) immediately comply with the applicable requirements of the notice and this chapter. If good cause is shown, the administrator may grant to an owner an extension of time to comply with the requirements of this subsection and this chapter.

(2-11-98; Code 1988, § 19.3-9; § 17-201, Ord. 98-A(1), 8-5-98; § 17-306, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-15.44:27.

ARTICLE IV. PROCEDURE FOR SUBMITTING, REVIEWING AND ACTING ON APPLICATIONS; POST-APPROVAL RIGHTS AND OBLIGATIONS

DIVISION 1. APPLICATION REQUIREMENTS

Sec. 17-400 Responsibility to prepare, submit and obtain approval of applications; multi-jurisdictional developments.

The procedures in this article, and all related requirements of this chapter, apply to any land disturbing activity subject to the VESMP. An application must be submitted as follows:

- A. *Responsibility of the owner.* Each owner is responsible for preparing, submitting, and obtaining approval of an application prior to engaging in land disturbing activity subject to this chapter. When the land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and obtaining approval of the plan is the responsibility of the owner.
- B. *Submittal of application to the administrator.* Subject to subsection (C), each application must be submitted to the administrator as provided in this chapter.
- C. *Multi-jurisdictional projects.* The County may enter an agreement with an adjacent VESMP authority regarding the administration of multi-jurisdictional projects, specifying who will be responsible for all or part of the administrative procedures. If the County and the adjacent VESMP authority fail to reach such an agreement, each will be responsible for administering the area of the multi-jurisdictional project that lies within its jurisdiction.

(§ 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) (§ 17-303: § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-27, 2-11-98; Code 1988, §§ 19.1-6, 19.2-7, 19.3-27; § 17-303, Ord. 98-A(1), 6-17-98; § 17-400, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:34; 9VAC25-890-40, 9VAC25-875-110.

Sec. 17-401 Land-disturbance permit application; form and content.

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

- A. *Application form.* A completed application on a form or in a format 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 9VAC25-875-940 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 and 17-500 or an executed agreement in lieu of an erosion and sediment control plan, if allowed by the administrator.
- E. *Stormwater management plan.* A stormwater management plan satisfying the requirements of sections 17-403 or an executed agreement in lieu of a plan, if allowed by the administrator.
- F. *Pollution prevention plan.* A pollution prevention plan satisfying the requirements of section 17-404.
- G. *Stormwater pollution prevention plan.* An SWPPP 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, effective 7-1-24)

State law reference – Va. Code § 62.1-44.15:34; 9VAC25-875-530, 9VAC25-875-920, 9VAC25-875-940, 9VAC25-880-70.

Sec. 17-402 Erosion and sediment control plans, and agreements in lieu of a plan; form and content.
[Effective 7/1/2024]

Any owner whose proposed land-disturbing activity is subject to this chapter must submit a soil erosion and sediment control plan for review that includes the following, in the form required by the administrator:

- A. *Elements of erosion and sediment control plan.* Except as provided in subsection (B), 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 the applicable certification required by Virginia Code § 62.1-44.15:30, 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.
- B. *Agreement in lieu of a plan.* Notwithstanding subsection (A), 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, 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 VESMP, 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 VESMP.* Except as provided in subsection (A) 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), 7-1-01; § 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, effective 7-1-24)

State law reference –, 9VAC25-875-970, 9VAC25-880-70, 9VAC25-890-40, 9VAC25-875-550.

Sec. 17-403 Stormwater management plans; form and content.

Any owner whose proposed land disturbing activity is subject to this chapter must develop and submit a stormwater management plan for review that includes the following, in the form required by the administrator:

- A. *Technical criteria.* A stormwater management plan for a land disturbing activity must apply the stormwater management technical criteria set forth in this section and 9VAC25-875-670 *et seq.* to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, are considered a single land disturbing activity.
- B. *Surface runoff.* A stormwater management plan must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- C. *Elements of plan.* Except as provided in section 17-301(B) and subsection (D), a complete stormwater management plan must contain all of the following elements:
 1. *Stormwater discharges and features.* The plan must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and must include information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters, and pre-development and post-development drainage areas.
 2. *Contact information.* Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected.
 3. *Details pertaining to, or narrative of, current and final site conditions.* Either sufficient plan information provided and documented during the review process that addresses the current and final site conditions, or a narrative that includes a description of current site conditions and final site conditions.
 4. *Description of proposed stormwater management facilities.* A detailed plan of the proposed stormwater management facilities, including all best management practices, that will satisfy the requirements of this chapter and a description of all facilities and best management practices that will prevent or minimize water quality impacts.
 5. *Description of long-term operation and maintenance.* A description of the mechanism through which the facilities, including all best management practices, will be operated and maintained after construction is complete, provided that this description is satisfied if the

stormwater management facility will be subject to the agreement required by section 17-415.

6. *Information about proposed stormwater management facilities.* The following information about the proposed stormwater management facilities, including:
 - a. a detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure;
 - b. the type of facilities;
 - c. the location, including geographic coordinates;
 - d. acres treated;
 - e. the surface waters into which the facility will discharge; and
 - f. any other information required by the administrator in order to comply with any requirements of the County's MS4 permit.
 7. *Documentation demonstrating compliance.* Documentation and calculations, including all hydrologic and hydraulic computations and runoff characteristics, verifying compliance with the water quality and quantity requirements of the technical criteria in section 17- 501.
 8. *Maps.* One or more maps of the site depicting the topography of the site and:
 - 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;
 - 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;
 - h. proposed land uses, 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; and
 - i. other site information deemed necessary by the administrator.
 9. *Offsite compliance options.* If an owner intends to meet the requirements established in section 17-502, which implements 9VAC25-875-580 and 9VAC25-875-600, through the use of off-site compliance options, where applicable, a letter of availability from the off- site provider.
 10. *Additional information.* Additional information deemed necessary by the administrator for a complete review of the plan.
- D. *Agreement in lieu of a plan.* Notwithstanding subsection (C), if the land disturbing activity is for the purpose of establishing a single family detached dwelling unit, the administrator may allow an agreement in lieu of a plan for the land disturbing activity required for constructing the dwelling.
- E. *Seals and signatures.* Any elements of the stormwater management plan that include activities regulated under Virginia Code § 54.1-400 *et seq.* must be appropriately sealed and signed by a professional registered in the State pursuant to Virginia Code § 54.1-400 *et seq.* Any stormwater management plan requiring an appropriate seal and signature is incomplete under section 17-409 if it is not sealed and signed as required by this section.

(§ 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-27, 2-11-98; Code 1988, §§ 19.1-6, 19.2-7, 19.3-27; § 17-303, Ord. 98-A(1), 6-17-98; § 17-403, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:34; 9VAC25-875-110, 9VAC25-875-970, 9VAC25-890-40, 9VAC25-875-510.

Sec. 17-404 Pollution prevention plans; form and content.

Any owner whose proposed land disturbing activity is subject to the VESMP must submit a pollution prevention plan for review that includes the following, in the form required by the administrator:

- A. *Elements of plan.* A pollution prevention plan containing all of the following elements:
1. *Sources of pollutants.* Identify potential pollutant generating activities and the pollutant that is expected to be exposed to stormwater.
 2. *Location of pollutant generating activities.* Describe the location where the potential pollutant generating activities will occur, or if identified on a site plan, refer to the site plan.
 3. *Non-stormwater discharges.* Identify all non-stormwater discharges as provided in 9VAC25-880-70, Part I(E), that are or will be commingled with stormwater discharges from the construction activity, including any support activity.
 4. *Person responsible.* Identify the person responsible for implementing the pollution prevention practices for each pollutant generating activity, if different from the person listed as the qualified personnel in the SWPPP.
 5. *Practices and procedures.* Describe the pollution prevention practices and procedures that will be implemented to respond to the categories of leaks, spills and discharges in 9VAC25-880-70, Part II(A)(4)(e).
 6. *Pollution prevention awareness.* Describe the procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices and applicable disposal locations of these wastes to personnel in order to comply with the State.
- B. *Details of measures to minimize the discharge of pollutants.* The pollution prevention plan must detail the design, installation, implementation, and maintenance of effective pollution prevention measures in accordance with 40 CFR 450.21(d) to minimize the discharge of pollutants. The following are the minimum requirements for minimizing the discharge of pollutants:
1. *Minimum control measures.* At a minimum, the control measures must be designed, installed, implemented, and maintained to address the following:
 - a. *Wash waters.* 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.
 - b. *Minimization of exposure to precipitation and stormwater.* 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.
 - c. *Minimize discharges from spills and leaks.* Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
 2. *Best management practices.* The pollution prevention plan must provide effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):
 - a. *Washout of concrete.* Wastewater from the washout of concrete, unless managed by an appropriate control.
 - b. *Washout of stucco and other materials.* Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials.

- c. *Vehicle and equipment maintenance and operation.* Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
- d. *Vehicle and equipment washing.* Soaps, solvents or detergents used in vehicle and equipment washing.
- 3. *Discharges from dewatering activities prohibited.* Discharges from dewatering activities, including discharges from dewatering trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).
- 4. *Control of waste.* The pollution prevention plan must include measures for controlling waste such as discarded building materials, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference –9VAC25-875-500, 9VAC25-875-970, 9VAC25-880-70, 9VAC25-890-40, 9VAC25-875-520.

Sec. 17-405 Stormwater pollution prevention plan (SWPPP); form and content.

Any owner whose proposed land disturbing activity is subject to the VESMP must submit a SWPPP for review that includes the following, in the form required by the administrator:

A. *Elements of plan.* A SWPPP containing all of the following elements:

- 1. *Registration statement.* A signed copy of the registration statement, if such a statement is required, for coverage under the general permit. 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.
- 2. *Notice of general permit coverage.* Upon receipt, a copy of the notice of coverage under the general permit.
- 3. *General permit.* A copy of the general permit.
- 4. *Nature of activity.* A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway).
- 5. *Plan of the site.* A plan of the site, satisfying the form and style for such a plan as provided in the Design Standards Manual, identifying:
 - a. *Direction of stormwater flow.* Directions of stormwater flow and approximate slopes anticipated after major grading activities.
 - b. *Limits of land disturbance.* Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed.
 - c. *Major structural and nonstructural control measures.* Locations of major structural and nonstructural control measures including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment that will be installed between disturbed areas and the undisturbed vegetated areas, in order to increase sediment removal and maximize stormwater infiltration;
 - d. *Surface waters.* Locations of surface waters.
 - e. *Concentrated stormwater.* Locations where concentrated stormwater is discharged.
 - f. *Support activities.* Locations of support activities, when applicable and when required by the administrator, including but not limited to: (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage.

6. *Requirements of 40 CFR 450.21.* The plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a permit:
 - a. *Runoff volume and velocity.* Control runoff volume and velocity within the site to minimize soil erosion.
 - b. *Stormwater discharges.* 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.
 - c. *Minimize soil exposure.* Minimize the amount of soil exposed during construction activity.
 - d. *Minimize disturbance of steep slopes.* Minimize the disturbance of slopes of twenty-five (25) percent or greater.
 - e. *Minimize sediment discharges.* Minimize sediment discharges from the site by designing, installing and maintaining erosion and sediment controls that address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.
 - f. *Buffers.* Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible.
 - g. *Soil compaction.* Minimize soil compaction and, unless infeasible, preserve topsoil.
 - h. *Stabilize disturbed areas.* 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 fourteen (14) calendar days. Stabilization must be completed within the period of time determined by the administrator. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measure immediately is infeasible, alternative stabilization measures must be employed as specified by the administrator.
 - i. *Outlet structures.* Use outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
 7. *Discharges to impaired waters, surface waters within an applicable TMDL wasteload allocation, and exceptional waters.* If a specific wasteload allocation for a pollutant has been established in an approved 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 wasteload allocation.
- B. *Qualified personnel.* The name, telephone number, and qualifications of the qualified personnel conducting inspections.
 - C. *Delegation of authority.* The persons or positions with authority to sign inspection reports or to modify the SWPPP.
 - D. *Additional elements of an approved plan.* In addition to the elements in subsection (A), an approved SWPPP must include the approved erosion and sediment control plan, including the elements of that plan addressing the requirements of 9VAC25-875-500(F), the approved stormwater management plan, and the pollution prevention plan for the land disturbing activity to which the SWPPP applies, and a description of any additional control measures necessary to address a TMDL pursuant to subsection (A) of this section.
1. *Erosion and sediment control plan.* Erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during construction activities.

2. *Stormwater management plan.* Stormwater management plan consistent with the requirements of 9VAC25-875-510 must be designed and implemented during construction activities.
 3. *Pollution prevention plan.* Pollution prevention plan that identifies the 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 site must be developed prior to land disturbance activities commence.
- E. *Signature.* The plan must be signed by a person authorized under 9VAC25-880-70, Part III(K).
- F. *Revisions and location.* The SWPPP must be amended 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 location must be posted near the main entrance at the construction site.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-880-70, 9VAC25-890-40, 9VAC25-875-500.

[Section 17-406 to remain unchanged]

Sec. 17-407 Variances.

The administrator may waive or modify any applicable erosion and sediment control requirements that the administrator deems to be inappropriate or too restrictive for the site conditions, by granting a variance in conjunction with his review of the erosion and sediment control plan, subject to the following:

- A. *When variance may be requested.* An owner may request that a variance be granted at the time the plan is submitted or while it is under review by the administrator.
- B. *Reason for variance.* The owner must explain in writing the reasons for requesting any variance.
- C. *Factors to be considered.* The administrator will consider the reasons given by the owner for requesting the variance, the purposes of this chapter, and the competing need of the owner to maximize cost effectiveness and the need to protect offsite properties and resources from damage.
- D. *Variance incorporated into approved plan.* Any approved variance becomes part of, and must be documented in, the approved plan.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-170.

Sec. 17-408 Exceptions.

The administrator may grant exceptions from the stormwater management requirements as follows:

- A. *When exception may be requested.* At the time the land-disturbance permit application is submitted and while it is under review, an owner may request an exception from any technical criteria in 9VAC25-875-570 through 9VAC25-875-660 or in 9VAC25-875-670 through 9VAC25-875-730.
- B. *Factors to be considered.* The administrator may grant an exception if: (i) the exception is the minimum necessary to afford relief; (ii) reasonable and appropriate conditions are imposed as necessary to ensure that the intent of the VESMA and this chapter are preserved; (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances; and (iv) the exception request is not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not a sufficient reason to grant an exception.
- C. *Certain exceptions expressly prohibited.* The following exceptions are expressly prohibited:
 1. *Requirement for general permit.* Any exception to the requirement that the land-disturbing activity obtain any required general permits.
 2. *Using unapproved BMP.* Any exception to allow using a best management practice that is not found either through the Virginia Stormwater BMP Clearinghouse (except where allowed under 9VAC25-875-670 *et seq.*) or in the Design Standards Manual.

3. *Phosphorous reductions.* Any exception to requirements for phosphorous reductions, unless offsite options available through 9VAC25-875-610 have been considered and found not available.
4. *Post-development nonpoint nutrient runoff compliance.* Any exception from post-development nonpoint nutrient runoff compliance requirements, unless offsite options have been considered and found not available.

(2-11-98; Code 1988, § 19.3-32; § 17-308, Ord. 98-A(1), 8-5-98; § 17-408, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:35; 9VAC25-875-170.

DIVISION 2. SUBMITTAL, REVIEW AND ACTION

[Section 17-409 to remain unchanged]

Sec. 17-410 Review and action on application.

The administrator will review and act on an application as follows:

- A. *Review.* The administrator will ensure that the plan is reviewed by a certified plan reviewer (but referred to herein as the “administrator”) who will review the plan for compliance with the technical requirements for an application in sections 17-400 through 17-408 and other applicable laws. This review will be completed within forty-five (45) days after the application was deemed to be complete under section 17-409.
- B. *Identification of required changes.* Upon completion of review, the administrator will identify all applicable requirements of this chapter that must be addressed for the application to be approved.
- C. *Revisions required.* The owner must revise the application to address all required changes before the application may be approved.
- D. *Time for action.* The administrator will act on the application within 60 days after the application was deemed to be complete, provided that the administrator will act on a resubmitted application within 45 days after receipt including determination of completeness within the first 15 days, and:
 1. *Time for action if changes required; notice of required changes.* If the administrator requires or recommends changes to the application, the administrator must issue within forty-five (45) days after the application was deemed to be complete a written notice to the owner identifying the required changes that must be made and the recommended changes that may, in the owner’s discretion, be made.
 2. *Suspension of running of time for action.* The running of the time by which the administrator must act on an application will be suspended: (i) from the date the appeal of the disapproval of a variance or exception is submitted until the date the board of supervisors acts on the appeal under section 17-211; (ii) from the date of the written notice to the owner until the date the revised application addressing the required changes is submitted; (iii) from the date of the owner’s request for a deferral of review under section 17-411(A); (iv) during any extension granted under section 17-411(C); and (v) for any multi-jurisdictional land disturbing activity, from the date either Virginia Department of Environmental Quality review was requested or a multi-jurisdictional agreement was identified as necessary until the date the Virginia Department of Environmental Quality informs the administrator in writing that it will accept review or the date of the multi- jurisdictional agreement.
- E. *Action to approve and notice of approval.* If the administrator determines that the application complies with all applicable requirements, the administrator will approve the application and promptly either indicate by stamp or signature on every plan that it is approved or issue a written notice informing the owner(s) of the approval.
- F. *Action to disapprove and notice of disapproval.* If the administrator determines that the application does not satisfy all applicable requirements, the administrator will disapprove the application and promptly issue a written notice to the owner stating the reasons for disapproval by identifying the application’s deficiencies and citing the applicable sections of this chapter or other applicable laws, and the modifications, terms, and conditions will permit approval of the application.

(§ 17-204: § 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; § 19.3-12, 2-11-98; Code 1988, §§ 7-5, 19.3-12; § 17-204, Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-304: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, art. II, § 3, 7-11-

90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; § 17-304, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 11-17(1), 10-5-11; § 17-410, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:34; 9VAC25-875-110.

Sec. 17-411 Deferral of review of application; when application deemed withdrawn.

The administrator's review and action on an application may be deferred, and the application may be deemed withdrawn, as follows:

- A. *Request to defer by owner.* An owner may request that review or action on the application be deferred for a specified period up to six (6) months. If during the deferral period the owner does not request the administrator to take action on the application as provided in section 17-410 within six (6) months after the date the deferral was requested, the application shall be deemed to have been voluntarily withdrawn.
- B. *Failure to submit revised application.* If an owner fails to submit a revised application to address all of the requirements within six (6) months after the date of the written notice as provided in section 17-410(D)(1), the application shall be deemed to have been voluntarily withdrawn by the owner.
- C. *Extension of deferral period or period to submit revised plan.* Before the deferral period in subsection (A) expires, the owner may request that the administrator extend the period before the application is deemed to have been voluntarily withdrawn. The request must be received by the administrator before the deferral period expires. The administrator may grant one extension for a period not to exceed three (3) months, taking into consideration the size or nature of the proposed development, the complexity of the review, and the laws in effect at the time the extension request is made.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:34.

[Section 17-412 to remain unchanged]

Sec. 17-413 Appeal of decision of the administrator.

Any decision of the administrator under section 17-410 may be appealed by the owner as provided in section 17-211.

(§ 17-210: § 7-7, 6-18-75, § 9, 2-11-87, 3-18-92; § 19.3-18, 2-11-98; Code 1988, §§ 7-7, 19.3-18; §17-210, Ord. 98-A(1), 8-5-98) (§ 17-311: 2-11-98; Code 1988, § 19.3-35; § 17-311, Ord. 98-A(1), 8-5-98; § 17-413, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:46; 9VAC25-875-160.

**DIVISION 3. REQUIRED AGREEMENTS AS PREREQUISITES TO
APPROVAL: SURETY AND MAINTENANCE**

[Section 17-414 to remain unchanged]

Sec. 17-415 Stormwater management maintenance agreement.

The long-term maintenance of permanent stormwater facilities and other techniques is subject to the following:

- A. *Responsibility.* The owner must enter into an agreement with the County providing for the owner's obligation to maintain, repair, replace, reconstruct any permanent stormwater facilities and other techniques required in conjunction with the approval of the stormwater management plan, including as it may be amended, or modified as provided in this chapter. The agreement is subject to acceptance by the administrator.
- B. *Form and substance of the agreement.* The agreement must be in a form and have the substance approved by the County Attorney, and is subject to review and approval by the County Attorney. At a minimum, the agreement must: (i) be submitted to the administrator for review and approval prior to approval of the stormwater management plan; (ii) be stated to run with the land; (iii) provide for all necessary access by the administrator to the property to inspect the facility or technique and to maintain the facility in the event the owner fails to do so; (iv) provide for periodic inspections and maintenance by the owner according to the schedule included in the agreement, and the owner's obligation to submit periodic inspection and maintenance reports to the administrator; provided that nothing herein precludes the administrator from conducting inspections in lieu of any owner-

conducted inspection; and (v) be enforceable by the County and any other public entity having authority to enforce the requirements of the VESMA or this chapter.

- C. *Recordation.* The agreement must be recorded in the records of the clerk of the circuit court of the County.
- D. *When agreement not required.* The administrator may waive requiring an agreement for any stormwater management facility designed to treat runoff primarily from an individual residential lot on which it is located, provided that the owner demonstrates to the satisfaction of the administrator that future maintenance of the facility will be addressed through an agreement or other enforceable mechanism at the discretion of the administrator.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, Art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; § 17-304, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 11-17(1), 10-5-11; § 17-415 Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-100, 9VAC25-875-130, 9VAC25-880-70.

DIVISION 4. POST-APPROVAL RIGHTS AND OBLIGATIONS

Sec. 17-416 Effect of approvals.

The effect of an approval of a land-disturbance permit, is as follows:

- A. *Land-disturbance permit.* An approved land-disturbance permit is a consolidated permit authorizing the owner to engage in land disturbing activity as provided by the approved erosion and sediment control plan, the approved stormwater management plan, the pollution prevention plan, the SWPPP, and the mitigation plan, if applicable, and the general permit, if applicable, subject to any applicable requirements of this chapter including, but not limited to, sections 17-417 through 17-424, and sections 17-800 through 17-807, and State and Federal law. The consolidated permit must include a copy of, or a reference to, the general permit coverage to discharge stormwater. Any land-disturbing activity may be conducted only as approved under the land-disturbance permit. Any plan approved in conjunction with a land-disturbance permit must be implemented only as it was approved.
- B. *Soil erosion control and stormwater management plans for residential, commercial, or industrial subdivisions govern development.* The approved ESM plan governs the development of the individual parcels until development of the project is complete, including those parcels developed under subsequent owners.

(§ 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; § 17-416, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:28(7); 9VAC25-890-40.

Sec. 17-417 Prerequisites to land disturbing activity.

Upon the approval of a land disturbance permit application, no land disturbing activity shown on the approved erosion and sediment control plan or stormwater management plan may occur until all of the following are satisfied:

- A. *Prerequisites to land disturbing activity and related permits.* No land disturbing activity may occur and no County department or office or any other public entity authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities regulated under this chapter may issue any such permit unless: (i) the owner submits with its application the land-disturbance permit, including the approved erosion and sediment control plan and the approved stormwater management plan, evidence of general permit coverage to discharge stormwater, if such evidence is required under sections 17-401(C) and 17-405(A)(1), and certification that the plans will be followed; (ii) the person responsible for carrying out the plan provides to the administrator the name of the person holding a certificate of competence who will be in charge of and responsible for carrying out the land disturbing activity; (iii) an agreement with surety is provided as required by section 17-414; and (iv) evidence of general permit coverage is provided, if required.
- B. *Revocation of approval.* The administrator is authorized to revoke the approval of the plan if the person responsible fails to provide the name of a person holding a certificate of competence prior

to engaging in the land disturbing activity and the person responsible for carrying out the plan is subject to the penalties provided by State law.

(§ 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; Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:34; 9VAC25-875-500, 9VAC25-890-40.

Sec. 17-418 Modifications and variances to approved erosion and sediment control plans.

Any approved erosion and sediment control plan may be changed only as follows:

- A. *Required modifications.* An approved plan may be modified only as follows:
1. *Plan inadequate to satisfy erosion and sediment control requirements.* An approved plan must be modified if, after an inspection of the site, the administrator determines that the approved plan: (i) is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; (ii) is unable to be physically implemented as approved; or (iii) fails to satisfy any other VESMP requirement. If an amendment is required, the administrator may also require the time by which the amendment to the plan must be submitted and approved.
 2. *Re-evaluation if land disturbing activity not begun within 180 days or ceases for more than 180 days.* If land disturbing activity is not begun within one hundred eighty (180) days after the plan was approved, or if land disturbing activity ceases for more than one hundred eighty (180) days, the administrator may evaluate the approved plan to determine whether it still satisfies the applicable erosion and sediment control requirements of this chapter and other applicable laws and to verify that all design factors are still valid. If the administrator determines that the approved plan is inadequate, no longer satisfies all applicable erosion and sediment control requirements, or that the design factors are no longer valid, the person responsible for carrying out the approved plan must submit and obtain approval of a modified plan before starting or resuming the land disturbing activity.
- B. *Modification by agreement.* The administrator may agree to allow an approved plan to be modified if the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with all erosion and sediment control requirements, are agreed to by the administrator and the person responsible for carrying out the plan. The agreement may be memorialized in a stand-alone agreement or by a note added to the approved plan and signed by the administrator.
- C. *Variances.* The administrator may waive or modify any applicable requirement of the erosion and sediment control plan otherwise applicable to an approved plan that the administrator deems to be inappropriate or too restrictive for the site conditions, by granting a variance, subject to the following:
1. *When variance may be requested.* During construction, the person responsible for implementing the approved plan may request a variance.
 2. *Reason for variance.* The owner must explain in writing the reasons for requesting any variance.
 3. *Factors to be considered.* The administrator will consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
 4. *Action on request.* The administrator shall respond to the request in writing by either approving or disapproving the variance. If the administrator does not approve the variance within ten (10) days after receipt of the request, the variance will be considered disapproved. After disapproval, the applicant may resubmit a variance request with additional documentation.
 5. *Variance incorporated into approved plan.* Any approved variance shall become part of, and be documented in, the approved plan.

(§ 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; § 19.3-16, 2-11-98; Code 1988, §§ 7-5, 19.3-16; § 17-208, Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; § 17-418, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference –9VAC25-890-40.

Sec. 17-419 Amendments and modifications to approved stormwater management plans.

Any approved stormwater management plan shall be amended or may be modified as follows:

- A. *Stormwater management plan; amendment.* The administrator shall require that an approved stormwater management plan be amended if, after an inspection of the site or submittal and review of the construction record drawing, the administrator determines that the plan fails to satisfy any VESMP requirement. If an amendment is required, the administrator also may require the time by which the amendment to the plan shall be submitted and approved.
- B. *Stormwater management plan; modification.* An owner may request that the administrator allow its approved stormwater management plan be modified. Any modification is subject to review and approval by the administrator. The administrator shall act on the request and either approve or disapprove the proposed modification in writing within sixty (60) days after the administrator receives the request.

(§ 19.3-31, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78; 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-31; § 17-307, Ord. 98-A(1), 8-5-98; § 17-419, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-500, 9VAC25-875-110, 9VAC25-880-70, 9VAC25-890-40.

[Section 17-420 to remain unchanged]

Sec. 17-421 Amendments to stormwater pollution prevention plans.

An owner must obtain approval of an amendment to an SWPPP in the circumstances outlined in subsections (A) through (D). Any amendment to the plan must be updated within seven (7) days after amendment to its implementation and include the information required by 9VAC25-880-70, Part II(B)(4) and be signed in accordance with 9VAC25-880-70, Part III(K).

- A. *Change affects discharge of pollutants.* There is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the plan.
- B. *Correction of ineffective control measures.* During inspections or investigations by the owner's qualified personal, the administrator, or any State or Federal official, it is determined that the plan is inadequate to satisfy applicable regulations or ordinances. Any required amendment to the plan must include additional or modified control measures designed and implemented to correct the problems identified.
- C. *Discharge, release, or spill from high priority facility.* Whenever deemed necessary by the administrator to accurately reflect any discharge, release, or spill from any high priority facility reported in accordance with 9VAC25-890-40(III)(G). For each such discharge, release, or spill, the amended plan must include the following information: (i) the date of the incident; (ii) the material discharged, released, or spilled; and (iii) the quantity discharged, released or spilled.
- D. *Change in contractor.* Any change in the name and required contact information in the contractor that will implement and maintain any control measure.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-500, 9VAC25-875-110, 9VAC25-880-70, 9VAC25-890-40.

Sec. 17-422 Construction record drawing; submittal. [effective 7/1/2024]

When construction of any permanent stormwater management facility is completed, a construction record drawing for the permanent stormwater management facility 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 in accordance with 9VAC25-875-535.
- 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 Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, certifying stating to the best of their professional knowledge that the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serve as a permanent record of the actual location of all constructed elements.
- 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 17-419.

(Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 23-17(1), 12-6-23, effective 7-1-24)

State law reference – 9VAC25-875-535.

Sec. 17-423 Release of surety. [effective 7/1/2024]

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 certify that adequate permanent stabilization of the land disturbing activity has been achieved. For any surety required in conjunction with a land-disturbance 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 (i) transfer the maintenance responsibilities of the stormwater management facilities to a Property Owners Association or (ii) 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:
- a. Submit acceptable record drawings.
 - b. Obtain an acceptable final inspection of the stormwater management facility by the County.
 - c. Transfer the necessary property to the POA.
 - d. 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.
 - e. Provide a copy of the recorded documents establishing the Property Owners Association to the County.
 - f. 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.
- a. The County will require a maintenance guaranty in the amount of 20 percent of the construction costs of the stormwater management facility.
 - b. 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.
 - c. 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, effective 7-1-24)

State law reference – Va. Code § 62.1-44.15:34.

Sec. 17-424 Effect of failure to obtain land disturbance, building or other permit; void for inactivity.

An approved land disturbance permit will be void if the owner fails to obtain a land disturbance, building, or other permit for activities involving land disturbing activities to implement the plan within one year after the

date of its approval; provided that any plan or permit associated with a subdivision plat or site plan whose period of validity is extended by Virginia Code § 15.2-2209.1(A) will likewise be extended for the same time period.

(§ 17-204: § 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; § 19.3-12, 2-11-98; Code 1988, §§ 7-5, 19.3-12; § 17-204, Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; Ord. 09-17(1), 8-5-09, effective 9-5-09) (§ 17-304: § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; § 17-304, Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09, effective 9-5-09; Ord. 11-17(1), 10-5-11; § 17-424, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

ARTICLE V. TECHNICAL CRITERIA

Sec. 17-500 Erosion and sediment control plans; applicable technical criteria.

Each erosion and sediment control plan must satisfy the following, as applicable:

- A. *Erosion and sediment control minimum standards.* The criteria, techniques and methods provided in 9VAC25-875-560.
- B. *Annual standards and specifications.* Any applicable annual standards and specifications approved by the Virginia Department of Environmental Quality.
- C. *Stormwater pollution prevention.* If the land disturbing activity also requires a land-disturbance permit, the requirements in 9VAC25-875-500(F) and as specified in 40 CFR 450.21.
- D. *Stream buffers.* The procedures and requirements for land disturbing activity and development in stream buffers, as provided in section 17-600 *et seq.*
- E. *County design standards.* The technical criteria, including County notes and details, as provided in the Design Standards Manual.

(§ 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; § 14-500, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:73; 9VAC25-875-560, 9VAC25-875-500, 9VAC25-890-40.

Sec. 17-501 Applicability of other laws and regulations; time limits on applicability of approved design criteria.

Each land disturbance permit application must satisfy the following criteria, techniques, and methods:

- A. *Land disturbing activity that obtained general permit coverage or commenced land disturbing activity prior to July 1, 2014.* Any land disturbing activity that obtained general permit coverage or commenced land disturbing activity prior to July 1, 2014 must be conducted in accordance with the technical criteria of 9VAC25-875-670 through 9VAC25-875-730. These projects remain subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730 for an additional two general permit cycles. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- B. *Land disturbing activity that obtains initial general permit coverage on or after July 1, 2014.* Any land disturbing activity that obtains initial general permit coverage on or after July 1, 2014 must be conducted in accordance with the technical criteria of 9VAC25-875-570 through 9VAC25-875-660, except as provided in subsection (C). These projects remain subject to the technical criteria of 9VAC25-875-570 through 9VAC25-875-660 for an additional two general permit cycles. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- C. *Land disturbing activity related to certain development approvals prior to July 1, 2012.* Any land disturbing activity will be subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730, provided all of the following apply:
 - 1. *Prior qualifying approval.* A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the County to be equivalent thereto (i) was approved by the County prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of 9VAC25-875-670 through 9VAC25-875-730; and (iv)

has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff.

2. *General permit not issued.* A general permit has not been issued prior to July 1, 2014.
 3. *Land disturbing activity not commenced.* Land disturbing activity did not commence prior to July 1, 2014.
 4. *Duration.* Land disturbing activities under this subsection (C) will remain subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730 for one additional general permit cycle. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- D. *Land disturbing activity related to County, State or Federal funded projects.* County, State and Federal projects are subject to the technical criteria of 9VAC25-875-670 through 9VAC25-875-730, provided all of the following apply:
1. *Prior qualifying obligation.* There has been an obligation of County, state or federal funding, in whole or in part, prior to July 1, 2012, or DEQ has approved a stormwater management plan prior to July 1, 2012.
 2. *General permit not issued.* A general permit has not been issued prior to July 1, 2014.
 3. *Land disturbing activity not commenced.* Land disturbance did not commence prior to July 1, 2014.
 4. *Duration.* Land disturbing activities under this subsection (D) will remain subject to the technical criteria in 9VAC25-875-670 through 9VAC25-875-730 for one additional general permit cycle. After that time, the portions of the project not under construction will become subject to any new technical criteria adopted by the State Water Control Board.
- E. *Land disturbing activity related where government bonds or other instruments of public debt financing issued.* In cases where government bonding or public debt financing has been issued for a project prior to July 1, 2012, the project will be subject to the technical criteria in 9VAC25-875-670 through 9VAC25-875-730.
- F. *TMDLs.* The Chesapeake Bay TMDL as provided in 9VAC25-890-40 and any other local TMDLs applicable to a regulated land disturbing activity apply to land disturbing activities under this section.
- G. *Stream buffers.* Any land disturbing activity under subsections (A) through (E) also must comply with the requirements for stream buffers in section 17-600 *et seq.*
- H. *Pre-existing County requirements.* Any criterion more stringent than the technical criteria set forth in subsections (A) through (F) existing prior to January 1, 2005 in either this chapter or the Design Standards Manual applies to land disturbing activities under this section.
- I. *More stringent standards.* Nothing in this section precludes an operator from constructing to a more stringent standard at the operator's discretion.

(§ 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-27, 2-11-98; Code 1988, §§ 19.1-6, 19.2-7, 19.3-27; § 17-303, Ord. 98-A(1), 6-17-98; § 17-500, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:33, 62.1-44.15:49; 9VAC25-875-480, 9VAC25-875-490, 9VAC25-875-690, 9VAC25-875-100, 9VAC25-875-970, 9VAC25-890-40.

Sec. 17-502 Offsite nutrient credits.

An owner is allowed to use offsite nutrient credits, subject to the following:

- A. *Eligibility to use offsite nutrient credits.* An owner is eligible to use offsite nutrient credits if one or more of the following are satisfied:
1. *Less than 5 acres disturbed.* Less than five acres of land will be disturbed.
 2. *Pollution control.* The postconstruction pollution control (measured in phosphorous) requirement is less than ten (10) pounds per year.

3. *Most phosphorus nutrient reductions are achieved onsite.* At least seventy-five (75) percent of the required phosphorus nutrient reductions are achieved onsite. If at least seventy-five (75) percent of the required phosphorus nutrient reductions cannot be achieved onsite, and the owner can demonstrate to the satisfaction of the administrator that: (i) alternative site designs have been considered that may accommodate onsite best management practices; (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable; (iii) appropriate onsite best management practices will be implemented; and (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met onsite, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of offsite compliance options.
- B. *Eligibility to use offsite nutrient credits as a substitute for existing onsite nutrient controls.* An owner satisfying one or more of the criteria in subsection (A) may use offsite nutrient credits as full or partial substitutes of perpetual nutrient credits for existing onsite nutrient controls when: (i) the nutrient credits will compensate for ten (10) or fewer pounds of the annual phosphorous requirement associated with the original land disturbing activity; or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon the use of the offsite credits, the party responsible for maintenance will be released from maintenance obligations related to the onsite controls for which the nutrient credits are substituted.
- C. *Documentation of credits.* The owner must provide documentation of its acquisition of nutrient credits to the administrator and the Virginia Department of Environmental Quality. The documentation must include a certification from the credit provider documenting the number of nutrient credits acquired and the associated ratio of nutrient credits at the credit- generating entity.
- D. *Minimum performance requirements.* The use of offsite nutrient credits will satisfy the following:
 1. *Ratio and perpetual credits.* For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nutrient credits, the owner must: (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use; and (ii) use credits certified as perpetual credits pursuant to Virginia Code § 62.1- 44.19:12 *et seq.*
 2. *Nutrient reductions prior to land disturbing activity.* Any offsite nutrient credit used will achieve the necessary nutrient reductions prior to the owner starting any land disturbing activity. If a project is phased, the owner may acquire or achieve the offsite nutrient reductions prior to starting each phase of the land disturbing activity in an amount sufficient for each phase.
- E. *Prohibited use of nutrient credits.* Offsite nutrient credits may not be used in the following cases:
 1. *Water quantity control requirements.* Offsite nutrient credits may not be used to address water quantity control requirements.
 2. *Water quality-based limitations.* Offsite nutrient credits may not be used in contravention of County water quality-based limitations at the point of discharge that are: (i) consistent with the determinations made pursuant to Virginia Code § 62.1-44.19:7(B); (ii) contained in the County's MS4 program plan; or (iii) as otherwise may be established or approved by the State Water Control Board.
- F. *Crediting nutrient reductions.* Nutrient reductions obtained through offsite nutrient credits will be credited toward compliance with any nutrient allocation assigned to the County's MS4 permit or any applicable TMDL to the location where the activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used does not discharge to an MS4, the nutrient reductions will be credited toward compliance with the applicable nutrient allocation.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:35; 9VAC25-875-610.

ARTICLE VI. STREAM BUFFERS

Sec. 17-600 Extent of stream buffers; retention and establishment.

Except as provided in section 17-602, each ESM plan and each land-disturbance permit must provide for 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:

- A. *Development within a development area.* If the development is located within a development area, stream buffers must be retained if present and established where they do not exist on any lands subject to this chapter containing perennial streams, contiguous nontidal wetlands, or both. The stream buffer must be no less than one hundred (100) feet wide on each side of any perennial stream and contiguous nontidal wetlands, measured horizontally from the edge of the contiguous nontidal wetlands, or the top of the stream bank if no wetlands exist.
- B. *Development within a water supply protection area or other rural land.* If the development is located within a water supply protection area or other rural land, stream buffers must be retained if present and established where they do not exist on any lands subject to this chapter containing perennial or intermittent streams, contiguous nontidal wetlands, and floodplains. The stream buffer must extend to whichever of the following is wider: (i) one hundred (100) feet on each side of any perennial or intermittent stream and contiguous nontidal wetlands, measured horizontally from the edge of the contiguous nontidal wetlands, or the top of the stream bank if no wetlands exist; or (ii) the limits of the floodplain. The stream buffer must be no less than two hundred (200) horizontal feet wide from the floodplain of any public water supply impoundment.

(§ 17-301: § 19.2-6, 6-19-91, § 6; § 19.3-25, 2-11-98; Code 1988, §§ 19.2-6, 19.3-25; § 17-301, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07) (§ 17-317: § 19.3-41, 2-11-98; § 19.2-8, 6-19-91; Code 1988, §§19.2-8, 19.3-41; § 17-317, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; § 17-600, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference –Va. Code § 62.1-44.15:73; 9VAC25-890-40.

[Section 17-601 to remain unchanged]

Sec. 17-602 Types of improvements and activities exempt from duties to retain, establish, or manage a stream buffer.

The following types of improvements and activities are not required to retain, establish, or manage a stream buffer, provided that the requirements of this section are satisfied:

- A. *Utility and transportation improvements.* The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Stormwater Management Act (Virginia Code § 62.1-44.15:24 *et seq.*) or an ESM plan approved by the State Water Control Board.
- B. *Public water and sewer improvements.* 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, only if all of the following are satisfied:
 - 1. *Location.* To the extent practical, as determined by the Albemarle County Service Authority or the Rivanna Water and Sewer Authority, the location of the water or sewer lines must be outside of all stream buffer areas.
 - 2. *Disturbance minimized.* No more land may be disturbed than is necessary to construct, install and maintain the water or sewer lines.
 - 3. *Compliance with applicable requirements.* All construction, installation, and maintenance of the water or sewer lines must comply with all applicable Federal, State, and local requirements and permits and be conducted in a manner that protects water quality.
- C. *Silvicultural activities.* Silvicultural activities that are conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry in its “Virginia’s Forestry Best Management Practices for Water Quality.”
- D. *Public airport improvements.* The construction, installation and maintenance of runways, taxiways, and other similar or appurtenant improvements at public airports, including the expansion or extension of those improvements, provided that all applicable Federal, State, and local permits are obtained.

(§ 19.3-43, 2-11-98; § 19.2-12, 6-19-91, § 12; Code 1988, §§ 19.2-12, 19.3-43; § 17-319, Ord. 98-A(1), 8-5-98; Ord. 08-17(4), 9-3-08; § 17-602, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference –Va. Code § 62.1-44.15:73; 9VAC25-890-40.

[Sections 17-603 through 17-700 to remain unchanged]

Sec. 17-701 Illicit discharges prohibited; exempt and authorized discharges.

No person may throw, drain, or otherwise discharge, cause, or allow others under their control to throw, drain, or otherwise discharge into the County's MS4 or State waters any pollutants or waters containing any pollutants, other than stormwater. Commencing, conducting, or continuing any illicit discharge to the County's MS4 or State waters is prohibited, subject to the following:

- A. *Conditionally exempt discharges.* The following discharges are not prohibited discharges provided that the administrator determines that the discharge is not adversely impacting State waters:
1. Discharges pursuant to a Virginia Pollutant Discharge Elimination System ("VPDES") or land-disturbance permit (other than a land-disturbance permit for discharges from the municipal separate storm sewer).
 2. Discharges resulting from firefighting and other public safety activities.
 3. Discharges associated with the maintenance or repair of public water, sanitary, and storm sewer lines, and public drinking water reservoirs and drinking water treatment or distributions systems conducted in accordance with applicable federal and state regulations and standards.
 4. Discharges associated with any activity by the County, its employees and agents, in the maintenance of any component of a County-maintained stormwater management facility conducted in accordance with applicable State and Federal regulations and standards.
 5. Discharges specified in writing by the administrator as being necessary to protect public health and safety.
 6. Water line flushing.
 7. Irrigation water, landscape irrigation, and lawn watering.
 8. Diverted stream flows.
 9. Rising groundwaters.
 10. Uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)).
 11. Uncontaminated pumped groundwater.
 12. Discharges from potable water sources.
 13. Foundation drains.
 14. Air conditioning condensation.
 15. Springs.
 16. Water from crawl space pumps.
 17. Footing drains.
 18. Individual residential car washing.
 19. Flows from riparian habitats and wetlands.
 20. Dechlorinated swimming pool discharges having less than one (1) part per million chlorine.
 21. Street wash water.
 22. Water from washed parking lots or sidewalks to remove algae or oil buildup;
 23. Application of salts or other de-icing substances to streets, sidewalks and parking lots;
 24. Discharges associated with dye testing, provided that the County is notified in writing before the test.

If the administrator determines that any of these conditionally exempted activities are causing adverse impacts to state waters in a specific case, the administrator may revoke the exemption for that specific case. The revocation will be effective from the date the administrator provides written notice to the person responsible for the discharge of the determination that the exemption is revoked.

- B. *Discharges authorized by VPDES permit, waiver, or waste discharge order.* This prohibition does not apply to any non-stormwater discharge permitted under a VPDES permit, including the general permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations and further provided that written approval has been granted by the EPA for any discharge to the County's MS4.

(§ 17-501; Ord. 07-17(1), 2-14-07; § 17-701, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33; 9VAC25-875-970, 9VAC25-890-40.

[Sections 17-702 and 17-703 to remain unchanged]

ARTICLE VIII. COMPLIANCE

Sec. 17-800 Duty to comply.

Each owner has the following duties to comply:

- A. *Upon a determination that land disturbing activity is subject to this chapter.* Upon the administrator's determination that a land disturbing activity is subject to the VESMP, the owner must immediately comply with the applicable requirements of this chapter and the applicable requirements of this chapter will be immediately enforced.
- B. *Upon approval of a land-disturbance permit.* Upon the administrator's approval of any land-disturbance permit, the owner must comply with all of the terms and conditions of the approved permit at all times the permit is in effect, including when any activities allowed under the permit are being performed. In addition, the owner must comply with the requirements of the general permit even though a registration statement was not required under sections 17-401(C) and 17-405(A)(1).
- C. *All other applicable requirements of this chapter.* The owner must comply with all other applicable requirements of this chapter not addressed in subsections (A) and (B), including (but not limited to) the express duties in this Article.

(§ 17-211: 2-11-98; Code 1988, § 19.3-19; § 17-211, Ord. 98-A(1), 8-5-98; Ord. 10-17(1), 7-11-01) (§ 17-323: § 19.3-47, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-47; § 17-323, Ord. 98-A(1), 8-5-98; § 17-800, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:28, 62.1-44.15:73.

Sec. 17-801 Duty to maintain structures, systems, facilities, and techniques.

Each owner must maintain and repair all structures, systems, facilities, and techniques required under the VESMP as follows:

- A. *Erosion and sediment control structures and systems.* Any erosion and sediment control structures and systems must be maintained and repaired as needed to ensure continued performance of their intended function at their intended level. The owner also must perform all maintenance responsibilities outlined in the approved erosion and sediment control plan. All control measures required by the plan must be maintained in accordance with good engineering practices.
- B. *Stormwater management facilities and techniques.* Any permanent stormwater management facility or technique specified in the approved stormwater management plan to manage the quality and quantity of runoff must be maintained for so long as the stormwater management facility or technique exists, in a manner that meets or exceeds the maintenance standards in the agreement entered into under section 17-415. The owner's obligation to maintain any such permanent stormwater management facility or technique will continue until all such obligations are the responsibility of the County or another public entity empowered to own and maintain stormwater management facilities and to implement the techniques described in the stormwater management plan.

- C. *Stormwater pollution prevention plan control measures; duty to maintain.* Any control measure in the approved SWPPP, including any control measure otherwise subject to subsections (A) or (B), must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.

(§ 17-211: 2-11-98; Code 1988, § 19.3-19; § 17-211, Ord. 98-A(1), 8-5-98; Ord. 10-17(1), 7-11-01) (§ 17-323: § 19.3-47, 2-11-98; § 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; Code 1988, §§ 19.1-6, 19.3-47; § 17-323, Ord. 98-A(1), 8-5-98; § 17-801, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-130, 9VAC25-880-70.

Sec. 17-802 Duty to maintain the functional performance of storm drainage systems and streams.

Each owner of property through which a privately-maintained storm drainage system or natural stream passes must maintain the functional performance of the system or stream, regardless of whether it is subject to a land-disturbance permit or an erosion and sediment control plan, as follows:

- A. *Keeping the storm drainage system and natural streams free of refuse and other obstacles.* The owner must maintain the part of storm drainage system or natural stream on the property free of refuse, as that term is defined in section 13-100, and other obstacles that would pollute, contaminate, or adversely impact the system's or the stream's functional performance.
- B. *Maintaining structures within the flood hazard overlay district.* The owner must maintain all existing privately owned structures on the property that are within the flood hazard overlay district established under section 18-30.3 so that the structures do not become a hazard to the use, function, or physical or ecological integrity of the stream.

(§ 17-504, Ord. 07-17(1), 2-14-07; § 17-802, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:27, 62.1-44.15:33; 9VAC25-890-40.

Sec. 17-803 Duty to maintain general permit, stormwater pollution prevention plan, and other documents onsite.

If the land disturbing activity is subject to a land-disturbance permit, each owner must maintain the general permit, the general permit coverage letter, the registration statement (if such a statement was required under sections 17-401(C) and 17-405(A)(1)), and the SWPPP, at a central location at the construction site. If an onsite location is unavailable to store the documents when no personnel are present, notice of the documents' location must be posted near the main entrance at the construction site.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-500, 9VAC25-880-70.

Sec. 17-804 Duty to inspect and take corrective action.

Each owner is responsible for ensuring that any inspections required by the general permit are conducted by the qualified personnel identified in the SWPPP. Any inspection must be conducted according to the schedule and satisfy the requirements of 9VAC25-880-70, Part II(G). Any corrective action identified in an inspection must be completed as follows:

- A. *Control measure not operating effectively.* If an inspection identifies a control measure that is not operating effectively or needs routine maintenance, corrective actions or routine maintenance must be completed as soon as practicable, but no later than five business days after discovery or a longer period allowed in writing by the administrator, to maintain the continued effectiveness of the control measures.
- B. *Repeat repairs.* If the operator must make the same repairs more than two times to the same control at the same location, even if the fix can be completed by the close of the next business day, the operator must either: (a) complete work to fix any subsequent repeat occurrences of this same problem under the corrective action procedures in 9VAC25-880-70, Part II(H), including keeping any records of the condition and how it was corrected under 9VAC25-880-70, Part II(C); or (b) document in the inspection report under 9VAC25-880-70, Part II(G) why the specific reoccurrence of this same problem should still be addressed as a routine maintenance fix.
- C. *Control measure inadequate.* If an inspection identifies an existing control measure that needs to be modified or if an additional control measure is necessary for any reason, implementation must be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures must be implemented as soon as practicable, but no later than five business days after discovery or a longer period allowed in writing by the administrator.

(§ 17-206: 2-11-98; Code 1988, § 19.3-14; § 17-206, Ord. 98-A(1), 8-5-98) (§ 17-305: 2-11-98; Code 1988, § 19.3-29; § 17-305, Ord. 98-A(1), 8-5-98; § 17-804, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-880-70, Parts II(F)&(G).

Sec. 17-805 Duty to provide information pertaining to discharges and compliance.

Each owner must provide within a reasonable time the following information pertaining to discharges upon the request of the administrator:

- A. *Effect of discharges and wastes.* Any application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of: (i) the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of the VESMA and 9VAC25-875; and (ii) the wastes from the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of the Clean Water Act and the VESMA.
- B. *Determine compliance or other cause to change general permit.* Any information request to determine whether cause exists for modifying, revoking and reissuing, or terminating the general permit or to determine compliance with the general permit.

(§ 17-206: 2-11-98; Code 1988, § 19.3-14; § 17-206, Ord. 98-A(1), 8-5-98) (§ 17-305: 2-11-98; Code 1988, § 19.3-29; § 17-305, Ord. 98-A(1), 8-5-98; § 17-805, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:40; 9VAC25-875-900, 9VAC25-880-70.

Sec. 17-806 Duty to report discharges or noncompliance.

Each owner must report discharges or noncompliance as follows:

- A. *Discharge of stormwater not authorized by general permit.* Except in compliance with a general permit, any person who discharges, causes, or allows a discharge of stormwater into or upon State waters from the County's MS4 or from a land disturbing activity, or who discharges, causes, or allows a discharge that may reasonably be expected to enter State waters, must notify the Virginia Department of Environmental Quality and the administrator of the discharge immediately upon discovery of the discharge but in no case later than twenty-four (24) hours after discovery of the discharge. In addition, the owner(s) must submit a written report of the unauthorized discharge to the Virginia Department of Environmental Quality and to the administrator within five (5) days after discovery of the discharge. The written report must include the contents required by 9VAC25-875-870.
- B. *Discharge of sewage, wastes, noxious, deleterious, or hazardous substances, or oil.* Any owner who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or Virginia Code § 62.1-44.15:19 that occurs during a twenty-four (24) hour period into or upon State waters or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters, must notify the Virginia Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within twenty-four (24) hours after the discovery. A written report of the unauthorized discharge must be submitted to the Virginia Department of Environmental Quality and the administrator within five (5) days after discovery of the discharge. The written report must satisfy the requirements of 9VAC25-880-70, Part III(G).
- C. *Unusual or extraordinary discharges.* The owner must promptly notify, in no case later than within twenty-four (24) hours, the Virginia Department of Environmental Quality and the administrator by telephone after the discovery of any unusual or extraordinary discharge, including a "bypass" or "upset," from a facility and the discharge enters or could be expected to enter State waters. The notification must include the information required by 9VAC25-880-70, Part III(H).
- D. *Reports of noncompliance.* The owner must report any noncompliance that may adversely affect State waters or may endanger public health. An oral report must be provided to the Virginia Department of Environmental Quality within twenty-four (24) hours after discovery of the noncompliance. A written report of the noncompliance must be submitted to the Virginia Department of Environmental Quality and the administrator within five (5) days after discovery of the noncompliance. The oral and written reports must include the information required by 9VAC25-880-70, Part III(I).

(§ 17-506, Ord. 07-17(1), 2-14-07; § 17-806, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – 9VAC25-875-870, 9VAC25-880-70.

[Section 17-807 to remain unchanged]

Sec. 17-808 Duty to stabilize denuded areas with permanent vegetation within nine months after commencing land disturbing activity.

In addition to the authority of the administrator to require that any disturbed area be stabilized under an approved SWPPP, any owner must install permanent vegetation on all denuded areas on the site, subject to the following:

- A. *When permanent vegetation required.* The owner must install on all denuded areas on the site within nine (9) months after the date the land disturbing activity commenced, except for areas that the administrator determines are necessary parts of the construction that are subject to an active building permit and areas where erosion is prevented by a non-erosive surface, including (but not limited to) the following surfaces: (i) roadways and sidewalks covered by gravel, asphalt pavement, or concrete; (ii) trails or paths covered by gravel, stone dust, or mulch; (iii) buildings and other permanent structures; and (iv) such other surfaces that the administrator determines would adequately provide a permanent barrier to erosion.
- B. *Extension.* The time limit for installing permanent vegetation may be extended by either the administrator or the board of supervisors, or both, as follows:
 - 1. *By the administrator.* The administrator may extend the time limit for installing permanent vegetation up to an additional six (6) months, provided that the owner submits a written request to the administrator no less than one (1) month prior to the deadline for installing the permanent vegetation. The administrator may grant the extension if the administrator finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has effectively controlled erosion and sedimentation on the site during the land disturbing activity. In granting an extension, the administrator may impose reasonable conditions.
 - 2. *By the board of supervisors.* The board of supervisors may extend the time limit for installing permanent vegetation for any duration it determines to be appropriate, provided that the owner submits a written request to the clerk of the board of supervisors no less than two (2) months prior to the deadline for installing the permanent vegetation. The administrator will provide an opinion to the board as to the condition of the site with respect to complying with this chapter and an estimate of the minimum time needed to complete grading and install permanent vegetation for the land disturbing activity covered by the approved erosion and sediment control plan or the land-disturbance permit. The board may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the site during the land disturbing activity. In granting an extension, the board will set a time limit and may impose other reasonable conditions.
- C. *Changes to approved plans or permits do not extend time.* An application to modify, vary, or otherwise amend an approved erosion and sediment control plan, or to amend or modify a stormwater management plan or any other plan approved under the approved land-disturbance permit, for the site, may not extend the time limit for installing permanent vegetation required by this section.
- D. *Land disturbing activity subject to this section.* The installation of permanent vegetation required by this section is required for those land disturbing activities subject to an erosion and sediment control plan approved on or after September 5, 2009, or an erosion and sediment control plan that was approved prior to that date but was renewed on or after September 5, 2009.

(§ 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; § 17-808, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:65.

Sec. 17-809 Right of administrator to enter to obtain information, conduct surveys, or in accordance with a performance bond.

In the administration and enforcement of the VESMP, the administrator or any duly authorized agent of the County may:

- A. *To obtain information or conduct surveys.* At reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys. If the purpose to enter the site is to conduct an inspection to either administer or enforce this chapter, the administrator or any duly authorized agent of the County will comply with section 17-811.
- B. *In accordance with an agreement with surety.* In accordance with an agreement with surety provided by the owner under section 17-414, enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate conservation actions that are required by the approved plan or any condition of the land-disturbance permit associated with a land disturbing activity when the owner, after proper notice, has failed to take acceptable conservation actions within the time specified.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:39.

Sec. 17-810 [Repealed]

Sec. 17-811 Inspections by the administrator under the VESMP.

In conjunction with the administration of the VESMP, the administrator will inspect all land-disturbing activity as follows:

- A. *During construction.* The administrator will inspect all land-disturbing activity during construction as follows:
 - 1. *Notice of inspection.* The administrator will provide either prior written or verbal notice of the inspection to the owner or other person responsible for carrying out the land-disturbance permit; provided that notice is not required if the owner has consented to the inspection in writing or granted a written right of entry. The administrator may request that an owner consent to inspections on the application form or make owner consent a condition of land-disturbance permit approval.
 - 2. *Who may conduct inspection.* Any inspection must be conducted by a person holding a certificate of competence as an inspector.
 - 3. *Scope of inspection.* The inspection will be conducted for the purpose of determining the land disturbing activity's: (i) compliance with the approved erosion and sediment control plan; (ii) compliance with the approved stormwater management plan; (iii) development, updating, and implementation of a pollution prevention plan; and (iv) development and implementation of any additional control measures necessary to address a TMDL.
 - 4. *When inspections conducted.* Unless an alternative inspection program is approved by the State Water Control Board, inspections will be conducted as follows:
 - a. *Initial installation.* During or immediately following initial installation of erosion and sediment controls,
 - b. *Bi-weekly.* At least once in every two-week period until the adequate stabilization of the land disturbing activity has been achieved,
 - c. *Rain events.* Within 48 hours following any runoff producing storm event, and
 - d. *Project completion.* At the completion of the project prior to the release of any performance bonds.
- B. *Post-construction.* The administrator must inspect all stormwater management facilities at least once every five (5) years, including facilities for which there is no long-term maintenance agreement or those serving an individual residential lot, after the land disturbing activity has ended. If the owner and the County have entered into an agreement as provided in section 17-415, any inspection must be conducted as provided in that agreement. If the owner and the County have not entered into an agreement under section 17-415, any inspection must be completed as follows:

1. *Notice of inspection.* The administrator must provide either prior written or verbal notice of the inspection to the owner; provided that notice will not be required if the owner has consented to the inspection in writing or granted a written right of entry.
2. *Who may conduct inspection.* Any inspection must be conducted by a person holding a certificate of competence as an inspector, other than the owner, provided that the administrator may, in the administrator's sole discretion, use the inspection report of the owner of the stormwater management facility as part of the facility's inspection program if the inspection is conducted by a person who: (i) is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Virginia Code § 54.1-400 *et seq.*; (ii) works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or (iii) holds an appropriate certificate of competence.
3. *Scope of inspection.* The inspection will be conducted for the purpose of determining the condition of the stormwater management facility and must be documented by records.
4. *When inspections conducted.* Inspections must be conducted for each stormwater management facility at least once every five (5) years or more frequently as provided in the County's MS4 permit. For any other stormwater management facility, the timing of the inspection will be in the discretion of the administrator.

(§ 19.3-48, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-48; §17-324, Ord. 98-A(1), 6-17-98; § 17-811, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37; 9VAC25-875-140.

[Section 17-812 to remain unchanged]

Sec. 17-813 Monitoring and sampling equipment by the administrator on VPDES permitted facilities.

Either under a condition of the land-disturbance permit, with the owner's consent, or by court order, the administrator may: (i) establish on any permitted facility any device deemed to be necessary by the administrator to conduct monitoring, sampling, or both, of the facility's stormwater discharge; and (ii) require the owner to install monitoring equipment deemed to be necessary by the administrator. The facility's sampling and monitoring equipment must be maintained at all times in a safe and proper operating condition by the owner at its own expense. All devices used to measure stormwater flow and quality must be calibrated to ensure their accuracy.

(§ 17-505, Ord. 07-17(1), 2-14-07; § 17-813, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:48, 62.1-44.15:49; 9VAC25-875-150, 9VAC25-875-1030.

Sec. 17-814 Third party complaints regarding impacts from land disturbing activities.

An aggrieved landowner sustaining pecuniary damage resulting from a violation of an ESM plan or a required permit, or from the conduct of land disturbing activities commenced without an approved ESM plan or a required permit under the VESMP, may provide written notice of the alleged violation to the administrator and to the director of the Virginia Department of Environmental Quality. If an investigation determines that a violation exists, but the administrator has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's lands within thirty (30) days following receipt of the notice from the aggrieved owner, the aggrieved owner may pursue the remedies available under Virginia Code § 62.1-44.15:37.

(Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37.

ARTICLE IX. ENFORCEMENT

Sec. 17-900 Notice to comply.

If, after an inspection, the administrator determines that the owner has failed to comply with any requirement of this chapter:

- A. *Notice to owner or other person responsible.* The administrator shall provide written notice to the owner and any other person responsible for carrying out the terms of the permit, plan, or any other applicable requirement of this chapter.

- B. *Contents of notice.* The notice shall specify the measures needed to comply with the permit, plan, or other applicable requirement of this chapter, and shall specify the time within which such measures shall be completed.
- C. *How notice delivered.* The notice shall be mailed by certified mail, with confirmation of delivery, to the address specified in the permit application, the plan certification, or, if the owner and the County have entered into an agreement as provided in section 17-415, to the address specified therein, or to another address provided by the owner to administrator in writing, or by personal delivery at the site of the land disturbing or development activities to the agent or employee supervising such activity.

(§ 17-213: § 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-21, 2-11-98; Code 1988, §§ 7-6, 19.3-21; § 17-213, Ord. 98-A(1), 8-5-98); § 17-325: § 19.3-49, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-49; § 17-325, Ord. 98-A(1), 8-5-98; § 17-900, Ord. 14-7(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37; 9VAC25-875-150.

Sec. 17-901 Failure to comply with notice; revocation, order to stop work, enforcement.

Upon any failure to comply with the permit, plan, or other applicable requirement within the time specified in the notice provided under section 17-900, one or more of the following actions may be taken:

- A. *Revocation.* The County or the administrator may revoke any permit issued in conjunction with the land disturbing activity.
- B. *Order to stop work.* The administrator may issue a stop work order as provided in section 17-902.
- C. *Enforcement.* The administrator may pursue enforcement as provided in section 17-904 as applicable.

(§ 17-213: § 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-21, 2-11-98; Code 1988, §§ 7-6, 19.3-21; § 17-213, Ord. 98-A(1), 8-5-98); § 17-325: § 19.3-49, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-49; § 17-325, Ord. 98-A(1), 8-5-98; § 17-901, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37.

Sec. 17-902 Stop work orders; procedure.

The administrator may issue stop work orders as follows:

- A. *When stop work order may be issued.* A stop work order may be issued after a notice to comply under section 17-901 has been issued when the owner has not timely satisfactorily addressed the noncompliance identified in the notice to comply, provided that a notice to comply is not required before an emergency stop work order may be issued where the alleged noncompliance is causing 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.
- B. *Contents of the stop work order.* The stop work order shall order the owner to stop all land disturbing activity on the site until all of the specified corrective measures have been taken to the satisfaction of the administrator, until any violation of the permit, plan or other applicable requirement of this chapter is determined by the administrator to have abated, or that any required plan or permit be obtained from the administrator, or any combination thereof; provided that any emergency stop work order to be issued under subsection (A) also shall direct the owner to cease immediately all land disturbing activity on the site.
- C. *How stop work order delivered.* The stop work order shall be delivered as follows:
 - 1. *Noncompliance with land-disturbance permit.* If the alleged violation is the owner's noncompliance with the land-disturbance permit, the stop work order shall be mailed by certified mail, with confirmation of delivery, to the address specified in the permit application or the plan certification, or by personal delivery at the site of the land disturbing activity or development activity to the agent or employee.
 - 2. *Land disturbing activity without a land-disturbance permit.* If the alleged violation is the owner engaging in land-disturbing activity without a land-disturbance permit, the stop work order shall be mailed by certified mail, with confirmation of delivery, to the address

specified in the land records of the County, and shall be posted on the site where the land disturbing activity is occurring.

- D. *Duration of order.* A stop work order will remain in effect for the following periods:
1. *Noncompliance with land-disturbance permit.* If the alleged violation is the owner's noncompliance with the land-disturbance permit, the stop work order will remain in effect for seven (7) days after the date of service pending application by the County or the alleged violator to the circuit court for appropriate relief.
 2. *Land disturbing activity without a land-disturbance permit.* If the alleged violation is the owner engaging in land-disturbing activity without a land-disturbance permit, the stop work order will remain in effect until all required permits and plans are obtained from the administrator, subject to the additional procedures and requirements in subsection (E).
- E. *Subsequent order and service; land disturbing activity without a land-disturbance permit; failure to obtain approval within 7 days.* If the alleged violation is the owner engaging in land-disturbing activity without a land-disturbance permit, and the owner has submitted a permit application but has not obtained approval within seven (7) days after the date of service of the stop work order, the administrator may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until approval of the required permit(s) is obtained. The subsequent order shall be either (i) served upon the owner by certified mail, with confirmation of delivery, to the address specified in the permit application or the land records of the County or (ii) hand-delivered to the owner.
- F. *Administrative hearing on emergency stop work order.* Within a reasonable time after the issuance of an emergency stop work order under subsection (A), the administrator shall conduct a hearing at which time the owner may respond to the order, explain the corrective measures taken, if any, raise any defenses, if any, and present any other relevant and material information. Upon conclusion of the hearing, the administrator may affirm, modify, amend, or cancel the emergency stop work order. A hearing is not required if the owner does not appear and does not submit any information in writing. Nothing in this subsection compels the owner to participate in a hearing.
- G. *Right to appeal.* The owner may appeal the issuance of any order under subsection (A) or (E) to the circuit court; provided that the owner has no right to appeal an order issued under subsection (A) unless the owner participated in the administrative hearing provided under subsection (F).
- H. *Authority to enforce order.* The County may enforce any order issued by the administrator under subsections (A) and (E) in an action seeking injunctive relief, mandamus, or any other appropriate remedy.
- I. *Compliance; lifting order.* Any order issued by the administrator under subsections (A) and (E) will be immediately lifted when (i) the corrective measures have been completed by the owner and approved by the administrator, (ii) all required permits or plans are obtained from the administrator, or (iii) the administrator determines that the requirements of this Chapter have been satisfied; provided in any event that nothing in this section prevents the County or the administrator from pursuing any other action or seeking any other remedy in the enforcement of this chapter.

(§ 17-214: § 7-6, 6-18-75, § 8, 2-11-76, 4-21-76, 2-11-87, 3-18-92; § 19.3-22, 2-11-98; Code 1988, §§ 7-6, 19.3-22; § 17-214, Ord. 98-A(1), 8-5-98); § 17-325: § 19.3-49, 2-11-98; § 19.1-9, 9-29-77, art. III, § 4, 10-19-77, 7-11-90; Code 1988, §§ 19.1-9, 19.3-49; § 17-325, Ord. 98-A(1), 8-5-98; § 17-902, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:37; 9VAC25-875-150.

Sec. 17-903 [Repealed]

Sec. 17-904 Remedies.

The following provisions apply to the enforcement of the VESMP:

- A. *Violations subject to this section.* Violations for which a penalty may be imposed under this section include (but are not limited to) the following:
1. *Registration.* No state permit registration, when required.
 2. *SWPPP.* No SWPPP, an incomplete SWPPP, or the SWPPP is not available for review.

3. *Approved plan.* An erosion and sediment control plan has not been approved.
 4. *BMPs or controls.* Stormwater BMPs or erosion and sediment controls have not been installed or have not been installed or maintained properly.
 5. *Operation deficiencies.* Operation deficiencies.
 6. *Inspections.* Required inspections are being conducted or are incomplete or improper.
 7. *Discharges.* Discharges not in compliance with the requirements of this Chapter.
- B. *Civil penalties.* Pursuant to Virginia Code § 62.1-44.15:48(A)(2), the County may seek civil penalties as follows:
1. *Procedure.* Proceedings seeking civil penalties for any violation outlined in subsection (A) commence by filing a civil summons in the appropriate court.
 2. *Amount of civil penalty.* Any violation is subject to a civil penalty of up to thirty- two thousand five hundred dollars (\$32,500.00) for each violation, in the discretion of the court. The amount of the penalty should reflect the degree of harm caused by the violation and take into account the economic benefit to the violator from noncompliance.
 3. *Each day a separate offense.* Each day of violation of each requirement constitutes a separate offense.
 4. *Civil penalties; use.* Civil penalties must be paid into the treasury of the County and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.
- C. *Civil charges.* Pursuant to Virginia Code § 62.1-44.15:25.1, in lieu of the civil penalties sought under subsection (B) and with the consent of any person who has committed a violation described in subsection (A), the administrator may provide, in an order issued against the person, for the payment of civil charges for violations in a specific sum, not to exceed the limits specified in subsection (B)(2), to be paid into the treasury of the County.
- D. *Criminal penalties.* The County may seek criminal penalties pursuant to Virginia Code § 62.1-44.32 for the violations specified therein.
- E. *Injunctive relief.* Pursuant to Virginia Code § 62.1-44.15:48(C), the County may apply to the appropriate court to enjoin a violation or a threatened violation of this chapter or the conditions of a land-disturbance permit. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this chapter will be subject, in the discretion of the court, to a civil penalty to be assessed and used in accordance with subsection B.
- F. *Use of offsite nutrient credits.* To the extent available and with the consent of the applicant, the administrator may include the use of nutrient credits or other offsite measures in resolving enforcement actions to compensate for: (i) nutrient control deficiencies occurring during the period of noncompliance; and (ii) permanent nutrient control deficiencies.

(§ 17-326: § 19.3-50, 2-11-98; § 19.1-10, 9-29-77, art. III, 4-13-88, 7-11-90, § 19.2-15, 6-19-91, § 15; Code 1988, §§ 19.1-10, 19.2-15, 19.3-50; § 17-326, Ord. 98-A(1), 8-5-98) (§ 17-507: Ord. 07-17(1), 2-14-07; § 17-904, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code §§ 62.1-44.15:25.1, 62.1-44.15:35, 62.1-44.15:48, 62.1-44.15:49; § 62.1-44.32, 9VAC25-875-150, 9VAC15-875-870.

[Sections 17-905 through 17-1004 to remain unchanged]

Sec. 17-1005 Fees. [Previously amended 12/6/2023, effective 7/1/2024]

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, effective 7-1-24)

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

Enactment Clause:

This Ordinance is effective on and after July 1, 2024. All provisions amended, superseded, or repealed by this Ordinance will remain effective continuously, without interruption, through and including June 30, 2024.

Agenda Item No. 22. **Public Hearing: OTA2024-00001 Amendments to Water Protection Ordinance and Associated Fee Schedule.** To receive comments on proposed ordinances to conform the County's Water Protection Ordinance (County Code Chapter 17) and fee schedule (County Code Chapter 1, Article 5) to the mandates of the new Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.), Virginia Erosion and Stormwater Management Regulation (9VAC25-875), and amended state regulations on the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880), each of which takes effect July 1, 2024. These proposed ordinances would repeal County Code Sections 17-208, 17-302, 17-303, 17-810, and 17-903, and would amend County Code Sections 1-503, 17-101, 17-102, 17-103, 17-104, 17-105, 17-200, 17-201, 17-202, 17-203, 17-204, 17-205, 17-207, 17-211, 17-300, 17-301, 17-304, 17-305, 17-306, 17-400, 17-401, 17-402, 17-403, 17-404, 17-405, 17-407, 17-408, 17-410, 17-411, 17-413, 17-415, 17-416, 17-417, 17-418, 17-419, 17-421, 17-422, 17-423, 17-424, 17-500, 17-501, 17-502, 17-600, 17-602, 17-701, 17-800, 17-801, 17-802, 17-803, 17-804, 17-805, 17-806, 17-808, 17-809, 17-811, 17-813, 17-814, 17-900, 17-901, 17-902, and 17-904, among others, by replacing existing references to the Virginia Erosion and Sediment Control Program (VЕСP) and the Virginia Stormwater Management Program (VSMP) (and the documents and processes associated with each) with references to the new consolidated Virginia Erosion and Stormwater Management Program (VESMP) (and its associated documents and processes). The proposed ordinances would also incorporate updated state regulations on the General VPDES Permit for Discharges of Stormwater from Construction Activities. The proposed ordinances would also make non-substantive clarifications and have a delayed effective date of July 1, 2024.

The presentations for Agenda Items No 21 and 22 were combined.

Mr. Andrews opened the public hearing and asked the Clerk if there were any speakers. Hearing none, he closed the public hearing and brought the matter back before the Board for comments or a motion.

Mr. Pruitt **moved** that the Board of Supervisors adopt the Ordinance to amend Chapter 1 (Attachment B), with an effective date of July 1, 2024. Ms. Mallek **seconded** the motion

Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Andrews, Mr. Gallaway, Ms. LaPisto-Kirtley, Ms. Mallek, Ms. McKeel, and Mr. Pruitt.
NAYS: None.

ORDINANCE NO. 24-1(1)

AN ORDINANCE TO AMEND CHAPTER 1, GENERAL PROVISIONS, ARTICLE 5, FEE SCHEDULE, 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 1, General Provisions, Article 5, Fee Schedule is hereby reordained and amended as follows:

By Amending:

Sec. 1-503 Water Protection Fees

Chapter 1. General Provisions

**ARTICLE 5
Fee Schedule**

Sec. 1-503 – Water Protection Fees

A – Rules Applicable to Water Protection Fees. The following rules apply to the fees imposed under subsection (B):

1. Virginia Erosion and Stormwater Management Program (VESMP): Payment of fees.
 - a) Transfer or modification. Each owner required to pay the transfer or modification fee as provided in this Article, must pay the fee upon submittal of the application to transfer or modify.
 - b) Annual maintenance fee. Each owner must pay the maintenance fee annually to the County until a notice of termination is effective. The maintenance fee will be billed in arrears and is due by April 1 of each year. On the first April 1 after

the land disturbing activity has begun, this fee will be prorated on a monthly basis, and the full fee will be due by April 1 of each year thereafter. The final fee will be prorated on a monthly basis based on the date of permit termination.

- 2. *Use of Water Protection fees.* The fees imposed under subsection (B) will be used solely to carry out the County's responsibilities under the Virginia Erosion and Stormwater Management Act, the applicable regulations in 9VAC25-830 through 9VAC25-890, and any other applicable standards and specifications.
- 3. *Late payments.* Any late payment will be subject to interest at the underpayment rate provided in Virginia Code § 58.1-15 and will be calculated on a monthly basis at the applicable periodic rate. A ten percent late payment fee will be charged to any account more than 90 days past due.
- 4. *Remedies.* The County may pursue any remedies provided by State law to collect any past due amount. In addition, the County or the program administrator may pursue the remedies provided in County Code §§ 17-900 *et seq.*, including revocation of any approval.

B – Water Protection Fee Amounts

Each of the following applications, permits, or activities is subject to the following fee(s):

Virginia Erosion and Stormwater Management Program (VESMP) exempt from water quantity and water quality technical criteria – Disturbed area less than one acre	
Plan review and land disturbance permit or each amendment	\$240
Annual Maintenance	\$230
VESMP exempt from water quantity and water quality technical criteria Disturbed area one acre up to 5 acres	
Plan review and land disturbance permit or each amendment	\$565
Annual Maintenance	\$340
Single Family (SF) – Land disturbing activity pertaining to a sole single family detached dwelling (including within a common plan of development) with less than 5 acres of land disturbance	
Plan review, land disturbance permit, and first year annual maintenance or each amendment	\$235
Annual Maintenance, starting with the second year	\$235
VESMP – Small construction activity or land clearing that is less than 10,000 sf within a common plan of development or is equal to or greater than 10,000 sf and less than 1 acre	
Plan Review and Land Disturbance Permit	\$235
Transfer or Modification	\$120
Annual Maintenance	\$160
VESMP – Small construction activity or land clearing that is equal to or greater than 1 acre and less than 5 acres	
Plan Review and Land Disturbance Permit	\$2,205
Transfer or Modification	\$225
Annual Maintenance	\$1,530
VESMP – Large construction activity or land clearing that is equal to or greater than 5 acres and less than 10 acres	
Plan Review and Land Disturbance Permit	\$2,775
Transfer or Modification	\$285
Annual Maintenance	\$1,925
VESMP – Large construction activity or land clearing that is equal to or greater than 10 acres and less than 50 acres	
Plan Review and Land Disturbance Permit	\$3,675
Transfer or Modification	\$340
Annual Maintenance	\$2,550

VESMP – Large construction activity or land clearing that is equal to or greater than 50 acres and less than 100 acres	
Plan Review and Land Disturbance Permit	\$4,980
Transfer or Modification	\$510
Annual Maintenance	\$3,460
VESMP – Large construction activity or land clearing that is equal to or greater than 100 acres	
Plan Review and Land Disturbance Permit	\$7,835
Transfer or Modification	\$795
Annual Maintenance	\$5,440
Other Services	
Amendment to Approved Plan	\$225 per review
Bond Agreement with Surety - Establish, Amend, Replace, Reduce, or Release a Bond	\$285
Construction record drawings review	\$340
Exception	\$270 each
Re-inspection pertaining to a single-family dwelling	\$170 for the first and \$270 for each subsequent reinspection
Re-inspection not pertaining to a single-family dwelling	\$285 for the first and \$385 for each subsequent reinspection
Review of mitigation plan pertaining to a land disturbing activity in a stream buffer	\$170
Stream Determination	\$320
Variation	\$170 each

Enactment Clause:

This Ordinance is effective on and after July 1, 2024. All provisions amended, superseded, or repealed by this Ordinance will remain effective continuously, without interruption, through and including June 30, 2024.

Agenda Item No. 24. Adjourn.

At 6:55 p.m., the Board adjourned its meeting to June 12, 2024, 1:00 p.m., Lane Auditorium, Albemarle County Office Building, 401 McIntire Road, Charlottesville, VA. Mr. Andrews said information on how to participate in the meeting would be posted on the Albemarle County website Board of Supervisors home page and on the Albemarle County calendar.

Chair

Approved by Board
Date 09/18/2024 Initials CKB