

**ORDINANCE NO. 21-17( )**

AN ORDINANCE TO AMEND CHAPTER 17, WATER PROTECTION ORDINANCE, 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 Ordinance, are hereby amended and reordained as follows:

By Amending:

- Sec. 17-201 Designation of program administrator; powers and duties; express designations
- Sec. 17-205 Definitions
- Sec. 17-209 Fees; payment
- Sec. 17-301 Land disturbing activities exempt from the VESCP
- Sec. 17-303 Land disturbing activities exempt from the VSMP
- Sec. 17-402 Erosion and sediment control plans, and agreements in lieu of a plan; form and content
- Sec. 17-414 Agreement with surety
- Sec. 17-423 Release of surety
- Sec. 17-603 Types of structures, improvements and activities authorized in a stream buffer
- Sec. 17-604 Types of structures, improvements and activities which may be allowed in a stream buffer by program authority

**Chapter 17. Water Protection Ordinance**

**Article II. Administration**

**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 VESCP and the VSMP, 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 VESCP and the VSMP.
- B. *Administrator for post-construction stormwater management facilities and best management practices.* The director of the County’s Department of General Facilities and Environmental Services is hereby designated to administer the VSMP 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 General 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)

**State law reference** – Va. Code §§ 62.1-44.15:27, 62.1-44.15:54.

## **17-205 Definitions.**

*Agricultural land.* The term “agricultural land” means land used for horticulture, viticulture, silviculture or other gardening which 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 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” exclusively for access to agricultural land and is located on or serves a lot which 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.

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

- A. *Structural best management practice.* Structural best management practices include storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as biofilters, grassed swales, sand filters and filter strips; infiltration practices such as infiltration basins and infiltration trenches; and any post-construction BMP listed in the Virginia Stormwater BMP Clearinghouse Website (<http://vwrrc.vt.edu/swc/PostConstructionBMPs.html> | <https://swbmp.vwrrc.vt.edu/>).
- B. *Nonstructural best management practice.* Nonstructural best management practices are preventative actions that involve management and source controls such as: (i) policies and regulations that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or regulations that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs and maintenance activities that minimize water quality impacts; and (iv) measures such as minimizing the percentage of impervious area after development and minimizing directly connected impervious areas; and (v) forest and open space.

*Forest and open space.* The term “forest and open space” means land that is protected to meet water quality requirements.

*Land disturbance or land disturbing activity.* The term “land disturbance” or “land disturbing activity” means: (i) for purposes of the VESCP, any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the State, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, but does not include those land disturbing activities exempt under section 17-301; and (2) for purposes of the VSMP, a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, filling, or excavation, but does not include those land disturbing activities that are exempt under Virginia Code § 62.1-44.15:34 and section 17-303.

*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.

*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 shall 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, ~~Chris Greene Lake~~, 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.

(§ 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)

**State law reference** – Va. Code §§ 62.1-44.15:24, 62.1-44.15:51; 9VAC25-840-10, 9VAC25-870-10.

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

Each owner shall pay the fees imposed by sections 17-207 and 17-208 as follows:

- A. *Form.* Each fee shall be in the form of cash or a check payable to the “County of Albemarle-” or may be paid through the County online payment system.
- B. *When payment to be made.* Payments shall be made as follows:
  1. *VESCP.* Each owner seeking approval of an erosion and sediment control plan shall pay all applicable fees upon submittal of the application.
  2. *VSMP; permit issuance.* Each owner required to pay the permit issuance fee shall pay one-half of the applicable total fee required by column 1 of the table in section 17-208 upon submittal of the application, and the remaining one-half shall be paid prior to issuance of coverage under the general permit.
  3. *VSMP; transfer or modification.* Each owner required to pay the transfer or modification fee required by column 3 of the table in section 17-208 shall pay the fee upon submittal of the application to transfer or modify.
  4. *VSMP; annual maintenance fee.* Each owner required to pay the general permit coverage maintenance fee required by column 4 of the table in section 17-208 shall must pay the fee annually to the County until a notice of termination is effective. The maintenance fee shall 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 shall will be prorated on a monthly basis, and the full fee shall will be paid due by April 1 of each year thereafter. No fee shall be refunded for land disturbing activity that is completed in months other than April. The final fee will be prorated on a monthly basis based on the date of permit termination.

- C. *Required information to be included with VSMP permit application payments.* Each owner shall submit the following information with the fee payment, or submit a completed Virginia Department of Environmental Quality permit application fee form:
1. Applicant name, address, and daytime phone number.
  2. The name of the facility or activity and its location.
  3. The type of general permit applied for.
  4. Whether the application is for a new general permit issuance, general permit reissuance, general permit maintenance, or general permit modification.
  5. The amount of fee submitted.
  6. The existing general permit number, if applicable.
  7. Other information as required by the administrator.
- D. *Use of fees.* The County's portion of the fees imposed under sections 17-207 and 17-208 shall be used solely to carry out the County's responsibilities under the Virginia Stormwater Management Act, the Erosion and Sediment Control Law, the applicable regulations in 9VAC25-830 through 9VAC25-890, this chapter and any other applicable standards and specifications.

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

**State law reference** – Va. Code §§ 62.1-44.15:36, 62.1-44.15:54; 9VAC25-840-30, 9 VAC25-870-700, 9VAC25-870-750, 9VAC25-870-760, 9VAC25-870-780, 9VAC25-870-820.

### **Article III. Applicability of the VSCP and the VSMP to a land disturbing activity or a site condition**

#### **Sec. 17-301 Land disturbing activities exempt from the VESCP.**

The following land disturbing activities are exempt from the VESCP:

- A. *Minor residential-related activities.* Minor residential-related land disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work.
- B. *Connections.* Individual service connections.
- C. *Public utility lines.* Installing, maintaining, or repairing any underground public utility lines when the 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.
- D. *Conventional onsite sewage systems.* Septic tank lines or drainage fields for a conventional onsite sewage system unless they are included in an overall plan for land disturbing activity related to constructing the building to be served by the system.

- E. *Mining, oil and gas operations and projects.* Permitted surface or deep mining operations and projects, and oil and gas operations and projects conducted pursuant to Title 45.1 of the Virginia Code.
- F. *Agricultural, horticultural, and forestal activities.* Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, 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), or as additionally set forth by the State Water Control Board in regulations; provided that this exemption shall not apply to the harvesting of forest crops unless the area on which the harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Virginia Code § 10.1-1100 *et seq.*) of Title 10.1 of the Virginia Code or is converted to bona fide agricultural or improved pasture use as described in Virginia Code § 10.1-1163(B)-, 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 (SMZ).
- G. *Agricultural engineering operations.* Agricultural engineering operations including, but not limited to, constructing terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Virginia Code § 10.1-604 *et seq.*), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation.
- H. *Railroad improvements.* Repairing or rebuilding the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.
- I. *Posts and poles.* Installing fence and sign posts or telephone and electric poles and other kinds of posts or poles.
- J. *Emergency work.* Emergency work to protect life, limb, or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan if the activity was not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the County.

(§ 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)

**State law reference** – Va. Code § 62.1-44.15:51.

### **Sec. 17-303 Land disturbing activities exempt from the VSMP.**

The following land disturbing activities are exempt from the VSMP requirements of this chapter, unless otherwise required by federal law:

- A. *Mining, oil and gas operations and projects.* Permitted surface or deep mining operations and projects, and oil and gas operations and projects conducted pursuant to Title 45.1 of the Virginia Code.

- B. *Agricultural, horticultural, and forestal activities.* Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Water Control Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Virginia Code § 10.1-1100 *et seq.*) of Title 10.1 of the Virginia Code or is converted to bona fide agricultural or improved pasture use as described in Virginia Code § 10.1-1163(B) 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 (SMZ).
- C. *Single-family residences.* Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures.
- D. *Land disturbance of less than 10,000 square feet.* Land disturbing activities that disturb less than ten thousand (10,000) square feet of land area except for land disturbing activities that are part of a larger common plan of development or sale that is ten thousand (10,000) square feet or greater of disturbance.
- E. *Discharges.* Discharges to a sanitary sewer or a combined sewer system.
- F. *Reclamation of abandoned property.* Activities under a State or Federal reclamation program to return an abandoned property to an agricultural or open land use.
- G. *Project maintenance.* Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection.
- H. *Emergencies.* Conducting land disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In a public emergency, the owner shall advise the administrator of the disturbance within seven (7) days after commencing the land disturbing activity, and compliance with the administrative requirements of this chapter to obtain approval of a VSMP permit is required within thirty (30) days after commencing the land disturbing activity.

(§ 19.1-6, 9-29-77, art. II, § 1, 10-19-77, 9-13-78, 10-22-80, 7-11-90, 8-3-94; § 19.2-5, 6-19-91, § 5; § 19.3-24, 2-11-98; Code 1988, §§ 19.1-6, 19.2-5, 19.3-24; § 17-300, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07; § 17-303, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:24, 62.1-44.15:34.

**Article IV. Procedure for submitting, reviewing and acting on  
Applications; post-approval rights and obligations**

**Division 1. Application requirements**

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

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

- A. *Application form.* A completed application on an application form provided by the administrator, if the land disturbing activity is subject only to the VESCP and a VSMP permit is not required.
- B. *Fee.* The fee required by section 17-207, if the land disturbing activity is subject only to the VESCP, and a VSMP permit is not required.
- C. *Elements of plan.* Except as provided in subsection (D), an erosion and sediment control plan that contains all of the following elements:
  - 1. *Temporary and permanent controls.* The specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the administrator deems to be reasonably adequate, considering the nature and extent of the proposed land disturbing activity, implementing appropriate erosion and sediment control best management practices and satisfying the requirements of 9VAC25-880-70, Part II(A)(2). All control measures required by the plan shall be designed and installed in accordance with good engineering practices.
  - 2. *Maintenance responsibilities.* A statement describing the maintenance responsibilities of the owner to ensure that the land disturbing activity will satisfy the purposes and requirements of this chapter.
  - 3. *Technical criteria.* The technical criteria required by section 17-500.
  - 4. *Identification of land disturber.* Identify the person holding a certificate of competence required by Virginia Code § 62.1-44.15:54, who shall be in charge of and responsible for carrying out the land disturbing activity.
  - 5. *Additional information.* Additional information required by the administrator as determined to be necessary for a complete review of the plan.
  - 6. *Certification.* A certification on a form provided by the administrator and signed by the owner stating that all requirements of the approved plan will be complied with.
- D. *Agreement in lieu of a plan.* Notwithstanding subsection (C), if the land disturbing activity is for the purpose of establishing or modifying a single family dwelling unit, the administrator may allow an agreement in lieu of a plan for the land disturbing activity required for constructing the dwelling; provided:

1. *Eligibility.* The single family dwelling unit is on an individual lot of one (1) 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 shall 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 shall be established by the administrator, and they shall: (i) be sufficient to ensure that the purposes and requirements of the VESCP, including the requirements of 9VAC25-880-70, Part II(A)(2) are satisfied; and (ii) identify the person in charge of and responsible for carrying out the land disturbing activity and holding a valid certificate of competence for that task. The form of the agreement shall be subject to review and approval by the County attorney.
4. *Effect of agreement in administration of the VESCP.* Except as provided in subsection (C) and section 17-500 pertaining to the content and technical criteria applicable to erosion and sediment control plans, all other references in this chapter to an erosion and sediment control plan shall include an agreement in lieu of a plan, and the County and the owner shall have all of the rights, responsibilities and remedies set forth in this chapter as though the agreement in lieu of a plan was an erosion and sediment control plan.

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

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



**Division 3. Required Agreements as Prerequisites  
to Approval; Surety and Maintenance**

**Sec. 17-414 Agreement with surety.**

Any agreement with surety required by this chapter shall be provided by the owner as a prerequisite to approval of the application ~~any land disturbance activity~~, as follows:

- A. *Purpose for agreement.* The owner shall enter into an agreement with the County to take all appropriate measures required by the approved plan or as a condition of the ~~VSMF~~ land disturbance permit (collectively, the “conservation actions”).
- B. *Form of the agreement.* The agreement accompanying the surety shall be on a form prepared by the County attorney and any proposed amendment to the agreement shall be subject to review and approval by the County attorney.
- C. *Purpose for surety; type of surety permitted amount.* The owner shall provide a surety to guarantee that the conservation actions will be taken and satisfied. The applicant shall furnish to the administrator a cash escrow, certified check, official check, bond with surety, letter of credit, or collaterally assign funds in a manner satisfactory to the County attorney (collectively, the “surety instrument”), in an amount sufficient for and conditioned upon the satisfactory performance of all conservation actions. Any proposed surety instrument shall be subject to being acceptable to the administrator, shall be in a form and have the substance approved by the County attorney, and shall be subject to review and approval by the County attorney.
- D. *Estimate.* The owner shall submit a request for an estimate of the surety amount to the administrator. The administrator shall prepare an estimate of the total estimated cost to initiate and maintain appropriate all conservation actions based on the unit price for new public or private sector construction in the County and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed twenty-five (25) percent of the estimated cost of the conservation actions.
- E. *Use of surety.* The County may make use of monies guaranteed by the surety instrument if either: (i) the owner fails to timely renew the bond with surety, letter of credit, or the collaterally assigned funds; or (ii) the administrator, in his discretion, determines that the owner, after written notice, failed within the time specified in the notice to initiate, maintain or complete appropriate conservation actions required by the approved plan or by a condition of the permit.
- F. *Right to collect shortfall.* If the County takes a conservation action because the owner failed to do so, the County may collect from the owner the difference if the amount of the reasonable cost of the conservation action exceeds the amount of the security held.
- G. *Release of surety.* The surety shall be released as provided in section 17-423.

(§ 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; § 17-414, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code §§ 62.1-44.15:34, 62.1-44.15:57; 9VAC25-870-104.

#### **Division 4. Post-approval rights and obligations**

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

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

**A.     *Partial release.*** In order for any surety to be partially released:

1.     *Request by owner.* The owner shall 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 sections 17-207 or 17-208, or both.
2.     *Response by administrator.* Within thirty (30) days after receipt of the statement required by subsection (A)(1), the administrator shall 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 shall be partially release within sixty (60) days after receipt of the request required by subsection (A)(1). The amount of the release shall 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 shall submit a statement to the administrator on a form provided by the administrator and pay the fee for a full release required by sections 17-207 or 17-208, or both. For any surety required in conjunction with an erosion and sediment control plan, the owner shall state that adequate permanent stabilization of the land disturbing activity has been achieved. For any surety required in conjunction with a VSMP permit, the owner shall state that the requirements of the permit have been satisfied.
2.     *Response by administrator.* Within thirty (30) days after receipt of the statement required by subsection (B)(1), the administrator shall 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 shall be fully released within sixty (60) days after receipt of the request required by subsection (B)(1).

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

1. Requirements for Transfer of Maintenance Responsibilities to the Property Owners Association (POA). To transfer the maintenance responsibilities of stormwater management facilities to a Property Owners Association, a developer must:

i. Submit acceptable record drawings.

ii. Obtain an acceptable final inspection of the stormwater management facility by the County.

iii. Transfer the necessary property to the POA.

iv. Organize and hold a meeting attended by the developer, the County and members of the POA; and provide evidence to the County that each member of the POA was provided prior notice of the meeting. The meeting must be held at a place and time convenient for members of the POA.

v. Provide a copy of the recorded documents establishing the Property Owners Association to the County.

vi. Provide the County with evidence that the Property Owners Association is funded. Minimum funding will be based on the following schedule:

1-20 lots = \$1,000

21-50 lots = \$1,500

51 and over = \$1500 + \$30 per lot over 50

2. Requirements for Posting Maintenance Security.

i. The County will require a maintenance guaranty in the amount of twenty (20%) percent of the construction costs of the stormwater management facility.

ii. The maintenance security must contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the permittee in accordance with the approved stormwater management plan.

iii. If the County takes such action upon such failure by the permittee, the County may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

iv. 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)

**State law reference** – Va. Code §§ 62.1-44.15:34; 62.1-44.15:57.

## **Article VI. Stream buffers**

### **Sec. 17-603 Types of structures, improvements and activities authorized in a stream buffer.**

If otherwise authorized by the applicable regulations of the Zoning Ordinance, the following types of structures, control measures and activities shall be allowed in a stream buffer, provided that the requirements of this section are satisfied:

- A. *Pre-existing buildings or structures.* Any building or structure which existed on February 11, 1998 may continue in its location on that date. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of any such building or structure except as provided in sections 18-6 and 18-30.3.
- ~~B. *Temporary erosion and sediment control measures.* Temporary erosion and sediment control measures, provided that to the extent practical, as determined by the administrator, the control measures shall be located outside of the stream buffer and disturbance impacts are minimized.~~
- CB. *Water-dependent facilities and miscellaneous uses.* Water-dependent facilities; water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archaeological activities; provided that all applicable Federal, State and local permits are obtained.

(§ 19.3-44, 2-11-98; § 19.2-7, 6-19-91, § 7; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-7, 19.2-8, 19.3-44; § 17-320, Ord. 98-A(1), 8-5-98; Ord. 08-17(2), 5-7-08; § 17-603, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

### **Sec. 17-604 Types of structures, improvements and activities which may be allowed in a stream buffer by program authority.**

Structures, improvements and activities may be authorized by the administrator in the circumstances described below, provided that a mitigation plan satisfying the requirements of section 17-406, is submitted to, and approved, by the administrator:

- A. *Within the landward 50 horizontal feet.* On a lot within the fifty (50) horizontal feet of a stream buffer that is the most landward (furthest from the stream), if the structures, improvements or activities either: (i) would be for necessary infrastructure to allow reasonable use of the lot; or (ii) would be on a lot that is within a water supply protection area where the stream buffer protects an intermittent stream and the lot is within a development area. In all cases under this subsection, any new building site and sewage disposal system shall be located outside of the stream buffer.

- B. *Lakes, ponds or restoration projects.* On a lot on which the development in the stream buffer will consist of a lake, pond, or ecological/wetland restoration project.
- C. *Stream crossings.* Stream crossings of perennial and intermittent streams for roads, streets or driveways, provided they meet the following minimum criteria:
1. *Bridges and culverts.* Bridges and culverts shall satisfy the following:
    - a. *Perennial streams.* For crossings of perennial streams, bridges, arch culverts, or box culverts shall be used for the stream crossing and shall be sized to pass the ten (10) year storm, or the twenty-five (25) year storm if the design standards in either section 14-410 or 18-32.7.2.1 apply, without backing water onto upstream properties. Bridges or arch culverts shall either leave the stream section, consisting of the stream bed and the stream bank, undisturbed or shall allow the stream to return to a natural stabilized cross-section upon completion of installation. The lowest interior elevation (invert) of a box culvert installation shall be a minimum of six (6) inches below the stream bed. Culvert walls and bridge columns should be located outside the stream banks wherever possible.
    - b. *Intermittent streams.* For crossings of intermittent streams, bridges or culverts shall be used for the stream crossing and sized to pass the ten (10) year storm, or the twenty-five (25) year storm if the design standards in either section 14-410 or 18-32.7.2.1 apply, without backing water onto upstream properties.
  2. *Stream stabilization and energy dissipation.* Stream stabilization and energy dissipation measures below each bridge or culvert shall be provided.
  3. *Disturbance minimized.* The stream buffer disturbance shall be the minimum necessary for the lot(s) to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the Subdivision Ordinance. Stream crossings shall not disturb more than thirty (30) linear feet of stream for driveways and sixty (60) linear feet for roads or streets, provided that the administrator may allow additional length of stream disturbance where fill slopes or special conditions necessitate additional length.
  4. *Stream bed and stream bank stabilization.* The stream bed and stream banks shall be stabilized within seven (7) days from the start of backfilling for the bridge or culvert.
  5. *Establishment of buffer vegetation.* For stream crossings where any portion of the pre-construction stream buffer is not fully vegetated as determined by the administrator, and for any portion of a vegetated stream buffer that is disturbed during the installation of the stream crossing, buffer vegetation shall be established and maintained within the stream buffer but outside of the stream crossing at a ratio of two (2) square feet of stream buffer restored for every one (1) square foot of stream buffer that was either not fully vegetated or is disturbed during the installation of the stream crossing. Buffer vegetation shall be established and maintained at the 2:1 ratio to the extent that the stream buffer is fully vegetated outside of the stream crossing, provided that the owner shall not be required to establish vegetation outside of the stream buffer in order to satisfy

the 2:1 ratio. The administrator may require that the owner enter into an agreement providing for the ongoing maintenance of the plantings in the stream buffer, and may require a bond with surety or other acceptable instrument as provided in section 17-414. Stream buffer plantings shall be consistent with guidance supplied by the administrator.

6. *Evidence of required permits.* The owner shall provide the administrator with copies of approved State and Federal permits associated with the stream crossing, if applicable.
  7. *Limitation on number of stream crossings; exception.* In order to ensure that the encroachment into or across the stream buffer is minimized, on and after May 7, 2008, it shall be presumed that one stream crossing is adequate to serve the owner's lot(s) existing on that date and all lots created therefrom on and after that date. The administrator shall allow only one stream crossing to serve all lots, provided that it may allow additional crossings under subsection (D).
- D. *Stream crossings not allowed under subsection (C).* On a lot on which the development in the stream buffer will consist of the construction and maintenance of a road, street or driveway that would not satisfy the requirements of subsection (C) and the administrator determines that the stream buffer would prohibit access to the lot necessary for the lot to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the Subdivision Ordinance, or to establish more than one stream crossing.
- E. *Water and sewer facilities or sewage disposal systems on pre-existing lots.* On a lot which was of record prior to February 11, 1998, on which the development in the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the administrator determines that the stream buffer would prohibit the practicable development of those facilities or systems. Any sewage disposal system must comply with all applicable State laws.
- F. *Sole building sites on pre-existing lots.* On a lot which was of record prior to February 11, 1998, if the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or to allow redevelopment as permitted in the underlying zoning district.
- G. *Temporary erosion and sediment control measures.* Temporary erosion and sediment control measures within the fifty (50) horizontal feet of a stream buffer that is the most landward (furthest from the stream), provided that to the extent practical, as determined by the administrator, the control measures must be located outside of the stream buffer and the disturbance impacts minimized.

(§ 19.3-45, 2-11-98; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-45; § 17-321, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; Ord. 08-17(2), 5-7-08; Ord. 11-17(1), 10-5-11; Ord. 12-17(1), 5-9-12; § 17-604, Ord. 14-17(1), 5-7-14, effective 7-1-14)

**State law reference** – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

**This Ordinance is effective on and after July 1, 2021.**

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

\_\_\_\_\_  
Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Gallaway	_____	_____
Ms. LaPisto-Kirtley	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Ms. Price	_____	_____