

STAFF BRIEFING AGENDA ITEM NO. S/B-11.1

**COUNTY OF AUGUSTA
STAFF REPORT
Ordinance Amendment
Chapter 9 Environment.
June 12, 2020**

An ordinance to amend Chapter 9. Environment

Amendments include multiple formatting revisions in addition to amendments for state code consistency, which include definitions, updated code references, and technical terminology.

PROPOSED ORDINANCE TEXT (REDLINE):

CHAPTER 9. ENVIRONMENT

ARTICLE I. Regulation of Stormwater and Erosion and Sediment Control

- § 9-1. Purpose and authority.
- § 9-2. Definitions.
- § 9-3. Programs Established
- § 9-4. Storm Water Permit and Land Disturbing Permit Requirement; Exemptions
- § 9-5. Stormwater Pollution Prevention Plan; Contents of Plan
- § 9-6. Erosion & Sediment Control Plan; Contents of Plan
- § 9-7. Stormwater Management Plan; Contents of Plan
- § 9-8. Pollution Prevention Plan; Contents of Plans.
- § 9-9. Additional Control Measures to Address a TMDL.
- § 9-10. Review of Submitted Plans.
- § 9-11. Technical Criteria for Regulated Land Disturbing Activities.
- § 9-12. Long-Term maintenance of permanent stormwater facilities.
- § 9-13. General drainage improvement programs and multi-jurisdictional systems
- § 9-14. Monitoring and inspections, Notice to Comply.
- § 9-15. Hearings and appeals.
- § 9-16. Penalties, Injunctions, and other legal actions under the VESCP.
- § 9-17. Enforcement.
- § 9-18. Permits; Fees; Security for Performance.

ARTICLE II. Illicit Discharge Detection and Elimination

- § 9-30. Purpose and Authority
- § 9-31. Applicability.
- § 9-32. Definitions.
- § 9-33. Prohibited Discharges.
- § 9-34. Inspections and Monitoring.
- § 9-35. Enforcement and Penalties.
- § 9-36. Civil charges.

ARTICLE I. Regulation of Stormwater and Erosion and Sediment Control

§ 9-1. Purpose and authority

1. Pursuant to Virginia Code ~~§ 62.1-44.15~~ 27, this ordinance integrates stormwater management requirements with the erosion and sediment control requirements into an integrated erosion and sediment control and stormwater program. The integrated program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the County and those responsible for compliance with these programs. This ordinance accounts for any town lying within the County unless such towns choose to adopt their own program.

2. The purpose of this ordinance is to establish minimum stormwater management (SWM) and erosion and sediment control (ESC) requirements and controls to protect properties, safeguard the general health, safety, and welfare of the public residing in watersheds within the County, and protect aquatic resources.

3. This ordinance is adopted pursuant to Articles 2.3 & 2.4 of Chapter 3.1 of Title 62.1 of the Code of Virginia.

§ 9-2. Definitions

As used in the ordinance, unless the context requires a different meaning, the following terms shall have the meanings indicated:

Administrator. ~~"Administrator" means~~ the VSMP authority responsible for administering the VSMP on behalf of the County ~~and the VESCP authority responsible for administering the VESCP on behalf of the County.~~ The Department of Community Development is designated as the Administrator.

Agreement in lieu of a plan. ~~"Agreement in lieu of a plan" means~~ a contract between the Administrator and the owner or permittee that specifies methods that must be implemented to comply with the requirements of a VSMP and/or Erosion and Sediment Control Plan in the construction of a single-family residence; this contract may be executed by the Administrator in lieu of a formal site plan. Fees associated with Agreement in lieu of a Plan do not require payment to Department.

Applicant. ~~"Applicant" means~~ any person submitting a development plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Best management practice or BMP. ~~"Best management practice" or "BMP" means~~ schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

Certified inspector. ~~"Certified inspector" means~~ an employee or agent of the County of Augusta who (i) holds a certificate of competence from the state board in the area of project inspection pertaining to VESCP and/or VSMP or (ii) is enrolled in the state board's VESCP

and/or VSMP training program for project inspection and successfully completes such program within one year after enrollment.

~~Certified plan reviewer.~~ **"Certified-plan-reviewer"** ~~Means~~ an employee or agent of the County of Augusta who (i) holds a certificate of competence from the state board in the area of plan review pertaining to VESCP and/or VSMP, (ii) is enrolled in the state board's VESCP and/or VSMP training program for plan review and successfully completes such program within one year after enrollment.

~~Certified program administrator.~~ **"Certified-program-administrator"** ~~Means~~ an employee or agent of the County of Augusta who (i) holds a certificate of competence from the state board in the area of program administration pertaining to VESCP and/or VSMP or (ii) is enrolled in the state board's VESCP and/or VSMP training program for program administration and successfully completes such program within one year after enrollment.

~~Cleaning.~~ **"Clearing"** ~~Means~~ any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

~~Common plan of development or sale.~~ **"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.

~~Conservation Plan, Erosion and Sediment Control Plan, or Plan.~~ **"Conservation-Plan," "Erosion and Sediment-Control-Plan," or "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 shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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

~~Clean Water Act or CWA.~~ **"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.

~~County or Program Authority.~~ **"County" or "Program-Authority"** ~~Means~~ the County of Augusta, Virginia, which has adopted an erosion and sediment control program that has been approved by the state board.

~~Department or DEQ.~~ **"Department" or "DEQ"** ~~Means~~ the Department of Environmental Quality.

~~Department of Community Development.~~ **"Department-of-Community-Development"** ~~Means~~ the County of Augusta, Virginia, Department of Community Development.

~~Development.~~ **"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 non-agricultural or non-silvicultural purposes.

~~Director.~~ **"Director"** ~~means~~ the Director of DEQ.

~~District or Soil and Water Conservation District.~~ **"District"** or **"Soil and Water Conservation District"** ~~refers to the~~ Headwaters Soil and Water Conservation District.

~~Erosion Impact Area.~~ **"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. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action.

~~Excavating.~~ **"Excavating"** ~~means~~ any digging, scooping or other methods of removing earth materials.

~~Filling.~~ **"Filling"** ~~means~~ any depositing or stockpiling of earth materials.

~~General permit.~~ **"General permit"** ~~means~~ the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

~~Grading.~~ **"Grading"** ~~means~~ any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

~~Land disturbance or land disturbing activity.~~ **"Land disturbance"** or **"land-disturbing activity"** ~~means~~ a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in ~~Section § 9-4 E.2, 9-4(E)-2~~ of this Ordinance.

~~Land disturbing Permit or Permit.~~ **"Land-disturbing Permit"** or **"Permit"** ~~means~~ a permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

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

~~Local erosion and sediment control program or local control program.~~ **"Local erosion and sediment control program"** or **"local control program"** ~~means~~ an outline of the various methods employed by the County to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

~~Minimum Standards or Minimum Standard~~ **"Minimum Standards or Minimum Standard"** ~~Means~~ any or all of the 19 minimum standards set forth by DEQ as per 9VAC25-840-40.

~~Minor modification~~ **"Minor modification"** ~~Means~~ an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

~~Operator~~ **"Operator"** ~~Means~~ the owner or operator of any facility or activity subject to regulation under this Ordinance.

~~Owner~~ **"Owner"** ~~Means~~ the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

~~Perimeter Erosion and Sediment Control Permit~~ **"Perimeter Erosion and Sediment Control Permit"** ~~Means~~ a permit issued by the County for installation of only perimeter erosion and sediment control measures on any project requiring a land-disturbing permit. This permit does not authorize the permittee to engage in a land disturbance activity outside that required for installation of the perimeter erosion and sediment control measures. Projects involving an agreement in lieu of a plan do not require this permit.

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

~~Permittee~~ **"Permittee"** ~~Means~~ the person to whom the VSMP and/or land disturbing permit is issued.

~~Person~~ **"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, any interstate body, or any other legal entity.

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

~~Responsible Land Disturber~~ **"Responsible Land Disturber"** ~~Means~~ an individual from the project or development team who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who

- (A) Holds a Responsible Land Disturber certificate of competence,
- (B) Holds a current certificate of competence from the state board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review,
- (C) Holds a current Contractor certificate of competence for erosion and sediment control, or
- (D) Is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Single family residence: ~~"Single-family residence"~~ **Means** a noncommercial dwelling that is intended to be occupied exclusively by one family.

Site: ~~"Site"~~ **Means** the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

State: ~~"State"~~ **Means** the Commonwealth of Virginia.

State Board: ~~"State Board"~~ **Means** the Virginia State Water Control Board.

State erosion and sediment Control program: ~~"State erosion and sediment Control program" or "state program"~~ **Means** the program administered by the state board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.

State permit: ~~"State permit"~~ **Means** an approval to conduct a land-disturbing activity issued by the state board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the state board for stormwater discharges from an MS4.

Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Regulations

State Water Control Law: ~~"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: ~~"State waters"~~ **Means** all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Stop Work Order: ~~"Stop-Work Order"~~ A written notice sent to the responsible land disturber or appropriate agent that stops all land-disturbing activity on the project for a specified time period

Stormwater: ~~"Stormwater"~~ **Means** precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater management plan: ~~"Stormwater management plan"~~ **Means** a document(s) containing material describing methods for complying with the requirements of ~~§ Section~~ 9-7 of this Ordinance.

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

~~Subdivision.~~ **"Subdivision"** ~~Means~~ **means** a division of a parcel of land into two or more lots, tracts or parcels for any purpose. The term includes re-subdivision and boundary line adjustments.

~~Total maximum daily load or TMDL.~~ **"Total maximum daily load" or "TMDL"** ~~T~~ **means** the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source tradeoffs.

~~Transporting.~~ **"Transporting"** ~~A~~ **means** any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

~~Virginia Erosion and Sediment Control Program or VESCP.~~ **"Virginia Erosion and Sediment Control Program" or "VESCP"** ~~Means~~ **means** a program approved by the state board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection enforcement where authorized in this article, and evaluation consistent with the requirements of the Act and this chapter.

~~Virginia Erosion and Sediment Control Program authority, or VESCP authority.~~ **"Virginia Erosion and Sediment Control Program authority," or "VESCP authority,"** ~~Means~~ **means** an authority approved by the state board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including DEQ, a federal entity; a district, county, city, or town, or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

~~Virginia Stormwater Management Act.~~ **"Virginia Stormwater Management Act" or "Act"** ~~means~~ **means** Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

~~Virginia Stormwater BMP Clearinghouse website.~~ **"Virginia Stormwater BMP Clearinghouse website"** ~~The~~ **means** a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

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

Virginia Stormwater Management Program authority or VSMP authority. ~~“Virginia Stormwater Management Program authority” or “VSMP authority.”~~ **Means** an authority approved by the state board after September 13, 2011, to operate a Virginia Stormwater Management Program.

§ 9-3. Programs Established

A. Pursuant to § 62.1-44.15:27 of the Code of Virginia, Augusta County hereby establishes a Virginia Stormwater Management Program (VSMP) for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the state board for the purposes set out in § 9-1 of this Ordinance. Augusta County hereby designates the Department of Community Development as the Administrator of the Virginia stormwater management program.

B. Pursuant to § 62.1-44.15:54 of the Code of Virginia, Augusta County hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) for land-disturbing activities and adopts the regulations, references, guidelines, standards and specifications promulgated by the state board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the “Virginia Erosion and Sediment Control Regulations” and the Virginia Erosion and Sediment Control Handbook, as amended. The County hereby designates the Department of Community Development as the VESCP authority.

§ 9-4. Storm Water Permit and Land Disturbing Permit Requirement; Exemptions

A. Except as provided herein, no person may engage in any land-disturbing activity until both a VSMP permit and a perimeter erosion and sediment control permit have been issued by the Administrator in accordance with the provisions of this Ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 62.1-44.15:55, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance. Property owners may be issued one agreement in lieu of a plan per calendar year for which a responsible land disturber need not be named. Subsequent permits in the same year however, will require naming of a responsible land disturber.

B. No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing,

construction, disturbance, land development and drainage will be done according to the approved permit and until the following items have been submitted to and approved by the Administrator as prescribed herein:

1. A permit application that includes a general permit registration statement, if such statement is required, and evidence that general permit coverage is obtained,
2. An erosion and sediment control plan approved in accordance with this chapter.
3. A stormwater management plan that meets the requirements of § 9-7 of this chapter.
4. Any fees and bond required to be paid in accordance with § 9-189.

C. No grading, building or other local permit shall be issued for a property unless a VSMP authority permit, when required, has been issued by the Administrator.

D. No land disturbing permit shall be issued until the applicant submits with his application approved erosion and sediment control plans and certification that the plan will be followed and all perimeter erosion and sediment control measures have been installed, inspected and approved by the Administrator.

E. Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:

1. Exemptions to Stormwater Management Plan, Pollution Prevention Plan and VSMP permit requirement

a. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;

b. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the state board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;

c. 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 disturbing activities that disturb less than one acre of land that are not part of a larger common plan of development or sale that is one acre or greater of disturbance;

e. Discharges to a sanitary sewer or a combined sewer system;

f. Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

g. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and

h. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

2. Exemptions to Erosion & Sediment Control Plan and land disturbing permit requirement.

a. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

b. Individual service connections;

c. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;

d. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

e. Surface or deep mining activities authorized under a permit issued by the Department of Mines, Minerals and Energy;

f. Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;

g. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations, including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10 1-604 et seq.) of Chapter 6 of the Code of Virginia, 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 (Sec. 10 1-1100 et seq.)

of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;

h. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

i. Disturbed land areas of less than 10,000 square feet in size

j. Installation of fence posts, sign posts or telephone and electric poles and other kinds of posts or poles;

k. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and

l. Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Administrator.

§ 9-5. Stormwater Pollution Prevention Plan; Contents of Plan

A. The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by ~~Section 9VAC25-870-54~~ and must also comply with the requirements and general information set forth in ~~Section 9VAC25-880-70, Section II~~ [stormwater pollution prevention plan] of the general permit. Such requirements shall include, but not be limited to:

1. An approved erosion and sediment control plan in accordance with § 9-6 of this chapter

2. An approved stormwater management plan in accordance with § 9-7 of this chapter

3. A pollution prevention plan for regulated land-disturbing activities in accordance with § 9-8 of this chapter

4. And a description of any additional control measures necessary to address a TMDL in accordance with § 9-9 of this chapter

B. The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

C. The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance of the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

§ 9-6. Erosion & Sediment Control Plan; Contents of Plan

A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Administrator an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the Administrator. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the state board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the Administrator.

B. The standards contained within the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook as amended are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The Administrator, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines.

C. Except for single family or two family dwellings covered by an Agreement in Lieu of an Erosion & Sediment Control Plan, stormwater detention or retention facilities will be required for proposed development where land disturbance is 10,000 square feet or greater and where there is a net increase in runoff between pre-developed and post-developed conditions.

D. In cases where the contributing drainage area being developed is equal to or less than 1% of the entire watershed, stormwater detention will not be required unless otherwise required by VSMP regulations. However, any concentrated water leaving the development site will be required to discharge into an adequate on or off site receiving channel.

E. All stormwater management facilities shall be designed and constructed in accordance with "Minimum Standard 19" of the Virginia Erosion and Sediment Control Law and Regulations, and the Virginia Stormwater Management Handbook, Latest Edition.

F. An approved plan may be changed by the Administrator when:

1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
2. The person responsible for carrying out the 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 the requirements of this ordinance are agreed to by the Administrator and the person responsible for carrying out the plans.

G. Variances. The Administrator may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the Administrator shall be documented in the plan.

2. During construction, the person responsible for implementing the approved plan may, with the property owner's written permission, request a variance in writing from the Administrator. The Administrator shall respond in writing within 10 calendar days either approving or disapproving such a request. If the Administrator does not approve a variance within 10 calendar days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

H. In order to prevent further erosion, the County may require approval of a plan for any land identified in the local program as an erosion impact area.

I. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. In accordance with the procedure set forth by § 62.1-44.15:55E of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the state board for review and approval consistent with guidelines established by the state board.

§ 9-7. Stormwater Management Plan; Contents of Plan

A. The Stormwater Management Plan, required in § 9-4 of this Ordinance, must apply the stormwater management technical criteria set forth in § 9-11 of this Ordinance to the entire land-disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff, and include the following information:

1. Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post development drainage areas;

2. Contact information including the name, address, and telephone number of the owner and the tax map number and parcel number of the property or properties affected;

3. A narrative that includes a description of current site conditions and final site conditions

4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

5. Information on the proposed stormwater management facilities, including

- a. The type of facilities;
 - b. Location, including geographic coordinates;
 - c. Acres treated; and
 - d. The surface waters or karst features, if present, into which the facility will discharge.
6. Hydrologic and hydraulic computations, including runoff characteristics;
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of § 9-11 of this ordinance.
8. A map or maps of the site that depicts the topography of the site and includes:
- a. All contributing drainage areas;
 - b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - d. Current land use including existing structures, roads, and locations of known utilities and easements;
 - e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - f. The limits of clearing and grading, and the proposed drainage patterns on the site;
 - g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

B. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for a stormwater management plan if executed by the Administrator. A registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

C. If an operator intends to meet the water quality and/or quantity requirements set forth in § 9-11 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of reservation from the off-site provider must be included. Approved off-site

options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.

D. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

E. A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners

§ 9-8. Pollution Prevention Plan; Contents of Plans

A. Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials,

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls

§ 9-9. Additional Control Measures to Address a TMDL

In addition to the requirements of §9-6 through §9-8 of this chapter, if a specific Waste Load Allocation (WLA) for a pollutant has been established in a TMDL implementation plan and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a state board approved plan.

§ 9-10. Review of Submitted Plans

A. The Administrator shall determine the completeness of a plan in accordance with this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

B. The Administrator shall have an additional 30 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (A) of this section, then plan shall be deemed complete and the Administrator shall have 30 calendar days from the date of submission to review the plan.

C. The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.

D. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.

E. If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subsection (B) of this section for review, the plan shall be deemed approved.

F. Approved stormwater plans may be modified as follows:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

G. The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to [§Section 9-12](#) B.

§ 9-11. Technical Criteria for Regulated Land Disturbing Activities

A. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-62 [technical criteria]; 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities]; 9VAC25-870-92 [comprehensive plans]; 9VAC25-870-93 [grandfathered projects]; 9VAC25-870-94 [applicability]; 9VAC25-870-95 [general]; 9VAC25-870-96 [water quality]; 9VAC25-870-97 [stream channel erosion]; 9VAC25-870-98 [flooding]; and 9VAC25-870-99 [regional plans], which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (B) of this Section.

Notwithstanding the above references to specific sections of 9VAC25-870-60, the technical criteria are modified to include the following:

1. Stormwater runoff shall be calculated by the following methods unless an alternative method for a specific project has been approved by the Administrator:

a. Using the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20, hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods

b. The Rational Method may be used for evaluating peak discharges or the Modified Rational Method for evaluating volumetric flows to stormwater conveyances with drainage areas of 200 acres or less

2. Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices and performed with methods approved and illustrated in the Virginia Stormwater Management Handbook. Calculations and designs must be prepared by a licensed professional engineer, a land surveyor – B, or certified landscape architect.

3. Retention or detention facilities shall be designed according to the standards and specifications in the Virginia Stormwater Management Handbook as amended. Stricter regulations may be enforced in areas where the board of supervisors have established a general drainage improvement program. Development within these areas must also be in compliance with § 9-13 (A).

4. Except for by right agricultural development, in cases of additions or incremental development, the pre-developed condition with respect to water quantity calculations submitted to demonstrate compliance with 9 VAC 25-870-66 C (Flood Protection) and D (sheet flow) shall be the condition that existed on January 1, 1990, and the pre-developed condition with respect to water quality calculations submitted to demonstrate compliance with 9 VAC 25-870-63 shall be the ground condition that existed on June 30, 2014. Stormwater

detention or retention facilities may be required for proposed development where the sum of the currently proposed land disturbance and the existing impervious and semi-impervious surface is 10,000 square feet or greater and where there is a net increase in runoff between pre-developed and post-developed conditions. Existing stormwater management facilities must be verified adequate through calculations regardless of the type of development or the size of the addition or incremental development. (Ord. 10/28/15; Ord. 6/28/17)

5. Natural channel characteristics shall be preserved to the maximum extent practicable.

6. For manmade or restored conveyance systems, bottom slopes shall, where reasonably possible, be no less than 1%. Side slopes shall be no steeper than 3:1. If side slopes of 3:1 cannot be achieved, the easement shall be piped.

7. All well-defined manmade or restored conveyance systems across lots one-half (1/2) acre or less in area shall be installed within drainage easements on lot lines. For the purposes of this section a well-defined channel is a channel with side slopes steeper than 3:1 and deeper than 2 feet or otherwise would be difficult to maintain with normal lawn equipment.

8. Construction of stormwater management facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59, and Chapter 25, Division H, Article XLVII, Floodplain Overlay Districts and the Augusta County Code. These stormwater management facilities shall be designed and located, to the extent practical, to provide an unrestricted release up to at least the 25-year flood elevation of the receiving state water.

9. Any stormwater management facilities that are designed to have a permanent pool of water constructed in or adjacent to residential and commercial zoning areas shall be constructed with an aquatic bench or have a minimum of a six-foot fence installed around the perimeter of the facility.

10. Stormwater management facilities designed to detain or retain water on a temporary or permanent basis shall not be built on multiple lots, but located on one lot under single ownership. An access easement of sufficient width given site specific conditions, must be provided.

11. A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

B. Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the County as being

equivalent thereto, was approved by the County prior to July 1, 2012, and for which no coverage under a state permit has been issued prior to July 1, 2014 shall be considered grandfathered by the Administrator and shall not be subject to the technical criteria of Part II B [of the Regulations], but shall be subject to the technical criteria of Part II C [of the Regulations] and Chapter 18 of this Code as it existed at the time of such approval for those areas that were included in the approval, provided that the Administrator finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the County as being equivalent thereto, (i) provides for a layout as defined in 9VAC25-870-10 and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C [of the Regulations]. In the event that the Locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

1. Until June 30, 2019, for local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which DEQ has approved a stormwater management plan prior to July 1, 2012; a state permit has not been issued prior to July 1, 2014, and land disturbance did not commence prior to July 1, 2014 such projects shall be considered grandfathered by the County and shall not be subject to the technical requirements of Part II B of the Regulations, but shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.

2. For land-disturbing activities grandfathered under this Subsection shall remain subject to the Part II C [of the Regulations] for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to the technical requirements of Subsection (a) above.

C. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC of the Regulations.

D. The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.

1. Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.

2. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

E. Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

§ 9-12. Long-Term maintenance of permanent stormwater facilities

A. The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records and shall at a minimum:

1. Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
2. Be stated to run with the land;
3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator.
5. Be enforceable by all appropriate governmental parties; and
6. Be recorded among the land records prior to release of bonds.

B. At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

C. If a recorded instrument is not required pursuant to Subsection 9-12 (B), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

D. For all types of development, the owner (s) or developer shall be responsible for maintenance of stormwater management facilities. In residential subdivisions only, the County may assume long-term maintenance of stormwater detention facilities and drainage easements from the developer in accordance with the provisions of the agreement required by Paragraph F below after eighty-five percent (85%) of the lots within the development have been built upon.

E. In residential subdivisions only, for final plats recorded on or after January 1, 2014 and where no homeowners association is required by this code, the County will assume both routine and long-term maintenance of stormwater detention or retention facilities in accordance

with the percentage requirements of the above Paragraph D and in accordance with the provisions of the agreement required by Paragraph F below if the facility:

1. Has a capacity of at least fifteen thousand (15,000) cubic feet, and
2. Is located on property dedicated to the County.

F. For all types of development, including residential development, the responsibility of the property owner or developer and their successors for maintenance shall be set forth in a legal stormwater agreement which shall be recorded by the property owner or developer. This agreement is separate and distinct from any agreements and bonding required in accordance with a site plan or § 21-36 (Subdivision). The agreement shall provide that:

1. The County will periodically conduct inspections to ensure stormwater management facilities are being properly maintained.

2. If deficiencies are found, the owner or developer and its successors will correct the deficiencies in a timely manner.

3. If applicable under Paragraph D above, the developer and its successors shall contact the county when the percentage requirement is met. At that time the county will conduct a final inspection and the developer and its successors will be notified of the results of the inspection. Any deficiencies shall be corrected by developer and its successors. If there are no deficiencies the county will accept the facilities for long term maintenance by written certificate. For purposes of this chapter, long term maintenance is defined as maintenance other than routine maintenance, such as the repair of erosion and failures that do not occur on a regular basis.

4. The property owners of all stormwater management facilities and easements shall be responsible for routine maintenance. For purposes of this chapter, routine maintenance is defined as mowing so that vegetation never exceeds the height limitation imposed in § 15-22 of this code for the underlying zoning district and lot size, and removing debris and trash that occurs on a regular basis.

5. If the property owners fail to perform routine maintenance, the county reserves the right to complete the work. In such event the cost or expenses thereof shall be chargeable to and paid by the lot owners of such property and may be collected by the county as taxes and levies are collected.

§9-13. General drainage improvement programs and multi-jurisdictional systems.

A. When the board of supervisors has established a general drainage improvement program for an area having related and common drainage problems and within which the land owned or controlled by the subdivider or developer is located, the subdivider or developer shall pay a pro rata share of the cost of providing reasonable drainage facilities located outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the construction or improvement of the subdivision or development.

B. Where stormwater resulting from a project flows into another political jurisdiction, final approval of the proposed development may be deferred until the county and the other jurisdiction mutually agree that the proposed system will be satisfactory.

§9-14. Monitoring and Inspections, Notice to Comply

A. The Administrator shall inspect the land-disturbing activity during construction in accordance with the County's VESCP Alternate Inspection Program for:

1. Compliance with the approved stormwater management plan;
2. Compliance with the approved erosion and sediment control plan;
3. Development, updating, and implementation of a pollution prevention plan;

and

4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.

C. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or

Formatted: Indent: First line 0.5"

maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

D. Pursuant to § 62.1-44.15-40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.

E. Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator pursuant to the Locality's adopted and state board approved inspection program, and shall occur, at minimum, at least once every five (5) years.

F. Notice to comply

1. If the Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan

certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

2. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

G. Action in case of violation

1. Upon determination of a violation of this ordinance, the Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

2. If land-disturbing activities have commenced without an approved plan, the Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

3. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, a stop work order shall be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

4. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained.

5. The stop work order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the County.

6. The owner may appeal the issuance of an order to the Augusta County Circuit Court.

7. Any person violating or failing, neglecting or refusing to obey an order issued by the Administrator may be compelled in a proceeding instituted in the Augusta County Circuit Court to obey same and to comply therewith by injunction or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the stop work order shall immediately be lifted.

8. Nothing in this section shall prevent the Administrator from taking any other action authorized by this ordinance.

§ 9-15. Hearings and appeals

A. Any applicant under the provision of this ordinance who is aggrieved by any action or inaction of the Administrator or its agent pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Board of Supervisors provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing provided that the Board of Supervisors and other involved parties have at least 15 days prior notice. In reviewing the agent's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the action. The Board of Supervisor's decision shall be final, subject only to review by the Circuit Court of Augusta County.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board of Supervisor meeting minutes. Depositions may be taken and read as in actions at law.

C. Final decisions of the Administrator under this ordinance shall be subject to review by the Augusta County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities. Decisions of the Circuit Court shall be subject to review by the Court of Appeals.

§ 9-16. Penalties, Injunctions, and other legal actions under the VESCP

A. Violators of any VESCP provision of this article shall be guilty of a class 1 misdemeanor.

B. The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section (refer to Code of Virginia, § 62-1-44 15.63(A)).

1. A civil penalty in the amount listed on the schedule below shall be assessed against the owner of the property where the violation has occurred, for each violation of the respective offenses:

a. Commencement of land disturbing activity without an approved plan as provided in § ~~9-6-14(A)~~ shall be \$1,000.00/day.

b. A site with an approved erosion and sediment control plan or agreement in lieu of a plan found in violation of any of the 19 Minimum Standards shall be assessed civil penalties as follows

	Single Violation	Multiple Violations (Based on # of violations, not to exceed amounts below)
1 st Inspection:	Warning issued	Warning issued
2 nd Inspection:	\$100	\$250
3 rd Inspection:	\$150	\$500
4 th Inspection:	\$200	\$1,000
5 th Inspection:	\$250	\$1,500
6 th Inspection:	Refer to Co. Atty.	Refer to Co. Atty.

c. Failure to obey a stop work order shall be \$100.00/day.

2. The permittee shall be notified of each violation and associate assessment in writing, via certified mail or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. This notification shall be sent or posted no later than the first working day after the violation.

3. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000.00, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00. The assessment of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section.

C. The County, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Augusta County Circuit Court to enjoin a violation or a threatened violation of this article, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property will not apply for injunctive relief unless:

1. He has notified in writing the person who has violated the local program, and the County, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and

2. Neither the person who has violated the local program nor the County has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

D. In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the County in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the County. Any civil penalties assessed by a court shall be paid into the treasury of the County, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this article, the County may provide an order for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (Ee) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (Bb) or (Ee).

G. The County Attorney may, upon request of the Administrator, take legal action to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

I. A Certificate of Occupancy and/or inspections by the County's building inspection department shall not be granted until all assessed civil penalties are paid and corrections to all erosion and sediment control practices have been made in accordance with the approved plans, notice of violation, stop work order, or agreement in lieu of a plan requirements, and accepted by the County.

J. Any violator may be required to restore land to its undisturbed condition or in accordance with a notice of violation, stop work order, or permit requirements. In the event that restoration is not undertaken within a reasonable time after notice, the County may take necessary corrective action, the cost of which shall be covered by the performance bond, or become a lien upon the property to be collected as taxes or levies, or be billed directly to the land owner.

§ 9-17. Enforcement

A. If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

1. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.

2. If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on

the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with ~~§ Subsection 9-17, 4 Ce.~~

B. In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the enforcement provisions contained in §1-12 of ~~County Code~~ *this chapter, mutatus mutandus.*

C. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the Circuit Court of Augusta County by the County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

D. Any person who violates any VSMP related provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$12,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

I. Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:

- a. No state permit registration;
- b. No SWPPP;
- c. Incomplete SWPPP;
- d. SWPPP not available for review;
- e. No approved erosion and sediment control plan;
- f. Failure to install stormwater BMPs or erosion and sediment controls;
- g. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- h. Operational deficiencies;
- i. Failure to conduct required inspections;
- j. Incomplete, improper, or missed inspections; and
- k. Discharges not in compliance with the requirements of ~~Section~~ *—9 VAC-25-880-70* of the general permit.

2. The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

3. In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

4. Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

E. Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

§ 9-18. Permits; Fees; Security for Performance

A. No person may engage in a land disturbing activity until they have acquired the necessary permits, have paid all applicable fees per the current policy of the Board of Supervisors, posted the required bond and installed all perimeter controls, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance.

B. Fees for a land disturbing permit when a SWM permit is not also required

[INTENTIONALLY LEFT BLANK]

An administrative fee shall be paid to the County at the time of submission of the land disturbance permit application. The land disturbance permit fee is separate from all other fees paid to other departments in the County. The following fee is hereby adopted and shall be applied to land disturbance permits:

1. Land disturbance where no more than one acre disturbed -- \$500.00
2. Fees for applications requiring ~~temporary erosion and sediment control facilities/sediment basins~~ -- \$100.00 each ~~facility/basin~~
3. Fees for applications requiring stream crossings -- \$100.00 each crossing
4. Fee for applications requiring ~~permanent stormwater storm-water detention or retention~~ facilities ~~or BMP's~~ -- \$250.00 each facility
5. Additional fee for applications requiring newly constructed storm water conveyance channels -- \$50.00 for each channel
6. Additional fee for each resubmittal of the required erosion and sediment control plan due to the owner's failure to include required information -- \$100.00

[INTENTIONALLY LEFT BLANK]

C. Fees for coverage under the general permit shall be imposed in accordance with Table 1. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to Table 1.

Table 1: Fees for coverage for new sites and sites purchased for development within a previously permitted common plan of development or sale

Type of Permit	Total Fee Amount	State Share (28%)	County Share (72%)
Agreement in lieu of a plan of a SWPPP and/or Erosion and Sediment Control Plan in the construction of a single family dwelling	\$250	N/A	\$250
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$600	\$81.00	\$519.00
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	\$2,700	\$756	\$1,944
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952	\$2,448
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	\$1,260	\$3,240
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708	\$4,392
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688	\$6,912

(Ord. 10/28/15)

D. Fees for the modification or transfer of registration statements from the general permit issued by the County shall be imposed in accordance with Table 2. If the permit modifications result in changes to stormwater management plans that require additional review by the County, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the

initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table I.

[INTENTIONALLY LEFT BLANK]

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

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

E. Permit maintenance fees. (9VAC25-870-830):

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

(INTENTIONALLY LEFT BLANK)

Table 3: Permit Maintenance Fees

Type of Permit	Fee Amount
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

General permit coverage maintenance fees shall be paid annually to the County, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

F. The fees set forth in Sections C-E, above shall apply to:

1. All persons seeking coverage under the general permit.
2. All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
3. Persons whose coverage under the general permit has been revoked shall apply to DEQ for an Individual Permit for Discharges of Stormwater from Construction Activities.
4. Permit and permit coverage maintenance fees outlined under Section E may apply to each general permit holder.
5. County departments, groups, organizations or agencies specified in the County of Augusta Fee Waiver Policy approved by the Board of Supervisors will pay 28% of any required VSMP fee to the state in accordance with the fee schedule in § 9-18 C-6-Item E.

G. No permit application fees will be assessed to:

1. Permittees who request minor modifications to permits as defined in ~~§Section~~ 9-3 of this chapter. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this section.

2. Permittees whose permits are modified or amended at the initiative of DEQ, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

H. All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

I. No land-disturbing permit shall be issued until the applicant submits with his application approved erosion and sediment control plan and certification that the plan will be followed and all perimeter erosion and sediment control measures have been installed, inspected and approved by the Administrator.

J. All applicants for permits will provide to the Administrator a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Administrator and the County Attorney, to ensure that measures could be taken by the plan approving authority at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the plan approving authority to take such conservation action, the Administrator may collect from the applicant any costs in excess of the amount of the surety held.

Once the Administrator approves the conservation plan and receives a completed application for land disturbing permit, applicable fees and the required surety bond, the Administrator will issue a Perimeter Erosion and Sediment Control Permit. The owner may then install all perimeter controls as detailed in the approved erosion plan as indicated by ~~Virginia Code~~ 9VAC25-870-40 (4). Once perimeter controls are functional and seeded/stabilized, the Administrator will inspect erosion measures. If installed measures are satisfactory to the Administrator, a land disturbing permit shall be issued.

Within sixty (60) days of adequate stabilization, as determined by the Administrator in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

(INTENTIONALLY LEFT BLANK)

	ESC Plan & Land Disturbing Permit Required	SWM Plan and VSMP Permit Required	Pollution Prevention Plan Required	Additional Control Measures - TMDL
Development < 10,000 ft ² and not part of a common plan of development disturbing ≥ 10,000 ft ² .	NO	NO	NO	NO
Development < 10,000 ft ² , and IS part of a common plan of development disturbing ≥ 10,000 ft ² but ≤ 1 acre.	YES	NO	NO	YES
Development < 10,000 ft ² , and IS part of a common plan of development disturbing ≥ 1 acre.	YES	YES	YES	YES
Development ≥ 10,000 ft ² and < 1 acre and IS NOT part of a common plan of development disturbing ≥ 1 acre.	YES	NO	NO	YES
Development disturbing ≥ 1 acre or IS part of a common plan of development disturbing ≥ 1 acre	YES	YES	YES	YES

Agreement-In-Lieu of an Erosion and Sediment Control Plan and SWPPP may be permitted for construction of Single Family Dwelling (Ord 5/28/14)

ARTICLE II. Illicit Discharge Detection and Elimination

Formatted: font: 12 pt

§ 9-30. Purpose and Authority

1. The purpose of this article is to promote the general health, safety, and welfare of the citizens of the County by protecting property and state waters through the prohibition of illicit discharges of non-storm water within the County's regulated MS4 area into the County's MS4, subject to certain exceptions.

2. This ordinance is adopted pursuant to Article 2.3 of Chapter 3.1 of Title 62.1 of the Code of Virginia.

§ 9-31. Applicability.

This ordinance is applicable to the MS4 designated areas and contributing watersheds consisting of approximately 20,600 acres and highlighted in red on a map entitled "Illicit Discharge Detection and Elimination Ordinance" which is declared part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

§ 9-32. Definitions.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this Article.

Formatted: Indent: First line 0"

Administrator. The MS4 authority responsible for administering the MS4 on behalf of the County. The Department of Community Development is designated as the Administrator.

Best Management Practices or (BMPs). A schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Formatted: Font: 12 pt

Formatted: Indent: First line 0"

Formatted: Font: 12 pt, Bold, No underline

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Director. The Director of the Community Development Department of Augusta County. The term includes any person or persons designated to perform certain specific administrative functions by the Director of the Community Development Department.

Formatted: Font: 12 pt

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Discharge. Any direct or indirect non-storm water discharge to the storm sewer system, except as exempted in Section 9-33.C of this ordinance.

Formatted: Font: 12 pt

Municipal Separate Storm Sewer System (MS4). The County's municipal separate storm sewer system. The terms "municipal separate storm sewer" and "municipal separate storm sewer system" shall have the meanings set forth within 9 VAC 25-870-10.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm sewer system that is not composed entirely of storm water.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables, pesticides, herbicides, and fertilizers; hazardous materials and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Storm Sewer System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan (SWPPP) A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Virginia Stormwater Management Program (VSMP) A program approved by the State after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the Storm Water Management Act (§ 62.1-44.15-24 et seq.) and associated regulations

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

Wastewater. Any water or other liquid other than uncontaminated storm water, discharged from a facility.

Formatted: Font: 12 pt

§ 9-33. Prohibited Discharges.

A. It shall be unlawful and a violation of this article to cause or allow any illicit discharge to enter, or have the potential of entering, the MS4.

B. Illicit discharges include, but are not limited to:

(1) Discharging, or allowing any discharge of sewage, industrial wastes, yard wastes, or other wastes, into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots, the ground, or any other areas draining to the storm sewer system.

(2) Connecting, or allowing any connection of any sanitary sewer to the storm sewer system.

(3) Connecting, or allowing any connection to the storm sewer system, without a valid VSMP, VPDES, or NPDES permit, any structure that conveys any liquid other than storm water or discharges listed in subsection (c), including, but not limited to, pipes, drains, sanitary sewer lines, washing machine drains, or floor drains

(4) Throwing, placing, or depositing, or causing to be thrown, placed, or deposited in the storm sewer system anything that impedes or interferes with the free flow of storm water therein, or adversely affects water quality.

C. The following non-storm water discharges are allowable under this article

(1) Discharges or flows covered by a separate individual or general VPDES or VSMP permit for non-storm water discharges:

(2) Individual non-storm water discharges or flows that have been identified in writing by the Virginia Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit:

(3) Non-storm water discharges or flows as listed in the following categories,

a. Water line flushing, managed in a manner to avoid an instream impact,

b. Landscape irrigation;

c. Diverted stream flows;

d. Rising groundwaters;

e. Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005120);

f. Uncontaminated pumped groundwater;

g. Discharges from potable water sources;

h. Foundation drains;

i. Air conditioning condensation;

j. Irrigation water;

k. Springs;

l. Water from crawl space pumps;

m. Flooding drains;

n. Lawn watering;

o. Individual residential car washing;

Formatted: Indent Left: 0.79", Hanging: 0.02"

- p. Flows from riparian habitats and wetlands;
- q. ~~Dechlorinated swimming pool discharges;~~
- r. ~~Street wash water;~~
- s. ~~Discharges or flows from firefighting activities;~~
- t. ~~Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water based cleaners, or~~
- u. ~~Other activities generating discharges identified by the department as not requiring VPIDES authorization.~~
 - a. ~~Water-line flushing;~~
 - b. ~~Landscape irrigation, irrigation water; lawn and garden watering;~~
 - c. ~~Diverted stream flows or rising groundwater;~~
 - d. ~~Uncontaminated ground-water infiltration;~~
 - e. ~~Uncontaminated pumped groundwater;~~
 - f. ~~Discharges from potable water sources;~~
 - g. ~~Foundation drains;~~
 - h. ~~Air conditioning condensate;~~
 - i. ~~Springs;~~
 - j. ~~Water from crawl space pumps;~~
 - k. ~~Leaking drains;~~
 - l. ~~Individual residential car-washing;~~
 - m. ~~Flows from riparian habitats and wetlands;~~
 - n. ~~Dechlorinated swimming pool discharges;~~
 - o. ~~Street wash water; and~~
 - p. ~~Firefighting activities;~~
 - q. ~~Over-testing, following notification to the County's Community Development Department~~

D. In the event any of the activities listed in subparagraph C (3) of this section are found to be a significant contributor of pollutants to be discharged into the MS4, the ~~Director~~ ~~Administrator~~ shall so notify the person performing such activities, and shall order that such activities be ceased or be conducted in such a manner as to avoid the discharge of pollutants into the MS4. The failure to comply with any such order shall constitute a violation of the provisions of this article.

Formatted: Font: 12 pt, Strikethrough

Formatted: Font: 12 pt

§ 9-34. Inspections and Monitoring.

A. The ~~Administrator~~ ~~Director~~ shall have the authority to carry out all inspections and monitoring procedures necessary to determine compliance and/or noncompliance with this article, and to enforce the requirements of this article.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

B. The ~~Administrator~~ ~~Director~~ shall have the authority, at his/her sole discretion, to require a SWPPP from any person whose property discharges, or has the potential to discharge, to the MS4.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

C. The ~~Administrator~~ ~~Director~~ and/or his/her duly authorized employees, agents, or representatives of the county, bearing proper credentials and identification, shall be authorized to enter any public property or to request entry into private property at any reasonable time for the purpose of enforcing this article, including, but not limited to taking samples of discharges, inspecting monitoring equipment, inspecting and copying documents relevant to the enforcement of this article, and such other items as may be deemed necessary for the enforcement of this article.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

If the owner or person in charge of the property refuses to allow the ~~Administrator~~ ~~Director~~ or his/her designees to enter in accordance with this subsection, then the ~~Administrator~~ ~~Director~~ may present sworn testimony to a magistrate or court of competent jurisdiction and request the issuance of an inspection warrant to enter the property for the purpose of making such inspections and investigations. The ~~Administrator~~ ~~Director~~ shall make a reasonable effort to obtain consent from the owner or person in charge of the property prior to seeking the issuance of an inspection warrant under this section.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

D. The ~~Administrator~~ ~~Director~~ shall have the authority to require any person responsible for a discharge to the MS4 to document that such discharge meets and is in compliance with the requirements of this article. This includes, but is not limited to, the ability of the ~~Administrator~~ ~~Director~~ to require such person to provide monitoring reports, test results, and such other matters as may be deemed necessary to show that such discharge is in compliance with the requirements of this article. The cost of any required documentation shall be the responsibility of the person responsible for the discharge.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

E. The failure of any person to comply with any of the requirements of this section shall constitute a violation of this article.

§ 9-35. Enforcement and Penalties.

A. Any person who violates any of the provisions of this article shall be guilty of a class 1 misdemeanor and, upon conviction, is subject to punishment by a fine of not more than two thousand five hundred dollars (\$2,500.00) per violation per day and confinement in jail for not more than twelve (12) months, either or both.

B. Each day during which a violation of this article occurs or continues shall be deemed a separate and distinct violation of this article.

C. Any person who commits any of the acts prohibited by this article or violates any of the provisions of this article shall be liable to the county for all costs of testing, containment, cleanup, abatement, removal, disposal, monitoring, and any other related costs or expenses that the County may incur in connection with the enforcement of this article and/or the prohibition and/or correction of a violation of this article.

D. The ~~Administrator~~ ~~Director~~ may bring legal action to enjoin a violation of this article and the existence of any other remedy shall be no defense to any such action.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

E. In addition to any of the remedies set forth above, the ~~Administrator~~ ~~Director~~ may seek to impose, or have imposed by the appropriate authority, any of the remedies provided for by § 62.1-44.15:48, Code of Virginia (1950), as amended, which are incorporated herein by reference.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

F. In any court action that may result from enforcement of this article, a judge hearing the case may direct the person responsible for the violation or the property owner to correct the violation and each day that the violation continues shall constitute a separate violation of this article.

G. Any person who knowingly makes any false statements, representations, or certifications in any record, report, or other document, either filed or requested pursuant to this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the Administrator, Director under this article in monitoring discharges, shall be guilty of a violation of this article.

Formatted: Font: 12 pt, Not Highlight

Formatted: Font: 12 pt

H. The remedies set forth in this section shall be cumulative, not exclusive, and it shall be no defense to any action that one (1) or more of the remedies set forth in this section has been sought or granted.

§ 9-36. Civil charges.

With the consent of any person who has violated any provision of this article, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$1,000. Civil charges shall be in lieu of any appropriate civil penalty. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damages in the county. (Ord. 5/25/16)

COMMUNITY DEVELOPMENT STAFF COMMENTS: Staff recommends approval of amendments to create internal consistency and reflect consistency with State Code.

6/12/2020

**AN ORDINANCE TO
TO AMEND CHAPTER 9 ENVIRONMENT.**

WHEREAS, the Augusta County Board of Supervisors has conducted a public hearing; and

WHEREAS, the Board public hearing has been properly advertised and all public notice as required by the Code of Virginia properly completed; and

WHEREAS, the Board of Supervisors has considered the ordinance amendment and the comments presented at the public hearing; and

WHEREAS, the Board of Supervisors has determined that the amendments bring the County ordinance in harmony with State Code; and

WHEREAS, the Board has determined that the public health, welfare, peace and safety, requires such amendment.

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that Chapter 9 of the Augusta County Code be amended as follows:

CHAPTER 9. ENVIRONMENT

ARTICLE I. Regulation of Stormwater and Erosion and Sediment Control

- § 9-1. Purpose and authority.
- § 9-2. Definitions.
- § 9-3. Programs Established.
- § 9-4. Storm Water Permit and Land Disturbing Permit Requirement; Exemptions.
- § 9-5. Stormwater Pollution Prevention Plan; Contents of Plan.
- § 9-6. Erosion & Sediment Control Plan; Contents of Plan.
- § 9-7. Stormwater Management Plan; Contents of Plan.
- § 9-8. Pollution Prevention Plan; Contents of Plans.
- § 9-9. Additional Control Measures to Address a TMDL.
- § 9-10. Review of Submitted Plans.
- § 9-11. Technical Criteria for Regulated Land Disturbing Activities.
- § 9-12. Long-Term maintenance of permanent stormwater facilities.
- § 9-13. General drainage improvement programs and multi-jurisdictional systems.
- § 9-14. Monitoring and inspections, Notice to Comply.
- § 9-15. Hearings and appeals.
- § 9-16. Penalties, Injunctions, and other legal actions under the VESCP.
- § 9-17. Enforcement.
- § 9-18. Permits; Fees; Security for Performance.

ARTICLE II. Illicit Discharge Detection and Elimination

- § 9-30. Purpose and Authority
- § 9-31. Applicability.
- § 9-32. Definitions.
- § 9-33. Prohibited Discharges.
- § 9-34. Inspections and Monitoring.
- § 9-35. Enforcement and Penalties.
- § 9-36. Civil charges.

ARTICLE I. Regulation of Stormwater and Erosion and Sediment Control

§ 9-1. Purpose and authority

1. Pursuant to Virginia Code 62.1-44.15:27, this ordinance integrates stormwater management requirements with the erosion and sediment control requirements into an integrated erosion and sediment control and stormwater program. The integrated program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the County and those responsible for compliance with these programs. This ordinance accounts for any town lying within the County unless such towns choose to adopt their own program.

2. The purpose of this ordinance is to establish minimum stormwater management (SWM) and erosion and sediment control (ESC) requirements and controls to protect properties, safeguard the general health, safety, and welfare of the public residing in watersheds within the County, and protect aquatic resources.

3. This ordinance is adopted pursuant to Articles 2.3 & 2.4 of Chapter 3.1 of Title 62.1 of the Code of Virginia.

§ 9-2. Definitions

As used in the ordinance, unless the context requires a different meaning, the following terms shall have the meanings indicated:

Administrator. The VSMP authority responsible for administering the VSMP on behalf of the County. The Department of Community Development is designated as the Administrator.

Agreement in lieu of a plan. A contract between the Administrator and the owner or permittee that specifies methods that must be implemented to comply with the requirements of a VSMP and/or Erosion and Sediment Control Plan in the construction of a single-family residence; this contract may be executed by the Administrator in lieu of a formal site plan. Fees associated with Agreement in lieu of a Plan do not require payment to Department.

Applicant. Any person submitting a development plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Best management practice or BMP. Schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

Certified inspector. An employee or agent of the County of Augusta who (i) holds a certificate of

competence from the state board in the area of project inspection pertaining to VESCP and/or VSMP or (ii) is enrolled in the state board's VESCP and/or VSMP training program for project inspection and successfully completes such program within one year after enrollment.

Certified plan reviewer. An employee or agent of the County of Augusta who (i) holds a certificate of competence from the state board in the area of plan review pertaining to VESCP and/or VSMP, (ii) is enrolled in the state board's VESCP and/or VSMP training program for plan review and successfully completes such program within one year after enrollment..

Certified program administrator. An employee or agent of the County of Augusta who (i) holds a certificate of competence from the state board in the area of program administration pertaining to VESCP and/or VSMP or (ii) is enrolled in the state board's VESCP and/or VSMP training program for program administration and successfully completes such program within one year after enrollment.

Clearing. Any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

Common plan of development or sale. A contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

Conservation Plan, Erosion and Sediment Control Plan, or Plan. 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 shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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

Clean Water Act or CWA. 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.

County or Program Authority. The County of Augusta, Virginia, which has adopted an erosion and sediment control program that has been approved by the state board.

Department or DEQ. The Department of Environmental Quality.

Department of Community Development. The County of Augusta, Virginia, Department of Community Development.

Development. 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 non-agricultural or non-silvicultural purposes.

Director. The Director of DEQ.

District or Soil and Water Conservation District. Headwaters Soil and Water Conservation District.

Erosion Impact Area. 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. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action.

Excavating. Any digging, scooping or other methods of removing earth materials.

Filling. Any depositing or stockpiling of earth materials.

General permit. The state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

Grading. Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land disturbance or land-disturbing activity. A man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in § 9-4.E.2 of this Ordinance.

Land-disturbing Permit or Permit. A permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

Layout. A conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

Local erosion and sediment control program or local control program. An outline of the various methods employed by the County to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Minimum Standards or Minimum Standard. Any or all of the 19 minimum standards set forth by DEQ as per 9VAC25-840-40.

Minor modification. An amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

Operator. The owner or operator of any facility or activity subject to regulation under this Ordinance.

Owner. The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Perimeter Erosion and Sediment Control Permit. A permit issued by the County for installation of only perimeter erosion and sediment control measures on any project requiring a land-disturbing permit. This permit does not authorize the permittee to engage in a land disturbance activity outside that required for installation of the perimeter erosion and sediment control measures. Projects involving an agreement in lieu of a plan do not require this permit.

Permit or VSMP Authority Permit. An approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after evidence of general permit coverage has been provided by DEQ.

Permittee. The person to whom the VSMP and/or land disturbing permit is issued.

Person. 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, any interstate body, or any other legal entity.

Regulations. The Virginia Stormwater Management Program (VSMP) Permit Regulations, as per 9VAC25-870, as amended.

Responsible Land Disturber. An individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who:

- (A) Holds a Responsible Land Disturber certificate of competence,
- (B) Holds a current certificate of competence from the state board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review,
- (C) Holds a current Contractor certificate of competence for erosion and sediment control, or

(D) Is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Single family residence. A noncommercial dwelling that is intended to be occupied exclusively by one family.

Site. The land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

State. The Commonwealth of Virginia.

State Board. The Virginia State Water Control Board.

State erosion and sediment Control program. The program administered by the state board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.

State permit. An approval to conduct a land-disturbing activity issued by the state board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the state board for stormwater discharges from an MS4.

Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Regulations.

State Water Control Law. Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

State waters. All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Stop Work Order. A written notice sent to the responsible land disturber or appropriate agent that stops all land-disturbing activity on the project for a specified time period.

Stormwater. Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater management plan. A document(s) containing material describing methods for complying with the requirements of § 9-7 of this Ordinance.

Stormwater Pollution Prevention Plan or SWPPP. A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Ordinance. In addition the document shall identify

and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Subdivision. A division of a parcel of land into two or more lots, tracts or parcels for any purpose. The term includes re-subdivision and boundary line adjustments.

Total maximum daily load or TMDL. The sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source tradeoffs.

Transporting. Any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Virginia Erosion and Sediment Control Program or VESCP. A program approved by the state board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of the Act and this chapter.

Virginia Erosion and Sediment Control Program authority, or VESCP authority. An authority approved by the state board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including DEQ; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

Virginia Stormwater Management Act. Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Virginia Stormwater BMP Clearinghouse website. The website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

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

associated regulations.

Virginia Stormwater Management Program authority or VSMP authority. An authority approved by the state board after September 13, 2011, to operate a Virginia Stormwater Management Program.

§ 9-3. Programs Established

A. Pursuant to § 62.1-44.15:27 of the Code of Virginia, Augusta County hereby establishes a Virginia Stormwater Management Program (VSMP) for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the state board for the purposes set out in § 9-1 of this Ordinance. Augusta County hereby designates the Department of Community Development as the Administrator of the Virginia stormwater management program.

B. Pursuant to § 62.1-44.15:54 of the Code of Virginia, Augusta County hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) for land-disturbing activities and adopts the regulations, references, guidelines, standards and specifications promulgated by the state board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended. The County hereby designates the Department of Community Development as the VESCP authority.

§ 9-4. Storm Water Permit and Land Disturbing Permit Requirement; Exemptions

A. Except as provided herein, no person may engage in any land-disturbing activity until both a VSMP permit and a perimeter erosion and sediment control permit have been issued by the Administrator in accordance with the provisions of this Ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 62.1-44.15:55, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance. Property owners may be issued one agreement in lieu of a plan per calendar year for which a responsible land disturber need not be named. Subsequent permits in the same year however, will require naming of a responsible land disturber.

B. No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit and until the following items have been submitted to and approved by the Administrator as prescribed herein:

1. A permit application that includes a general permit registration statement, if such statement is required, and evidence that general permit coverage is obtained;

2. An erosion and sediment control plan approved in accordance with this chapter.

3. A stormwater management plan that meets the requirements of § 9-7 of this chapter.

4. Any fees and bond required to be paid in accordance with § 9-18.

C. No grading, building or other local permit shall be issued for a property unless a VSMP authority permit, when required, has been issued by the Administrator.

D. No land disturbing permit shall be issued until the applicant submits with his application approved erosion and sediment control plans and certification that the plan will be followed and all perimeter erosion and sediment control measures have been installed, inspected and approved by the Administrator.

E. Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:

1. Exemptions to Stormwater Management Plan, Pollution Prevention Plan and VSMP permit requirement

a. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;

b. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the state board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;

c. 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 disturbing activities that disturb less than one acre of land that are not part of a larger common plan of development or sale that is one acre or greater of disturbance;

e. Discharges to a sanitary sewer or a combined sewer system;

f. Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

g. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and

h. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

2. Exemptions to Erosion & Sediment Control Plan and land disturbing permit requirement.

a. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

b. Individual service connections;

c. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;

d. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

e. Surface or deep mining activities authorized under a permit issued by the Department of Mines, Minerals and Energy;

f. Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;

g. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting

basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6 of the Code of Virginia, 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 (Sec. 10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;

h. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

i. Disturbed land areas of less than 10,000 square feet in size

j. Installation of fence posts, sign posts or telephone and electric poles and other kinds of posts or poles;

k. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and

l. Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Administrator.

§ 9-5. Stormwater Pollution Prevention Plan; Contents of Plan

A. The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by 9VAC25-870-54 and must also comply with the requirements and general information set forth in 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit. Such requirements shall include, but not be limited to:

1. An approved erosion and sediment control plan in accordance with § 9-6 of this chapter

2. An approved stormwater management plan in accordance with § 9-7 of this chapter

3. A pollution prevention plan for regulated land-disturbing activities in accordance with § 9-8 of this chapter

4. And a description of any additional control measures necessary to address a TMDL in accordance with § 9-9 of this chapter

B. The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

C. The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance of the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

§ 9-6. Erosion & Sediment Control Plan; Contents of Plan

A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Administrator an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the Administrator. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the state board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the Administrator.

B. The standards contained within the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook as amended are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The Administrator, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines.

C. Except for single family or two family dwellings covered by an Agreement in Lieu of an Erosion & Sediment Control Plan, stormwater detention or retention facilities will be required for proposed development where land disturbance is 10,000 square feet or greater and where there is a net increase in runoff between pre-developed and post-developed conditions.

D. In cases where the contributing drainage area being developed is equal to or less than 1% of the entire watershed, stormwater detention will not be required unless otherwise required by VSMP regulations. However, any concentrated water leaving the development site will be required to discharge into an adequate on or off site receiving channel.

E. All stormwater management facilities shall be designed and constructed in accordance with "Minimum Standard 19" of the Virginia Erosion and Sediment Control Law and Regulations, and the Virginia Stormwater Management Handbook, Latest Edition.

F. An approved plan may be changed by the Administrator when:

1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or

2. The person responsible for carrying out the 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 the requirements of this ordinance are agreed to by the Administrator and the person responsible for carrying out the plans.

G. Variances: The Administrator may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the Administrator shall be documented in the plan.

2. During construction, the person responsible for implementing the approved plan may, with the property owner's written permission, request a variance in writing from the Administrator. The Administrator shall respond in writing within 10 calendar days either approving or disapproving such a request. If the Administrator does not approve a variance within 10 calendar days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

H. In order to prevent further erosion, the County may require approval of a plan for any land identified in the local program as an erosion impact area.

I. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. In accordance with the procedure set forth by § 62.1-44.15:55E of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the state board for review and approval consistent with guidelines established by the state board.

§ 9-7. Stormwater Management Plan; Contents of Plan

A. The Stormwater Management Plan, required in § 9-4 of this Ordinance, must apply the stormwater management technical criteria set forth in § 9-11 of this Ordinance to the entire land-disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff, and include the following information:

1. Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post development drainage areas;

2. Contact information including the name, address, and telephone number of the owner and the tax map number and parcel number of the property or properties affected;

3. A narrative that includes a description of current site conditions and final site conditions

4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

5. Information on the proposed stormwater management facilities, including:

a. The type of facilities;

b. Location, including geographic coordinates;

c. Acres treated; and

d. The surface waters or karst features, if present, into which the facility will discharge.

6. Hydrologic and hydraulic computations, including runoff characteristics;

7. Documentation and calculations verifying compliance with the water quality and quantity requirements of § 9-11 of this ordinance.

8. A map or maps of the site that depicts the topography of the site and includes:

a. All contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

d. Current land use including existing structures, roads, and locations of known utilities and easements;

e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

f. The limits of clearing and grading, and the proposed drainage patterns on the site;

g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

B. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for a stormwater management plan if executed by the Administrator. A registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

C. If an operator intends to meet the water quality and/or quantity requirements set forth in § 9-11 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of reservation from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.

D. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

E. A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners

§ 9-8. Pollution Prevention Plan; Contents of Plans

A. Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

§ 9-9. Additional Control Measures to Address a TMDL

In addition to the requirements of §9-6 through §9-8 of this chapter, if a specific Waste Load Allocation (WLA) for a pollutant has been established in a TMDL implementation plan and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a state board approved plan.

§ 9-10. Review of Submitted Plans

A. The Administrator shall determine the completeness of a plan in accordance with this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

B. The Administrator shall have an additional 30 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (A) of this section, then plan shall be deemed complete and the Administrator shall have 30 calendar days from the date of submission to review the plan.

C. The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.

D. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.

E. If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subsection (B) of this section for review, the plan shall be deemed approved.

F. Approved stormwater plans may be modified as follows:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

G. The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to § 9-12.B.

§ 9-11. Technical Criteria for Regulated Land Disturbing Activities

A. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-62 [technical criteria]; 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities]; 9VAC25-870-92 [comprehensive plans]; 9VAC25-870-93 [grandfathered projects]; 9VAC25-870-94 [applicability]; 9VAC25-870-95 [general]; 9VAC25-870-96 [water quality]; 9VAC25-870-97 [stream channel erosion]; 9VAC25-870-98 [flooding]; and 9VAC25-870-99 [regional plans], which shall apply to all land-disturbing

activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (B) of this Section.

Notwithstanding the above references to specific sections of 9VAC25-870-60, the technical criteria are modified to include the following:

1. Stormwater runoff shall be calculated by the following methods unless an alternative method for a specific project has been approved by the Administrator:

a. Using the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods.

b. The Rational Method may be used for evaluating peak discharges or the Modified Rational Method for evaluating volumetric flows to stormwater conveyances with drainage areas of 200 acres or less.

2. Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices and performed with methods approved and illustrated in the Virginia Stormwater Management Handbook. Calculations and designs must be prepared by a licensed professional engineer, a land surveyor – B, or certified landscape architect.

3. Retention or detention facilities shall be designed according to the standards and specifications in the Virginia Stormwater Management Handbook as amended. Stricter regulations may be enforced in areas where the board of supervisors have established a general drainage improvement program. Development within these areas must also be in compliance with § 9-13.A.

4. Except for by right agricultural development, in cases of additions or incremental development, the pre-developed condition with respect to water quantity calculations submitted to demonstrate compliance with 9VAC25-870-66 C (Flood Protection) and D (sheet flow) shall be the condition that existed on January 1, 1990, and the pre-developed condition with respect to water quality calculations submitted to demonstrate compliance with 9VAC25-870-63 shall be the ground condition that existed on June 30, 2014. Stormwater detention or retention facilities may be required for proposed development where the sum of the currently proposed land disturbance and the existing impervious and semi-impervious surface is 10,000 square feet or greater and where there is a net increase in runoff between pre-developed and post-developed conditions. Existing stormwater management facilities must be verified adequate through calculations regardless of the type of development or the size of the addition or

incremental development. (Ord. 10/28/15; Ord. 6/28/17)

5. Natural channel characteristics shall be preserved to the maximum extent practicable.

6. For manmade or restored conveyance systems, bottom slopes shall, where reasonably possible, be no less than 1%. Side slopes shall be no steeper than 3:1. If side slopes of 3:1 cannot be achieved, the easement shall be piped.

7. All well-defined manmade or restored conveyance systems across lots one-half (1/2) acre or less in area shall be installed within drainage easements on lot lines. For the purposes of this section a well-defined channel is a channel with side slopes steeper than 3:1 and deeper than 2 feet or otherwise would be difficult to maintain with normal lawn equipment.

8. Construction of stormwater management facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59, and Chapter 25, Division H, Article XLVII, Floodplain Overlay Districts and the Augusta County Code. These stormwater management facilities shall be designed and located, to the extent practical, to provide an unrestricted release up to at least the 25-year flood elevation of the receiving state water.

9. Any stormwater management facilities that are designed to have a permanent pool of water constructed in or adjacent to residential and commercial zoning areas shall be constructed with an aquatic bench or have a minimum of a six-foot fence installed around the perimeter of the facility.

10. Stormwater management facilities designed to detain or retain water on a temporary or permanent basis shall not be built on multiple lots, but located on one lot under single ownership. An access easement of sufficient width given site specific conditions, must be provided.

11. A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

B. Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or

zoning with a plan of development, or any document determined by the County as being equivalent thereto, was approved by the County prior to July 1, 2012, and for which no coverage under a state permit has been issued prior to July 1, 2014 shall be considered grandfathered by the Administrator and shall not be subject to the technical criteria of Part II B [of the Regulations], but shall be subject to the technical criteria of Part II C [of the Regulations] and Chapter 18 of this Code as it existed at the time of such approval for those areas that were included in the approval, provided that the Administrator finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the County as being equivalent thereto, (i) provides for a layout as defined in 9VAC25-870-10 and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C [of the Regulations]. In the event that the Locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

1. Until June 30, 2019, for local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which DEQ has approved a stormwater management plan prior to July 1, 2012; a state permit has not been issued prior to July 1, 2014, and land disturbance did not commence prior to July 1, 2014 such projects shall be considered grandfathered by the County and shall not be subject to the technical requirements of Part II B of the Regulations, but shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.

2. For land-disturbing activities grandfathered under this Subsection shall remain subject to the Part II C [of the Regulations] for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to the technical requirements of Subsection (a) above.

C. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC of the Regulations.

D. The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.

1. Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or

any other control measure duly approved by the Director.

2. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

E. Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

§ 9-12. Long-Term maintenance of permanent stormwater facilities

A. The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records and shall at a minimum:

1. Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
2. Be stated to run with the land;
3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator;
5. Be enforceable by all appropriate governmental parties; and
6. Be recorded among the land records prior to release of bonds.

B. At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

C. If a recorded instrument is not required pursuant to Subsection 9-12.B, the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

D. For all types of development, the owner (s) or developer shall be responsible for

maintenance of stormwater management facilities. In residential subdivisions only, the County may assume long-term maintenance of stormwater detention facilities and drainage easements from the developer in accordance with the provisions of the agreement required by Paragraph F below after eighty-five percent (85%) of the lots within the development have been built upon.

E. In residential subdivisions only, for final plats recorded on or after January 1, 2014 and where no homeowners association is required by this code, the County will assume both routine and long-term maintenance of stormwater detention or retention facilities in accordance with the percentage requirements of the above Paragraph D and in accordance with the provisions of the agreement required by Paragraph F below if the facility:

1. Has a capacity of at least fifteen thousand (15,000) cubic feet, and
2. Is located on property dedicated to the County.

F. For all types of development, including residential development, the responsibility of the property owner or developer and their successors for maintenance shall be set forth in a legal stormwater agreement which shall be recorded by the property owner or developer. This agreement is separate and distinct from any agreements and bonding required in accordance with a site plan or § 21-36 (Subdivision). The agreement shall provide that:

1. The County will periodically conduct inspections to ensure stormwater management facilities are being properly maintained.

2. If deficiencies are found, the owner or developer and its successors will correct the deficiencies in a timely manner.

3. If applicable under Paragraph D above, the developer and its successors shall contact the county when the percentage requirement is met. At that time the county will conduct a final inspection and the developer and its successors will be notified of the results of the inspection. Any deficiencies shall be corrected by developer and its successors. If there are no deficiencies the county will accept the facilities for long term maintenance by written certificate. For purposes of this chapter, long term maintenance is defined as maintenance other than routine maintenance, such as the repair of erosion and failures that do not occur on a regular basis.

4. The property owners of all stormwater management facilities and easements shall be responsible for routine maintenance. For purposes of this chapter, routine maintenance is defined as mowing so that vegetation never exceeds the height limitation imposed in §15-22 of this code for the underlying zoning district and lot size, and removing debris and trash that occurs on a regular basis.

5. If the property owners fail to perform routine maintenance, the county reserves the right to complete the work. In such event the cost or expenses thereof shall be chargeable to and paid by the lot owners of such property and may be collected by the

county as taxes and levies are collected.

§9-13. General drainage improvement programs and multi-jurisdictional systems.

A. When the board of supervisors has established a general drainage improvement program for an area having related and common drainage problems and within which the land owned or controlled by the subdivider or developer is located, the subdivider or developer shall pay a pro rata share of the cost of providing reasonable drainage facilities located outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the construction or improvement of the subdivision or development.

B. Where stormwater resulting from a project flows into another political jurisdiction, final approval of the proposed development may be deferred until the county and the other jurisdiction mutually agree that the proposed system will be satisfactory.

§9-14. Monitoring and inspections, Notice to Comply

A. The Administrator shall inspect the land-disturbing activity during construction in accordance with the County's VESCP Alternate Inspection Program for:

1. Compliance with the approved stormwater management plan;
2. Compliance with the approved erosion and sediment control plan;
3. Development, updating, and implementation of a pollution prevention plan;

and

4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.

C. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

D. Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP

authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.

E. Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator pursuant to the Locality's adopted and state board approved inspection program, and shall occur, at minimum, at least once every five (5) years.

F. Notice to comply

1. If the Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

2. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

G. Action in case of violation

1. Upon determination of a violation of this ordinance, the Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

2. If land-disturbing activities have commenced without an approved plan, the Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

3. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, a stop work order shall be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

4. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Administrator may issue an

order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained.

5. The stop work order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the County.

6. The owner may appeal the issuance of an order to the Augusta County Circuit Court.

7. Any person violating or failing, neglecting or refusing to obey an order issued by the Administrator may be compelled in a proceeding instituted in the Augusta County Circuit Court to obey same and to comply therewith by injunction or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the stop work order shall immediately be lifted.

8. Nothing in this section shall prevent the Administrator from taking any other action authorized by this ordinance.

§ 9-15. Hearings and appeals

A. Any applicant under the provision of this ordinance who is aggrieved by any action or inaction of the Administrator or its agent pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Board of Supervisors provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing provided that the Board of Supervisors and other involved parties have at least 15 days prior notice. In reviewing the agent's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the action. The Board of Supervisor's decision shall be final, subject only to review by the Circuit Court of Augusta County.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board of Supervisor meeting minutes. Depositions may be taken and read as in actions at law.

C. Final decisions of the Administrator under this ordinance shall be subject to review by the Augusta County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities. Decisions of the Circuit Court shall be subject to review by the Court of Appeals.

§ 9-16. Penalties, Injunctions, and other legal actions under the VESCP

A. Violators of any VESCP provision of this article shall be guilty of a class I misdemeanor.

B. The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section (refer to Code of Virginia, § 62.1-44.15:63(A)).

1. A civil penalty in the amount listed on the schedule below shall be assessed against the owner of the property where the violation has occurred, for each violation of the respective offenses:

a. Commencement of land disturbing activity without an approved plan as provided in § 9-6 shall be \$1,000.00/day.

b. A site with an approved erosion and sediment control plan or agreement in lieu of a plan found in violation of any of the 19 Minimum Standards shall be assessed civil penalties as follows:

	Single Violation	Multiple Violations (Based on # of violations, not to exceed amounts below)
1 st Inspection:	Warning issued	Warning issued
2 nd Inspection:	\$100	\$250
3 rd Inspection:	\$150	\$500
4 th Inspection:	\$200	\$1,000
5 th Inspection:	\$250	\$1,500
6 th Inspection:	Refer to Co. Atty.	Refer to Co. Atty.

c. Failure to obey a stop work order shall be \$100.00/day.

2. The permittee shall be notified of each violation and associate assessment in writing, via certified mail or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. This notification shall be sent or posted no later than the first working day after the violation.

3. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000.00, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00. The assessment of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section.

C. The County, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Augusta County Circuit Court to enjoin a violation or a threatened violation of this article, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property will not apply for injunctive relief unless:

1. He has notified in writing the person who has violated the local program, and the County, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and

2. Neither the person who has violated the local program nor the County has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

D. In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the County in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the County. Any civil penalties assessed by a court shall be paid into the treasury of the County, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this article, the County may provide an order for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (E) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (B) or (E).

G. The County Attorney may, upon request of the Administrator, take legal action to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

I. A Certificate of Occupancy and/or inspections by the County's building inspection department shall not be granted until all assessed civil penalties are paid and corrections to all erosion and sediment control practices have been made in accordance with the approved plans, notice of violation, stop work order, or agreement in lieu of a plan requirements, and accepted by the County.

J. Any violator may be required to restore land to its undisturbed condition or in accordance with a notice of violation, stop work order, or permit requirements. In the event that restoration is not undertaken within a reasonable time after notice, the County may take necessary corrective action, the cost of which shall be covered by the performance bond, or

become a lien upon the property to be collected as taxes or levies, or be billed directly to the land owner.

§ 9-17. Enforcement

A. If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

1. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.

2. If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with §9-17.C.

B. In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the enforcement provisions contained in §1-12 of County Code, *mutatus mutandus*.

C. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the

Administrator may be compelled in a proceeding instituted in the Circuit Court of Augusta County by the County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

D. Any person who violates any VSMP related provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

1. Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:

- a. No state permit registration;
- b. No SWPPP;
- c. Incomplete SWPPP;
- d. SWPPP not available for review;
- e. No approved erosion and sediment control plan;
- f. Failure to install stormwater BMPs or erosion and sediment controls;
- g. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- h. Operational deficiencies;
- i. Failure to conduct required inspections;
- j. Incomplete, improper, or missed inspections; and
- k. Discharges not in compliance with the requirements of 9VAC25-880-70 of the general permit.

2. The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

3. In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

4. Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating

environmental pollution therein in such manner as the court may, by order, direct.

E. Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

§ 9-18. Permits; Fees; Security for Performance

A. No person may engage in a land disturbing activity until they have acquired the necessary permits, have paid all applicable fees per the current policy of the Board of Supervisors, posted the required bond and installed all perimeter controls, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance.

B. Fees for a land disturbing permit when a SWM permit is not also required.

[INTENTIONALLY LEFT BLANK]

An administrative fee shall be paid to the County at the time of submission of the land disturbance permit application. The land disturbance permit fee is separate from all other fees paid to other departments in the County. The following fee is hereby adopted and shall be applied to land disturbance permits:

1. Land disturbance: where no more than one acre disturbed -- \$500.00
2. Fees for applications requiring temporary erosion and sediment control facilities-- \$100.00 each facility
3. Fees for applications requiring stream crossings -- \$100.00 each crossing
4. Fee for applications requiring permanent stormwater facilities or BMP's -- \$250.00 each facility
5. Additional fee for applications requiring newly constructed storm water conveyance channels -- \$50.00 for each channel
6. Additional fee for each resubmittal of the required erosion and sediment control plan due to the owner's failure to include required information -- \$100.00

[INTENTIONALLY LEFT BLANK]

C. Fees for coverage under the general permit shall be imposed in accordance with Table 1. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to Table 1.

Table 1: Fees for coverage for new sites and sites purchased for development within a previously permitted common plan of development or sale

Type of Permit	Total Fee Amount	State Share (28%)	County Share (72%)
Agreement in lieu of a plan of a SWPPP and/or Erosion and Sediment Control Plan in the construction of a single family dwelling	\$250	N/A	\$250
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$600	\$81.00	\$519.00
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	\$2,700	\$756	\$1,944
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952	\$2,448
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]	\$4,500	\$1,260	\$3,240
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708	\$4,392
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688	\$6,912

(Ord. 10/28/15)

D. Fees for the modification or transfer of registration statements from the general permit issued by the County shall be imposed in accordance with Table 2. If the permit modifications result in changes to stormwater management plans that require additional review by the County,

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

[INTENTIONALLY LEFT BLANK]

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

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

E. Permit maintenance fees. (9VAC25-870-830):

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

[INTENTIONALLY LEFT BLANK]

Table 3: Permit Maintenance Fees

Type of Permit	Fee Amount
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

General permit coverage maintenance fees shall be paid annually to the County, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

F. The fees set forth in Sections C-E, above shall apply to:

1. All persons seeking coverage under the general permit.
2. All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
3. Persons whose coverage under the general permit has been revoked shall apply to DEQ for an Individual Permit for Discharges of Stormwater from Construction Activities.
4. Permit and permit coverage maintenance fees outlined under Section E may apply to each general permit holder.
5. County departments, groups, organizations or agencies specified in the County of Augusta Fee Waiver Policy approved by the Board of Supervisors will pay 28% of any

required VSMP fee to the state in accordance with the fee schedule in § 9-18 (C).

G. No permit application fees will be assessed to:

1. Permittees who request minor modifications to permits as defined in § 9-3 of this chapter. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this section.

2. Permittees whose permits are modified or amended at the initiative of DEQ, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

H. All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

I. No land-disturbing permit shall be issued until the applicant submits with his application approved erosion and sediment control plan and certification that the plan will be followed and all perimeter erosion and sediment control measures have been installed, inspected and approved by the Administrator.

J. All applicants for permits will provide to the Administrator a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Administrator and the County Attorney, to ensure that measures could be taken by the plan approving authority at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the plan approving authority to take such conservation action, the Administrator may collect from the applicant any costs in excess of the amount of the surety held.

Once the Administrator approves the conservation plan and receives a completed application for land disturbing permit, applicable fees and the required surety bond, the Administrator will issue a Perimeter Erosion and Sediment Control Permit. The owner may then install all perimeter controls as detailed in the approved erosion plan as indicated by 9VAC25-870-40 (4). Once perimeter controls are functional and seeded/stabilized, the Administrator will inspect erosion measures. If installed measures are satisfactory to the Administrator, a land disturbing permit shall be issued.

Within sixty (60) days of adequate stabilization, as determined by the Administrator in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

[INTENTIONALLY LEFT BLANK]

	ESC Plan & Land Disturbing Permit Required	SWM Plan and VSMP Permit Required	Pollution Prevention Plan Required	Additional Control Measures - TMDL
Development < 10,000 ft ² and not part of a common plan of development disturbing ≥ 10,000 ft ² .	NO	NO	NO	NO
Development < 10,000 ft ² , and IS part of a common plan of development disturbing ≥ 10,000 ft ² but ≤ 1 acre.	YES	NO	NO	YES
Development < 10,000 ft ² , and IS part of a common plan of development disturbing ≥ 1 acre.	YES	YES	YES	YES
Development ≥ 10,000 ft ² and < 1 acre and IS NOT part of a common plan of development disturbing ≥ 1 acre.	YES	NO	NO	YES
Development disturbing ≥ 1 acre or IS part of a common plan of development disturbing ≥ 1 acre	YES	YES	YES	YES

Agreement-In-Lieu of an Erosion and Sediment Control Plan and SWPPP may be permitted for construction of Single Family Dwelling (Ord. 5/28/14)

ARTICLE II. Illicit Discharge Detection and Elimination

§ 9-30. Purpose and Authority

1. The purpose of this article is to promote the general health, safety, and welfare of the citizens of the County by protecting property and state waters through the prohibition of illicit discharges of non-storm water within the County's regulated MS4 area into the County's MS4, subject to certain exceptions.

2. This ordinance is adopted pursuant to Article 2.3 of Chapter 3.1 of Title 62.1 of the Code of Virginia.

§ 9-31. Applicability.

This ordinance is applicable to the MS4 designated areas and contributing watersheds consisting of approximately 20,600 acres and highlighted in red on a map entitled "Illicit Discharge Detection and Elimination Ordinance" which is declared part of this ordinance and which shall be kept on file in the Offices of the Department of Community Development.

§ 9-32. Definitions.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this Article.

Administrator. The MS4 authority responsible for administering the MS4 on behalf of the County. The Department of Community Development is designated as the Administrator.

Best Management Practices or (BMPs). A schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Discharge. Any direct or indirect non-storm water discharge to the storm sewer system, except as exempted in Section 9-33.C of this ordinance.

Municipal Separate Storm Sewer System (MS4). The County's municipal separate storm sewer system. The terms "municipal separate storm sewer" and "municipal separate storm sewer system" shall have the meanings set forth within 9VAC25-870-10

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm sewer system that is not composed entirely of storm water.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous materials and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Storm Sewer System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Pollution Prevention Plan (SWPPP). A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Virginia Stormwater Management Program (VSMP). A program approved by the State after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the Storm Water Management Act (§ 62.1-44.15:24 et seq.) and associated regulations.

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

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

§ 9-33. Prohibited Discharges.

A. It shall be unlawful and a violation of this article to cause or allow any illicit discharge to enter, or have the potential of entering, the MS4.

B. Illicit discharges include, but are not limited to:

(1) Discharging, or allowing any discharge of sewage, industrial wastes, yard wastes, or other wastes, into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots, the ground, or any other areas draining to the storm sewer system.

(2) Connecting, or allowing any connection of any sanitary sewer to the storm sewer system.

(3) Connecting, or allowing any connection to the storm sewer system, without a valid VSMP, VPDES, or NPDES permit, any structure that conveys any liquid other than storm water or discharges listed in subsection (c), including, but not limited to, pipes, drains, sanitary sewer lines, washing machine drains, or floor drains.

(4) Throwing, placing, or depositing, or causing to be thrown, placed, or deposited in the storm sewer system anything that impedes or interferes with the free flow of storm water therein, or adversely affects water quality.

C. The following non-storm water discharges are allowable under this article:

(1) Discharges or flows covered by a separate individual or general VPDES or VSMP permit for non-storm water discharges;

(2) Individual non-storm water discharges or flows that have been identified in writing by the Virginia Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit;

(3) Non-storm water discharges or flows as listed in the following categories;

- a. Water line flushing, managed in a manner to avoid an instream impact;
- b. Landscape irrigation;
- c. Diverted stream flows;

- d. Rising groundwaters;
- e. Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);
- f. Uncontaminated pumped groundwater;
- g. Discharges from potable water sources;
- h. Foundation drains;
- i. Air conditioning condensation;
- j. Irrigation water;
- k. Springs;
- l. Water from crawl space pumps;
- m. Footing drains;
- n. Lawn watering;
- o. Individual residential car washing;
- p. Flows from riparian habitats and wetlands;
- q. Dechlorinated swimming pool discharges;
- r. Street wash water;
- s. Discharges or flows from firefighting activities;
- t. Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners; or
- u. Other activities generating discharges identified by the department as not requiring VPDES authorization.

D. In the event any of the activities listed in subparagraph C (3) of this section are found to be a significant contributor of pollutants to be discharged into the MS4, the Administrator shall so notify the person performing such activities, and shall order that such activities be ceased or be conducted in such a manner as to avoid the discharge of pollutants into the MS4. The failure to comply with any such order shall constitute a violation of the provisions of this article.

§ 9-34. Inspections and Monitoring.

A. The Administrator shall have the authority to carry out all inspections and monitoring procedures necessary to determine compliance and/or noncompliance with this article, and to enforce the requirements of this article.

B. The Administrator shall have the authority, at his/her sole discretion, to require a SWPPP from any person whose property discharges, or has the potential to discharge, to the MS4.

C. The Administrator and/or his/her duly authorized employees, agents, or representatives of the county, bearing proper credentials and identification, shall be authorized to enter any public property or to request entry into private property at any reasonable time for the purpose of enforcing this article, including, but not limited to taking samples of discharges, inspecting monitoring equipment, inspecting and copying documents relevant to the enforcement of this article, and such other items as may be deemed necessary for the enforcement of this article.

If the owner or person in charge of the property refuses to allow the Administrator or his/her designees to enter in accordance with this subsection, then the Administrator may present sworn testimony to a magistrate or court of competent jurisdiction and request the issuance of an inspection warrant to enter the property for the purpose of making such inspections and investigations. The Administrator shall make a reasonable effort to obtain consent from the owner or person in charge of the property prior to seeking the issuance of an inspection warrant under this section.

D. The Administrator shall have the authority to require any person responsible for a discharge to the MS4 to document that such discharge meets and is in compliance with the requirements of this article. This includes, but is not limited to, the ability of the Administrator to require such person to provide monitoring reports, test results, and such other matters as may be deemed necessary to show that such discharge is in compliance with the requirements of this article. The cost of any required documentation shall be the responsibility of the person responsible for the discharge.

E. The failure of any person to comply with any of the requirements of this section shall constitute a violation of this article.

§ 9-35. Enforcement and Penalties.

A. Any person who violates any of the provisions of this article shall be guilty of a class 1 misdemeanor and, upon conviction, is subject to punishment by a fine of not more than two thousand five hundred dollars (\$2,500.00) per violation per day and confinement in jail for not more than twelve (12) months, either or both.

B. Each day during which a violation of this article occurs or continues shall be deemed a separate and distinct violation of this article.

C. Any person who commits any of the acts prohibited by this article or violates any of the provisions of this article shall be liable to the county for all costs of testing, containment, cleanup, abatement, removal, disposal, monitoring, and any other related costs or expenses that the County may incur in connection with the enforcement of this article and/or the prohibition and/or correction of a violation of this article.

D. The Administrator may bring legal action to enjoin a violation of this article and the existence of any other remedy shall be no defense to any such action.

E. In addition to any of the remedies set forth above, the Administrator may seek to impose, or have imposed by the appropriate authority, any of the remedies provided for by § 62.1-44.15:48, Code of Virginia (1950), as amended, which are incorporated herein by reference.

F. In any court action that may result from enforcement of this article, a judge hearing the case may direct the person responsible for the violation or the property owner to correct

the violation and each day that the violation continues shall constitute a separate violation of this article.

G. Any person who knowingly makes any false statements, representations, or certifications in any record, report, or other document, either filed or requested pursuant to this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the Administrator under this article in monitoring discharges, shall be guilty of a violation of this article.

H. The remedies set forth in this section shall be cumulative, not exclusive, and it shall be no defense to any action that one (1) or more of the remedies set forth in this section has been sought or granted.

§ 9-36. Civil charges.

With the consent of any person who has violated any provision of this article, the county may provide for the payment of civil charges for violations in specific sums, not to exceed \$1,000. Civil charges shall be in lieu of any appropriate civil penalty. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damages in the county. (Ord. 5/25/16)

**COUNTY OF AUGUSTA
STAFF REPORT
Ordinance Amendment
Chapter 15. Nuisances
Article I. Noise Control
June 16, 2020**

An ordinance to amend Chapter 15. Nuisances. Article I. Noise Control

Amendments include: language for testing and validating of a sound level metering device to more accurately describe the process used by the Sheriff's Office, new restriction related to sound producing and re-producing devices which would be prohibited beyond 65 dBA at the property line at all times of day, for other noise violations, expanding the current time of enforcement from 12 a.m. to 6 a.m. to 11 p.m. to 6 a.m., revised penalty for violation from a Class II to a Class III misdemeanor.

PROPOSED ORDINANCE TEXT:

CHAPTER 15. NUISANCES.

ARTICLE I. Noise Control.

§ 15-1. Short title; scope.

This article may be cited as the "Noise Control Ordinance of the County of Augusta." It shall be applicable to the control of noises originating within the county limits.

State law reference--Virginia Code § 15.2-1200; Acts of Assembly, 1990, Chapter 699, pg. 1049.

§ 15-2. Declaration of findings and policy.

The board of supervisors hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace and safety, and the quality of life; that a substantial body of science and technology exists by which excessive sound may be substantially abated; that the people have a right to and should be ensured an environment free from excessive sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of the county to prevent such excessive sound by prescribing the decibel levels, degrees, and types of sound which shall be unacceptable in the county.

§ 15-3. Definitions.

The following terms, when used in this article, shall have the meanings hereinafter ascribed to them, unless otherwise clearly indicated by the context:

(a) **A-weighted sound level.** The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

(b) **Decibel (dB).** A unit for measuring the volume of a sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (twenty micronewtons per square meter).

(c) **Emergency.** Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(d) **Emergency Work.** Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(e) **Noise.** Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

(f) **Property boundary.** An imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

(g) **Sound.** An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(h) **Sound level.** The weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

(i) **Sound level meter.** An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

§ 15-4. Administration and enforcement.

The noise control program established by this article shall be enforced and administered by the sheriff's department with the assistance of other county departments as required.

§ 15-5. Use of sound level meters.

In order to enforce this article, the decibel level of any noise may be measured by the use

of a sound level meter which measures sound pressure levels.

§ 15-6. Procedure for testing and validating metering devices.

~~A. Any individual operating a sound level meter pursuant to the provisions of the Noise Control Ordinance of the County of Augusta shall issue a certificate which will indicate:~~

~~1. Field calibrate the unit before and after the evidentiary reading.~~

~~2. Ensure t~~That the sound level meter used to take the decibel level reading ~~is~~was operated in accordance with the manufacturer's specifications;

~~3. File, in the courts, That the county has on file~~an attested document from the manufacturer which states that the sound level meter has been tested within the past twelve months and has been found to be accurate;

~~2. 4. Record, t~~The name of the accused, ~~the location of the noise, the date and time that the reading was made, and the decibel reading., and cause a report to be generated by uploading the data recorded by the sound meter,~~

~~3. The location of the noise;~~

~~4. The date and time that the reading was made; and~~

~~5. The decibel level reading.~~

~~A. The certificate, as provided for in this section, when duly attested by the operator taking the decibel level reading, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the decibel level reading. Any such certificate purporting to be signed by the operator shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A copy of such certificate shall be delivered to the accused upon his or his attorney's request.~~

§ 15-7. Maximum sound levels in County.

~~(a) Sound producing and sound-reproducing devices. The use operation or playing of any radio, phonograph, television, record, compact disc, tape, digital music, MP3 or DVD player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound, regardless of where such sound-producing or sound re-producing machine or device is located, whether indoor or outdoor, in such a manner or with such volume that it exceeds 65dBA at the property line, from which the sound emanates, shall be a violation of this article.~~

~~(b) In all other cases, n~~No person shall permit, operate or cause any source of sound

~~from leisure and recreational activities to exceed~~ ~~create~~ a sound level of 65dBA, when measured at or outside the property boundary, from which the sound emanates, during the hours between ~~11:00 p.m. 12:00-midnight~~ and 6:00 a.m. ~~in excess of 65 dBA when measured at or outside the property boundary.~~

~~(b)(c)~~ Measurements in multi-family structures. In a structure used as a multi-family dwelling the Sheriff's department may take measurements to determine such sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. Such measurement shall be taken at a point at least four feet from the wall, ceiling or floor nearest the noise source, with doors to the receiving area closed and windows closed, in the normal position for the season.

§ 15-8. Exemptions.

Unless otherwise prohibited elsewhere in this article, ~~The~~ following activities or sources of noise shall be exempt from the prohibitions set forth in § 15-7 of this article:

- (1) Business, manufacturing, construction or agricultural operations.
- (2) Activities for which the regulation of noise has been preempted by federal law.

§ 15-9. Unnecessary Noises Enumerated.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this Article, but such enumeration shall not be deemed to be exclusive:

A. Barking Dogs

1. It shall be unlawful to own, keep, possess or harbor any dog on property zoned Single Family Residential, Attached Residential, Multi-family Residential, Manufactured

Home Park or Planned Unit Development which by loud, frequent or habitual barking or howling or by other conduct likely to cause annoyance and disturb the peace and quiet of any person or neighborhood between the hours of 12 midnight and 6 a.m., which loud, frequent or habitual barking or howling or other conduct is heard or observed by any animal control officer, other officer or other person, shall be unlawful, and any such dog is hereby declared to be a public nuisance.

2. Any citizen having sufficient evidence of violation of one or more of the prohibitions set out in the section above may present such evidence and make affidavit to the Augusta County Magistrate and request issuance of a summons or warrant based thereon. Corroboration of the alleged violation by the sheriff's department or the animal control officers shall not be necessary in order for a citizen to pursue a summons or warrant against another person for such violation. In no event shall this section be construed as a limitation or restriction of any person's right to access the courts or to seek the abatement of violations of this article by any lawful means.

B. Air cannons, carbide cannons, or other loud explosive devices which are designed to produce high intensity sound percussions for the purpose of repelling birds are prohibited in all zoning districts (Code of Virginia – 15.2-918).

(Ord. 12/10/14, effective 1/1/15)

§ 15-10. Emergency exception.

No provisions of this article shall apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work.

§ 15-11. Penalties and violations.

~~A. Any person who violates Section 15-9 of this article shall be fined \$100 for the first offense, \$250 for the second offense within a twelve month period, and \$500 for the third and subsequent offenses within a twelve month period.~~

~~B.A.~~ Any person who violates any ~~other~~ provision of this article shall be deemed to be guilty of a class III misdemeanor.

~~C. Each day of violation of any provision of this article shall constitute a separate offense.~~

~~D.B.~~ The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that person cannot be determined, any owner, tenant or resident physically present on the property where the violation is occurring is rebuttably presumed to be guilty of the violation.

(Ord. 12/10/14, effective 1/1/15)

§ 15-12 through § 15-20. Reserved.

COMMUNITY DEVELOPMENT STAFF COMMENTS: Staff has worked with the Sheriff's Office and the Commonwealth Attorney's Office to develop the amendments proposed. Some of the amendments involve technicalities of testing and validating a sound level meter. A substantive change involves regulating sound producing and re-producing devices at the current dBA level during all times of day, not just during the overnight hours.

The amendment changes the time of enforcement for all other noises from 12 AM to 6 AM to 11 PM to 6 AM. The amendment does not change anything to do with current categories for exempt noises, including agriculture and industry. At the recommendation of the Commonwealth Attorney's office the amendment reduces the penalty from a Class II to a Class III misdemeanor. Staff feels that the proposed ordinance provides more remedies for citizens aggrieved by nuisance noise violations than the current ordinance. The increased number of calls received by the Sheriff's Office should be monitored to see if further adjustment to the ordinance is needed.

6/16/2020

**AN ORDINANCE TO
TO AMEND CHAPTER 15 NUISANCES.
ARTICLE I. NOISE CONTROL**

WHEREAS, the Augusta County Board of Supervisors has conducted a public hearing; and

WHEREAS, the Board public hearing has been properly advertised and all public notice as required by the Code of Virginia properly completed; and

WHEREAS, the Board of Supervisors has considered the ordinance amendment and the comments presented at the public hearing; and

WHEREAS, the Board has determined that the public health, welfare, peace and safety, requires such amendment.

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that Chapter 15. Nuisances. Article I. Noise Control of the Augusta County Code be amended as follows:

CHAPTER 15. NUISANCES.

ARTICLE I. Noise Control.

- § 15-1. Short title; scope.
- § 15-2. Declaration of findings and policy.
- § 15-3. Definitions.
- § 15-4. Administration and enforcement.
- § 15-5. Use of sound level meters.
- § 15-6. Procedure for testing and validating metering devices.
- § 15-7. Maximum sound levels in County.
- § 15-8. Exemptions.
- § 15-9. Unnecessary Noises Enumerated.
- § 15-10. Emergency exception.
- § 15-11. Penalties and violations.
- § 15-12. through § 15-20. Reserved.

CHAPTER 15. NUISANCES.

ARTICLE I. Noise Control.

§ 15-1. Short title; scope.

This article may be cited as the "Noise Control Ordinance of the County of Augusta." It shall be applicable to the control of noises originating within the county limits.

State law reference--Virginia Code § 15.2-1200; Acts of Assembly, 1990, Chapter 699, pg. 1049.

§ 15-2. Declaration of findings and policy.

The board of supervisors hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace and safety, and the quality of life; that a substantial body of science and technology exists by which excessive sound may be substantially abated; that the people have a right to and should be ensured an environment free from excessive sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of the county to prevent such excessive sound by prescribing the decibel levels, degrees, and types of sound which shall be unacceptable in the county.

§ 15-3. Definitions.

The following terms, when used in this article, shall have the meanings hereinafter ascribed to them, unless otherwise clearly indicated by the context:

(a) **A-weighted sound level.** The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

(b) **Decibel (dB).** A unit for measuring the volume of a sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (twenty micronewtons per square meter).

(c) **Emergency.** Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(d) **Emergency Work.** Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(e) **Noise.** Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

(f) **Property boundary.** An imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

(g) **Sound.** An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(h) **Sound level.** The weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

(i) **Sound level meter.** An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

§ 15-4. Administration and enforcement.

The noise control program established by this article shall be enforced and administered by the sheriff's department with the assistance of other county departments as required.

§ 15-5. Use of sound level meters.

In order to enforce this article, the decibel level of any noise may be measured by the use of a sound level meter which measures sound pressure levels.

§ 15-6. Procedure for testing and validating metering devices.

A. Any individual operating a sound level meter pursuant to the provisions of the Noise Control Ordinance of the County of Augusta shall:

1. Field calibrate the unit before and after the evidentiary reading.
2. Ensure that the sound level meter used to take the decibel level reading is operated in accordance with the manufacturer's specifications;
3. File, in the courts, an attested document from the manufacturer which states that the sound level meter has been tested within the past twelve months and has been found to be accurate;
4. Record, the name of the accused, the location of the noise, the date and time that the reading was made, and the decibel reading.

§ 15-7. Maximum sound levels in County.

(a) *Sound producing and sound-reproducing devices.* The use operation or playing of any radio, phonograph, television, record, compact disc, tape, digital music, MP3 or DVD player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound, regardless of where such sound-producing or sound re-producing machine or device is located, whether indoor or outdoor, in such a manner or with such volume that it exceeds 65dBA at the property line, from which the sound emanates, shall be a violation of this article.

(b) In all other cases, no person shall permit, operate or cause any source of sound to exceed a sound level of 65dBA, when measured at or outside the property boundary, from which the sound emanates, during the hours between 11:00 p.m. and 6:00 a.m.

(c) Measurements in multi-family structures. In a structure used as a multi-family dwelling the Sheriff's department may take measurements to determine such sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. Such measurement shall be taken at a point at least four feet from the wall, ceiling or floor nearest the noise source, with doors to the receiving area closed and windows closed.

§ 15-8. Exemptions.

Unless otherwise prohibited elsewhere in this article, the following activities or sources of noise shall be exempt from the prohibitions set forth in § 15-7 of this article:

- (1) Business, manufacturing, construction or agricultural operations.
- (2) Activities for which the regulation of noise has been preempted by federal law.

§ 15-9. Unnecessary Noises Enumerated.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this Article, but such enumeration shall not be deemed to be exclusive:

A. Barking Dogs

1. It shall be unlawful to own, keep, possess or harbor any dog on property zoned Single Family Residential, Attached Residential, Multi-family Residential, Manufactured

Home Park or Planned Unit Development which by loud, frequent or habitual barking or howling or by other conduct likely to cause annoyance and disturb the peace and quiet of any person or neighborhood between the hours of 12 midnight and 6 a.m., which loud, frequent or habitual barking or howling or other conduct is heard or observed by any animal control officer, other officer or other person., shall be unlawful, and any such dog is hereby declared to be a public nuisance.

2. Any citizen having sufficient evidence of violation of one or more of the prohibitions set out in the section above may present such evidence and make affidavit to the Augusta County Magistrate and request issuance of a summons or warrant based thereon. Corroboration of the alleged violation by the sheriff's department or the animal control officers shall not be necessary in order for a citizen to pursue a summons or warrant against another person for such violation. In no event shall this section be construed as a limitation or restriction of any person's right to access the courts or to seek the abatement of violations of this article by any lawful means.

- B. Air cannons, carbide cannons, or other loud explosive devices which are designed to produce high intensity sound percussions for the purpose of repelling birds are prohibited in all zoning districts (Code of Virginia – 15.2-918).

(Ord. 12/10/14, effective 1/1/15)

§ 15-10. Emergency exception.

No provisions of this article shall apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work.

§ 15-11. Penalties and violations.

A. Any person who violates any provision of this article shall be deemed to be guilty of a class III misdemeanor.

B. The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that person cannot be determined, any owner, tenant or resident physically present on the property where the violation is occurring is rebuttably presumed to be guilty of the violation.

(Ord. 12/10/14, effective 1/1/15)

§ 15-12 through § 15-20. Reserved.

COUNTY OF AUGUSTA
STAFF REPORT
Ordinance Amendment
Chapter 5. Animals.
Article IV. Compensation for Livestock and Poultry Killed by Dogs
June 16, 2020

An ordinance to amend Chapter 5. Animals. Article IV. Compensation for Livestock and Poultry Killed by Dogs § 5-32. Requirements for compensation.

Amendment permits the County Administrator, rather than the Board of Supervisors, to determine that a claim associated with livestock or poultry killed or injured by any dog of an unknown owner, is supported by the investigation of the animal control officer.

PROPOSED ORDINANCE TEXT:

ARTICLE IV. Compensation for Livestock and Poultry Killed by Dogs.

§ 5-31. Compensation provided.

Any person who has any livestock or poultry killed or injured by any dog not his own shall be entitled to receive as compensation the fair market value of such livestock or poultry, not to exceed limits established by state law, provided the requirements of this article have been met. (Ord.4/24/79)

State law reference - Virginia Code § 3.2-6553

§ 5-32. Requirements for compensation.

No person shall be entitled to receive compensation under section 5-31 unless:

A. The claimant has furnished evidence within sixty days of discovery of the quantity and value of the dead or injured livestock and the reasons the claimant believes that death or injury was caused by a dog;

B. The animal control officer shall have been notified of the incident within seventy-two hours of its discovery;

C. The animal control officer has conducted an investigation which included a visual examination of the dead or injured livestock;

D. The ~~County Administrator or designee~~~~board of supervisors~~ of Augusta County, Virginia, has determined that the claim is supported by the investigation of the animal control officer; and

E. The claimant first has exhausted his legal remedies against the owner, if known, of the dog doing the damage for which compensation under section 5-31 is sought. Exhaustion shall mean a judgment against the owner of the dog upon which an execution has been returned unsatisfied. (Ords. 4/24/79; 3/12/86)

State law reference - Virginia Code § 3.2-6553

§ 5-33. Subrogation.

Upon payment under section 5-31, the board of supervisors of Augusta County, Virginia, shall be subrogated to the extent of compensation paid to the right of action to the owner of the livestock or poultry against the owner of the dog and may enforce the same in an appropriate action at law. (Ord. 4/24/79)

State law reference - Virginia Code § 3.2-6553

COMMUNITY DEVELOPMENT STAFF COMMENTS: The Board requested that staff review the ordinance to determine if State Code required that the Board of Supervisors determine the claim is supported by the investigation of the animal control officer. After review of State Code, staff believes that the designation of such duty to the County Administrator or designee is consistent with state code; therefore, staff recommends the amendment as presented.

6/16/2020

**AN ORDINANCE TO
TO AMEND CHAPTER 5 ANIMALS.
ARTICLE IV. COMPENSATION FOR LIVESTOCK AND POULTRY KILLED BY
DOGS
SECTION 5-32. REQUIREMENTS FOR COMPENSATION**

WHEREAS, the Augusta County Board of Supervisors has conducted a public hearing; and

WHEREAS, the Board public hearing has been properly advertised and all public notice as required by the Code of Virginia properly completed; and

WHEREAS, the Board of Supervisors has considered the ordinance amendment and the comments presented at the public hearing; and

WHEREAS, the Board has determined that the public health, welfare, peace and safety, requires such amendment.

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County § 5-32 of the Augusta County Code be amended as follows:

§ 5-32. Requirements for compensation.

No person shall be entitled to receive compensation under section 5-31 unless:

A. The claimant has furnished evidence within sixty days of discovery of the quantity and value of the dead or injured livestock and the reasons the claimant believes that death or injury was caused by a dog;

B. The animal control officer shall have been notified of the incident within seventy-two hours of its discovery;

C. The animal control officer has conducted an investigation which included a visual examination of the dead or injured livestock;

D. The County Administrator or designee of Augusta County, Virginia, has determined that the claim is supported by the investigation of the animal control officer; and

E. The claimant first has exhausted his legal remedies against the owner, if known, of the dog doing the damage for which compensation under section 5-31 is sought. Exhaustion shall mean a judgment against the owner of the dog upon which an execution has been returned unsatisfied. (Ords. 4/24/79; 3/12/86)

State law reference - Virginia Code § 3.2-6553

COUNTY OF AUGUSTA
STAFF REPORT
Ordinance Amendment
Chapter 22. Taxation
Article I. In General
June 12, 2020

An ordinance to amend Chapter 22 Taxation. Article I. In General.

Amendment adds § 22-9. Penalty for passing bad checks. The amendment sets the penalty at thirty dollars.

PROPOSED ORDINANCE TEXT:

CHAPTER 22. TAXATION

ARTICLE I. In General

§ 22-1. Failure to file returns.

§ 22-2. Failure to pay tax when due.

§ 22-3. Interest on delinquencies.

§ 22-4. Payments by credit card.

§ 22-5. Manufactured Home Park Register.

§ 22-6. Powers of the Commissioner of the Revenue.

§ 22-7. Payment of administrative fees, attorney's fees, and collection agency's fees to cover the costs associated with the collection of delinquent taxes.

§ 22-8. Procedure for Board of Equalization.

§ 22-9. Penalty for passing bad checks.

§ 22-9. Penalty for passing bad checks.

The fee for the uttering, publishing or passing of any check, draft, or order for payment of taxes or any other sums due, which is subsequently returned for insufficient funds or because there is no account or the account has been closed, or because such check, draft, or order was returned because of a stop-payment order placed in bad faith on the check, draft, or order by the drawer, shall be \$30.

State law reference—Virginia Code § 15.2-106.

Sections ~~22-9 through 22-10~~ reserved.

STAFF COMMENTS: State Code authorizes a maximum penalty fee of \$50 for the passing of bad checks. The Treasurer recommends that we adopt an ordinance for a \$30 penalty in keeping with current practice. Staff recommends approval for State Code consistency with current practice.

6/12/2020

**AN ORDINANCE TO
TO AMEND CHAPTER 22 TAXATION.
ARTICLE I. IN GENERAL
ADD SECTION 22-9. PENALTY FOR PASSING BAD CHECKS**

WHEREAS, the Augusta County Board of Supervisors has conducted a public hearing; and

WHEREAS, the Board public hearing has been properly advertised and all public notice as required by the Code of Virginia properly completed; and

WHEREAS, the Board of Supervisors has considered the ordinance amendment and the comments presented at the public hearing; and

WHEREAS, the Board of Supervisors has determined that the amendment is in compliance with State Code;

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that Chapter 22. Article I of the Augusta County Code be amended as follows to add § 22-9. Penalty for passing bad checks:

§ 22-9. Penalty for passing bad checks.

The fee for the uttering, publishing or passing of any check, draft, or order for payment of taxes or any other sums due, which is subsequently returned for insufficient funds or because there is no account or the account has been closed, or because such check, draft, or order was returned because of a stop-payment order placed in bad faith on the check, draft, or order by the drawer, shall be \$30.

State law reference—Virginia Code § 15.2-106.

Sections 22-10 reserved.

COUNTY OF AUGUSTA
STAFF REPORT
Ordinance Amendment
Chapter 22 Taxation.
Article II. Real Property Tax
June 12, 2020

An ordinance to amend Chapter 22. Taxation. Article II. Real Property Tax. § 22-15. Special assessments for agricultural, horticultural, forest or open space real estate.

Amendment references and incorporates into County Code provisions related to zoning classifications and special assessments identified in § 58.1-3237.1 of the Code of Virginia.

PROPOSED ORDINANCE TEXT:

§ 22-15. Special assessments for agricultural, horticultural, forest or open space real estate.

- ~~A. A.~~ Provision for use value assessment and taxation. Use value assessment and taxation of real estate classified in § 58.1-3230 of the Code of Virginia (1950), as amended, is hereby provided in accordance with the provisions of Article 4, Chapter 32 of Title 58.1 of the Code of Virginia (1950), as amended. Such assessment and taxation shall include all of the four classes of real estate set forth in said section.
- ~~A.B.~~ Additional provisions concerning zoning classifications. Use value assessment and taxation of real estate provisions classified in § 58.1-3237.1. of the Code of Virginia (1950), as amended, is hereby provided in accordance with the provisions of Article 4, Chapter 32 of Title 58.1 of the Code of Virginia (1950), as amended.

State law reference—Virginia Code § 58.1-3231.

~~CB.~~ Revalidation required. For continuation of assessment and taxation under this section, the property owner shall revalidate any applications previously approved. Revalidation shall be done annually with the Commissioner of the Revenue, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the Commissioner of the Revenue

State law reference—Virginia Code § 58.1-3234.

~~DE.~~ Application fees. Nonrefundable application fees in accordance with the following schedule shall accompany all applications for assessment or revalidation:

1. A fee of twelve dollars (\$12.00) plus twelve cents (12¢) per acre shall be required for each application.
2. A revalidation fee of twelve dollars (\$12.00) plus twelve cents (12¢) per acre shall be required every sixth year for each application. "Sixth year" shall mean the sixth year after the initial application for assessment and every sixth year thereafter. (Ord. 4/28/81; Augusta County Code 1969, § 22-27)

State law reference—Virginia Code § 58.1-3234.

ED. Fee for late filing of revalidation forms. Late filing of revalidation forms before the effective date of the assessment is permitted on the payment of the late filing fee. The late filing fee shall be ten per cent (10%) of the amount, if any, by which the taxes payable on the basis of the assessment and taxation under this section are exceeded by the taxes that would have been payable had the revalidation form not been filed. (Ord. 3/25/86)

State law reference—Virginia Code § 58.1-3234.

FE. Interest on roll-back taxes. Interest on roll-back taxes as provided by state law shall be at the rate of one-half per cent of the amount of the deferred tax and any penalty per month or fraction thereof until paid, but in no event shall it exceed the rate applicable to delinquent taxes generally in each of the tax years.

State law reference—Virginia Code § 58.1-3237(B).

GF. Penalty for failure to report change in use. Any owner of real estate which has been zoned to more intensive use at the request of the owner or his agent or otherwise subject to or liable for roll-back taxes who fails, within sixty days following such change in use or zoning, to report such change to the Commissioner of the Revenue shall be liable for the penalties prescribed by § 22-1 of this chapter.

State law reference—Virginia Code §§ 58.1-3243, 58.1-3916 and 58.1-3916.1.

STAFF COMMENTS: State Code § 58.1-3237.1. authorizes Albemarle County, Arlington County, James City County, Loudoun County, Rockingham County, and Augusta County to include additional provisions in assessments related to zoning classifications. Due to the fact that the majority of County land area is zoned General Agriculture, our current land use assessment practice is to require that the land be zoned General Agriculture. The inclusion of the state code section, authorizing such practice, is required by state code.

6/12/2020

**AN ORDINANCE TO
TO AMEND CHAPTER 22 TAXATION.
ARTICLE II. REAL PROPERTY TAX
SECTION 22-15. SPECIAL ASSESSMENTS FOR AGRICULTURAL,
HORTICULTURAL, FOREST OR OPEN SPACE REAL ESTATE**

WHEREAS, the Augusta County Board of Supervisors has conducted a public hearing; and

WHEREAS, the Board public hearing has been properly advertised and all public notice as required by the Code of Virginia properly completed; and

WHEREAS, the Board of Supervisors has considered the ordinance amendment and the comments presented at the public hearing; and

WHEREAS, the Board of Supervisors has determined that the amendment is in compliance with State Code;

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that Chapter 22. Article II. § 22-15 of the Augusta County Code be amended as follows:

§ 22-15. Special assessments for agricultural, horticultural, forest or open space real estate.

- A. Provision for use value assessment and taxation. Use value assessment and taxation of real estate classified in § 58.1-3230 of the Code of Virginia (1950), as amended, is hereby provided in accordance with the provisions of Article 4, Chapter 32 of Title 58.1 of the Code of Virginia (1950), as amended. Such assessment and taxation shall include all of the four classes of real estate set forth in said section.

- B. Additional provisions concerning zoning classifications. Use value assessment and taxation of real estate provisions classified in § 58.1-3237.1. of the Code of Virginia (1950), as amended, is hereby provided in accordance with the provisions of Article 4, Chapter 32 of Title 58.1 of the Code of Virginia (1950), as amended.

State law reference—Virginia Code § 58.1-3231.

C. Revalidation required. For continuation of assessment and taxation under this section, the property owner shall revalidate any applications previously approved. Revalidation shall be done annually with the Commissioner of the Revenue, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the Commissioner of the Revenue

State law reference—Virginia Code § 58.1-3234.

D. Application fees. Nonrefundable application fees in accordance with the following schedule shall accompany all applications for assessment or revalidation:

1. A fee of twelve dollars (\$12.00) plus twelve cents (12¢) per acre shall be required for each application.
2. A revalidation fee of twelve dollars (\$12.00) plus twelve cents (12¢) per acre shall be required every sixth year for each application. "Sixth year" shall mean the sixth year after the initial application for assessment and every sixth year thereafter. (Ord. 4/28/81; Augusta County Code 1969, § 22-27)

State law reference—Virginia Code § 58.1-3234.

E. Fee for late filing of revalidation forms. Late filing of revalidation forms before the effective date of the assessment is permitted on the payment of the late filing fee. The late filing fee shall be ten per cent (10%) of the amount, if any, by which the taxes payable on the basis of the assessment and taxation under this section are exceeded by the taxes that would have been payable had the revalidation form not been filed. (Ord. 3/25/86)

State law reference—Virginia Code § 58.1-3234.

F. Interest on roll-back taxes. Interest on roll-back taxes as provided by state law shall be at the rate of one-half per cent of the amount of the deferred tax and any penalty per month or fraction thereof until paid, but in no event shall it exceed the rate applicable to delinquent taxes generally in each of the tax years.

State law reference—Virginia Code § 58.1-3237(B).

G. Penalty for failure to report change in use. Any owner of real estate which has been zoned to more intensive use at the request of the owner or his agent or otherwise subject to or liable for roll-back taxes who fails, within sixty days following such change in use or zoning, to report such change to the Commissioner of the Revenue shall be liable for the penalties prescribed by § 22-1 of this chapter.

State law reference—Virginia Code §§ 58.1-3243, 58.1-3916 and 58.1-3916.1.



COUNTY OF AUGUSTA
 COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF COMMUNITY DEVELOPMENT
 P.O. BOX 590
 COUNTY GOVERNMENT CENTER
 VERONA, VA 24482-0590



MEMORANDUM

TO: Board of Supervisors
FROM: Leslie Tate, Senior Planner *Leslie*
DATE: June 16, 2020
SUBJECT: Public Hearing on Planning Commission approved Stuarts Draft Small Area Plan

Staff presented a draft of the Plan to the Board in October of 2019 and the Board directed staff to schedule public hearings. The Planning Commission tabled the Plan after holding their public hearing. However, since then, the Planning Commission approved the Plan at their meeting on January 14, 2020.

At your staff briefing on February 24, 2020, staff presented the Planning Commission approved Stuarts Draft Small Area Plan to the Board of Supervisors. Since that time, the Board released the plan for advertisement of a public hearing for plan adoption.

As you are well aware, this planning process has lasted 3 years and is the culmination of hard work and devotion from elected officials, citizens, members of the appointed advisory committee, consultants, and staff. We look forward to incorporating the Stuarts Draft Small Area Plan into our series of Comprehensive Plans.

Below is the link to the online draft Plan:

<https://www.co.augusta.va.us/government/community-development/planning/comprehensive-plan>

<ftp://ftp.co.augusta.va.us/COMDEV/PLANNING/Stuarts%20Draft%20Small%20Area/>
 (Appendix documents)

Please be advised that staff would recommend that the Board add the names of the current Board members in addition to past Board members since the November 2019 election. Attached is a resolution for the Board to consider for adoption of the Stuarts Draft Small Area Plan.

6/16/2020

**RESOLUTION TO ADOPT THE
STUARTS DRAFT SMALL AREA PLAN
AND INCORPORATE IT INTO THE SERIES OF COMPREHENSIVE PLANNING
DOCUMENTS OF AUGUSTA COUNTY**

WHEREAS, the Augusta County Board of Supervisors appointed a Citizen Advisory Committee to guide and facilitate the planning process; and

WHEREAS, the planning process has involved 3 years of dedicated work by elected officials, the Virginia Department of Transportation, consultants, citizens, and staff; and

WHEREAS, in addition to ten Citizen Advisory Committee meetings, two citizen outreach meetings were held to present draft elements of the Plan and collect feedback from the public; and

WHEREAS, the Augusta County Planning Commission has conducted a public hearing and made a recommendation of approval of the Plan; and

WHEREAS, the Augusta County Board of Supervisors has conducted a public hearing; and

WHEREAS, the Planning Commission and Board public hearings have been properly advertised and all public notice as required by the Code of Virginia properly completed; and

WHEREAS, the Board of Supervisors has considered the Plan record, draft Plan, and the comments presented at the public hearing; and

WHEREAS, the Board is desirous of adding the following elected official's names to the Plan: Dr. Scott Seaton, Mr. Steve Morelli, and Mr. Jeff Slaven as Board members voting on the Plan's adoption and unintentionally left off of the Plan approved by the Planning Commission due to election transitions.

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that The Stuarts Draft Small Area Plan be adopted and incorporated into the series of Comprehensive Planning Documents of Augusta County and dated June 24, 2020.

**COUNTY OF AUGUSTA
STAFF REPORT
Trustee of Phyllis H. Kiser
June 9, 2020
Revised June 12, 2020**

SUMMARY OF REQUEST: A request to rezone from Single Family Residential 10 with proffers to General Agriculture approximately 9.85 acres (TMP 91A (2) 3) owned by Trustee of Phyllis H. Kiser located at 405 Lake Road in Stuarts Draft in the South River District. The proposed general use of the property is agriculture. The general use of the property stated in the Comprehensive Plan is Medium Density Residential, which may include detached residential units at a density of 3-4 dwelling units per acre.

VICINITY ZONING: General Agriculture zoning to the north, east, south, and west.

CURRENT ZONING: Single Family Residential 10 with proffers (below), Source Water Protection Overlay and Urban Service Overlay

1. A drainage swale along the southwest and northwest property lines 515 feet along the L.P. Deputy Subdivision and 585 feet along the Huffman property sufficient to intercept surface runoff as it enters the property shall be constructed as part of the detention and drainage system.
2. Building permits and certificates of occupancy for each lot shall be subject to compliance with a grading and drainage plan approved by the County Engineer.
3. The minimum lot size shall be 15,000 square feet.
4. The crawl space shall contain twice the amount of vents that is required in provision R-311 of the 1992 CABO One & Two Family Dwelling Code and the crawl space under the floor joist shall have a minimum height of 32 inches.

COMPREHENSIVE PLAN PLANNING POLICY AREA/FUTURE LAND USE DESIGNATION: Urban Service Area/Medium Density Residential

COMMENTS FROM ENGINEER:

Environment Ordinance Considerations

A reduced stormwater impact is anticipated in rezoning this property from Single Family to Agriculture.

The applicant is advised to contact the U.S. Army Corps of Engineers and the Virginia Department of Environmental Quality for any requirements related to proposed work in wetland areas or adjacent to any streams.

This property drains to South River which is listed on the Virginia DEQ Draft 2014 Impaired Waters List. This impaired segment extends from its confluence with

Stony Run downstream to its confluence with the Back Creek. The impaired use is recreation, the specific impairment is E. coli., The sources of the impairment are wildlife other than waterfowl, non-point sources and agriculture. Numerous TMDLs have been approved for this segment for each of the impairments and must be considered by the applicant.

South River

Additionally, the Augusta County Comprehensive Plan lists the South River – Canada Run watershed as a Priority Watershed for Groundwater Protection due to the presence of karst features and the location of Source Water Assessment Program zones.

Overlay Ordinance Considerations

This property lies within Area 2 of the Source Water Protection Overlay (SWPO) District. All provisions of the Source Water Protection Ordinance (SWPO) must be satisfied. Additionally, for Source Water & Recharge Areas, the Comprehensive Plan recommends restriction of land uses that pose a contaminant threat. Additionally, stormwater practices that infiltrate or can contaminate groundwater should be avoided. Water quality treatment and revegetation are recommended.

This property lies outside of the Airport Overlay District (APO).

This property lies within Zone X on the FEMA FIRM and therefore is outside the Special Flood Hazard Area and not subject to the Floodplain Overlay (FPO) Ordinance.

This property lies within the Urban Service Overlay District (USO) and is therefore subject to the limitations on access to public streets contained in that ordinance.

Subdivision Ordinance Considerations

§21-9.1 Subsection B of the County Subdivision Ordinance addresses street layout and access to adjacent property. Development is required to connect to existing or planned streets and must also provide for access to adjacent property that is located with areas designated in the Comprehensive Plan as Urban Service or Community Development Areas. This property, while zoned Single Family, is surrounded by other parcels zoned General Agriculture which are already substantially subdivided, therefore connections to other parcels are unlikely.

Natural Resources Recommendations from the Comprehensive Plan

The Augusta County Comprehensive Plan recommends performance standards to protect natural resources. For Urban Service Areas, a riparian buffer of 35 feet on either side of a stream is encouraged, and where feasible, stormwater should not be piped through in a manner to short-cut the buffer. Additionally, floodplain areas should have no habitable structures, but should instead be utilized for greenways & recreation areas.

For Source Water & Recharge Areas, the Comprehensive Plan recommends restriction of land uses that pose a contaminant threat. Additionally, stormwater practices that infiltrate or can contaminate groundwater should be avoided. Water quality treatment and revegetation are recommended.

Wetlands may or may not exist on the site. For Wetland areas, the Comprehensive Plan recommends provision of a 35 foot buffer from the edge of wetlands.

The riparian area may provide for unique habitat. For unique natural features such as caves, major karst features, critical habitats, etc., the Comprehensive Plan recommends to tie these features in with greenways, active and passive recreation areas and flood plain preservation areas.

COMMENTS FROM ZONING ADMINISTRATOR: The property is surrounded by General Agriculture zoned property; therefore, Zoning does not feel rezoning the 9.85 acres to General Agriculture to have a farmers' market would have a negative impact on the neighboring properties.

COMMENTS FROM ACSA:

1. Water and sewer capacities are not reserved until system adequacy is determined (supply, treatment, transmission) and payment of the connection fees has been received in accordance with Service Authority Policy. Augusta County Service Authority Policies and Procedures can be found at <http://www.acsawater.com/oppm>.
2. Any engineering evaluations and upgrades or extensions would be the responsibility of the owner/developer and are subject to Service Authority review and approval.
3. Investigation of available fire flow is recommended to ensure that the system is capable of providing the needed fire flow to comply with Chapter 24 of the Augusta County Code requirements for the proposed use of the property. Any upgrades or extensions would be the responsibility of the owner/developer and are subject to Service Authority review and approval.

4. There is an existing 6" waterline running through the northern portion of the subject parcel but Service Authority has determined that this line is not suitable for connections or extension. The structure at 405 Lake Road is currently served by a residential connection (from existing main on Gra-Mar Lane).
5. There is an existing 8" sewer line that ends at the northern property line of the subject parcel. As previously noted, this line has not been accepted into the public system and it has no connections.
6. The Service Authority has little potential for revenue generation from the subject property to support its future maintenance/replacement. As a result, the Authority does not oppose the request of the landowners. If approved, the private sewer line will be disconnected from the public system near 333 Lake Road. Additionally, the private 6" water main will be disconnected from the public system (including removal of the existing fire hydrant on the property) near 121 Sugar Camp Lane. This has been discussed with representatives for the landowner.

COMMENTS FROM HEALTH DEPARTMENT: No comments from the local health department.

COMMENTS FROM FIRE-RESCUE: Fire-Rescue sees little to no impact on service delivery from this request.

TRAFFIC:

Rt. 660 Lake Rd

- AADT: 930 vpd (2013)
- Speed Limit: 25 mph
- K-factor: N/A; Dir. Factor: N/A
- Funct. Class.: Local Street

COMMENTS FROM VDOT:

1. The requested zoning would not warrant a traffic impact analysis.
2. Any entrance/intersection to an existing state maintained roadway must be designed and constructed in accordance with VDOT requirements in Appendix F of the Road Design Manual.
 - If there is a change in use, the existing private entrance would likely need to be re-aligned to as close as 90 degrees as possible. The existing skew exceeds the VDOT allowance.

SCHOOL BOARD STAFF COMMENTS: The request for a change of approximately (9.85) acres from Single Family Residential to General Agriculture will have no impact on these three (3) schools.

The table below indicates the enrollment as of January 31, 2020.

School	Enrollment	Capacity
Riverheads Elem (RES)	717	834
Beverly Manor (BMMS)	698	720
Buffalo Gap (BGHS)	470	800

COMMUNITY DEVELOPMENT STAFF COMMENTS:

PROS

1. Parcel is surrounded by General Agriculture zoned property.
2. Request has no impact on public school capacity.
3. Fire-Rescue sees little to no impact on service delivery.

CONS

1. Request is not in compliance with the Comprehensive Plan future land use map which designates the property for Medium Density Residential development.
2. Request may have potential negative impacts to adjacent property associated with some uses permitted in General Agriculture zoning.

COMMUNITY DEVELOPMENT STAFF RECOMMENDATION: The property is designated in the Comprehensive Plan for residential development on public utilities; however, some existing water and sewer lines on the property were not funded publically and some have not been used for public service since being installed in 1992. The property was zoned for residential development in 1995 and has not developed. The property is wooded and contains one structure.

In order for the property to develop under the Single Family zoning, a public road would need to be constructed with individual lots fronting on the internal public road, which would likely not be economically feasible given the acreage of the area.

The property is surrounded by General Agriculture zoned property, although some adjacent properties contain residences. Some uses permitted in General Agriculture zoning could potentially be impactful to adjacent residences on General Agriculture zoned lots. While the applicant has indicated the desire to operate a farm stand at the location, General Agriculture zoning would permit all agriculture uses.

Although the request is not in compliance with the Comprehensive Plan future land use designation, staff would recommend approval of the request for the following reasons:

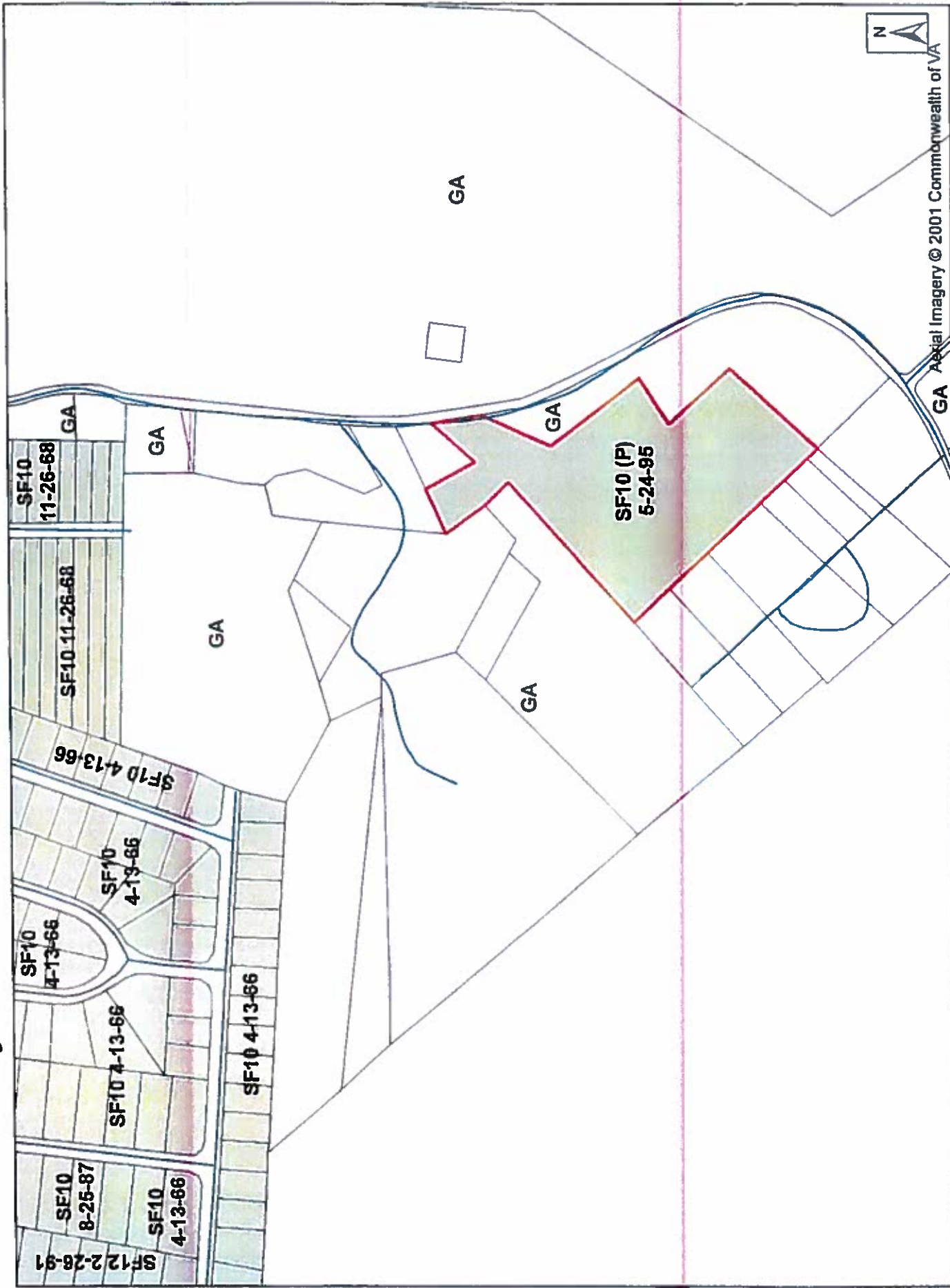
1. The rezoning would make the zoning classification of the property the same as all surrounding property.
2. The property has not developed residentially since zoned 25 years ago.
3. The property is located close to national forest land, representing a distinct ending of future development.
4. Lastly, there is land within the vicinity, Stuarts Draft community, which is either planned or zoned for residential development with better road access, water and sewer service, etc.

PLANNING COMMISSION RECOMMENDATION: The Planning Commission recommends approval.

Trustee of Phyllis H. Kiser



Trustee of Phyllis H. Kiser



STAFF BRIEFING AGENDA ITEM NO. S/B-15

CONVENE CLOSED SESSION

June 22, 2020

(In) MOTION: _____ SECOND: _____ VOTE: _____

(Out) _____

(Certify) _____

I move that the Board of Supervisors of Augusta County convene in closed session pursuant to:

(1) the personnel exemption under Virginia Code § 2.2-3711(A) (1)
[discussion, consideration or interviews of (a) prospective candidates for employment, or (b) assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific employees]:

a) Boards and Commissions: Youth Commission, Economic Development Authority, Ag & Forestal Dist., Planning Commission, ACSA, Ag Ind. Brd., Parks & Rec, Library, Recycling, Broadband

(2) the economic development exemption under Virginia Code § 2.2-3711(A) (5)
[discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of its interest in locating or expanding its facilities in the county]:

a) Proposed Office space, flex space, storage facilities, manufacturing facilities, utility and mixed use development.

h:exec.sec/13

A G E N D A

REGULAR MEETING OF THE AUGUSTA COUNTY BOARD OF SUPERVISORS

WEDNESDAY, JUNE 24, 2020, at 7:00 p.m.

Government Center, Verona, VA

ITEM NO.	DESCRIPTION
7:00 P.M.	PLEDGE OF ALLEGIANCE INVOCATION – Public participation is optional; those who wish to join the Board of Supervisors in prayer are asked to remain standing after the Pledge.
PUBLIC HEARINGS:	
6-09	<u>COURT FEE-ORDINANCE AMENDMENT</u> Consider an ordinance amendment to Augusta County Code Section 19-61, which would, effective July 1, 2020, increase the assessment of court costs for courtroom security from \$10.00 to \$20.00 as part of the costs in each criminal or traffic case in the district and circuit courts of the County in which the defendant is convicted of a violation of any statute or ordinance.
6-10	<u>ORDINANCE AMENDMENT-CHAPTER 9-ENVIRONMENT</u> Consider an ordinance amendment to Chapter 9-Environment.
6-11	<u>ORDINANCE AMENDMENT-CHAPTER 15-NOISE CONTROL</u> Consider an ordinance amendment to Chapter 15. Nuisances. Article I. Noise Control. Amendments include: language for testing and validating of a sound level metering device to more accurately describe the process used by the Sheriff's Office, new restriction related to sound producing and re-producing devices which would be prohibited beyond 65dBA at the property line at all times of day for other noise violations expanding the current time of enforcement from 12 a.m. to 6 a.m. to 11 p.m. to 6 a.m., revised penalty for violation from a Class II to a Class III misdemeanor.
6-12	<u>ORDINANCE AMENDMENT-CHAPTER 5. ANIMALS. ARTICLE IV.</u> Consider an ordinance amendment that permits the County Administrator, rather than the Board of Supervisors, to determine that a claim associated with livestock or poultry killed or injured by any dog of an unknown owner, is supported by the investigation of the animal control officer.

- 6-13 **ORDINANCE AMENDMENT-CHAPTER 22. TAXATION. ARTICLE I**
Consider an ordinance amendment that adds 22-9. Penalty for passing bad checks. The amendment sets the penalty at thirty dollars.
- 6-14 **ORDINANCE AMENDMENT-CHAPTER 22-ARTICLE II**
Consider an ordinance amendment that references and incorporates into County Code provisions related to zoning classifications and special assessments identified in 58-1-3237.1 of the Code of Virginia.
- 6-15 **TRUSTEE OF PHYLLIS KISER—REZONING**
Consider a request to rezone from Single Family Residential 10 with proffers to General Agriculture approximately 9.85 acres (TMP 91A(2)3) owned by Trustee of Phyllis H. Kiser located at 405 Lake Road in Stuarts Draft in the South River District. The proposed general use of the property is agriculture. The general use of the property stated in the Comprehensive Plan is Medium Density Residential, which may include detached residential units at a density of 3-4 dwelling units per acre. The Planning Commission recommends approval.
- 6-16 **STUARTS DRAFT SMALL AREA PLAN**
Consider a request to amend the Augusta County Comprehensive Plan 2007-2027 and 2014-2015 Update by adopting the Stuarts Draft Small Area Plan. The Stuarts Draft Small Area Plan supplements the County's Comprehensive Plan by providing more specific recommendations, particularly in the areas of land use and transportation, for the Stuarts Draft area. It includes a revised Future Land Use Map, bike and pedestrian infrastructure recommendations, Development Design Suggestions and an Implementation Strategy.
- 6-17 **FY2020 & FY2021 BUDGET AMENDMENT-CARES RELIEF FUNDING & SCHOOL CAFETERIA FUND**
Consider appropriations of CARES Relief funding.

**** (END OF PUBLIC HEARINGS) ****

- 6-18 **INFRASTRUCTURE ACCOUNT STATUS**
Consider additions/deletions to Infrastructure & Recreation Capital Account.
- 6-19 **CRAIGSVILLE ELEMENTARY SCHOOL PLAYGROUND**
Consider funding for playground.

Funding Source: Pastures Infrastructure	8014-106
Pastures Parks & Rec Infrastructure	8024-26

- 6-20 **FIRE-RESCUE GRANT FUND**
Consider committee's recommendation for funding.
- 6-21 **SHAMROCK AFID PERFORMANCE AGREEMENT EXTENSION**
Consider the AFID performance agreement extension for Shamrock.
- 6-22 **MUTUAL AID RESOLUTION**
Consider a resolution authorizing the County Administrator to enter into a Mutual Aid Agreement.
- 6-23 **DOOMS/CRIMORA DUPONT SETTLEMENT GRANTS**
Consider agreement for maintenance of property.
- 6-24 **GRANT PROGRAM CONTRIBUTION AGREEMENT-CARES ACT FUNDING**
Consider the Augusta County Disaster Recovery Grant Program Contribution Agreement.
- 6-25 **WAIVERS**
- 6-26 **CONSENT AGENDA (SEE ATTACHED)**
6-26.1 **MINUTES**
Consider minutes of the following meeting:
- Regular Meeting, Wednesday, May 13, 2020
 - Staff Briefing, Tuesday, May 26, 2020
- (END OF CONSENT AGENDA)**
- 6-27 **MATTERS TO BE PRESENTED BY THE PUBLIC**
- 6-28 **MATTERS TO BE PRESENTED BY THE BOARD**
- 6-29 **MATTERS TO BE PRESENTED BY STAFF**

Regular Meeting, Wednesday, May 13, 2020, 7:00 p.m. Government Center, Verona, VA.

PRESENT: Gerald Garber, Chairman
Pam L. Carter, Vice-Chair
Butch Wells
Michael L. Shull
Scott Seaton
Jeffrey Slaven
Steven Morelli
Timothy K. Fitzgerald, County Administrator
Jennifer M. Whetzel, Deputy County Administrator
James Benkahia, County Attorney
Angie Michael, Executive Assistant (Via Electronic)

VIRGINIA: At a regular meeting of the Augusta County Board of Supervisors held on Wednesday, May 13, 2020, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 244th year of the Commonwealth....

.....

Chairman Garber welcomed the citizens present.

.....

Mr. Morelli led the Pledge of Allegiance.

.....

Ms. Carter, Supervisor for the Pastures District, delivered the invocation.

.....

ORDINANCE AMENDMENT – AUGUSTA COUNTY CODE SECTION 22-2

This being day and time advertised to consider an ordinance amendment to Augusta County Code Section 22-2 which would temporarily set the penalty for failure to pay the first installment of real estate taxes for tax year 2020 due and payable on or before June 26, 2020, to zero percent until August 31, 2020.

Jennifer Whetzel, Deputy County Administrator, stated that there are two public hearings on the agenda. The first is regarding the penalty for failure to pay the first installment of real estate taxes to zero percent until August 31, 2020. At the last Board of Supervisors meeting a resolution was passed to extend the first half real estate tax due date from June 5 to June 26. The Board discussed the elimination or reduction in penalty and interest related to the June 2020 real estate tax collections. This requires an ordinance change so advertising was necessary. The elimination would only be for 2020 first half real estate. If there were any change beyond the August 31 date, whether going back to normal or further extending it, another public hearing would be required. Penalty is currently charged at ten percent and is charged the day after the due date. Staff recommends zero percent penalty through August 31, 2020.

The Chairman declared the public hearing open.

May 13, 2020, at 7:00 p.m.

2020 TAX RATES

The Board considered adoption of real estate and personal tax rates for 2020, as proposed at a public hearing held on April 22, 2020.

	<u>Current</u>	<u>Proposed</u>
Real Estate	\$0.63	\$0.63
Personal Property – auto & motorcycle campers, boats, boat trailers, horse trailers, airplanes, trailers	\$2.50	\$2.50
Personal Property – business, large trucks and trailers, machinery & tools	\$2.00	\$2.00

Misty Cook, Director of Finance, stated that there is no change in the rates from the previous year. The advertised rate is the highest rate that the Board can pass for the tax year, but a lesser rate can be approved.

Mr. Shull moved, seconded by Mr. Wells, that the Board approve the 2020 tax rates as presented.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, Seaton and Morelli
 Nays: None

Motion carried.

.....

REVISED BUDGET FOR FY2019-2020

The Board considered the revised budget and appropriations for Fiscal Year 2019-2020.

Ms. Cook stated that a detailed revised FY20 and FY21 budget is available. Both take into account the projected revenue shortfalls due to COVID-19. The revised FY20 budget shows a reduced revenue of approximately \$1 million. Expenditures have been adjusted to balance the budget by reallocating a capital transfer of \$442,000.00 and reducing operating expenditures by \$559,500.00.

Mr. Shull moved, seconded by Mr. Wells, that the Board approve the revised budget for FY2019-2020 as presented.

Mr. Morelli thanked Staff for their hardwork in producing a balanced budget.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, Seaton and Morelli
 Nays: None

Motion carried.

.....

May 13, 2020, at 7:00 p.m.

PROPOSED BUDGET FOR FY2020-2021

The Board considered the proposed budget and appropriations for Fiscal Year 2020-2021.

Ms. Cook stated that in the FY21 proposed budget a reduced revenue is shown of approximately \$5.5 million. The agenda package details the reductions in expenditures to balance the budget. There was \$1.1 million in personnel changes. This includes the proposed pay increases for all employees. There is a hiring freeze in place and a removal of all new proposed positions. All departments received a 5-10% reduction in their operating budgets. \$1.9 million was reallocated from the capital accounts.

Mr. Wells pointed out that there has been a lot of hard work put into this budget.

Mr. Shull stated that it was difficult reviewing the budget due to COVID-19 and not being allowed to have meetings.

Dr. Seaton would like to have more than two years of the budget to review to get a sense over a ten-year period.

Mr. Shull stated that the format of the previous budgets gives specifics on line items. It is important to be transparent for the citizens.

Ms. Cook pointed out that the reason for the format change of the budget book is to make it easy for the citizens to read. Up to this point there have been two budget books created. The one for the Board and then one for the public. Ms. Cook would like feedback before next year.

Mr. Wells found the budget presented this year was easy to follow.

Mr. Morelli moved, seconded by Mr. Wells, that the Board approve the proposed budget for FY2020-2021 as presented.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, Seaton and Morelli
Nays: None

Motion carried.

INFRASTRUCTURE ACCOUNT STATUS

The Board considered additions/deletions to Infrastructure & Recreational Capital Accounts.

Ms. Cook stated that there is a list of infrastructure accounts that require Board action to either encumber or unencumber the funds. Beverley Manor and North River Districts both have projects to remove and return the funds to the account. Beverley Manor also has a project to add for the Verona Pedestrian Design project now that the actual amount is known.

Mr. Wells moved, seconded by Mr. Shull, that the Board approve to uncommit \$677,473.00 for the Barren Ridge Water Improvements project in the Beverley Manor Infrastructure.

May 13, 2020, at 7:00 p.m.

INFRASTRUCTURE ACCOUNT STATUS (CONT'D)

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, Seaton and Morelli
Nays: None

Motion carried.

Mr. Slaven moved, seconded by Ms. Carter, that the Board approve to uncommit \$22,000.00 for the North River Elementary School-Road project in the North River Infrastructure.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, Seaton and Morelli
Nays: None

Motion carried.

Mr. Wells moved, seconded by Ms. Carter, that the Board approve committing \$92,161.00 for the Verona Pedestrian Design from the Beverley Manor Infrastructure account.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, Seaton and Morelli
Nays: None

Motion carried.

.....

AUGUSTA HEALTH CERTIFICATE OF PUBLIC NEED REQUEST RESOLUTION

The Board considered a resolution for an Augusta Health COPN request

Mr. Fitzgerald stated that there was a discussion at the April 22 Board of Supervisors meeting regarding Augusta Health's latest project to build a freestanding center on the campus. It would include a surgical suite and imaging with a new MRI and CT machine. The MRI and CT machine require a Certificate of Public Need approval from the state. Augusta Health has requested the Board of Supervisors to support a resolution that supports the application for the Certificate of Public Need. There were several questions at the last meeting and the responses were included in the agenda package.

A RESOLUTION URGING THE VIRGINIA STATE HEALTH COMMISSIONER TO APPROVE COPN REQUEST No. VA-8500 – AUGUSTA HEALTH
WHEREAS, the County of Augusta, Virginia benefits greatly from a healthy community and the provision of healthcare services by Augusta Health, and
WHEREAS, Augusta Health has been providing access to high quality medical care to our (residents/employees) for more than 25 years, and
WHEREAS, Augusta Health has recognized an increasing need for additional diagnostic testing procedures for its patients; and
WHEREAS, Augusta Health is perfectly positioned to establish a freestanding diagnostic testing facility on its campus to further serve ours and the surrounding communities, and
WHEREAS, Augusta Health and its providers will be able to provide comprehensive outpatient diagnostic services with this facility and provide an enhanced level of care to its patients; and
WHEREAS, Augusta Health strives to provide comprehensive, local care for its patients and this project will allow it to deliver a full complement of services for the local patient population in

May 13, 2020, at 7:00 p.m.

MATTERS TO BE PRESENTED BY THE PUBLIC (CONT'D)

Providers such as, for example, Verizon and A.T.&T. indicate little or no desire to improve the situation and have further indicated that 'land line' services, maintenance etc. may be eventually affected by lack of replacement parts. Recent and ongoing events which use the inter-net as a means of providing information etc. further highlight the need for at least some modicum of modern communications.

2. Consideration should be given to property rates. Why should for example there not be different rates based upon availability of services. Again as an example. Some property has availability of county water, county sewage, inter-net and cellular phone services whilst others have none of these. Yet the tax rate is the same regardless. One might argue that the lack of such services is reflected in the assessed value of the property. Is it? Using these lack of services has little or no affect when seeking a reduction in assessed value from person/persons representing the contracted company who performed the actual assessment. Regarding general issues. Companies have little or no interest, perhaps justifiably so, in investing in rural areas where the population density is low and unlikely to add to their profit margins. Perhaps being critical of the general situation it could be said that county administration is similarly biased for other reasons. Even the local electricity provider has advised that they have no interest in considering providing inter-net services in a manner currently provided by an electric provider in an adjacent county. Augusta County is a wonderful place to live (been here 53 yrs.) but it is lagging behind other counties now relative to what, over time, has become the expected norm in communications. With no cellular or reliable high speed /net service residents cannot avail themselves of general informative communications, emergency assistance (police, fire etc.), government announcements, educational programs, competitive coupon promotions, weather related warnings or competitive methods of television entertainment etc. Even State law enforcement officers often cannot get on site communication when accidents and or emergencies occur. Isn't it long overdue for rectification of at least some of these issues? I appreciate the opportunity of providing these concerns to you as our duly elected representatives.

.....

MATTERS TO BE PRESENTED BY THE BOARD

Dr. Seaton reminded everyone that medical practices and offices were open for business and are taking measures for safety such as controlling access, checking temperatures and screening for symptoms. Do not delay seeking medical attention.

Mr. Shull would like the Health Department to provide active case numbers regarding COVID-19. People are not concerned with the total number, they want to know the actual number of cases currently.

Ms. Carter is not sure how practical it would be to get that information without following up with the individuals that have tested positive.

Mr. Wells would like for someone from the Health Department to brief the Board on what is happening within the Augusta County.

Mr. Shull has an issue that he would like to send to the Ordinance Committee for review. If you own a lot that is twenty acres or less and you want to divide it off, then it has to be perked right away. Mr. Shull would like to change the ordinance to say it does not need to be perked until ready to sell.

.....

MATTERS TO BE PRESENTED BY STAFF

Timothy Fitzgerald, County Administrator discussed the following issues.

May 13, 2020, at 7:00 p.m.

- 1) A presentation on the Stuarts Draft Small Area Plan was given at a previous meeting. The intent, at that time, was to advertise for public hearing to officially adopt the plan. A previous Board has adopted the maps that go with the plan. Staff request approval from the Board to advertise for public hearing.

Mr. Morelli moved, seconded by Mr. Shull, that the Board approve advertising for a public hearing to be held on June 24, 2020.

Dr. Seaton questioned waiting until a July or August meeting.

Mr. Fitzgerald stated that there is not a deadline for approval, however the mapping of the plan has been approved and the writing part of the plan needs to go along with the mapping. There is risk in waiting until July or August, but can be done if the Board desires.

Dr. Seaton amended the motion, that the Board approve advertising for a public hearing to be held on July 22, 2020.

There was a vote taken for the amended motion.

Mr. Shull agrees with having the public hearing on June 24, 2020.

Vote was as follows:

Yeas:	Carter, Wells, Shull, Slaven, and Morelli
Nays:	Garber and Seaton

Motion carried.

- 2) Jennifer Whetzel, Deputy County Administrator, stated that there is a great deal of stimulus money available and there are different agencies that are monitoring the application process for the money. Augusta County is able to partner with other agencies. One available opportunity is for CDBG funding related to COVID-19. There is a letter of interest related to telework expenses that the County has incurred and also telemedicine expenses that Augusta Health has incurred. The grant funding requires two public hearings to provide information. The discussion at this meeting will count as one hearing and then if qualified, there will be a more formal public hearing for citizens to speak.
- 3) Mr. Fitzgerald gave the Board an update on the 2020 Census. Augusta County ranks 23 out of 125 localities in Virginia for a response rate. There was a concern with the Craigsville area and the low response rate. The census was set to close on July 31, but due to the pandemic, the deadline has been extended to October 31, 2020. There are grants available for outreach. The census is hiring positions to meet their recruitment goals.
- 4) Candy Hensley has been assigned the task of leading a team to re-opening the Government Center. A draft plan has been created. The County will take a phased approach at opening the building. The current plan is to re-open at least one set of doors on June 1. The number of people in the building will be limited. There are safety measures being taken at each counter to ensure proper social distancing. Hand sanitizing stations will be available at each entrance. Wearing masks by staff and the public is recommended, but optional. When phase 2 is, entered staff will consider opening playgrounds, pools, campgrounds and shelters, activities can be scheduled through Parks & Recreation and meetings may be held with fifty people or less.

MATTERS TO BE PRESENTED BY STAFF (CONT'D)

May 13, 2020, at 7:00 p.m.

- 5) The State will be allocating funding from the CARES Act in the amount of \$6.5 million for Augusta County. The funding should be received approximately June 1. The funding can only be used for COVID-19 expenses. It cannot be used to supplement revenue losses. An affidavit has to be signed verifying what the money was used for. Expenses have been tracked to this point and plans are in place for eligible expenses coming up.

.....

CLOSED SESSION

On motion of Ms. Carter, seconded by Mr. Shull, the Board went into closed session pursuant to:

- (1) **the personnel exemption under Virginia Code § 2.2-3711(A)(1)** [discussion, consideration or interviews of (a) prospective candidates for employment, or (b) assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific employees]:
 - a) Boards and Commissions: Youth Commission, Economic Development Authority, Ag & Forestal Dist., Planning Commission, Shenandoah Workforce Development

- (2) **the real property exemption under Virginia Code § 2.2-3711(A)(3)** [discussion of the acquisition for a public purpose, or disposition, of real property]:
 - a) Ladd Elementary School

- (3) **the economic development exemption under Virginia Code § 2.2-3711(A)(5)** [discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of its interest in locating or expanding its facilities in the county]:
 - a) Proposed office space, flex space, storage facilities, manufacturing facilities, utility and mixed use development.

On motion of Mr. Shull, seconded by Ms. Carter, the Board came out of Closed Session.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven
 Seaton and Morelli
 Nays: None

Motion carried.

.....

The Chairman advised that each member is required to certify that to the best of their knowledge during the closed session only the following was discussed:

Public business matters lawfully exempted from statutory open meeting requirements, and

- 2. Only such public business matters identified in the motion to convene the executive session.

The Chairman asked if there is any Board member who cannot so certify.

CLOSED SESSION (CONT'D)

Hearing none, the Chairman called upon the County Administrator/ Clerk of the Board to

May 13, 2020, at 7:00 p.m.

call the roll noting members of the Board who approve the certification shall answer AYE and those who cannot shall answer NAY.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven
Seaton and Morelli
Nays: None

Motion carried.

The Chairman authorized the County Administrator/Clerk of the Board to record this certification in the minutes.

.....

Ms. Carter moved, seconded by Mr. Shull, that the Board authorize Mr. Fitzgerald to sign the confidentiality agreement as discussed in Closed Session.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven
Seaton and Morelli
Nays: None

Motion carried.

Mr. Morelli moved, seconded by Mr. Shull, that the Board appoint Carolyn Bragg to serve on the Planning Commission. Effective July 1, 2020 and to expire on June 30, 2024.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven
Seaton and Morelli
Nays: None

Motion carried.

.....

ADJOURNMENT

There being no other business to come before the Board, Dr. Seaton moved, seconded by Mr. Morelli that the Board adjourn subject to call of the Chairman.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven
Seaton and Morelli
Nays: None

Motion carried.

Chairman

County Administrator

Staff Briefing Meeting, Tuesday, May 26, 2020, 1:30 p.m., Government Center, Verona, VA.

PRESENT: Gerald Garber, Chairman
Pam L. Carter, Vice-Chair
Butch Wells
Michael L. Shull
Scott Seaton
Jeffrey Slaven
Steven Morelli
Timothy K. Fitzgerald, County Administrator
Jennifer M. Whetzel, Deputy County Administrator
John Wilkinson, Director of Community Development
Leslie Tate, Senior Planner
Misty Cook, Finance Director
James Benkahla, County Attorney

VIRGINIA: At an adjourned meeting of the Augusta County Board of Supervisors held on Tuesday, May 26, 2020, at 1:30 p.m., at the Government Center, Verona, Virginia, and in the 244th year of the Commonwealth....

.....

ECONOMIC DEVELOPMENT

Rebecca Castle, Director of Economic Development, discussed the Economic Development monthly report of April 2020.

The Board accepted the monthly report as information.

.....

MILL PLACE COVENANTS

The Board received a presentation by Lisa Hawkins on the proposed revisions to the covenants.

The Board accepted the report as information.

.....

FIRE AND RESCUE

- 1) David Nichols, Fire Chief, discussed the Fire and Rescue monthly report of April 2020.

The Board accepted the report as information.

- 2) Mr. Nichols discussed the Self Contained Breathing Apparatus Plan for replacement.

The Board authorized placing on the May 27, 2020 regular meeting agenda.

.....

May 26, 2020, at 1:30 p.m.

LIVESTOCK CLAIM

The Board discussed a claim filed by Mary and Randolph Covington in the amount of \$394.00.

Funding Source: Livestock Reimbursement Fund 35010-5802 \$394.00

The Board authorized placing on the May 27, 2020 regular meeting agenda.

.....

HAZMAT EMERGENCY RESPONSE PLAN

Donna Good, Director of ECC, discussed the update and adoption of the Staunton-Augusta-Waynesboro HAZMAT Emergency Response Plan.

The Board accepted the report as information.

.....

CDBG GRANT OPPORTUNITY – COVID19

Jennifer Whetzel, Deputy County Administrator, discussed the CDBG Grant opportunity in regards to COVID19.

The Board accepted the report as information.

.....

UTILITY SCALE SOLAR COMMITTEE

Leslie Tate discussed the results and requested direction for amendments to the Comprehensive Plan and the ordinance.

The Board accepted the report as information and recommended scheduling a special worksession to discuss.

.....

SMART SCALE PROJECTS

Ms. Tate discussed Round 4 pre-applications incorporation into the Comprehensive Plan.

The Board accepted the report as information and directed Staff to take the projects to the Planning Commission to be included in the Comprehensive Plan.

.....

WAIVERS

Ms. Tate discussed a parking waiver request for William Park's affordable senior apartments.

The Board authorized placing on the May 27, 2020 regular meeting agenda.

.....

May 26, 2020, at 1:30 p.m.

MATTERS TO BE PRESENTED BY THE BOARD

Sheriff's tactical vehicle in the amount of \$409,553.10 which includes a 10% contingency.

South River	\$187,276.55
Beverley Manor	\$187,276.55
North River	\$ 25,000.00
Middle River	\$10,000.00

The Board authorized placing on the May 27, 2020 regular meeting agenda.

MATTERS TO BE PRESENTED BY STAFF

Mr. Fitzgerald discussed the following:

- 1) Re-opening plan for the Government Center. Re-open date to the public is June 1, 2020.
- 2) Request permission to advertise for public hearing updating Courthouse Security Fees from \$5.00 to \$20.00 per State code effective July 1, 2020.
- 3) Dr. Kornegay will give a COVID-19 update at Wednesday's Board of Supervisors meeting.
- 4) Ms. Whetzel will be sending the Board an email with training information. This training is required by State code.

Chairman

County Administrator

