AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MONTGOMERY, VIRGINIA HELD ON THE 9th DAY OF JUNE, 2014 AT 6:30 P.M. IN THE BOARD CHAMBERS, MONTGOMERY COUNTY GOVERNMENT CENTER, 755 ROANOKE STREET, CHRISTIANSBURG, VIRGINIA:

ORD-FY-14-22
AN ORDINANCE ESTABLISHING THE MONTGOMERY COUNTY VIRGINIA STORMWATER ORDINANCE SECTIONS 8-70 THROUGH 8-85 OF THE CODE OF THE COUNTY OF MONTGOMERY BY CREATING STORMWATER MANAGEMENT REQUIREMENTS BY PROVIDING A FRAMEWORK FOR THE ADMINISTRATION, IMPLEMENTATION AND ENFORCEMENT OF THE PROVISIONS OF THE VIRGINIA STORMWATER ACT AND THE INTEGRATION OF MONTGOMERY COUNTY'S STORMWATER REQUIREMENTS WITH THE COUNTY'S EROSION AND SEDIMENT CONTROL, FLOOD INSURANCE AND FLOOD PLAIN MANAGEMENT

On a motion by Matthew R. Gabriele, seconded by M. Todd King and carried unanimously,

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia, as follows:

Sec. 8-70 PURPOSE AND AUTHORITY. (9VAC25-870-20; 62.1-44.15:27)

(a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of Montgomery County and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced. This ordinance provides the framework for the administration, implementation, and enforcement of the provisions of the Virginia Stormwater Management Act and delineates the procedures and requirements to be followed in connection with permits issued by the local VSMP Authority, Montgomery County.

(b) This ordinance is adopted pursuant to Virginia Code §62.1-44.15:27, as part of an initiative to integrate Montgomery County's Stormwater requirements with its erosion and sediment control, flood insurance and flood plain management requirements into a unified stormwater program. This unified 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.

Sec. 8-71 DEFINITIONS. (9VAC25-870-10)

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"*Administrator*" means the VSMP authority including the County staff person or department responsible for administering the VSMP on behalf of the locality. The Montgomery County Board of Supervisors hereby designates the County Administrator or their designee as the Administrator of the Virginia Stormwater Management Program.

"*Administrative Guidance Manual*" means the documentation of policies and procedures for documentation and calculations verifying compliance with the water quality and quantity requirements review and appeal of Stormwater Pollution Prevention Plans and Stormwater Management Plans, site inspections, obtaining and releasing bonds, reporting and record keeping, and compile a strategies for reviews, enforcement and long term maintenance and inspection programs.

"*Agreement in Lieu of a Stormwater Management Plan*" means a contract between the County and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the Stormwater Management Program for the construction of a single-family residence; such contract may be executed by the County in lieu of a Stormwater Management Plan.

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

"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.

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

"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" 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" means County of Montgomery.

"Department" means the Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

"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.

"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 8-72 (b) of this Ordinance.

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

"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" means the owner or operator of any facility or activity subject to regulation under this Ordinance.

"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 if such statement is required has been provided by the Department.

"Permittee" means the person to whom the VSMP Authority Permit is issued.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

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

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"State" means the Commonwealth of Virginia.

"State Board" means the Virginia State Water Control Board.

"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, if such permit is required, 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" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

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

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

"Stormwater management plan" means a document(s) containing material describing methods for complying with the requirements of Section 8-75 of this Ordinance.

"Stormwater Pollution Prevention Plan" or "*SWPPP*" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, 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" means the same as defined in Chapter 8, Article IV Subdivisions of the Code of the County of Montgomery, Virginia.

"Total maximum daily load" or *"TMDL"* 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 trade-offs.

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

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

"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"* means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

Sec. 8-72 STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.

(a) Except as provided herein, a person shall not conduct any land-disturbing activity until he or she has submitted a permit application to the Administrator that includes a State VSMP permit registration statement if such statement is required and a Stormwater management plan or an executed agreement in lieu of a Stormwater management plan and has obtained a VSMP authority permit from the Administrator in accordance with the provisions of this Ordinance to begin land disturbance.

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

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

(2) Clearing of lands 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, contourcultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;

(3) 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;

(4) Land disturbing activities that disturb less than one acre of land area except for land disturbing activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;

(5) Discharges to a sanitary sewer or a combined sewer system;

(6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

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

(8) 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.

Sec. 8-73 STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.

(a) Pursuant to §62.1-44.15:27 of the Code of Virginia, Montgomery County hereby establishes a Virginia stormwater management program 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 Section 8-70 of this Ordinance. The Montgomery County Board of Supervisors hereby designates the County Administrator or their designee as the Administrator of the Virginia Stormwater Management Program.

(b) Pursuant to §62.1-44.15:28 7 of the Code of Virginia, the County must ensure the stormwater management plans for residential, commercial or industrial subdivisions are approved and govern the development of individual parcels within that plan, throughout the development life even if ownership changes.

(c) Pursuant to §62.1-44.15:28 8 of the Code of Virginia, a general permit statement is not required for detached single-family home construction within or outside of common plan of development or sale with a land-disturbing activity less than five (5) acres, however such projects must adhere to the requirements of the general permit.

(d) An agreement in lieu of a stormwater management plan may be granted by the Administrator for detached single-family home construction within or outside of common plan of development or sale with a land-disturbing activity less than five (5) acres; however such projects must comply with the requirements of the general permit.

(e) No VSMP authority permit shall be issued by the Administrator until an executed agreement in lieu of a stormwater management plan is provided and/or 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 a statement is required;
(2) An erosion and sediment control plan approved in accordance with the Montgomery County Erosion and Sediment Control Ordinance Chapter 8, Article III of this Code; and
(3) A stormwater management plan that meets the requirements of Section 8-75 of this Ordinance, or an executed agreement in lieu of a plan as provided for in Section 8-73(d) of this Ordinance.
(4) Other requirements as set forth in Section 9VAC25-880-70 of the general permit.

(f) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained, if such permit is required.

(g) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 8-84, are received, and a reasonable performance bond required pursuant to Section 8-85 of this Ordinance has been submitted.

(h) 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.

(i) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

Sec. 8-74 STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

(a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54, including, but not limited to, an erosion and sediment control plan, stormwater management plan, pollution prevention plan and additional control measures necessary to address a TMDL, and must also comply with the requirements and general information set forth in Section

9VAC25-880-70 of the general permit.

(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 at 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.

Sec. 8-75 STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

(a) A Stormwater Management Plan shall be developed and submitted to the VSMP Authority. The Stormwater management plan shall be implemented as approved or modified by the VSMP Authority and shall be developed in accordance with the following:

(1) A stormwater management plan for a land disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.
(2) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(b) The Stormwater management plan shall include the following information and as required by the VSMP Permit Regulations (9VAC25-870-55) and the Administrative Guidance Manual:

(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 postdevelopment drainage areas;
(2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
(3) A narrative that includes a description of current site conditions and final site conditions;
(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 and a note that states the stormwater management meets the requirements set forth in the VSMP Permit Regulations (9VAC25-870-55) and the Administrative Guidance Manual;

(5) Information on the proposed stormwater management facilities, including:
   (i) The type of facilities;
   (ii) Location, including geographic coordinates;
   (iii) Acres treated; and
   (iv) The surface waters 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 Section 8-78 of this Ordinance and the Administrative Guidance Manual.
(8) A map or maps of the site that depicts the topography of the site and includes:
   (i) All contributing drainage areas;
   (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
   (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
   (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
   (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
   (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
   (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
   (viii) 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.

(c) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 8-78 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability 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 engineer, architect, surveyor or landscape architect 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.

(1) If Agreement in lieu of a stormwater management plan is executed, a stormwater pollution prevention plan is still required; however, the Administrator may waive the requirement of the plan to be signed and sealed by a professional engineer, architect, surveyor or landscape architect 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 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 engineer, architect, surveyor or landscape architect registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

(1) If Agreement in lieu of a stormwater management plan is executed, a construction record drawing is still required; however, the Administrator may waive the certification by a professional engineer, architect, surveyor or landscape architect 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.

Sec. 8-76 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 as required by 9VAC25-870-56 to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;
(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
(4) Soaps or solvents used in vehicle and equipment washing.

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

Sec. 8-77 REVIEW OF STORMWATER MANAGEMENT PLAN.

(a) The Administrator or any duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

(1) The Administrator shall determine the completeness of a plan in accordance with Section 8-75 of 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.
(2) The Administrator shall have an additional 60 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 subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
(3) For plans not approved by the Administrator, all comments shall be addressed by the applicant within 180 calendar days. Plans that are not resubmitted with this time period will be subject to a new application fee.
(4) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
(5) 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 and the Administrative Guidance Manual.
(6) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.

(b) 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.

(c) 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 8-79 (b).

Sec.8-78 TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES; GRANDFATHERING.

For technical criteria, adhere to the technical criteria provisions of the Regulations as shown in subsection (a) below. Such State technical criteria or more stringent standards maybe enforced through this Ordinance as amended.

(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 9VAC25-870-30 [applicability]; 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]; 9VAC25-870-85 [stormwater management impoundment structures or facilities], and 9VAC25-870-92 [comprehensive Stormwater management plans], which shall apply to all land disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Section 8-78 (b) of the technical criteria for regulated land disturbing activities set forth in Part II C of the Regulations, as amended including 9VAC25-870-93 through 9VAC25-870-99.

(b) Any land-disturbing activity shall be considered grandfathered by the Administrator and shall be subject to the technical criteria of Part II C of the Regulations provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the Administrator to be equivalent thereto (i) was approved by the County prior to July 1, 2012., (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with Part II C technical criteria of the Regulations and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;
(2) A state permit has not been issued prior to July 1, 2014, and
(3) Land disturbance did not commence prior to July 1, 2014.

(c) Locality, state and federal projects shall be considered grandfathered by the Administrator and shall be subject to the technical criteria of Part II C of the Regulations provided:

(1) There has been an obligation of locality, state or federal funding in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;
(2) A State permit has not been issued prior to July 1, 2014; and
(3) Land disturbance did not commence prior to July 1, 2014.

(d) Land disturbing activities grandfathered under subsections (b) and (c) above shall remain subject to the technical criteria of 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 any new technical criteria adopted by the State Board.

(e) 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 II C of the Regulations.

(f) 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 9VAC-25-870-69 have been considered and found not available.

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

Sec. 8-79 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 prior to general permit termination, if such a permit is required, or earlier as required by the Administrator 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; and
(5) Be enforceable by all appropriate governmental parties.

(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 Section 8-79, 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 or any duly authorized agent of the Administrator.

Sec. 8-80 MONITORING AND INSPECTIONS.

(a) The Administrator or any duly authorized agent of the Administrator shall inspect the land-disturbing activity during construction for:

(1) Compliance with the approved erosion and sediment control plan;
(2) Compliance with the approved stormwater management plan;
(3) Development, updating, and implementation of a pollution prevention plan; and
(4) Development and implementation of any additional control measures necessary to address a TMDL.

(b) The Administrator or any duly authorized agent of 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. In the event the Administrator, or his agent, shall be denied access to the property, the Administrator may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this ordinance has occurred, request that the magistrate or court grant the Administrator an inspection warrant to enable the Administrator or agent to enter the property for the purpose of determining whether a violation of this Ordinance exists. The Administrator shall make a reasonable effort to obtain consent from the Owner or occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the Administrator access to any property after obtaining an inspection warrant from a magistrate or a court of competent jurisdiction for the inspection of such property. Nothing herein shall be construed to authorize the Administrator to enter or inspect the interior portions of any dwelling or structure situated on such property unless that inspection be reasonably necessary and directly related to verifying the presence and character of a stormwater control mitigation system or control measure that the Owner of the property claims to be installed therein.

(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, and subject to provisions therein regarding protection of specified confidential information, 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 and the recorded maintenance agreement shall be conducted by the Owner and at the Owner’s cost pursuant to the Locality's adopted and State Board approved inspection program, and shall occur within the minimum frequencies shown in table 8-80-1 following approval of the final construction record report for each stormwater facility.

Table 8-80-1

BMP Classification	BMP Type	Minimum Inspection Schedule	Notes
1	Rooftop Disconnection	Every 5 Years	Owner shall inspect and provide documentation as per the requirements found on the Virginia Stormwater BMP Clearinghouse Website and the Administrative Guidance Manual for BMPs within classification 2, 3, and 4. The County of Montgomery shall inspect all BMPs every 5 years.
1	Sheetflow to Vegetated Filter or Conserved Open Space	Every 5 Years	
1	Grass Channel	Every 5 Years	
1	Soil Amendments	Every 5 Years	
2	Permeable Pavement	Annually	
2	Infiltration	Annually	
2	Bioretention	Annually	
2	Dry Swale	Annually	
2	Wet Swale	Annually	
2	Filtering Practice	Annually	
2	Constructed Wetland	Annually	
2	Wet Pond	Annually	
2	Extended Detention	Annually	
3	Vegetated Roof	Twice per year (Spring/Fall)	
3	Rainwater Harvesting	Twice per year (Spring/Fall)	
4	Manufactured/ Other BMP	Yearly or per manufacturer recommendations, whichever is more frequent.	Owner shall inspect and provide documentation according to manufacturer's guidelines and the Administrative Guidance Manual.

(f) The owner shall furnish to the Administrator an inspection report for BMPs within classifications 2, 3, and 4 as provided in Table 8-80-1 prepared by a qualified inspector within the timeframe listed in Table 8-80-1. This report shall include, but not be limited to, the items listed in Table 8-80-1, current photographs of the BMP, and a summary of the current BMP condition and any recommendations for improvements, if necessary.

(g) Qualified inspection personnel include professional engineer, architect, landscape architect, or land surveyor registered in the Commonwealth of Virginia or project inspector for SWM or combined administrator for SWM who have met the certification requirements of 9VAC25-850-50.

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

Sec. 8-81 HEARINGS

(a) Any permit applicant or permittee, or person subject to Ordinance requirements, aggrieved by any action of the County taken without a formal hearing, or by inaction of the County, may demand in writing a formal hearing by the Building Code of Appeals causing such grievance, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.

(b) The hearings held under this Section shall be conducted by the Building Code of Appeals at a regular or special meeting of the Building Code of Appeals, or by at least one member of the Building Code of Appeals designated by the Building Code of Appeals to conduct such hearings on behalf of the Building Code of Appeals at any other time and place authorized by the Building Code of Appeals.

(c) A verbatim record of the proceedings of such hearings shall be taken and filed with the Building Code of Appeals. Depositions may be taken and read as in actions at law.

(d) The Building Code of Appeals or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Building Code of Appeals, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Sec. 8-82 APPEALS

Appeals to decisions made by the Building Code of Appeals are subject to judicial review by the Montgomery 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.

Sec. 8-83 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 be issued in accordance with the Administrative Guidance Manual. 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 8-83 (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 Administrative Guidance Manual.

(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 Montgomery County Circuit Court by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(d) Any person who violates any 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:

(i) No state permit registration;
(ii) No SWPPP;
(iii) Incomplete SWPPP;
(iv) SWPPP not available for review;
(v) No approved erosion and sediment control plan;
(vi) Failure to install stormwater BMPs or erosion and sediment controls;
(vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
(viii) Operational deficiencies;
(ix) Failure to conduct required inspections;
(x) Incomplete, improper, or missed inspections; and
(xi) Discharges not in compliance with the requirements of Section 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 Montgomery 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.

Sec. 8-84 FEES

(a) Fees to cover costs associated with implementation of a VSMP related to a detached single-family home construction within or outside of common plan of development or sale with a land-disturbing activity less than five (5) acres. 50% of the applicable fees designated to the Administrator paid by the Applicant to the Administrator at the initial plan submittal. Prior to permit issuance, the remaining fee shall be paid by the Applicant to the Administrator.

Table 8-84A Land Disturbance Permit Fees For Detached Single-Family Home Construction Within Or Outside Of Common Plan Of Development Or Sale With A Land-Disturbing Activity Less Than Five (5) Acres

Fee type	Total Fee	VSMP Authority (Administrator) portion	Department (DEQ) portion
General / Stormwater Management - Detached Single-Family Home Construction (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	$209	$209	$0
General / Stormwater Management - Detached Single-Family Home Construction (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)	$209	$209	$0

(b) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall imposed in accordance with the VSMP Permit Regulations 9VAC25-870-820 and as per the fee schedule provided below in Table 8-84B. 50% of the applicable fees designated to the Administrator paid by the Applicant to the Administrator at the initial plan submittal. Prior to permit issuance, the remaining fee shall be paid by the Applicant to the Administrator. The Administrator shall on a regular basis, as agreed to by the Department, shall remit the Department portion of the fee to the Department.

Table 8-84B Land Disturbance Permit Fees for the General Permit for Discharges of Stormwater from Construction Activities

Fee type	Total Fee	VSMP Authority (Administrator) portion	Department (DEQ) portion
General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	$290	$209	$81
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	$1944	$756
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	$2448	$952
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	$3,240	$1,260
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	$4,392	$1,708
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	$6,912	$2,688

(c) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with the VSMP Permit Regulations 9VAC25-870-825 and as per the fee schedule provided below in Table 8-84C and shall be paid directly to the Administrator.

Table 8-84C Fees for the Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities

Type of Permit	VSMP Authority (Administrator) Fee Amount
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
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
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
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
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
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

If the general permit modifications result in changes to stormwater management plans that require additional review by Montgomery County, such reviews shall be subject to the fees set out in the VSMP Permit Regulations 9VAC25-870-825 and the fee schedules provided above. 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 the VSMP Permit Regulations 9VAC25-870-820 and as per the fee schedule provided in Table 8-84B. These fees shall be paid directly to the Administrator.

(d) The annual permit maintenance fees shall be imposed in accordance with the VSMP Permit Regulations 9VAC25-870-830 and as per the fee schedule provided below in Table 8-84D, 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.

Table 8-84D Annual Maintenance Fees for the General Permit for Discharges of Stormwater from Construction Activities

Type of Permit	**VSMP Authority (Administrator) Fee Amount**
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
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
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
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
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
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 Montgomery 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.

(e) The fees set forth in Subsections (a) through (d) 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 the Department for an Individual Permit for Discharges of Stormwater From Construction Activities.
(4) Permit and permit coverage maintenance fees outlined under Section 8-84 (d) may apply to each general permit holder.

(f) No general permit application fees will be assessed to:

(1) Applicants who request a permit for a detached single-family home construction within or outside of common plan of development or sale with a land-disturbing activity less than five (5) acres.
(2) Permittees who request minor modifications to general permits as defined in Section 8-71 of this Ordinance. 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.
(3) Permittees whose general permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

(g) 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. Montgomery County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

Sec. 8-85 Performance Bond (9VAC24-870-104.D)

Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County Attorney and Administrators, to ensure that measures could be taken by the County at the Applicant's expense should applicant fail, after

proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the County takes such action upon such failure by the Applicant, the County may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

The vote on the forgoing ordinance was as follows:

AYE	NAY	ABSENT
Matthew R. Gabriele	None	Christopher A. Tuck
Gary D. Creed		
Annette S. Perkins		
M. Todd King		
Mary W. Biggs		
William H. Brown		

ATTEST: F. Craig Meadows
F. Craig Meadows
County Administrator