

ORDINANCE NO. 09-17(1)

AN ORDINANCE TO AMEND CHAPTER 17, WATER PROTECTION, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA, BY AMENDING ARTICLE II, EROSION AND SEDIMENT CONTROL, AND ARTICLE III, STORMWATER MANAGEMENT AND WATER QUALITY

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 17, Water Protection, Article II, Erosion and Sediment Control, and Article III, Stormwater Management and Water Quality, are amended and reordained as follows:

By Amending:

Sec. 17-203	Erosion and sediment control plan
Sec. 17-204	Review and approval of erosion and sediment control plan
Sec. 17-207	Issuance of permit; surety
Sec. 17-304	Review and approval of stormwater management/BMP plan
Sec. 17-306	Issuance of permit; surety

Chapter 17. Water Protection

Article II. Erosion and Sediment Control

Sec. 17-203 Erosion and sediment control plan.

Except as provided in section 17-205, each owner subject to this article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

A. The owner shall submit a completed application on an application form provided by the program authority, the fee required by section 17-209, an erosion and sediment control plan that satisfies the requirements of paragraphs (B) and (C), and a certification stating that all requirements of the approved plan will be complied with.

B. The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this article. The plan shall be in accordance with the applicable provisions of the handbook, including the criteria, techniques and methods set forth in 4 VAC 50-30-40. The plan shall identify the person holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

C. The program authority may require additional information as may be necessary for a complete review of the plan.

D. In lieu of paragraphs (A), (B) and (C), if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan approved by the Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation Board. The owner shall notify the program authority of such plan approval by such board.

E. If land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of a plan shall be the responsibility of the owner.

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

State law reference--Va. Code § 10.1-563.

Sec. 17-204 Review and approval of erosion and sediment control plan.

Each erosion and sediment control plan submitted pursuant to this article shall be reviewed and approved as provided herein:

- A. The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 17-203 and all other requirements of this article.
- B. During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved. The program authority may also consider and act on a variance request under the following criteria: (i) the owner shall explain in writing the reasons for requesting the variance; and (ii) the variance may be approved if the program authority determines that the approved plan, with the variance and any associated conditions of approval, would protect off-site properties and resources from damage to the same extent or better than if the variance was not granted.
- C. Except as provided in paragraph (E), the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date the complete application was received by the program authority. The decision of the program authority shall be based on the plan's compliance with the requirements of this article. The decision shall be in writing and shall be served by first class mail to the address provided by the owner in the application for approval of the plan or by personal delivery to the owner. The date of the decision shall be either the date that it is deposited for mailing or the date that it is personally delivered to the owner. If the plan is disapproved, the reasons for disapproval shall be stated in the writing.
- D. If the program authority fails to act on the plan within forty-five (45) days from the date the application was received by the program authority, the plan shall be deemed approved.
- E. If the owner is required to obtain approval of a site plan or plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this article, and the program authority determines that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:
1. to correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this chapter or by accident, act of God or other cause beyond the control of the owner; provided, that the activity proposed shall be strictly limited to the correction of such condition;
 2. to clear and grub stumps and other activity directly related to the selective cutting of trees, as permitted by law;
 3. to install underground public utility mains, interceptors, transmission lines and trunk lines for which plans have been previously approved by the operating utility and approved by the county as being substantially in accord with the comprehensive plan, if necessary;
 4. to fill earth with spoils obtained from grading, excavation or other lawful earth disturbing activity;

5. to clear, grade, fill or engage in similar related activity for the temporary storage of earth, equipment and materials, and to construct temporary access roads; provided, that in each case, the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours. The return to previous condition shall occur within thirty (30) days of the completion of the activity or temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to the activity, whichever period shall be shorter; or

6. to establish borrow, fill or waste areas in accordance with sections 5.1.28 and 10.2.1.18 of the zoning ordinance.

F. An application for an erosion and sediment control plan that requires modifications, terms, or conditions to be included in order for it to be approved shall be deemed to be withdrawn if the owner fails to submit a revised plan addressing the omitted modifications, terms or conditions within six (6) months after the owner is informed of the omitted information as provided under paragraph (B).

G. An approved erosion and sediment control plan shall be void if the owner fails to obtain a grading, building or other permit for activities involving land disturbing activities within one (1) year after the date of the approval.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-12, 2-11-98; Code 1988, §§ 7-5, 19.3-12; Ord. 98-A(1), 8-5-98; Ord. 08-17(3), 8-6-08; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code § 10.1-563.

Sec. 17-207 Issuance of permit; surety.

A grading, building or other permit for activities involving land disturbing activities may be issued by a permit-issuing department only as provided herein:

A. The owner shall submit with his application for such permit an erosion and sediment control plan, submitted for review and approval pursuant to this article, or an approved and valid erosion and sediment control plan and certification that the plan will be followed. The permit-issuing department shall not issue a permit until an approved and valid erosion and sediment control plan and certification are submitted.

B. Each permit shall also be subject to the following:

1. The permitted land disturbing activity shall be deemed to have commenced on the date the permit was issued, provided that the program authority may establish another date of commencement based on documentation submitted by the owner that clearly demonstrates that the land disturbing activity commenced on that date.

2. Permanent vegetation shall be installed on all denuded areas within nine (9) months after the date the land disturbing activity commenced, except for areas that the program authority finds are necessary parts of the construction that are subject to an active building permit and areas where erosion is prevented by a non-erosive surface. For the purposes of this section, a "non-erosive surface" includes, but is not limited to, roadways and sidewalks covered by gravel, asphalt pavement, or concrete; trails or paths covered by gravel, stone dust, or mulch; buildings and other permanent structures; and such other surfaces that the program authority determines would adequately provide a permanent barrier to erosion.

3. The time limit for installing permanent vegetation as required by paragraph (B)(2) may be extended by either the program authority or the board of supervisors, or both, as follows:

a. The program authority may extend the time limit for installing permanent vegetation up to an additional six (6) months, provided the owner submits a written request to the program

authority no less than one (1) month prior to the deadline for installing the permanent vegetation. The program authority may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has effectively controlled erosion and sedimentation on the property during the land disturbing activity. In granting an extension, the program authority may impose reasonable conditions.

b. The board of supervisors may extend the time limit for installing permanent vegetation for duration it determines to be appropriate, provided the owner submits a written request to the clerk of the board of supervisors no less than two (2) months prior to the deadline for installing the permanent vegetation. The program authority shall provide its opinion to the board as to the condition of the property with respect to compliance with this chapter and an estimate of the minimum time needed to complete grading and install permanent vegetation for the land disturbance covered by this permit. The board may grant the extension if it finds that: (i) the additional time is necessary due to factors beyond the control of the owner; (ii) the owner had made good faith efforts to comply with the time limit; and (iii) the owner has plans to effectively control or has effectively controlled erosion and sedimentation on the property during the land disturbing activity. In granting an extension, the board shall set a time limit and may impose other reasonable conditions.

4. An application to amend the erosion and sediment control plan shall not extend the time limit for installing permanent vegetation authorized by paragraph (B)(3).

5. The installation of permanent vegetation required by paragraph (B)(2) shall be required only for those land disturbing activities that are subject to an erosion and sediment control plan approved on or after September 5, 2009, or an erosion and sediment control plan that was approved prior to that date but was renewed on or after September 5, 2009.

C. Prior to the issuance of such permit, the permit-issuing department shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the county attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 17-213, to take timely corrective action specified in the notice.

D. A bond or other surety required by the permit-issuing department pursuant to paragraph (C) shall not exceed the total of the estimated cost to initiate, maintain and repair all erosion and sediment control structures and systems, and to comply with all other terms and conditions of the erosion and sediment control plan. The amount of the bond or other surety shall be based on unit price for new public or private sector construction, including architectural engineering, inspection and project management expenses, in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ten (10) percent of the estimated cost to initiate, maintain and repair all erosion and sediment control structures and systems, and to comply with all other terms and conditions, of the erosion and sediment control plan.

E. If the program authority is required to take corrective action pursuant to section 17-213, upon the failure of the owner to do so, the county may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.

F. Within sixty (60) days of achieving adequate stabilization of the land disturbing activity in any project or section thereof, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.

G. If a bond or other surety is provided under paragraph (D) and the erosion and sediment control plan expires before the permit is issued, the permit-issuing department shall return the bond or other surety to the owner.

(§ 7-5, 6-18-75, § 7, 2-11-76, 4-21-76, 6-2-76, 7-9-80, 7-8-81, 2-11-87, 3-18-92; § 19.3-15, 2-11-98; Code 1988, §§ 7-5, 19.3-15; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code § 10.1-565.

Article III. Stormwater Management and Water Quality

Sec. 17-304 Review and approval of stormwater management/BMP plan.

Each stormwater management/BMP plan submitted pursuant to this article shall be reviewed and approved as provided herein:

A. Within ten (10) days from the receipt of an application, the program authority shall conduct a preliminary review of the application for completeness. During this period, the program authority shall either accept the application for review, which will begin the forty-five (45) day review period set forth in paragraph (D), or reject the application for incompleteness. If the program authority rejects the application because it is incomplete, it shall inform the owner in writing of the information necessary to complete the application. If the program authority accepts the application for review, it shall send an acknowledgment of the acceptance of the application to the owner.

B. The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 17-303 and all other requirements of this article.

C. During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.

D. The program authority shall approve or disapprove a plan within sixty (60) days from the date the application was accepted for review; provided that the program authority shall act on any plan that was previously approved within forty-five (45) days after the plan was revised, resubmitted to the program authority, and accepted for review. The decision of the program authority shall be based on the plan's compliance with this article. The decision shall be in writing and shall be served by first class mail to the address provided by the owner in the application for approval of the plan or by personal delivery to the owner. The date of the decision shall be either the date that it is deposited for mailing or the date that it is personally delivered to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

E. Each stormwater management/BMP plan approved by the program authority shall be subject to the following:

1. The owner shall comply with all applicable requirements of the approved plan, this article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the state stormwater management regulations set forth in 4 VAC 50-60-10 et seq.;

2. The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;

3. Land development shall be conducted only within the area specified in the approved plan;

4. The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (E)(2);

5. The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 17-323;

6. The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 17-324; and

7. The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

F. Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.1-8, 9-29-77, art. II, § 3, 7-11-90; § 19.3-28, 2-11-98; Code 1988, §§ 19.1-7, 19.1-8, 19.3-28; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code §§ 10.1-603.2, 10.1-603.8.

Sec. 17-306 Issuance of permit; surety.

A grading, building or other permit for activities involving land development may be issued by a permit-issuing department only as provided herein:

A. The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing, construction, land development and drainage will be done according to the approved plan. The permit-issuing department shall not issue a permit until an approved stormwater management/BMP plan and certification are submitted.

B. Prior to the issuance of any such permit, the permit-issuing department shall require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the county attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 17-325, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority. If approved by the program authority and the county attorney, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in conjunction with a site plan, plat, or the performance bond or surety required by section 17-207.

C. A performance bond or other surety required by the permit-issuing department pursuant to paragraph (B) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for new public or private sector construction, including architectural engineering, inspection and project management expenses, in Albemarle County, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ten (10) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.

D. If the program authority is required to take corrective action pursuant to section 17-325 upon the failure of the owner to do so, the county may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.

E. Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the county attorney.

F. If a bond or other surety is provided under paragraph (B) and the stormwater management/BMP plan expires before the permit is issued, the permit-issuing department shall return the bond or other surety to the owner.

(§ 19.1-7, 9-29-77, art. II, § 2, 7-11-90; § 19.3-30, 2-11-98; Code 1988, §§ 19.1-7, 19.3-30; Ord. 98-A(1), 8-5-98; Ord. 09-17(1), 8-5-09)

State law reference--Va. Code § 10.1-603.8.

This ordinance shall be effective on and after September 5, 2009.

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

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Boyd	_____	_____
Mr. Dorrier	_____	_____
Ms. Mallek	_____	_____
Mr. Rooker	_____	_____
Mr. Slutzky	_____	_____
Ms. Thomas	_____	_____