



County of Fairfax, Virginia

MEMORANDUM

DATE: March 5, 2018

TO: Chad Crawford, PE, Director
Department of Public Works and Environmental Services (DPWES)
Maintenance and Stormwater Management Division (MSMD)

FROM: Bruce McGranahan, PE, Director
Land Development Services (LDS)
Site Development and Inspections Division (SDID)

SUBJECT: Allowed SWM Facility Maintenance in Resource Protection Areas

Summary

Maintenance of stormwater management (SWM) facilities is necessary for their functionality. The County Code regulates work in the Resource Protection Area (RPA) but allows necessary maintenance. This memo describes that Code and allowed maintenance in the RPA.

Background

Fairfax County has implemented a Municipal Separate Storm Sewer System (MS4) plan including a program to ensure long-term operation and maintenance of SWM facilities. The program verifies SWM facilities are maintained following established schedules and guidelines as required by Private Maintenance Agreements (PMA), County ordinances, and the original design specifications. MSMD administers the post-construction SWM facility program to ensure proper maintenance is performed and that SWM facilities function as designed.

Many of these SWM facilities are in RPAs. Chapter 118 of the County Code, known as the Chesapeake Bay Preservation Ordinance (CBPO), regulates development in the RPA and exempts maintenance of certain allowed or nonconforming uses. LDS administers the CBPO and issues any required permits for work in the RPA. This memo describes that most SWM maintenance does not require RPA permits and is explicitly allowed by the Code.

CBPO and application to SWM Facilities

The CBPO designates RPAs and regulates development and redevelopment therein. Maintenance of established and non-conforming or permitted uses is specifically allowed. The CBPO sections applicable to SWM facility maintenance are summarized as follows:



- **§118-2-1:** SWM facilities permitted under §118-2-1(e) may be maintained per §118-2-1(e)(7), which states that “routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.”
- **§118-5-1(a):** Allows the continuation and maintenance of uses established in an RPA prior to November 18, 2003 as nonconforming uses, and any use established by waiver, exception, or exemption after that date. Any SWM facility established within the RPA under these criteria is a “use” under this section and so “may continue and be maintained, but may not be enlarged or expanded, unless such enlargement or expansion is approved pursuant to Article 5 or Article 6” of the CBPO.
- **§118-5-1(b):** Allows reconstruction of structures “destroyed or damaged by any casualty.” SWM facilities damaged or destroyed may be rebuilt “so long as the structure is reconstructed in the same location and creates no more impervious area than existed with the prior structure.” A SWM facility owner is entitled to rebuild a facility in the original location specified on the approved plan and continue the use in the RPA in the event of damage requiring a complete reconstruction.

Allowable SWM Facility Maintenance

Together, §§ 118-2-1(e)(7) and 118-5-1 of the CBPO authorize maintenance of SWM facilities within an RPA without further permission from LDS. However, maintenance must meet the development criteria found in §118-3-2, including that land disturbance shall be minimized and that vegetation shall be preserved to the maximum extent practicable.

Sediment and debris removal, soil stabilization, vegetation management, piping and outfall repairs, restoration of original grades, or similar activities to ensure a SWM facility functions as designed are allowable SWM maintenance activities in an RPA. Access to maintain facility components like piping and outfalls is allowable, though land disturbance must be the minimum necessary and the RPA restored per original plans following any disturbance.

Maintenance of SWM facilities does not include vegetation management outside the facility, nor any grading or additional structures not on the original facility plans. No enlargement or expansion of SWM facilities or divergence from approved plans may occur without separate permission from LDS under the CBPO.

cc: LDS-SDID Staff