

Summary of Significant Proposed Amendments to the Leesburg Town Code and the Design and Construction Standards Manual to Comply with the Virginia Stormwater Management Program Regulations

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The Town of Leesburg must make changes to the Town Code and Design and Construction Standards Manual (DCSM) to comply with the new requirements of the Virginia Stormwater Management Program (VSMP) regulations. Specifically, this includes amending Chapter 14 - Environment, Article II - Stormwater Management of the Town Code and Article 5 - Storm Drainage of the Design and Construction Standards Manual (DCSM).

A preliminary draft was submitted to the Virginia Department of Environmental Quality (DEQ) on April 1, 2013. The purpose of the preliminary draft was to demonstrate adequate progress toward making necessary changes. The Town was informed by DEQ that the preliminary draft met the standard for adequate progress. Town staff has since met with the Environmental Advisory Council (September 3rd) and the engineering and development community (December 3rd) to review proposed changes and solicit feedback and input.

The following is the current schedule for finalizing changes to the Town Code and DCSM:

- By January 15, 2014 – Submit a second draft of the amended Town Code and DCSM to DEQ. DEQ will perform a detailed review to ensure that the documents meet with the requirements of the VSMP regulations.
- By March 15th – Receive comments back from DEQ, the Town will make changes if necessary.
- March 20th – Planning Commission work session.
- April 22nd – Town Council work session.
- By May 15th – Adopt and submit final Town Code and DCSM for approval by the State Water Control Board.
- July 1st – Go-live date for new requirements.

The following is a summary of significant proposed changes to the Town Code and the DCSM.

Town Code - Chapter 14 Environment, Article II Stormwater Management

Article Section	Amended or New	Change/Requirement
State Law references	Amended	Updates references to account for the transfer of the Virginia Stormwater Management Program (VSMP) from the Virginia Soil and Water Conservation Board (Section 10.1-602.3 et seq of the Code of Virginia) to the State Water Control Board (Section 62.1-44.15:27 et seq of the Code of Virginia).
Sec. 14-19 Definitions	Amended	Adds several new definitions necessary to implement amendments to the article. Changes the term “Low impact development” to the more updated term “Environmental site design.” This change is also reflected in the DCSM.
Sec. 14-21 Authority	Amended	Simplifies and updates state enabling authority language.
Sec. 14-23 Program components (a) Elements	Amended	Adds a new stormwater program element entitled “VSMP compliance.” This is further discussed in subsection (e).
(c) Illicit discharges	Amended	Makes minor changes to the list of acceptable stormwater discharges based on changes to the Town’s MS4 permit. Eliminates from the list of allowable discharges “lawn fertilizer provided it is applied in accordance with the manufacturer’s recommendations.” This language is not found in the MS4 permit.
(e)(1) VSMP compliance elements	New	Establishes that no land-disturbing activity may take place until all requirements of the article are approved by the Town. The most significant change is that the Town is now responsible for administration of the state general construction permit process. This includes accepting the developer’s registration statement and authorizing the state to issue the general permit. These activities were previously performed by DEQ.
(e)(2) Stormwater pollution prevention plan	New	Establishes the requirement for a stormwater pollution prevention plan (SWPPP). The SWPPP is made up of two plans that are already required by the Town (erosion and sediment control plan and stormwater management plan) and a new plan – the pollution prevention plan (discussed in (f)(3)). The SWPPP does not need to be reviewed by the Town prior to issuing a general permit; however, the Town is responsible for making sure the SWPPP is being implemented during the development process.
(e)(3) Fees and bonds	New	Establishes fee and bonding requirements. The fee schedule is set by the State Water Control Board and is included in the amended Land Development Review and Inspection Fee Schedule. Bonding details are included in the Subdivision and Land Development Regulations.

Article Section	Amended or New	Change/Requirement
(e)(4) Grandfathering	New	References state grandfathering requirements. In general, these are projects that have already begun the planning process and will be subject to the existing stormwater technical criteria.
(e)(5) Monitoring and inspections	New	Establishes specific standards for the Town to inspect land-disturbing activities for all components of the SWPPP.
(e)(6) Exemptions	New	<p>Exempts several activities from the article. The Town must provide an exemption for single family residences that disturb less than one acre and are not part of a common plan of development from the requirement to obtain a state general permit and to comply with the water quality and quantity technical criteria. Any other land-disturbing activity less than one acre and not part of a common plan of development may be exempted or exempted with conditions.</p> <p>It should be noted that even if exempt, these smaller activities contribute to new pollutant loads that will need to be addressed under the Chesapeake Bay TMDL. The proposed exemptions seek to balance protecting water resources with ensuring that the new requirements do not impose an unreasonable burden on these smaller activities and Town staff.</p> <p>The draft ordinance proposes the following exemptions in accordance with state law:</p> <p>Site Plan Waiver or Standard Zoning Permit – These are very small projects and are proposed to be exempt from the new water quality and quantity requirements provided that they meet existing requirements for erosion and sediment control.</p> <p>Single Family Residences – Single family residences disturbing less than an acre and not part of a common plan of development are exempt from the new water quality and quantity requirements provided that they meet existing requirements for erosion and sediment control.</p> <p>Other Activities Less Than One Acre – All other activities under one acre and not part of a common plan of development must meet the new water quality requirements (so as not to add to the Town’s Chesapeake Bay TMDL pollutant load) and the existing erosion and sediment control requirements. However, they are exempt from having to meet the new water quantity requirements. Note that the erosion and sediment control requirements contain provisions to protect neighboring properties from adverse impacts from water quantity.</p>
(f)(3) Pollution prevention plan	New	Establishes the requirement for a pollution prevention plan (PPP). This will be included as part of the SWPPP. Generally, the PPP is intended to minimize the exposure of materials to precipitation and ensure that practices are in place to prevent pollution from wastewater, handling of fuels and lubricants, etc.

Article Section	Amended or New	Change/Requirement
(g)(1) Minimum requirements for stormwater	Amended	<p>Establishes new state-mandated technical criteria for water quality and water quantity control. This section references the state regulations rather than try to include all of the requirements in the Town Code. Given the changing nature of the regulations, this will ensure consistency and reduce the need for changes to the Town Code.</p> <p>New development will need to meet pollutant reduction standards that are equivalent to a site with 10% impervious cover, 30% turf-grass, and 60% forest cover (0.41 lbs/phosphorus/year).</p> <p>Redevelopment will need to reduce pollution from existing conditions by 10% for land disturbances under one acre and 20% for greater than one acre.</p>
(g)(2) Stormwater management plan	Amended	<p>Establishes a more detailed description of what must be included in the stormwater management plan and makes clear that the plan and technical criteria must apply to an entire common plan of development, even if the individual activity is less than one acre.</p>
(g)(3) Nutrient credit offsets	New	<p>Permits a developer to use off-site compliance options for achieving pollutant reductions for smaller projects. These situations are expressly spelled out in the Code of Virginia. Off-site options are not allowed for water quantity requirements.</p> <p>The Town has the authority to allow larger activities to utilize offsite compliance options where an onsite stormwater facility may conflict with other Town goals. This section authorizes the Director of Plan Review to establish such guidelines.</p>
(g)(4) Stormwater management plan review	New	<p>Establishes specific procedures and timeframes for Town review of the stormwater management plan. The timeframes are set by the Code of Virginia.</p>
(g)(5) Exceptions	New	<p>Establishes exceptions to the technical criteria in (g)(1). Exceptions to the water quality criteria cannot be made unless off-site options in (g)(3) have been considered and found not available. The draft also allows exceptions if implementing the regulations conflicts with the Town's flood control program.</p>
(h)(1) Stormwater management system maintenance	Amendments	<p>Makes technical adjustments to the requirement that all stormwater management facility owners must have a maintenance agreement.</p>
Sec. 14-24 Violations	Amendments	<p>Replaces existing language on penalties with enhanced language allowed by the state regulations. Fines up to \$32,500 per day per violation are possible.</p>

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Article Section	Amended or New	Change/Requirement
Sec. 14-25 Hearings	New	Establishes a process for requesting a formal hearing when a property owner is aggrieved by a decision made without a formal hearing. This process is set by the Code of Virginia.
Sec. 14-26 Appeals	New	Establishes an appeals process. Appeals of any decision made by the Director of Plan Review must be made to the Town Manager within 30 days. Decisions by the Town Manager may be appealed to the Town Council and then the circuit court. The Town has discretion under the Code of Virginia for establishing the appeals process.

Design and Construction Standards Manual - Article 5, Storm Drainage

Article Section	Amended or New	Change/Requirement
In General		<p>The primary change to the DCSM has been to remove specific stormwater requirements and calculations that are otherwise found in the Town Code, the Virginia Stormwater Management Handbook, the Virginia Stormwater BMP Clearinghouse, and other standard state and federal reference manuals. This has been done for two primary reasons. First, standards and specifications now change with greater frequency and can quickly cause the DCSM to become out-of-date. The most recent standards and specifications are easily found on-line. Second, the Town is precluded from having standards different from the Virginia Stormwater BMP Clearinghouse without review by the Virginia DEQ (different standards adopted prior to January 1, 2013 are exempt from this review process). As a result, the Town has less discretion over design standards.</p> <p>Based on the above, the amended DCSM references acceptable standards and specifications and focuses on those areas where Town specifications are different.</p>
Sec. 5-100 and Sec. 5-110	Amended	Technical changes and removal of redundant language.
Sec. 5-120	Amended	Renames from “Remarks” to “References.” Updates and expands the list of referenced materials.
Sec. 5-210	Amended	Technical changes to meet the VSMP permit regulations.
Sec. 5-210 14. Pro-Rata Share	Moved	Moves pro-rata share language to Section 5-300.
Sec. 5-220	Moved	Moves section dealing with easements to new Section 5-700. Additional easement language throughout the text has been consolidated into the new Section 5-700 as appropriate.
Sec. 5-221	Amended	Removes reference to rainfall precipitation frequency data charts included in the DCSM. NOAA peak rainfall intensity charts are updated frequently based on local rain gage data and composite charts for the Town will be updated as necessary and will now be found on the Town’s website.
Sec. 5-239 2.B.	Amended	Clarifies requirements for how hydraulic gradient will be calculated and shown.
Sec. 5-242 2.	Amended	Deletes requirement for accounting for overland relief of the 100 year storm event in open channel design.

Article Section	Amended or New	Change/Requirement
Sec. 5-300	Amended	Consolidates water quantity requirements with the water quality requirements that had been located in Section 5-600 in recognition that the VSMP permit regulations address both in a more integrated manner.
Sec. 5-310	Amended	Sets the stage for replacing stormwater criteria detail contained in Section 5-300 with references to the appropriate sections of the VSMP permit regulations.
Sec. 5-311	Replaced	Removed old Section 5-311 entitled Stormwater Management Requirements and replaces with a new section entitled Applicability. The requirements previously outlined in this section are now included by reference in the updated Section 5-310. This section now references the Town Code sections dealing with when the requirements are applicable and also the grandfathering provisions of the VSMP permit regulations.
Sec. 5-312	Amended and Merged	Merged sections entitled Rational Method and USDA-NRCS Methodology into new Design Storms and Hydrologic Methods. New section references appropriate methodology and deletes extraneous detail.
Sec. 5-320	Moved	<p>Moves general water quality performance criteria contained in old Section 5-620 into this section. As noted previously, water quality and quantity technical criteria are merged in Section 5-310. These are items adopted by the Town through the authority of the Chesapeake Bay Preservation Act. Since the Town is not subject to the Act, the Town is permitted, but not required, to adopt these requirements.</p> <p>Language is also included reiterating that unless exempt under the Town Code, all activities regardless of lot size and whether a formal VSMP permit is required must meet the water quality technical criteria.</p>
Sec. 5-321	Amended and Moved	<p>Moves language regarding the use of Low Impact Development contained in old Section 5-620 into this section. The term is also changed to the more modern Environmental Site Design. This section requires developers to demonstrate how ESD was considered in the site design and was amended to require use of the BMP Clearinghouse in designing such facilities. Additional resources are also provided for guidance in developing the written assessment. This is language above and beyond the VSMP permit regulations that was adopted as part of the Town's MS4 Program Plan.</p>
Sec. 5-322	Amended and Moved	<p>Moves language regarding the ability of the Town to impose additional requirements on hot spots contained in old Section 5-620 into this section. Makes technical and clarifying changes.</p>

Article Section	Amended or New	Change/Requirement
Sec. 5-323	Amended and Moved	Merges redundant language from old Section 5-650 and 5-620.3.H. Clarifies existing policy to require a buffer along intermittent streams in addition to perennial streams.
Sec. 5-330	Amended and Moved	Moves existing Leesburg-specific language concerning water quantity from old Section 5-311.4. Subsection 2 is deleted since it is redundant to the requirements of Town Code Section 14-23(g)(2) requiring a stormwater management plan to include the entire common plan of development.
Sec. 5-331	Amended	Specifies that on-site detention, while desirable in many cases, may cause or contribute to downstream flooding and therefore the Director may prohibit detention when identified in Town plans or by the Director as not being in the best interests of the Town.
Sec. 5-332	Amended and Moved	Technical changes and removal of redundant language to existing DCSM criteria dealing with adequate outfall.
Sec. 5-333	Amended and Moved	Moves language regarding pro-rata share program from old Section 5-210. Technical changes to ensure that the pro-rata share program complies with requirements of the VSMP program and to make it clear that nutrient offsets must be done in accordance with the Town Code.
Sec. 5-341	Amended	Removes special design criteria for Cattail Branch, Big Springs, and Sycolin Creek watersheds. Criteria for these watersheds will now be those from technical criteria from the VSMP regulations. Keeps and makes technical amendments to special design criteria for Tuscarora Creek watershed.
Sec. 5-442	Amended and Moved	Adds new language in agreement with the Code of Virginia (§62.1-44.15:33(C)) stating when the Director may preclude the onsite use of a type of stormwater management facility or require more stringent design based on a review of the stormwater plan and site-specific conditions.
Old Sec. 5-323	Deleted	Deletes old Section 5-323 dealing with design standards for detention ponds. These are now contained in the Virginia Stormwater BMP Clearinghouse.
Old Sec. 5-324	Moved	Moves old Section 5-325 Embankment Ponds to Section 5-521 since it is more aligned with dam requirements than water quantity criteria or design standards.
Old Sec. 5-326	Deleted	Deletes old Section 5-326 dealing with design standards for wet ponds. These are now contained in the Virginia Stormwater BMP Clearinghouse.
Sec. 5-342	Amended	Makes organizational amendments to this section and moves language regarding maintenance and inspection provisions to a consolidated section on maintenance and inspections (Section 5-370).

Article Section	Amended or New	Change/Requirement
Sec. 5-347	Amended	Moves easement language to new consolidated Section 5-700
Sec. 5-348	Amended	Specifies that porous pavement is allowed only if appropriate for individual site conditions. Makes organizational amendments to this section.
Sec. 5-360	Amended	Deletes most of the existing language regarding when waivers and exemptions may be granted and replaces them with reference to Section 14-23 of the Town Code. This section of the Town Code mirrors the specific requirements in the VSMP regulations as to when a waiver or exemption may be allowed.
Sec. 5-370	Amended	Provides that the maintenance and inspection plan must be approved by the Town prior to plan approval. Consolidates inspection and maintenance provisions by merging language from old Section 5-322.
Sec. 5-521	Moved	Moves old Section 5-324 Embankment Ponds to Section 5-521 since the language is more aligned with dam requirements than water quantity criteria or design standards.
Old Sec. 5-600	Deleted	Deletes old Section 5-600. This section dealt with stormwater quality control criteria and has been merged into a consolidated Section 5-300.
Sec. 5-600	Moved	Moves old Section 5-700 Inspections and Acceptance to Section 5-600. Clarifies that a maintenance agreement must be executed and a performance bond provided prior to acceptance of infrastructure by the Director.
Sec. 5-700	New	Consolidates easement requirements from throughout Article 5 into one section. Includes storm drain system language from old Section 5-220, underground detention language from Section 5-347, and vegetated buffer area language from Section 5-323. New Section 5-701 contains general easement requirements while new Section 5-702 places specific requirements in table format.