



DATE: February 10, 2020

TO: All Architects, Builders, Contractors, Developers, Engineers, Surveyors, and Property Owners

FROM: Greg Emanuel, Director, Department of Environmental Services (DES)

SUBJECT: Policy Regarding Use of Performance Bonds to Obtain Certificates of Occupancy for Land Disturbing Activities Regulated under Arlington County Code Chapter 60 (Stormwater Management Ordinance) and Arlington County Code Chapter 61 (Chesapeake Bay Preservation Ordinance)

EFFECTIVE DATE: Immediately.

BACKGROUND AND PURPOSE

Chapter 60 requires a construction record drawing, appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities (SWMFs) required by the approved Land Disturbing Activities (LDA) permit have been constructed in accordance with the approved Stormwater Management Plan (Plan).

Arlington County will not issue a Certificate of Occupancy (CO) until DES approves the 'as-built certification' for each SWMF required by the approved Plan.

Additionally, a CO also will not be issued until the final stabilization measures required by Chapter 60 and the tree and other vegetation planting requirements of Chapter 61 are satisfied.

The DES Director ("Director"), as a customer service accommodation for extenuating circumstances, may allow for the use of performance bonds to obtain a CO before SWMF as-built requirements and/or permanent stabilization and tree/vegetation planting requirements are satisfied.

The use of the performance bond tool will not be available when construction schedules or closing deadlines did not account for SWMF construction requirements and timelines.

This Policy establishes the conditions under which the Director will consider the use of performance bonds to obtain a CO.

POLICY

With sole discretion, the Director may consider requests to post performance bonds to obtain a CO before SWMF as-built requirements, final stabilization measures, and tree and other vegetation planting requirements are satisfied only under the following circumstances:

1. SWMFs required under Chapter 60 or Chapter 61

- Vegetation required for SWMFs cannot be planted because of circumstances outside the planting season (as defined in the Stormwater Manual).
- Subdivisions: where required SWMF(s) are to be installed on an 'outlot' and the sequence of construction for the outlot SWMF(s) requires final stabilization of the SWMF drainage area(s) prior to construction.

The Director will not approve the use of performance bonds for SWMFs that rely solely on infiltration due to the high failure rates of such systems at the end of construction.

2. Permanent stabilization measures required under Chapter 60

- Vegetative stabilization is unable to occur because of circumstances outside the planting season (as defined in the Stormwater Manual).
- Temporary stabilization measures must be installed—and inspected and approved by DES.

3. Tree and other planting required under Chapter 61

- Planting is unable to occur because of circumstances outside the planting season (as defined in the Stormwater Manual).

Before the Director will approve a performance bond, an amendment to the Stormwater Management Facility Maintenance and Monitoring Agreement (MMA) must be recorded to specify that the current landowner posting the bond retains the right of access and remains responsible for construction of the required SWMFs and, if applicable, planting of trees and other landscaping for the lot until DES approves the as-built certification for each SWMF.

The methodology for determining specific performance bond amounts will be set forth in the Stormwater Manual.



Greg Emanuel, Director

Department of Environmental Services