



DSC NOTICE #127
City of Virginia Beach
Planning Department
Development Services Center
November 3, 2006

Topic: Stormwater Management Facility (SWMF) Maintenance Agreements – Tips on How to Reduce Approval Times

Background: Stormwater Management Facility (SWMF) Maintenance Agreements are required for private SWM facilities. The reviews of these agreements are sometimes lengthened or delayed due to several issues. The typical issue areas are: proper person preparing the agreement, changes to the standard agreement, complete submittal package, consistent information in the title report and the agreement, up-to-date title reports, following church legal procedures, proper attestation of signatures and providing a “Schedule A” for recording.

The following suggestions or tips are provided to assist owners, developers, consultants and attorneys in preparing and submitting SWMF maintenance agreements and avoiding delays:

1. Only the owner or his/her attorney may prepare a SWMF maintenance agreement.
2. When possible, the standard SWMF maintenance agreement should be used. It is suggested that if the standard agreement is changed, approval by the City Attorney’s Office is recommended prior to submitting the agreement for review and approval. The DSC staff will assist in coordinating this effort.
3. The individual who prepares the agreement should use the DSC Checklist for Stormwater Management Facility Maintenance Agreement Package Submittal.
4. The owner identified in the title report must match the owner who signed the agreement. If the owners do not match, a current deed must be provided showing that the name of the new owner matches the person signing the agreement.
5. The signatures of all company officers, noteholders and trustees must be properly attested on the document and all signatures must be notarized.
6. The deeds of trust noted in the title report and the agreement must be the same. If the agreement does not reflect the same deed of trust, the person preparing the agreement must provide a Certificate of Satisfaction, a letter of explanation or an acceptable alternative approved by the City Attorney’s staff.
7. If the owner of the property is a religious organization (other than the Catholic or Episcopal Church), a certified copy of the court order appointing the trustees, who are authorized to execute legal documents for the organization, must accompany the original agreement. See Virginia Code Section 57-8.
8. The title reports must be up-to-date.
9. In addition to the title report, a separated “Schedule A” (legal description of the property) must be attached to the agreement for recordation purposes.

10. The SWMF maintenance agreement is considered a part of the stormwater management plan and as such, the plan must be complete and approved prior to issuing any permits for land disturbing activity. In order for the plan to be complete for the issuance of a land disturbance permit, the Agreement must be submitted, reviewed, approved, executed by all parties and recorded. Therefore, site plan release for permitting will be held until the agreement is recorded and all other “holds” are satisfied.
11. It is strongly suggested that the SWMF agreement be submitted for review with the initial submittal or by the second submittal of the site plan. This may avoid costly delays to the owner/developer/builder that can be experienced when the agreement is submitted late in the review process or after the site plan is approved.
12. The DSC Staff will be responsible for the recordation of the agreement after it has been reviewed and approved by the City Attorney’s Office.

The standard SWMF Maintenance Agreement and DSC Checklist for Stormwater Management Facility Maintenance Agreement Package Submittal are available on the City’s website (vbgov.com) under the Planning Department/DSC/Forms and Agreements. *(Specific site addresses are not provided because the City’s webpage is expected to change in the near future.)*

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