



VIRGINIA SOIL AND WATER CONSERVATION BOARD GUIDANCE DOCUMENT ON STORMWATER NONPOINT NUTRIENT OFFSETS

DRAFT

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Summary:

The purpose of this document is to provide guidance for implementing the new stormwater nonpoint nutrient offset program provisions of the Virginia Stormwater Management Act authorized by §10.1-603.8:1 of the Code of Virginia enacted during the 2009 Session of the General Assembly and to explain how the program may be utilized to address the required phosphorus load reductions of permits issued under the Virginia Stormwater Management Program [See Attachment 1 for copy of legislation: Chapter 364 of the 2009 Virginia Acts of Assembly (HB2168)].

This guidance document provides:

- Procedures for generating and selling stormwater nonpoint nutrient offsets in Virginia's Chesapeake Bay watershed tributaries;
- Procedures for purchasing offsets for use in relation to a regulated construction activity;
- Methods by which a permit issuing authority will determine whether an offset may be used;
- Definitions;
- Applications and reporting requirements; and
- Roles and responsibilities for the parties.

The Department of Conservation and Recreation will implement this program in the Chesapeake Bay Watershed in coordination with the Department of Environmental Quality (DEQ) and localities. Additional authorities regarding this program may be found in Appendix I.

Electronic Copy:

An electronic copy of this guidance in PDF format is available on the Regulatory TownHall under the Virginia Soil and Water Conservation Board at <http://townhall.virginia.gov/L/GDocs.cfm>.

36 **Contact Information:**

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38 Please contact the Department of Conservation and Recreation’s Division of Soil and Water
39 Conservation at SWMESquestions@dcr.virginia.gov or by calling (804) 786-2064 with any
40 questions regarding the application of this guidance.

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42 Questions specifically regarding the certification of offsets should be referred to the Department
43 of Environmental Quality’s Division of Water Quality Programs. Contact information may be
44 found on the Department’s nutrient trading webpage at
45 <http://www.deq.virginia.gov/vpdes/nutrienttrade.html>.

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47 **Disclaimer:**

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49 This document is guidance and sets forth standard operating procedures for the Virginia Soil and
50 Water Conservation Board, the Department of Conservation and Recreation, regulated entities,
51 offset generators and brokers, local governments, and the general public regarding
52 implementation of the stormwater nonpoint nutrient offset program. This guidance provides a
53 general interpretation of the applicable Code and Regulations but is not meant to be exhaustive
54 in nature. Each situation may differ and may require additional interpretation. Additionally,
55 stormwater nonpoint nutrient offsets not directly discussed in this guidance document or
56 applicable DEQ guidance documents may be available for consideration. Interested parties
57 should contact the appropriate DEQ and DCR personnel to discuss.

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59 **Nonpoint Nutrient Offset Program**

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61 **I. Background:**

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63 Managing stormwater from construction activities is a key component to improving water quality
64 in Virginia’s waters, along with managing pollution from sources such as agriculture, air
65 deposition, sewage treatment plants, and industrial facilities. In situations where required
66 reductions are not practicable on-site, a stormwater nutrient offset program may be a tool
67 available to assist a developer in achieving the Board’s required nutrient reductions.

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69 Specific conditions and exceptions for this program include:

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- The permit issuing authority is granted discretion whether to allow the use of offsets to meet the necessary water quality control requirements.
- Offsets shall not be utilized to address water quantity control requirements.
- Offsets may not be utilized to contravene local water quality-based limitations:
 - consistent with determinations made pursuant to subsection B of §62.1-44.19:7 (related to TMDLs developed to protect and restore water quality in impaired waters);
 - contained in a municipal separate storm sewer system (MS4) program plan approved by DCR; or
 - as otherwise may be established or approved by the Virginia Soil and Water Conservation Board.
- Stormwater nonpoint nutrient offsets may not be attained in a different tributary than the tributary in which the development project is located and where an offset is available, shall be within the same or adjacent eight digit hydrologic unit code. (See definition of “tributary” and “eight digit hydrologic unit code”)

- 85 ▪ Prior to commencement of the construction activity in accordance with the appropriate
86 state permit, all offsets must be protected in perpetuity and specified supporting
87 documents incorporated into the Stormwater Pollution Prevention Plan.
88 ▪ No permit issuing authority may grant an exception to, or waiver of, postdevelopment
89 water quality requirements in accordance with the Stormwater Management Act and
90 VSMP permit regulations unless off-site options (including offsets) have been considered
91 and found not available.
92 ▪ Upon authorization for a construction activity to acquire stormwater nonpoint nutrient
93 offsets by the permit issuing authority in accordance with Stormwater Management Act
94 and attendant regulation requirements, offsets may only be obtained from those certified
95 under the Chesapeake Bay Watershed Nutrient Exchange Program by DEQ.
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97 **II. Definitions:**

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99 Only for the purposes of this guidance, the following terms are defined as follows:
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101 "Best management practice (BMP)" or "BMP" means both structural or nonstructural practices
102 and other management practices used to prevent or reduce the pollution of surface waters and
103 groundwater systems from the impacts of construction activities. Such practices are designed in
104 accordance with standards and specifications provided on the Virginia Stormwater BMP
105 Clearinghouse (<http://www.vwrrc.vt.edu/swc/index.html>) or in the Virginia Stormwater
106 Management Handbook (http://www.dcr.virginia.gov/soil_and_water/stormwat.shtml#pubs).
107

108 "Broker" or "Offset Broker" means a person that facilitates the exchange of nutrient offsets
109 between an authorized buyer and an operational offset generating facility owner with certified
110 offsets available for acquisition.
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112 "Buyer" means a person that is considering purchasing offsets and that is seeking authority from
113 the permit issuing authority for use of a nonpoint nutrient offset to satisfy the phosphorus load
114 reductions of VSMP construction permits.
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116 "Chesapeake Bay Watershed Nutrient Credit Exchange Program" means the program
117 administered by DEQ pursuant to §62.1-44.19:12 et seq. under which the nutrient reductions of
118 an offset generating facility are certified as eligible stormwater nonpoint nutrient offsets.
119

120 "DCR" means the Virginia Department of Conservation and Recreation.
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122 "DEQ" mean the Virginia Department of Environmental Quality.
123

124 "Directly discharge to" means the direct conveyance of stormwater from a land disturbing
125 activity into state waters. For purposes of both concentrated discharges through pipes, ditches,
126 MS4s, or other conveyances and sheet flow, the direct discharge is located where the stormwater
127 first enters a state water, either on or off-site.
128

129 "Eight digit hydrologic unit code" means a watershed unit defined by the United States
130 Geological Survey and established in the most recent version of Virginia's 4th Order National
131 Watershed Boundary Dataset. Boundaries for such watershed units may be found on DCR's
132 website at <http://www.dcr.virginia.gov/lr6.shtml>.
133

134 “Impaired water” means a water contained in the current 303(d) Report on Impaired Waters in
135 Virginia published by DEQ that does not meet water quality standards and is impaired by one or
136 more pollutants.

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138 “Letter of Authorization” means a letter sent by the permit issuing authority to the buyer
139 documenting (i) the permit issuing authority’s satisfaction of the buyer’s demonstration in
140 accordance with these guidance procedures, (ii) that the offsets being proposed for use have been
141 confirmed to be secured in perpetuity, (iii) the number of pounds of phosphorus approved for
142 acquisition, and (iv) any specific requirements concerning the purchase (such as geographic
143 location constraints).

144
145 “Maximum extent practicable” or “MEP”, means thoroughly considering the use of BMPs in
146 alternative site designs in order to demonstrate to the permit issuing authority that an offset
147 should be allowed for the construction activity. To fully meet this standard, there is an
148 expectation for alternative site designs and calculations to be provided to the permit issuing
149 authority, as well as narrative discussing the options considered. MEP necessarily involves the
150 professional judgment of the buyer and his engineer in determining what is practicable and
151 appropriate for a given construction project’s requirements and site constraints. The method for
152 demonstrating MEP is more fully described in Section III -2, Step 5, of this guidance.

153
154 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise
155 known as a municipal separate storm sewer system or "MS4," including roads with drainage
156 systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm
157 drains:

- 158 1. Owned or operated by a federal, state, city, town, county, district, association, or other
159 public body, created by or pursuant to state law, having jurisdiction or delegated
160 authority for erosion and sediment control and stormwater management, or a designated
161 and approved management agency under § 208 of the CWA that discharges to surface
162 waters;
- 163 2. Designed or used for collecting or conveying stormwater;
- 164 3. That is not a combined sewer; and
- 165 4. That is not part of a publicly owned treatment works.

166
167 “Nonpoint nutrient offset” means nutrient reductions certified as nonpoint nutrient offsets under
168 the Chesapeake Bay Watershed Nutrient Exchange Program (§62.1-44.19:12 et seq.) by DEQ
169 and secured in perpetuity.

170
171 “Offset generating facility” means a property that has generated nutrient offsets which DEQ has
172 certified under the Chesapeake Bay Watershed Nutrient Exchange Program.

173
174 "Permit issuing authority" pursuant to § 10.1-603.8:1 (A) means the Virginia Soil and Water
175 Conservation Board, DCR, or a locality that is delegated authority by the Board to issue, deny,
176 revoke, terminate, or amend stormwater permits under the provisions of the Virginia Stormwater
177 Act and includes any locality that has adopted a local stormwater management program. For the
178 purposes of allowing offsets, recognized local stormwater management programs include those
179 localities located within Tidewater Virginia as defined by the Chesapeake Bay Preservation Act
180 (§ 10.1-2100 et seq.), or any locality that is partially or wholly designated as required to obtain
181 coverage under an MS4 permit under the provisions of the federal Clean Water Act. Such
182 localities serving as the permit issuing authority, when addressing offsets in accordance with this

183 guidance, shall utilize locality-wide the water quality technical criteria of the Commonwealth's
184 Stormwater Management Act and attendant regulations when conducting plan reviews and
185 require the buyer to obtain a VSMP permit, or the locality may choose to have DCR remain the
186 permit issuing authority until such time as the locality becomes a qualifying local program.
187 Additional localities may be authorized as permit issuing authorities for the purposes of allowing
188 offsets when they are approved as a qualifying local program by the Virginia Soil and Water
189 Conservation Board in accordance with §10.1-603.3.

190
191 "Person" means an individual, corporation, partnership, association, state, municipality,
192 commission, or political subdivision of a state, governmental body, any interstate body, or any
193 other legal entity.

194
195 "Post-development nonpoint nutrient runoff compliance" means that a construction activity,
196 utilizing BMP's, has developed and implemented a design that will meet the appropriate
197 phosphorus reduction limits required by state law and regulations in order to protect water
198 quality.

199
200 "Practicable" means that a buyer has considered on-site practices to the MEP in order to meet
201 post-development nonpoint nutrient runoff compliance and has demonstrated to the permit
202 issuing authority using good engineering practices that full compliance cannot be reasonably
203 attained on-site given consideration of site constraints, cost associated with potential on-site best
204 management practices, local conditions, and/or technical uncertainty of the BMPs.

205
206 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations
207 for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a
208 margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other
209 appropriate measure.

210
211 "Tributary" or "Tributaries" means those identified pursuant to §62.1-44.19:13 (the
212 Potomac/Shenandoah, Rappahannock, York, and James River Basins, and the Eastern Coastal
213 Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that drain into
214 the Chesapeake Bay).

215
216 "Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing,
217 modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing
218 and enforcing requirements pursuant to the federal Clean Water Act, the Virginia Stormwater
219 Management Act and attendant regulations, and associated Board guidance documents.

220
221 "Virginia Stormwater Management Program (VSMP) permit" means a document issued by the
222 permit-issuing authority pursuant to the Virginia Stormwater Management Act and attendant
223 regulations authorizing, under prescribed conditions, the potential or actual discharge of
224 pollutants from a point source to surface waters. Under the approved state program, a VSMP
225 permit is equivalent to a NPDES permit.

226
227 **III. Discussion: How to Gain Approval for Use of Nutrient Offsets under the VSMP**
228 **program**

229
230 **1. Determining Availability of Offsets**

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232 Nonpoint nutrient offsets must be certified under DEQ’s Chesapeake Bay Watershed Nutrient
233 Exchange Program [§10.1-603.8:1(A)]. The Department of Environmental Quality’s February
234 2005 guidance document entitled *Trading Nutrient Reductions from Nonpoint Source Best*
235 *Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural*
236 *Landowners and Your Potential Trading Partners* (the “DEQ Agricultural Lands Guidance”
237 (http://www.deq.virginia.gov/export/sites/default/vpdes/pdf/VANPSTradingManual_2-5-08.pdf)
238 is a key resource for those interested in developing stormwater nonpoint nutrient offsets in the
239 Chesapeake Bay Watershed. Additional information including a list of brokers may be found on
240 DEQ’s website at <http://www.deq.virginia.gov/vpdes/nutrienttrade.html>.

241
242 In addition to the options and procedures provided in DEQ’s guidance, §10.1-603.8:1(G)
243 specifies that stormwater nonpoint nutrient offsets must be secured in perpetuity. All offsets
244 must be placed under a conservation easement, open space easement, restrictive covenant, or
245 other instrument to ensure that the nutrient reducing offsets will remain in place in perpetuity and
246 that the offsets will be appropriately managed and monitored. An example of restrictive
247 covenants that may be modified for a specific situation is provided as Attachment 2. Perpetual
248 offset restrictions must be in place prior to the offset being sold as a stormwater nonpoint
249 nutrient offset. Drafts of such restrictive covenants shall be a component of the offset
250 certification package provided to DEQ.

251
252 Although varying offset strategies may emerge in the future, today, one of the primary
253 stormwater nonpoint nutrient offsets that may be generated in perpetuity is an offset created as a
254 result of land conversion. Examples of a potential land conversions currently allowed include
255 cropland to forest or hay to forest. DEQ may certify offsets through other means as well.

256
257 All stormwater nonpoint nutrient offsets shall be used at a 1:1 ratio (pounds of phosphorus) of
258 nonpoint nutrient offsets to the construction activity’s remaining post development nonpoint
259 nutrient runoff compliance requirement (i.e. those authorized nutrient reductions that cannot be
260 met on site) pursuant to §10.1-603.8:1(G). Although a buyer will be authorized to use a specific
261 amount of phosphorus offsets to meet the stormwater nutrient reduction requirements, §10.1-
262 603.8:1(E) specifies that in addition to the phosphorus nonpoint nutrient offsets acquired, the
263 associated ratio of nitrogen nutrient offsets at the offset generating facility shall also be retired.
264 When working with the offset broker a buyer should determine whether the broker’s offset
265 generating facility has operational status and enough phosphorous offsets and associated nitrogen
266 offsets to meet a development project’s needs. This can be documented through an “Offset
267 Availability Letter.” (See Attachment 3 for an example)

268
269 **2. Obtaining Approval for the Purchase of an Offset by a Buyer**

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271 Prior to commencement of any VSMP regulated construction activity, a potential offset buyer
272 that wishes to be authorized to purchase stormwater nonpoint nutrient offsets for a construction
273 activity shall submit a request package that will be evaluated by the permit issuing authority to
274 determine eligibility. It should be noted that the purchase of an offset will be considered only
275 after a buyer has demonstrated to the permit issuing authority that steps 1 through 5 in this
276 section have been addressed.

277
278 In accordance with this section, to be eligible for consideration to purchase a stormwater nutrient
279 offset, the buyer must make the following determinations and demonstrate compliance to the

280 satisfaction of the permit issuing authority. Failure to consider and satisfy these items will likely
281 result in a denial of the request for authorization to use stormwater nutrient offsets.
282

283 **Step 1: Determine availability of offsets.** Before seeking authorization to acquire a nonpoint
284 nutrient offset, the buyer should verify that offsets are available within allowable hydrologic unit
285 codes, and if not, then within the same tributary as the construction activity. Nonpoint nutrient
286 offsets for construction activities shall be generated in the same or adjacent eight digit hydrologic
287 unit code as defined by the United States Geological Survey as the permitted site [§10.1-
288 603.8:1(F)]. A map of these eight digit hydrologic unit codes may be found on DCR’s website at
289 <http://www.dcr.virginia.gov/lr6.shtml>. Nonpoint nutrient offsets outside the same or adjacent
290 eight digit hydrologic unit code may only be used if it is determined by the permit issuing
291 authority that no nonpoint nutrient offsets are available within the same or adjacent eight digit
292 hydrologic unit code when the permit issuing authority accepts the final site design. In such
293 cases, nonpoint nutrient offsets generated within the same tributary may be used. In no case
294 shall nonpoint nutrient offsets from another tributary be used. DEQ maintains a listing of
295 certified stormwater nonpoint nutrient offsets that may be found at
296 <http://www.deq.virginia.gov/vpdes/nutrienttrade.html>.

297
298 **Step 2: Meet state water quantity control requirements on site.** In order to minimize local
299 stream impacts and downstream flooding, the buyer shall ensure that BMPs are implemented in
300 accordance with approved stormwater plans and calculations that address water quantity controls
301 on the project site in accordance with the current state stormwater management regulations.
302

303 **Step 3: Determine if receiving waters to which there would be a direct discharge have local**
304 **water quality-based limitations that would be contravened by allowing the use of offsets.**
305 Pursuant to subsection C of §10.1-603.8:1 a permit issuing authority may not allow the use of
306 offsets when such use would be in contravention of local water quality-based limitations:
307 (i) consistent with determinations made pursuant to subsection B of §62.1-44.19:7
308 (related to TMDL development to protect and restore water quality in impaired
309 waters);
310 (ii) contained in a municipal separate storm sewer system (MS4) program plan
311 approved by DCR; or
312 (iii) as otherwise may be established or approved by the Virginia Soil and Water
313 Conservation Board.
314

315 Additionally, §10.1-603.2:2 specifies that “[i]t shall be unlawful to cause a stormwater discharge
316 from an MS4 or a land disturbing activity except in compliance with a permit issued by a permit
317 issuing authority (Board, DCR or qualifying local program). The requirements of §10.1-603.8:1
318 are in addition to those water quality permit requirements that a buyer must address in order to
319 receive coverage under the Virginia Soil and Water Conservation Board’s Construction General
320 Permit or to receive a Construction Individual Permit.
321

322 Each of the combined areas of local water quality limitations (TMDLs, MS4s, and Impaired
323 Waters) that must be addressed are discussed below. Where the construction activity directly
324 discharges to state waters that are impaired by phosphorus or have a TMDL wasteload allocation
325 associated with phosphorus, the permit issuing authority, should it not be DCR, shall consult
326 with DCR when developing its determination. Where impairments exist, buyers should be aware
327 that under DCR’s VSMP permit responsibilities, additional on-site BMPs may be required by the

328 Department should on-site inspections conclude that state waters are not being satisfactorily
329 protected.

330
331 **(i) TMDLs:** The provision of §10.1-603.8:1 (C)(i) is designed to address local water quality
332 issues when there has been a specific limitation developed for the receiving waters that the
333 construction activity directly discharges into. This determination would need to be made prior to
334 a permit issuing authority authorizing the use of offsets in a particular situation.

335
336 Subsection B of §62.1-44.19:7 provides for development of TMDLs and waste load allocations.

337
338 Under Section 4VAC50-60-1130 (A) (3) of the Construction General Permit related to
339 “Authorization to discharge” states that “[d]ischarges to waters for which a total maximum daily
340 load (TMDL) wasteload allocation has been established are not eligible for coverage under this
341 general permit unless they are otherwise authorized in accordance with 4VAC50-60-1170
342 Section II D 6 and consistent with the requirements and assumptions of the wasteload allocations
343 in the TMDL”. Additional details regarding TMDL regulatory requirements may be found in
344 Appendix I.

345
346 The permit issuing authority, prior to authorizing the use of offsets will need to determine
347 whether the amount of phosphorous allowed to leave the construction site due to the proposed
348 use of offsets would be inconsistent with any waste load allocation to construction activities for
349 the state water that receives the direct discharge from the construction activity. If no such
350 TMDL phosphorus requirement exists, there would be no “contravention” in accordance with
351 this provision. If such a requirement does exist, then the permit issuing authority in consultation
352 with DCR shall determine if an offset can be allowed, and if it is, then the offset generating
353 facility must be located in the upstream portion of the watershed of the TMDL segment. The
354 permit issuing authority may request the applicant to provide information to support a
355 determination in this regard.

356
357 **(ii) MS4s:** The provision of §10.1-603.8:1 (C)(ii) applies if the construction activity will occur in
358 an area with an MS4 program plan approved by DCR and the plan includes nutrient local water
359 quality based limitations. The buyer must first determine if the runoff from the construction
360 activity would discharge to a municipal separate storm sewer system (MS4) and make note of
361 this in their application materials. A listing of MS4s is available on DCR’s website at
362 http://www.dcr.virginia.gov/soil_and_water/vsmp.shtml. If the construction activity is within an
363 MS4, then a determination will need to be made as to whether the phosphorous leaving the
364 construction site due to the proposed use of offsets would be inconsistent with that plan.

365
366 Where a stormwater management plan has been approved by the permit issuing authority, it will
367 be determined that the offset would not contravene the MS4’s Program Plan. In the absence of
368 the submission of a stormwater management plan to the permit issuing authority, the permit
369 issuing authority shall determine if the use of offsets within the MS4 would contravene the
370 MS4’s Program Plan.

371
372 **(iii) Impaired Waters:** Additional water quality requirements of the Virginia Soil and Water
373 Conservation Board’s Construction General Permit include provisions related to impaired waters
374 and must be taken into consideration in accordance with §10.1-603.8:1 (C)(iii). Section
375 4VAC50-60-1130 (A) (4) of the Construction General Permit related to “Authorization to
376 discharge” states that “[d]ischarges to waters that have been identified as impaired in the 2008 §

377 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under
378 this general permit unless they are otherwise authorized in accordance with 4VAC50-60-1170
379 Section I H.”. Additional details regarding the Board’s impaired waters regulatory requirements
380 may be found in Appendix I.

381
382 If it is determined that the construction activity will directly discharge to an impaired water, the
383 permit issuing authority will determine whether the nutrient runoff from the construction activity
384 may further contribute to the impairment. Should contribution to an impairment be determined
385 based on a review of the buyer’s information by the permit issuing authority in consultation with
386 DCR, an offset pursuant to §10.1-603.8:1 of the Code of Virginia may not be allowed unless
387 such offset is located within the upstream portion of the watershed of the impaired segment.
388

389 DEQ maintains on their website an assessment database to determine the location and type of
390 impairments. This tool and accompanying instructions may be found at
391 <http://www.deq.virginia.gov/wqa/adbims2008.html>.

392
393 **Step 4: Meeting Local Water Quality Requirements:** If the locality in which the construction
394 activity will occur has an ordinance establishing local water quality requirements for the waters
395 that the construction activity will directly discharge to, the buyer should consult with the locality
396 regarding such local requirements.

397
398 **Step 5: Demonstration of On-site Practicability.** In accordance with §10.1-603.8:1(D), if a
399 buyer satisfactorily addresses each of the areas outlined below, they will be deemed as having
400 provided sufficient analyses for consideration. Such demonstration shall include at a minimum:
401 a. A minimum of three alternative site designs that may accommodate on-site best management
402 practices.
403 b. The placement of on-site BMPs that are designed in accordance with standards and
404 specifications provided on the Virginia Stormwater BMP Clearinghouse
405 (<http://www.vwrrc.vt.edu/swc/index.html>) or in the Virginia Stormwater Management Handbook
406 (http://www.dcr.virginia.gov/soil_and_water/stormwat.shtml#pubs). The buyer is expected to
407 demonstrate that on-site best management practices have been considered in alternative site
408 designs to the maximum extent practicable which should include at a minimum consideration of
409 the following types of BMPs.
410 ▪ Conventional/ traditional BMPs such as Extended Detention Ponds, Wet Ponds,
411 Constructed Wetlands, Soil Compost Amendments. The buyer is advised to consult
412 with the permit issuing authority to determine if there are any local ordinances or
413 other factors that may limit the choice of BMPs on a particular site; and
414 ▪ BMPs aimed at reducing the volume of stormwater runoff leaving the development
415 site, and therefore, mimicking the hydrologic patterns that existed at a site before it
416 was developed. These are often termed “low impact development” practices and
417 could include green roofs, Bioretention, Rain Gardens, Rooftop Disconnection,
418 Rainwater Harvesting, Dry Swales and Wet Swales. Again, the buyer should consult
419 with the permit issuing authority to determine if there are any limitations on the use
420 of selected BMPs in the applicable locality.
421 c. Water quality and water quantity calculations by a qualified engineer for the selected option.
422 d. A narrative discussing both the site plan options as well as the mix of BMPs considered and why
423 the selected option was chosen. This may include a discussion of costs, site constraints, local
424 conditions, technical uncertainty of BMPs, and other factors clearly indicating why certain
425 practices examined are impracticable to achieve compliance on-site.

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3. Prepare Offset Nutrient Submittal Package

The buyer must provide the following documentation in order to receive review for offset use for a portion of the water quality requirement of the project.

- a. Documentation that steps 1-4 have been satisfied.
- b. Site Plan(s): Sealed alternative site plan(s) will be provided that show that design and engineering have been considered for BMP’s to the MEP (see discussion above) and that the buyer is unable to completely account on-site for a portion of the water quality requirement.
- c. Water quality and quantity engineering calculation sheets and narrative discussing all options considered.
- d. Offset Availability Letter: The applicant should provide a current offset availability letter from an operational certified offset provider that documents the ability of the provider to supply the necessary number of offsets in the appropriate service area pursuant to §10.1-603.8:1(F). An example of a completed form is provided as Attachment 3 of this document.
- e. Proof of Perpetuity of the Offset: All perpetual instruments (e.g., deed restrictions, restrictive covenants, or easements) must be recorded for the offset property prior to the permitted construction activity commencing. An example of a set of restrictive covenants is provided as Attachment 2 of this document.

Complete packages shall be submitted to both the locality in which the project is located and to DCR’s Richmond Central Office at:

Virginia Department of Conservation and Recreation
c/o Stormwater Nutrient Offset Review
203 Governor Street
Room 206, 2nd Floor
Richmond, Virginia 23219

Upon receipt, the package will be reviewed for completeness by the permit issuing authority within 15 calendar days or is deemed complete. If a package is deemed incomplete, the buyer will be contacted via letter from the permit issuing authority indicating what the deficiencies are.

Upon receipt of a package that is deemed complete, the permit issuing authority shall complete its review and issue its determination within 60 days.

Upon approval of the use of an offset, a Letter of Authorization will be sent to the buyer documenting (i) the permit issuing authority’s satisfaction of the permit applicant’s demonstration pursuant to §10.1-603.8:1(D), (ii) that the offsets being proposed for use have been demonstrated to be secured in perpetuity, (iii) the number of pounds of phosphorus approved for use and (iv) any specific requirements concerning the purchase (such as geographic location constraints). Similarly, should an approval be denied by the permit issuing authority, a letter shall be sent to the buyer outlining the reasons for such denial. Copies of the approval and denial letters shall be kept on file by both DCR and the locality in which the project is located.

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4. Offset Transfer Documentation to be Provided by the Buyer

Before a construction activity that has acquired an offset may commence, the following information shall be available. Each of these documents must also be incorporated into the buyer’s stormwater pollution prevention plan.

- a. Letter of Authorization: A letter from the permit issuing authority to the buyer outlining conditions pursuant to the use of an offset.
- b. Affidavit of Offset Sale: The Affidavit will be notarized and provided to the permit issuing authority in addition to the buyer. An example of the Affidavit of Nutrient Offset Sale is provided as Attachment 3 to this document.
- c. Proof of Perpetuity of the Offset: A copy of the recorded covenants, restrictions, easement, etc. verifying the stormwater nutrient offsets that have been acquired to meet the construction activity’s required nutrient reductions will be protected in perpetuity. See Attachment 2 for an example of covenant restrictions.

In addition to these documents, the broker is also obligated to pay the permit issuing authority a water quality enhancement fee equal to six percent of the amount paid by the permit applicant for the nonpoint nutrient offsets prior to commencement of the construction activity. A bill of sale documenting the amount paid by the buyer for the offsets shall be provided to the permit issuing authority with the buyer’s payment. The broker will coordinate with the permit issuing authority regarding payment details.

5. Annual monitoring and reporting requirements

The restrictive covenants shall provide the broker and DEQ and DCR and their authorized agents, with advance notice, the right to enter and go on the offset generating facility to inspect and take actions necessary to verify compliance. The covenants shall be enforceable by the broker, DEQ, and DCR.

Additionally, the offset broker shall provide an annual report to DEQ and DCR that includes the current ledger and photographs fully documenting the status of the site.

Should a purchase occur from the offset generating facility, an updated ledger indicating at a minimum the amount of offsets purchased as well as information identifying the buyer and the location of the buyer’s project shall be provided to DEQ and DCR within 7 business days of the transaction.

V Adoption, Amendments, and Repeals:

This document was adopted by the Board on July XX, 2009 and may be amended or repealed as necessary by the Board.

521 **Appendix I**

522
523 **Authority:** The Virginia Soil and Water Conservation Board and DCR derive their authority to regulate
524 stormwater and to administer the Virginia Stormwater Management Program (VSMP) from the
525 Stormwater Management Act (Code of Virginia §10.1-603.1 et seq.). The Act contains the following
526 authorities applicable to this guidance and the implementation of a stormwater nonpoint nutrient offset
527 program:

528
529 **§10.1-603.8:1. Stormwater nonpoint nutrient offsets.** (Chapter 364 of the 2009 Virginia Acts
530 of Assembly [HB2168]) (See Attachment 1). This section authorizes a permit issuing authority
531 to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established
532 pursuant to §10.1-603.4, in whole or in part, through the use of the permittee’s acquisition of
533 nonpoint nutrient offsets in the same tributary. Such nonpoint nutrient offsets are to be certified
534 under the Chesapeake Bay Watershed Nutrient Exchange Program (§62.1-44.19:12 et seq.).

535
536 **§10.1-603.4. Development of regulations.**

- 537 ...The regulations shall:
- 538 2. Establish minimum design criteria for measures to control nonpoint source pollution and
539 localized flooding...;
 - 540 3. Require the provision of long-term responsibility for and maintenance of stormwater
541 management control devices and other techniques specified to manage the quality and quantity
542 of runoff;...;
 - 543 6. Establish statewide standards for stormwater management from land disturbing [construction]
544 activities of one acre or greater, except as specified otherwise within this article, and allow for
545 the consolidation in the permit of a comprehensive approach to addressing stormwater
546 management and erosion and sediment control, consistent with the provisions of the Erosion and
547 Sediment Control Law (§ 10.1-560 et seq.) and this article. However, such standards shall also
548 apply to land disturbing [construction] activity exceeding an area of 2500 square feet in all areas
549 of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation
550 and Management Regulations (9 VAC 10-20 et seq.) adopted pursuant to the Chesapeake Bay
551 Preservation Act (§ 10.1-2100 et seq.);
 - 552 7. Require that stormwater management programs maintain after-development runoff rate of
553 flow and characteristics that replicate, as nearly as practicable, the existing predevelopment
554 runoff characteristics and site hydrology, or improve upon the contributing share of the existing
555 predevelopment runoff characteristics and site hydrology if stream channel erosion or localized
556 flooding is an existing predevelopment condition....;
 - 557 8. Encourage low impact development designs, regional and watershed approaches, and
558 nonstructural means for controlling stormwater;
 - 559 9. Promote the reclamation and reuse of stormwater for uses other than potable water in order to
560 protect state waters and the public health and to minimize the direct discharge of pollutants into
561 state waters;...

562
563 Authority for the Virginia Department of Environmental Quality to establish the Chesapeake Bay
564 Watershed Nutrient Credit Exchange Program in Virginia’s portion of the Bay is found in §62.1-
565 44.19:12 et seq. Applicable authorities are as follows:

566
567 **§ 62.1-44.19:12. Legislative findings and purposes.**

568 The General Assembly finds and determines that adoption and utilization of a watershed
569 general permit and market-based point source nutrient credit trading program will assist in (a)
570 meeting these cap load allocations cost-effectively and as soon as possible in keeping with the

571 2010 timeline and objectives of the Chesapeake 2000 Agreement, (b) accommodating continued
572 growth and economic development in the Chesapeake Bay watershed, and (c) providing a
573 foundation for establishing market-based incentives to help achieve the Chesapeake Bay
574 Program's nonpoint source reduction goals.

575
576 **§ 62.1-44.19:15 . New or expanded facilities.**

577 B. Waste load allocations required by this section to offset new or increased delivered total
578 nitrogen and delivered total phosphorus loads shall be acquired in accordance with this
579 subsection.

580 1. Such allocations may be acquired from one or a combination of the following:

- 581 ...b. Acquisition of nonpoint source load allocations through the use of best management
582 practices acquired through a public or private entity acting on behalf of the land owner. Such
583 best management practices shall achieve reductions beyond those already required by or funded
584 under federal or state law, or the Virginia tributaries strategies plans, and shall be installed in the
585 same tributary in which the new or expanded facility is located and included as conditions of the
586 facility's individual Virginia Pollutant Discharge Elimination System permit; or
587 c. Acquisition of allocations in accordance with the terms of the general permit or through such
588 other means as may be approved by the Department on a case-by-case basis.

589
590 The Department of Environmental Quality's February 2005 guidance document entitled *Trading*
591 *Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay*
592 *Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners*
593 (http://www.deq.virginia.gov/export/sites/default/vpdes/pdf/VANPSTradingManual_2-5-08.pdf) is a
594 detailed source of information regarding how nutrient trading works and how the offsets may be
595 developed and approved in the Chesapeake Bay Watershed. This guidance was developed in
596 accordance with § 62.1-44.19:15(B)(1)(b). This document shall serve as the foundation for certifying
597 nonpoint nutrient offsets that an authorized buyer may acquire.

598
599 Regulatory authorities embodied in the Construction General Permit relative to the Virginia Soil and
600 Water Conservation Board's responsibilities associated with impaired waters and waters for which a
601 TMDL WLA has been established include the following:

602
603 **Section 4VAC50-60-1130 related to "Authorization to discharge" states:**

604 A. Any operator governed by this general permit is authorized to discharge to state waters of the
605 Commonwealth of Virginia in accordance with 4VAC50-60-1150 A 4 provided that the operator has
606 filed a complete and accurate registration statement in accordance with 4VAC50-60-1150, submitted
607 any fees required by 4VAC50-60-700 et seq. (Part XIII) unless exempted pursuant to 4VAC60-60-1150
608 A 3 (a), complied with the requirements of 4VAC50-60-1150, complies with the requirements of
609 4VAC50-60-1180 through 4VAC50-60-1190, and

610 3. Discharges to waters for which a "total maximum daily load" (TMDL) wasteload allocation
611 has been established are not eligible for coverage under this general permit unless they are otherwise
612 authorized in accordance with 4VAC50-60-1170 Section II D 6 and consistent with the requirements
613 and assumptions of the wasteload allocations in the TMDL; and

614 4. Discharges to waters that have been identified as impaired in the 2008 § 305(b)/303(d) Water
615 Quality Assessment Integrated Report are not eligible for coverage under this general permit unless they
616 are otherwise authorized in accordance with 4VAC50-60-1170 Section I H.

617
618 **4VAC50-60-1170 Section I H. states:**

619 H. Water quality protection.

620 1. The operator must select, install, implement and maintain control measures at the construction
621 site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does
622 not cause or contribute to an excursion above any applicable water quality standards.

623 2. If it is determined by the permit-issuing authority in consultation with the State Water Control
624 Board at any time that the operator's stormwater discharges have reasonable potential to cause or
625 contribute to an excursion above any applicable water quality standard, the permit-issuing authority shall
626 require the operator to:

627 a. Modify control measures in accordance with Section II C to adequately address the identified
628 water quality concerns;

629 b. Submit valid and verifiable data and information that are representative of ambient conditions
630 and indicate that the receiving water is attaining water quality standards; or

631 c. Cease discharges of pollutants from construction activity and submit an individual permit
632 application according to 4VAC50-60-410 B 3.

633

634 **4VAC50-60-1170 Section II D 6 and 7 states:**

635 D. Stormwater pollution prevention plan contents. The SWPPP shall include the registration
636 statement, this permit, and the following items:

637 6. Total maximum daily loads. A total maximum daily load (TMDL) approved by the State
638 Water Control Board may include a wasteload allocation to the regulated construction activity that
639 identifies the pollutant for which stormwater control measures are necessary for the surface waters to
640 meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date
641 of this permit must be specified in the SWPPP. The SWPPP shall include strategies and control
642 measures to ensure consistency with the assumptions and requirements of the TMDL WLA that apply to
643 the operator's discharge. In a situation where a TMDL has specified a general wasteload allocation
644 applicable to construction stormwater discharges, but no specific requirements for construction sites
645 have been identified in the TMDL, the operator shall consult with the state or federal TMDL authority to
646 confirm that meeting permit requirements will be consistent with the approved TMDL. If the TMDL
647 specifically precludes such discharges, the operator is not eligible for coverage under the general permit.

648 7. Impaired waters. In accordance with Section I H, control measures shall be protective of water
649 quality standards for impaired waters identified as having impairments for pollutants that may be
650 discharged from the construction activity in the 2008 § 305(b)/303(d) Water Quality Assessment
651 Integrated Report.

652

654

655 **VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION**

656

CHAPTER 364

657

658 An Act to amend the Code of Virginia by adding a section numbered 10.1-603.8:1, relating to
659 stormwater nonpoint nutrient runoff offsets.

660

[H 2168]

661

Approved March 27, 2009

662

Be it enacted by the General Assembly of Virginia:

663

1. That the Code of Virginia is amended by adding a section numbered 10.1-603.8:1 as follows:

664

§ 10.1-603.8:1. Stormwater nonpoint nutrient offsets.

665

A. As used in this section:

666

"Nonpoint nutrient offset" means nutrient reductions certified as nonpoint nutrient offsets under the
667 Chesapeake Bay Watershed Nutrient Exchange Program (§ 62.1-44.19:12 et seq.).

668

"Permit issuing authority" has the same meaning as in § 10.1-603.2 and includes any locality that
669 has adopted a local stormwater management program.

670

"Tributary" has the same meaning as in § 62.1-44.19:13.

671

B. A permit issuing authority may allow compliance with stormwater nonpoint nutrient runoff water
672 quality criteria established pursuant to § 10.1-603.4, in whole or in part, through the use of the
673 permittee's acquisition of nonpoint nutrient offsets in the same tributary.

674

C. No permit issuing authority shall allow the use of nonpoint nutrient offsets to address water
675 quantity control requirements. No permit issuing authority shall allow the use of nonpoint nutrient
676 offsets in contravention of local water quality-based limitations: (i) consistent with determinations made
677 pursuant to subsection B of § 62.1-44.19:7, (ii) contained in a municipal separate storm sewer system
678 (MS4) program plan approved by the Department, or (iii) as otherwise may be established or approved
679 by the Board.

680

D. A permit issuing authority may only allow the use of nonpoint nutrient offsets when the permit
681 applicant demonstrates to the satisfaction of the permit issuing authority that (i) alternative site designs
682 have been considered that may accommodate on-site best management practices, (ii) on-site best
683 management practices have been considered in alternative site designs to the maximum extent
684 practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full
685 compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably
686 be met on site.

687

E. Documentation of the permittee's acquisition of nonpoint nutrient offsets shall be provided to the
688 permit issuing authority in a certification from an offset broker documenting the number of phosphorus
689 nonpoint nutrient offsets acquired and the associated ratio of nitrogen nonpoint nutrient offsets at the
690 offset generating facility. The offset broker shall pay the permit issuing authority a water quality
691 enhancement fee equal to six percent of the amount paid by the permittee for the nonpoint nutrient
692 offsets. If a locality is not the permit issuing authority, such fee shall be deposited into the Virginia
693 Stormwater Management Fund established by § 10.1-603.4:1. If the permit issuing authority is a
694 locality,

695

such fees shall be used solely in the locality where the associated stormwater permit applies for
696 inspection and maintenance of stormwater best management practices, stormwater educational
697 programs, or programs designed to protect or improve local water quality.

698

F. Nonpoint nutrient offsets used pursuant to subsection B shall be generated in the same or
699 adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the
700 permitted site. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code
701 may only be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are
702 available within the same or adjacent eight digit hydrologic unit code when the permit issuing authority

703 accepts the final site design. In such cases, and subject to other limitations imposed in this section,
704 nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint
705 nutrient offsets from another tributary be used.

706 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality
707 criteria being obtained through nonpoint nutrient offsets, a permit issuing authority shall (i) use a 1:1
708 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment nonpoint nutrient runoff
709 compliance requirement and (ii) assure that the nonpoint nutrient offsets are secured in perpetuity.

710 H. No permit issuing authority may grant an exception to, or waiver of, postdevelopment nonpoint
711 nutrient runoff compliance requirements unless off-site options have been considered and found not
712 available.

713 I. In considering off-site options, the permit issuing authority shall give priority to the use of
714 nonpoint nutrient offsets unless a local fee-in-lieu-of, pro-rata share, or similar program has been
715 approved by the Board as being substantially equivalent in nutrient reduction benefits. However, prior
716 to approval by the Board, there shall be a rebuttable presumption that any local government fee-in-
717 lieuof,

718 pro-rata share, or similar program is substantially equivalent in nutrient reduction benefits. The
719 Board shall establish criteria for determining whether any such local program is substantially
720 equivalent, which shall be used during the local stormwater management program approval process in
721 § 10.1-603.3.

722 J. The Board may establish by regulation a stormwater nutrient program for portions of the
723 Commonwealth that do not drain into the Chesapeake Bay.

724 **2. That no Virginia Soil and Water Conservation Board regulatory action, nor any local**
725 **government ordinance or regional (watershedwide) stormwater management plan amendment, is**
726 **necessary prior to implementation of this act; however, the Virginia Soil and Water Conservation**
727 **Board may conform its regulations to this act through an exempt action and may adopt**
728 **regulations through a nonexempt action.**

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Attachment 2: Example of Declaration of Restrictions.

TAX MAP # _____

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this ____ day of _____, 20__, by [Owner], Grantor; [Broker], referred to as Grantor and Grantee for recordation purposes; and the Commonwealth of Virginia Department of Conservation and Recreation and the Commonwealth of Virginia Department of Environmental Quality, both of whom are referred to as Grantees for recordation purposes,

WHEREAS, _____, (the Grantor and “Owner”) is the owner in fee simple of certain property (the “Property”) consisting of _____ acres situated, lying, and being in _____, _____ County, Virginia, consisting of ____ acres, more or less, and more accurately described as

_____.

WHEREAS, Owner desires to be party to and comply with the respective conditions and terms of the _____ Nutrient Reduction Implementation Plan (the “Nutrient Reduction Implementation Plan”) dated _____ and approved by the Virginia Department of Environmental Quality (“DEQ”) and the Virginia Department of Conservation and Recreation (“DCR”) on _____, by imposing this Declaration of Restrictions upon those areas of the Property shown in the Nutrient Reduction Implementation Plan as “Land Conversion Areas” currently consisting of agricultural lands converted to _____ for the purpose of generating and transferring nutrient offsets.

WHEREAS, Owner desires to impose on said Land Conversion Areas a Declaration of Restrictions expressing the Owner’s intent to preserve in perpetuity the Land Conversion Areas, consisting of ____ acres, as shown in the Nutrient Reduction Implementation Plan. The Owner desires to comply with the respective conditions and terms of the Nutrient Reduction Implementation Plan by imposing this Declaration of Restrictions on the Land Conversion Areas located on the Property. These Restrictions are imposed by the Owner freely and voluntarily.

WHEREAS, Owner intends that the Restrictions contained within this Declaration of Restrictions be enforceable by the Commonwealth of Virginia Department of Conservation and Recreation, the Commonwealth of Virginia Department of Environmental Quality, and [Broker].

WHEREAS, Owner wishes to grant operational and nutrient offset transfer rights for the Land Conversion Areas under the terms of the Nutrient Reduction Implementation Plan to [Broker].

771 NOW THEREFORE THIS DECLARATION WITNESSETH: That for and in consideration of
772 One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and
773 sufficiency of which are hereby acknowledged, the Owner does hereby declare, covenant and agree, for
774 itself and its successors and assigns, that the Land Conversion Areas as shown in the Nutrient Reduction
775 Implementation Plan shall be hereafter held, leased, transferred, and sold subject to the following
776 conditions and restrictions:

777

778 **Covenants and Restrictions:**

779

780 A. The Land Conversion Areas shall be preserved in perpetuity by prohibiting the following activities:

781

782 1. Destruction or alteration of the Land Conversion Areas except:

783

784 (a) Alteration necessary to complete the land conversion and to implement the terms of the Nutrient
785 Reduction Implementation Plan and ensure the success of the planned nutrient reductions and
786 associated nutrient offsets and in conjunction with the construction, reconstruction, enhancement or
787 maintenance of the Land Conversion Areas;

788

789 (b) Alteration to construct structures such as walkways, boardwalks, foot trails, wildlife observation or
790 management structures, benches, observation decks, picnic tables, fence posts and ecological,
791 biological, hydrological or chemical monitoring, observation or management equipment including,
792 without limitation, monitoring wells, water control weirs or interpretive stations, or other
793 educational structures provided that such facilities do not impact the nutrient reductions specified in
794 the Nutrient Reduction Implementation Plan and are constructed and maintained in accordance with
795 all applicable federal and states laws;

796

797 (c) Addition of signs constructed in public right of ways by or on behalf of the Virginia Department of
798 Transportation or other governmental agencies;

799

800 (d) Removal of vegetation (where not precluded by federal or state law) when conducted for

801 (i) removal of noxious or invasive plants, or

802 (ii) limited aesthetic modifications not involving clearing or removal of trees or
803 limbs greater than three (3) inches in caliber unless dead, dying or diseased;

804

805 (e) Planting of native species of plants by hand for aesthetic landscaping or screening purposes;

806

807 (f) Alteration authorized by the Nutrient Reduction Implementation Plan and other activities pursuant to
808 all applicable laws, regulations and guidance governing the generation and trading of nutrient offsets
809 within the Commonwealth of Virginia as long as such activities do not negatively affect the nutrient
810 reductions specified in the Nutrient Reduction Implementation Plan;

811

812 (g) Alteration as reasonably necessary to comply with state or federal law or appropriate court order;

813

814 (h) Maintenance and use of existing trails and access roads crossing the Land Conversion Areas as long
815 as activities do not negatively affect the nutrient reductions specified in the Nutrient Reduction
816 Implementation Plan;

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(i) Subsistence livestock for personal use will be limited to domestically raised animals on privately held portions of the Property outside the Land Conversion Areas (i.e., the areas within the Declaration of Restrictions). Any domestic livestock will be fenced from the Land Conversion Areas and access to stream watering locations or paddock crossing will be restricted to limited access points outside of the Land Conversion Areas. In no event shall such watering locations or crossings negatively affect the nutrient reductions specified in the Nutrient Reduction Implementation Plan.

2. Construction, maintenance or placement of any new structures (including, but not limited to, residential, accessory, and farm and commercial structures) or fills other than those described in paragraph 1(b) above. Existing structures may be maintained, but the footprint of such structures may not be expanded without the consent of DEQ, DCR, and [Broker];

3. Ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding/ponding, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials (except as may be necessary on a case-by-case basis with the approval of DEQ and DCR) other than as authorized under the Nutrient Reduction Implementation Plan;

4. Permitting livestock to graze, inhabit or otherwise enter the Land Conversion Areas;

5. Harvesting, cutting, logging, and pruning of trees and plants, or using fertilizers and spraying with biocides other than what is authorized by the Nutrient Reduction Implementation Plan (except as may be necessary on a case-by-case basis with the approval of DEQ, DCR, and [Broker]).

(a) A current written forest management plan or Virginia Forest Stewardship Plan shall be developed prior to the commencement of any timber harvesting, cutting, or logging activities. All such activities shall be conducted in a manner consistent with Virginia’s Forestry Best Management Practices for Water Quality.

B. Owner hereby grants operational and nutrient offset transfer rights for the Land Conversion Areas under the terms of the Nutrient Reduction Implementation Plan to [Broker]. [Broker] agrees that all management activities undertaken by [Broker] shall be in accordance with the terms of this Declaration of Restrictions and the Nutrient Reduction Implementation Plan.

Amendment:

The covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner or its successor in interest, DEQ, DCR, and [Broker]. After recording, the Owner or its successor may vacate or modify this declaration by providing a document signed by [Broker], DEQ, DCR, and the Owner or its successor in interest. For portions of the Land Conversion Areas for which nutrient offsets are not currently being generated and transferred: the Owner or its successor in interest may amend or vacate this declaration by providing a document signed by the Owner or its successor, [Broker], DEQ, and DCR provided the amendment or vacation of this declaration does not negatively affect the areas within the Land Conversion Areas that continue to generate and transfer nutrient offsets.

862 **Compliance Inspections and Enforcement:**

863
864 DEQ and DCR and their authorized agents shall have the right to enter and go on the Land
865 Conversion Areas to inspect and take actions necessary to verify compliance with this declaration
866 of restrictions. For safety reasons, DEQ and DCR shall notify the Owner and [Broker] in
867 advance of on-site inspections. Each request for access by non-DEQ and DCR private parties
868 will be evaluated on a case by case basis by [Broker] and Owner. Violation of the terms of this
869 Declaration by Owner shall be enforceable by any proceeding at law or in equity or
870 administrative proceeding by DEQ, DCR, and [Broker]. Violation of the terms of this
871 Declaration by [Broker] shall be enforceable by any proceeding at law or in equity or
872 administrative proceeding by DEQ, DCR, and Owner. Failure by DEQ, DCR, [Broker] or Owner
873 to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of
874 the right to do so thereafter.

875
876 **Severability Provision:**

877
878 The provisions hereof shall be deemed individual and severable and the invalidity or partial
879 invalidity or unenforceability of any one provision or any portion thereof shall not affect the
880 validity or enforceability of any other provision thereof.

881
882 **Consent of Lender and Trustee: (If Applicable)**

883
884
885 **Reference Document:**

886
887 Terms and Conditions of the _____ Nutrient Reduction Implementation Plan dated
888 _____ between: _____, the Virginia Department of Environmental
889 Quality and the Virginia Department of Conservation and Recreation are available upon written
890 request.

891
892 Document copies may be obtained with _____ or Owner permission from:

893
894 _____
895 _____
896 _____, Virginia _____

897 WITNESS the following signature(s) and seal(s):

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[OWNER]

BY: _____

STATE OF _____,

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this the ____ day of _____, 20__, by _____.

My commission expires: _____

Notary Public

[BROKER]

BY: _____

STATE OF _____,

COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this the ____ day of _____, 20__, by _____.

My commission expires: _____

Notary Public

944 **Attachment 3: Example of Offset Availability Letter.**

945
946
947 Permit Applicant _____
948 _____
949 _____
950 _____

951
952
953
954 **RE: _____ – Nutrient Offset Availability**
955 _____ [broker]

956
957 _____ [Date]

958
959 Project Reference: “ _____ ”

960
961
962 Attention: Mr(s) _____:

963
964 This letter is to confirm the availability of authorized nonpoint nutrient offsets at our
965 _____ project located in _____ County. The _____ project has received
966 operational status through the Chesapeake Bay Watershed Nutrient Exchange Program (Virginia
967 Code § 62.1-44.19:12 et seq.) of the Virginia Department of Environmental Quality.
968 _____ [broker] currently has _____ pounds of phosphorus offsets and
969 _____ pounds of nitrogen offsets available for transfer in the approved service area in the
970 _____ watershed.

971
972 These offsets were certified pursuant to the Chesapeake Bay Watershed Nutrient Exchange
973 Program by the Virginia Department of Environmental Quality and the Virginia Department of
974 Conservation and Recreation to be used as compensation for state or local permit water quality
975 requirements. These offsets have been generated and are transferable according to § 10.1-
976 603.8:1 of the Code of Virginia.

977
978 If we can provide further assistance please feel free to contact our office.

979
980
981 Sincerely,
982
983
984 _____
985

986 **Attachment 7: Example of Affidavit of Nutrient Offset Sale.**

987

988

989 AFFIDAVIT OF NUTRIENT OFFSET SALE

990

991 _____, [broker](the “Company”), hereby certifies the following:

992

993 1. Pursuant to that certain Purchase and Sale Agreement dated _____, 20__ (the
994 “Agreement”), between the Company (as Seller) and _____ (“Purchaser”), the Company,
995 for the benefit of the Purchaser, agreed to sell _____ pounds of phosphorus offsets and retire
996 _____pounds of nitrogen (representing the ratio of nitrogen offsets to the phosphorous offsets at the offset
997 generating facility) offsets to Purchaser;

998

999 2. The Company and the Purchaser, as of the date hereof, have closed the transaction
1000 contemplated by the Agreement and the Company has sold to Purchaser phosphorus offsets and retired
1001 _____pounds of nitrogen (representing the ratio of nitrogen offsets to the phosphorous offsets at the offset
1002 generating facility) offsets.

1003

1004 WITNESS the following signature:

1005

1006 _____

1007

1008

1009 By: _____
1010 Manager

1011

1012 Date: _____

1013

1014

1015 Sworn to and subscribed before me this _____ day of _____, 20__, by
1016 _____, Manager, on behalf of _____.

1017

1018 My commission expires:

1019

1020 _____

1021 Notary Public

1022

1023

1024 Permit Issuing Authority Permit # _____

1025

1026 Permittee: _____

1027

1027 Phosphorus Offsets: _____ pounds

1028

1028 Nitrogen Offsets: _____ pounds

1029