



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of January 26, 2008**

DATE: January 16, 2008

SUBJECT: Amendments to Chapter 57 Erosion and Sediment Control Ordinance of the Arlington County Code.

C. M. RECOMMENDATION:

Adopt an Ordinance to amend, reenact and recodify Sections 57-3. Authorization; 57-4. Definitions; 57-5. Local erosion and sediment control program; 57-6. Regulated land-disturbing activities; and 57-7. Action on erosion and sediment control plans; Chapter 57, Erosion and Sediment Control Ordinance, of the Arlington County Code, to bring the Ordinance into compliance with Virginia Erosion and Sediment Control Law and associated regulations

ISSUES: The County Board is required to approve this amendment to comply with state laws. No issues have been identified.

SUMMARY: Adoption of the proposed amendments will bring the County's Erosion and Sediment Control Program in compliance with State law, and with the conditions of a Virginia Department of Conservation & Recreation audit of the program performed on October 18, 2005.

BACKGROUND: On October 18, 2005, the Virginia Department of Conservation & Recreation (DCR) performed an audit of the County's erosion and sediment control program (ESC program). As a result of that audit, on April 18, 2006, DCR identified a number of measures the County would need to perform to improve its ESC program; meet minimum standards of effectiveness in controlling erosion, sediment deposition and nonagricultural runoff; and obtain consistency with Virginia Erosion and Sediment Control Law (VESCL) and associated regulations. On May 19, 2006, DCR approved a Corrective Action Agreement that outlined specific corrective actions the County would need to implement in order to obtain a rating of "Consistent" with VESCL. One of the above actions was to make certain amendments to the County's Erosion and Sediment Control Ordinance.

The proposed Ordinance amendments are as follows:

1. Correction to the citation to the Code of Virginia in **Section 57-3. Authorization**

County Manager: _____

County Attorney: _____

Staff: Luis Araya, Chief, Development Services Bureau, Department of Environmental Services

2. New definitions, and clarifications to existing definitions in **Section 57-4. Definitions**
3. Additional technical language to regulate storm water flow rate capacity and velocity requirements for natural or manmade channels in **Section 57-5. Local erosion and sediment control program**
4. Additional regulatory language related to single family construction activities; linear utility and railroad project specifications; and erosion and sediment control for wetland mitigation activities in **Section 57-6. Regulated land-disturbing activities**
5. A requirement for the submittal to the County of proof of certification for persons responsible for carrying out land disturbing activities prior to performing such activities in **Section 57-7. Action on erosion and sediment control plans**

The proposed amendments, in conjunction with the establishment and appointment of an Erosion and Sediment Control Program Administrator for the County, certified under Virginia DCR's training program, will bring the ESC program for Arlington into compliance with Virginia DCR requirements and with the above Corrective Action Agreement. The County's Erosion and Sediment Control Program Administrator is Ms. Qianqian Li., P.E., in the Department of Environmental Services, Development Services Bureau.

FISCAL IMPACT: None

AN ORDINANCE TO AMEND, REENACT AND RECODIFY SECTIONS 57-3. AUTHORIZATION; 57-4. DEFINITIONS; 57-5. LOCAL EROSION AND SEDIMENT CONTROL PROGRAM; 57-6. REGULATED LAND-DISTURBING ACTIVITIES; AND 57-7. ACTION ON EROSION AND SEDIMENT CONTROL PLANS, CHAPTER 57, EROSION AND SEDIMENT CONTROL ORDINANCE, OF THE ARLINGTON COUNTY CODE, TO BRING THE ORDINANCE INTO COMPLIANCE WITH VIRGINIA EROSION AND SEDIMENT CONTROL LAW AND ASSOCIATED REGULATIONS

Be it ordained that Sections 57-3 Authorization; 57-4 Definitions; 57-5 Local Erosion and Sediment Control Program; 57-6 Regulated Land-Disturbing Activities; and 57-7 Action on Erosion and Sediment Control Plans, of Chapter 57, Erosion and Sediment Control Ordinance are hereby amended, reenacted and recodified as follows to bring the Ordinance into compliance with Virginia Erosion and Sediment Control Law and associated regulations:

Chapter 57

EROSION AND SEDIMENT CONTROL

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§ 57-1. Title.

§ 57-2. Purpose.

§ 57-3. Authorization.

§ 57-4. Definitions.

§ 57-5. Local erosion and sediment control program.

§ 57-6. Regulated land-disturbing activities.

§ 57-7. Action on erosion and sediment control plans prior to land disturbing activity.

§ 57-8. Issuance of land-disturbing permit and fees.

§ 57-9. Monitoring, reports and inspections.

§ 57-9.1. Adherence to approved plans and specifications.

§ 57-10. Administrative appeal; judicial review.

§ 57-11. Penalties, injunctions, and other legal actions.

§ 57-12. Severability.

§ 57-13. Conflict of chapter.

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Section 57-3. Authorization.

This chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4, known as the "Erosion and Sediment Control Law." This article provides for a comprehensive statewide program with standards and guidelines to control soil erosion and sedimentation which is implemented on the local level.

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Section 57-4. Definitions.

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- (4) ~~Land-disturbing activity~~ Land-disturbing activity means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include: (i) individual service connections; (ii) installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street, or sidewalk provided such land-disturbing activity is confined to the area of the road, street, or sidewalk which is hard-surfaced; (iii) septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system; (iv) surface or deep mining; (v) exploration or drilling for oil and gas including well-site, roads, feeder lines and off-site disposal areas; (vi) installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (vii) ~~shore erosion control projects on tidal water recommended by the soil and water conservation districts in which the projects are located or approved by the marine resources commission~~ shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; (viii) such minor land-disturbing activities as home gardens and individual landscaping, repairs, and maintenance work of areas which are less than two thousand five hundred (2,500) square feet and for which no building permit is required; (ix) emergency work to protect life, limb, or property, and emergency repairs; provided that if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirement of the local plan approving authority or the commission when applicable; (x) livestock feed lot operations, tilling, planting, or harvesting of agricultural, horticultural forestry, or forest crops, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, to reforest or convert to bone fide agriculture or improved pasture use, land drainage and land irrigation; (xi) repair or rebuilding of tracks, right-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company; (xii) preparation for single-family residences separately built where the disturbed site area is less than two thousand five hundred (2,500) square feet in size, unless in conjunction with multiple construction in subdivision development; (xiii) disturbed land areas for commercial or noncommercial uses of less than two thousand five hundred (2,500) square feet in size; ~~and~~ (xiv) agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of

the Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.

* * *

- (6) Natural channel design concepts means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.
- (6 7) *Owner* means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm or corporation in control of a property.
- (8) Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.
- (7 9) *Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of this state, any interstate body, or any other legal entity.
- (8 10) *Conservation standards or standards* means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation.
- (9 11) *Conservation plan, erosion, and sediment control plan or plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps and appropriate soil and water plan inventory and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that entire unit or units of land will be treated so as to achieve the conservation objectives.
- (12) Runoff volume means the volume of water that runs off the land development project from a prescribed storm event.
- (10 13) *State erosion and sediment control program or state program* means the program adopted by the commission consisting of conservation standards, guidelines, and criteria to minimize erosion and sedimentation.
- (11 14) *State waters* means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth of Virginia or within its jurisdiction.
- (12 15) *Subdivision* shall have the meaning in the definition provided in Chapter 23,

Subdivisions, of the Code of Arlington County, Virginia.

(13 ~~16~~) *Plan approving authority* means the Arlington County Department of Environmental Services which is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land and which shall approve such plan if the plan is determined to be adequate and which is responsible for inspecting land-disturbing activity to ensure compliance with the approved plan.

(14 ~~17~~) *Land-disturbing permit* means a permit issued by Arlington County for any land-disturbing activity that requires the submission and review of an approved conservation plan by the plan approving authority under the provisions of this chapter.

(18) *Water Quality Volume* means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

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Section 57-5. Local erosion and sediment control program.

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(2) The Arlington County Board hereby adopts the Virginia Erosion and Sediment Control Regulations (~~VR625-02-00, effective September 13, 1990~~ Section 4VAC50-30, as amended) for Controlling Erosion and Sediment from Land-Disturbing Activities as setting the minimum requirements for controlling erosion and sedimentation from land-disturbing activities. In addition to these minimum requirements, the relevant requirements of with the exception of storm water management criteria (MS-19) which will be governed by provisions contained in the Storm Water Detention Ordinance, Chapter 60 of the Code of Arlington County, Virginia, also apply.

(3) In accordance with §10.1-561 of the Code of Virginia, and as an alternative to the requirements of the most recent version of Minimum Standard 19 contained in the Virginia Erosion and Sediment Control Regulations, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined herein or other county regulation.

(3 ~~4~~) The "Virginia Erosion and Sediment Control Handbook," current edition, shall be

used by an applicant making a submittal under the provisions of this chapter in preparing the erosion and sediment control plan. The plan approving authority, in considering the adequacy of such submitted plan, shall be guided by the same guidelines and standards.

(5) In accordance with , §10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as set forth herein or applicable state law.

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Section 57-6. Regulated land-disturbing activities.

(1) Except as provided in subsections (2) and (3), no person shall engage in any land-disturbing activity until he has submitted to the plan approving authority an erosion and sediment control plan for such land-disturbing activity and until that plan has been reviewed and approved by the plan approving authority. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

* * *

(5) State Water Control Board approval of linear utility and railroad project specifications.

(6) In accordance with the procedure set forth by §10.1-563 (E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Board for review and approval consistent with guidelines established by the Board.

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Section 57-7. Action on erosion and sediment control plans prior to land disturbing activity.

* * *

(2) The plan approving authority shall act on all plans submitted to it and for which a fee is paid within forty-five (45) days after receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval pursuant to this chapter is found upon review to be inadequate, the plan approving authority shall review or specify such modifications, terms, and conditions as will permit approval of the plan and shall communicate these requirements to the applicant. If no action is taken by the plan approving authority within the time specified above, the plan shall be deemed approved and the applicant shall be authorized to proceed with

the proposed activity. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program authority, as provided by § 10.1-561 of the Code of Virginia, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561 of the Code of Virginia. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided herein.

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