**ATTACHMENT C**
**Rev. 11/14/13**

# PROPOSED AMENDMENTS
# TO
# CHAPTER 104 (EROSION AND SEDIMENTATION CONTROL)
# OF THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA

**Revisions to advertised amendments recommend by staff**
**November 14, 2013**

***Advertised amendments (9/10/13) are indicated by single strikethroughs and single underlines. The revisions (11/14/13) to the proposed amendments recommended by staff are indicated by double strikethroughs and double underlines.***

**Amend Article 1, Purpose and Administration, by revising Section 104-1-1, Purpose, to read as follows:**

Section 104-1-1. Purpose and administration.

Pursuant to the powers granted by general law, including the provisions of Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4 ~~Title 10.1, Chapter 5, Article 4~~, Erosion and Sediment Control Law, this Chapter is adopted for the following purposes: To conserve and protect the land, water, air, vegetation and other natural resources of Fairfax County; to alleviate erosion, siltation and other harmful effects of land-disturbing activities on neighboring land and streams, by ensuring that the owner of the property on which land-disturbing activities are to be carried out provides adequate controls of erosion and sedimentation; and takes necessary measures to preserve and protect trees and other vegetation during all phases of any land-disturbing activity. The Director shall be responsible for the administration of this Chapter.

**Amend Article 1, Purpose and Administration, by revising Section 104-1-2, Applicability; regulated land-disturbing activities; submission and approval of a conservation plan, to read as follows:**

Section 104-1-2. Applicability; regulated land-disturbing activities; submission and approval of a conservation plan.

Except as noted herein, no person may engage in any land-disturbing activity in Fairfax County until he has submitted to the County a conservation plan for the land-disturbing activity and the plan has been reviewed and approved by the Director. The conservation plan shall be included in the grading plan required under Paragraph 3 of Part 6 of Article 2 of the Zoning Ordinance unless the following applies. Where the land disturbing activity results from the demolition of a single family dwelling, demolition of an accessory structure to a single family dwelling, construction of an addition to a single family dwelling as defined in Chapter 61 of the Code, or construction of an accessory structure to a single family dwelling, that results in a disturbed area of 5,000 square feet or less and does not require the installation of water quality controls or other drainage improvements, the conservation plan may be included in a plat certified by a land surveyor, engineer, landscape architect or architect authorized by the State to

practice as such meeting the requirements of Part 6 of Article 18 of the Zoning Ordinance in lieu of a grading plan. The standards in ~~Section~~ § 104-1-8 are to be used by the applicant when making a submittal under the provisions of this Chapter and in the preparation of a conservation plan. The Director, in considering the adequacy of a submitted plan, shall be guided by these standards. 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 Director, as provided in § 62.1-44.15:52 ~~Section 10.1-561~~ of the Code of Virginia, who will be in charge of and responsible for carrying out the land-disturbing activity. 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 in this Chapter. In order to prevent further erosion, the County may require approval of a conservation plan for any land identified as an erosion impact area. The provisions of this Article shall not limit the powers or duties presently exercised by the State Water Control Board or the Department of Mines, Minerals and Energy.

(a) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the ~~Virginia Soil and Water Conservation~~ State Water Control Board for review and approval in accordance with § 62.1-44.15:55.D ~~Section 10.1.563.D~~ of the Virginia Code.

(b) Any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, 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 wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed 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 or stream restoration banks annually with the ~~Virginia Soil and Water Conservation~~ State Water Control Board for review and approval in accordance with § 62.1-44.15:55.E ~~Section 10.1-563.E~~ of the Virginia Code. Approval of general erosion and sediment control specifications by the ~~Virginia Soil and Water Conservation~~ State Water Control Board does not relieve the owner or operator from compliance with any other Fairfax County ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

(c) Except as provided for in § 62.1-44.15:56 ~~Section 10.1-564~~ of the Virginia Code, land-disturbing activities undertaken by an agency of the Commonwealth of Virginia shall be exempt from the requirements of this Chapter. Notwithstanding § 62.1-44.15:56 of the Virginia Code, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the Director, unless such institution submits annual specifications to the Department of Conservation and Recreation, in accordance with § 62.1-44.15:56 A (i) of the Virginia Code.

**Amend Article 1, Purpose and Administration, Section 104-1-3 Plan review and approval,**

**by revising paragraph (b) to read as follows:**

(b) The Director must act on all plans submitted within forty-five (45) days from 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 under this Section is found upon review by the Director to be inadequate, he/she shall specify such modifications, terms, and conditions as will permit approval of the plan and communicate these requirements to the applicant. If no action is taken by the Director within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. Where proposed land-disturbing activities involve lands under the jurisdiction of more than one (1) local erosion and sediment control program, at the option of the applicant, an erosion and sediment control plan may be submitted to the State Water Control Board ~~Soil and Water Conservation Board~~ for review and approval rather than to each jurisdiction concerned.

**Amend Article 1, Purpose and Administration, Section 104-1-3 Plan review and approval, by adding new paragraph (f) to read as follows:**

(f) The Director may waive or modify any of the standards that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

(1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the Director shall be documented in the plan.

(2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the Director. The Director shall respond in writing either approving or disapproving such a request. If the Director does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

(3) The Director shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

**Amend Article 1, Purpose and Administration, by revising Section 104-1-4, Approved plan required for issuance of grading, building or other permits; security for performance, to read as follows:**

Section 104-1-4. - Approved plan required for issuance of grading, building or other permits; security for performance.

Neither the Director, nor any agency authorized under any law to issue grading, building, or other permits for activities involving land-disturbing activities, may issue any such permits unless the applicant submits with his application an approved conservation plan, ~~and~~

certification that the plan will be followed, and, where required, evidence of VSMP permit coverage. Prior to issuance of any permit, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the Director, as provided by Virginia Code, § 62.1-44.15:52 ~~§ 10.1-561~~, who will be in charge of and responsible for carrying out the land-disturbing activity. The Director, prior to issuance of any permit, may also require from any applicant a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Director, to ensure that measures could be taken by the County at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land-disturbing activity. If the County takes such conservation action upon any failure by the permittee, the County may collect from the permittee the reasonable cost of such action which exceeds the amount of security held. Following the issuance of any permit, the Director, or his agents, shall have the right to enter and inspect the permittee's property at all times prior to release of the project. Within 60 days of the completion of adequate stabilization of the land-disturbing activity, as determined by the Director, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

**Amend Article 1, Purpose and Administration, by revising Section 104-1-5, Monitoring and inspections, to read as follows:**

Section 104-1-5. Monitoring and inspections.

The Director shall provide for periodic inspections of any land-disturbing activity in accordance with Section ~~4VAC50-30-60.B~~ 9VAC25-840-60.B of the Virginia Erosion and Sediment Control Regulations and require that an individual holding a certificate of competence, as provided by Virginia Code, § 62.1-44.15:52 ~~§ 10.1-561~~, will be in charge of and responsible for carrying out the land-disturbing activity. 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 in this Chapter. The Director may require monitoring and reports from the person responsible for carrying out the plan to ensure compliance with (1) the approved plan, and (2) the field practices specified in the standards defined herein, to determine whether the measures required in the plan and standards are effective in preserving and protecting trees and other vegetation, and controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the permit. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the Director determines that the permittee has failed to comply with the plan, the standards defined herein, or this Section, the Director shall immediately serve upon the permittee, his agent, or the person responsible for carrying out the plan either in person or by registered or certified mail to the address specified by the permittee in his permit application, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities a notice to comply.

Such notice shall specifically set forth the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he may be subject to revocation of the permit; furthermore, the permittee or the person responsible for carrying out the plan shall be deemed to be in violation of this Article and shall be subject to the penalties provided by this Article.

**Amend Article 1, Purpose and Administration, by revising Section 104-1-7, Definitions, to read as follows:**

For the purpose of this Chapter, the following terms shall have the meanings respectively ascribed to them by this Section:

(a) Applicant means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

(b) Board means the Virginia State Water Control Board ~~Soil and Water Conservation Board~~.

(c) *Certified inspector* means an employee or agent of a ~~program~~ VESCP authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

(d) *Certified plan reviewer* means an employee or agent of a ~~program~~ VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, ~~certified~~ landscape architect or land surveyor pursuant to Code of Virginia, Title 54.1, Chapter 4, Article 1, ~~Sections~~ § 54.1-400 et seq., or is a professional soil scientist as defined in Code of Virginia, Title 54.1, Chapter 22, § 54.1-2200 et seq.

(e) *Certified program administrator* means an employee or agent of a ~~program~~ VESCP authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

(f) *Clearing* means removing or causing to be removed the vegetation growing in the soil which protects and stabilizes the soil. Such removing or causing to be removed shall include any intentional or negligent act to (1) cut down, (2) remove all or a substantial part of, or (3) damage a tree or other vegetation which will cause the tree or other vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of materials, or by the damage of natural grade due to unapproved excavation or filling, or damage caused by the unapproved alteration of natural physical conditions.

(g) *Conservation plan or erosion and sediment control plan or plan* means a document containing methods for the conservation of soil and water and other natural resources of a unit or group of units of land, pursuant to the requirements of this Chapter. It may include appropriate maps, an 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 the entire unit or units of land will be so treated to achieve the conservation objectives and demonstrate compliance with the standards of ~~Section~~ § 104-1-8. The conservation plan shall contain the tree conservation requirements specified in Chapter 122 of the Code and in Chapter 12 of the Public Facilities Manual.

(h) *Conservation standards or standards* shall be defined in ~~Section~~ § 104-1-8, "Conservation standards," of this Article.

(i) *Director* means the Director of the Department of Public Works and Environmental Services, or his/her agent.

(j) *Disturbed land area* means that land on which the soil has been disturbed or on which soil disturbances may be caused by natural elements due to clearing of the vegetation or on which pavement or other impervious surfaces have been placed over existing pervious surfaces.

(k) *Engage* means to take part in or to allow, direct or permit another person to take part in, a land-disturbing activity.

(l) *Erosion impact area* means an area of land not associated with current land-disturbing activities but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

(m) *Land-disturbing activity* means any ~~land~~ man-made change to the land surface that ~~which~~ may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, paving of existing pervious areas or otherwise creating new impervious areas, except that the term shall not include:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

(2) Individual service connections;

(3) 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~~ that is hard surfaced;

(4) Septic tank lines or drainfields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

(5) Permitted s~~S~~urface or deep mining operations and projects, or oil and gas operations

and projects conducted pursuant to Code of Virginia Title 45.1;

~~(6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas;~~

(6~~7~~) Tilling, planting, or harvesting ~~or~~ of agricultural, horticultural, or forest crops, ~~or~~ livestock feedlot operations, or as additionally set forth by the Board in regulation; including engineering operations as follows: the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Virginia Code, Chapter 11~~, Section~~ (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in Subsection (B) of § 10.1-1163;

(7~~8~~) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.

(8~~9~~) 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 Dam Safety Act (Virginia Code, ~~Section~~ § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

(9~~10~~) Disturbed land areas for commercial or noncommercial uses of 2,500 square feet or less in size;

(10~~11~~) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(11~~12~~) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by the Fairfax County Wetlands Board, 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 Chapter;

(12~~13~~) Emergency work to protect life, limb or property, and emergency repairs; however, 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 requirements of the Director.

(n) *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.

(o~~n~~) *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.

(p) *Peak flow rate* means the maximum instantaneous flow from a given storm condition at a particular location.

(q~~o~~) *Permittee* means the person to whom the permit authorizing land-disturbing activities is issued or the person who certified that the approved erosion and sediment control

plan will be followed.

(r~~p~~) *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.

~~(q) *Plan-approving authority* means the Director.~~

~~(r) Program authority means the County of Fairfax, Virginia which has adopted an erosion and sediment control program which has been approved by the Board.~~

(s) *Runoff volume* means the volume of water that runs off the land development project from a prescribed storm event.

(t~~s~~) *Soil and water conservation district means* a political subdivision of ~~this~~ the Commonwealth organized in accordance with the provisions of Virginia Code Article 1.5 (§ 10.1-1187.21 et seq.) of Chapter 11.1 of Title 10.1. ~~Article 3 (Section 10.1-506 et seq.) of Chapter 5~~

(u~~t~~) *State waters* means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

(v~~u~~) *Vegetation* includes but is not limited to trees, shrubs and plants of any kind.

(w) *Virginia Erosion and Sediment Control Program* or *VESCP* means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

(x) *Virginia Erosion and Sediment Control Program authority* or *VESCP* authority means the County of Fairfax, Virginia which has been approved by the Board to operate a VESCP.

**Amend Article 1, Purpose and Administration, by adding new paragraph (c) to Section 104-1-8, Conservation Standards, to read as follows:**

(c) 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 defined in any regulations promulgated pursuant to Virginia Code §§ 62.1-44.15:52, 62.1-44.15:54 or 62.1-44.15:65 or this section. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels

shall satisfy the flow rate capacity and velocity requirements for natural or man-made 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-year, two-year, 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 requirement for natural or man-made channels as defined in regulations promulgated pursuant to Virginia Code §§ 62.1-44.15:54 or 62.1-44.15:65 or this section. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

**Amend Article 1, Purpose and Administration, by adding new Section 104-1-13, Right of Entry, to read as follows:**

**Section 104-1-13, Right of Entry**

The Director or any duly authorized agent of the Director may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of Virginia Erosion and Sediment Control Law and this Chapter.