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State: Virginia
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Title: County of Fairfax Erosion and Sedimentation Control Ordinance
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Abstract

This ordinance not only requires that land disturbing activity meets Virginia best management practice guidelines, but lists several more stringent controls. For instance, the use of brush or rebar-enforced straw bale barriers is not allowed. Additionally, this ordinance lists a number of fees which must be paid prior to the issuance of any land disturbing permits including: soil report fees, drainage study fees, and water quality fees.

Resource

CHAPTER 104. Erosion and Sedimentation Control.

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ARTICLE 1. Purpose and Administration.1

1. Editor's note--Ord. No. 5-82-104 effected major changes in Art. 1 through the process of redesignation and amendment. For the convenience of the user, the following table will illustrate the former designation and the new disposition:

TABLE INSET:

Former Section New Section

- 104-1-1(a) 104-1-1
- 104-1-1(b) 104-1-2
- 104-1-1(c)(1) 104-1-3(a)
- 104-1-1(c)(2) 104-1-3(b)
- 104-1-1(d) 104-1-3(c)
- 104-1-1(e) 104-1-4
- 104-1-1(f) 104-1-5
- 104-1-1(g) 104-1-6
- 104-1-1(h) 104-1-13
- 104-1-1(i) 104-1-7
- 104-1-1(i)(1) 104-1-7(a)
- 104-1-1(i)(2) 104-1-7(b)

TABLE INSET:

Former Section New Section

- 104-1-1(i)(3) 104-1-7(c)
- 104-1-1(i)(4) 104-1-7(d)
- 104-1-1(i)(5) 104-1-7(e)
- 104-1-1(i)(6) 104-1-7(f)
- 104-1-1(1)(7) 104-1-7(g)
- 104-1-1(i)(8) 104-1-7(h)
- 104-1-1(j) 104-1-9
- 104-1-1(k) 104-1-10
- 104-1-1(l) 104-1-11
- 104-1-1(m) 104-1-12

104-1-2 104-2-4(d)

Formerly, Art. 1 consisted of §§ 104-1-1, 104-1-2 and was derived from the following: Ord. Nos. 11-4-70, 17-75-17; 1961 Code, § 17-2; and Ord. Nos. 29-75-17, 24-76-104, 10-77-104, 19-77-104, 31-78-104, 40-78-104, 4-79-104, 22-80-104, 12-81-104.

Section 104-1-1. Purpose.

Pursuant to the powers granted by general law, including the provisions of Code of Virginia, 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. (5-82-104; 15-89-104.)

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. 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 by Virginia Code, § 10.1-561, 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 Board for review and written comments in accordance with Virginia Code, § 10.1-563.D.

(b) Except as provided for in Virginia Code, § 10.1-564, land-disturbing activities undertaken by an agency of the Commonwealth of Virginia shall be exempt from the requirements of this Chapter. (5-82-104; 15-89-104; 37-03-104.)

Section 104-1-3. Plan review and approval.

(a) Upon submission of a conservation plan to the Director, the Director shall, within 45 days, approve any such plan if he determines that the plan meets the conservation standards as defined herein.

(b) The Director must act on all plans submitted within 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 Soil and Water Conservation Board for review and approval rather than to each jurisdiction concerned.

(c) Plan Alterations: An approved plan may be changed by the Director when he has approved the plan in the following cases:

(1) Where inspection has revealed the inadequacy of the plan to satisfy applicable regulations; or

(2) Where the owner responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Article, are agreed to by the Director and the owner responsible for carrying out the plan.

(d) No permit to engage in any land-disturbing activity shall be issued nor shall any conservation plan for such land-disturbing activity be approved until the following fees have been paid to the County:

(1) Grading plans:

Grading plans for building permits on existing lots within a subdivision currently bonded with the County: A fee of \$520 for the first lot, and \$430 for each additional lot within the same subdivision submitted within the same plan set will be paid to the County.

Grading plan revisions and resubmissions for building permits on existing lots within a subdivision currently bonded with the County: A fee of \$175 for the first lot and \$90 for each

additional lot within the same subdivision submitted within the same plan set shall be paid upon each submission of a revision to a previously approved plan, or resubmission of a plan.

Grading plans for building permits on existing lots that are not within a subdivision currently bonded with the County and parcels with lots of 5 acres or more: A fee of \$575 per lot shall be paid to the County.

Grading plan revisions and resubmissions for building permits on existing lots that are not within a subdivision currently bonded with the County and parcels with lots of 5 acres or more: A fee of \$230 per lot shall be paid upon each submission of a revision to a previously approved plan or resubmission of a plan.

Rough grading and filling parcels: A fee of \$400 per division of land or disturbed 0.5 hectare, whichever is greater, not to exceed \$6,000, will be paid prior to submission to the County.

Rough grading and filling parcels (resubmissions and revisions): A fee equal to 25% of the original rough grading plan fee shall be paid upon each subsequent submission or revision to the County.

(2) Debris landfill design plans:

A fee of \$550, plus \$90.00 per hectare, will be paid for the review of debris landfill design plans. This fee will be paid with the submission of the plans.

(3) Debris landfill permit:

A semi-annual fee of \$1,200 will be charged for each such permit.

(4) Tree removal permits:

Prior to the submission of a plan for the removal of trees, a fee of \$90 shall be paid to the County.

(5) Floodplain studies:

A fee of \$3.75 per meter of baseline plus \$250 per road crossing and per dam, not to exceed a total fee of \$4,600, shall be paid prior to the submission to the County of a floodplain study for existing lots and acreage, rough grading and filling parcels, and parcels with lots of 5 acres or more used for single-family residences separately built, not in conjunction with multiple construction in a subdivision development.

(6) Drainage studies (for non-floodplain watersheds):

A fee of \$800 shall be paid prior to the submission to the County of a drainage study for existing lots and acreage, rough grading and filling parcels, and parcels with lots of 5 acres

or more used for single-family residences separately built, not in conjunction with multiple construction in a subdivision development.

(7) Soil reports:

A fee of \$900 per lot, not to exceed \$1,800, shall be paid prior to the submission to the County of a soil report for existing lots and parcels, rough grading and filling parcels, and parcels with lots of 5 acres or more used for single-family residences separately built, not in conjunction with multiple construction in a subdivision development.

(8) Water quality fees:

(A) Water Quality Impact Assessments: A fee of \$175 shall be paid prior to the submission of a Water Quality Impact Assessment to the County.

(B) Resource Protection Area Boundary Delineations and Resource Management Area Boundary Delineations: A fee of \$175 shall be paid prior to the submission of a Resource Protection Area Boundary Delineation and Resource Management Area Boundary Delineation to the County.

(C) Chesapeake Bay Preservation Ordinance Exceptions: A fee of \$115 per lot, not to exceed \$500 shall be paid prior to the submission of a request for an exception or waiver under the Chesapeake Bay Preservation Ordinance to the County. An additional fee of \$250 shall be paid prior to the submission of any request for an exception when a public hearing is required under Article 6 of the Chesapeake Bay Preservation Ordinance.

(D) Water Quality Fees are not required for plans and permits reviewed under this Article for which fees have been paid in connection with the review and approval of Water Quality Impact Assessments, Resource Protection Area Boundary Delineations and Resource Management Area Boundary Delineations, and Chesapeake Bay Preservation Ordinance exceptions under Chapter 101 (Subdivision Provisions) of the County Code or Article 17 (Site Plans) of the Zoning Ordinance.

(9) Sheet substitution (insert):

A fee of \$60 per sheet shall be paid upon submission of any insert to a study, report, or plan submitted pursuant to paragraph (d).

(10) Inspection following a violation:

A fee of \$115 shall be paid for each inspection following a violation of this Chapter.

(e) For the purposes of subsections (a) and (b) of this Section, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of a conservation plan shall be the responsibility of the owner. (5-82-104; 10-86-84; 17-86-104; 52-86-104; 7-89-104;

13-89-104; 15-89-104; 4-90-104; 17-91-104; 21-93-104; 28-93-104; 14-96-104; 12-00-104; 44-01-104; 31-03-104; 37-03-104.)

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. 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, § 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. (5-82-104; 15-89-104; 21-93-104; 37-03-104.)

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 of the Virginia Erosion and Sediment Control Regulations and require that an individual holding a certificate of competence, as provided by Virginia Code, § 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. (5-82-104; 37-86-104; 15-89-104; 38-94-104; 44-01-104; 37-03-104.)

Section 104-1-6. Reconsideration; judicial review.

(1) Any person aggrieved by a decision of the Director has the right to petition the Director for reconsideration of the decision, provided such request is made in writing within ten (10) days of the date of the Director's written decision. This reconsideration procedure is not applicable where an emergency situation exists, as determined by the Director, which would require immediate and necessary action under this Chapter. A petitioner under this reconsideration procedure must demonstrate to the Director's satisfaction a clear and direct interest in the decision. If requested by the petitioner, the Director shall seek the recommendations of the Erosion and Sediment Control Review Board, as established in Article 3 of this Chapter, although such recommendations would be advisory in nature only. If a timely reconsideration is filed by a petitioner with a clear and direct interest, the final decision of the Director shall be the written decision on the reconsideration.

(2) Final decisions of the Director under this Chapter shall be subject to review by the circuit court, provided an appeal is filed within thirty (30) days from the date of the final written decision which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities. (5-82-104; 12-00-104.)

Section 104-1-7. Definitions.

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 Soil and Water Conservation Board.

(c) Certified inspector means an employee or agent of a program 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 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.

(e) Certified program administrator means an employee or agent of a program 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. 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. The plan shall contain the tree cover requirements for overlot grading plans specified in 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 change 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 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) Surface or deep mining;

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

(7) Tilling, planting, or harvesting or agricultural, horticultural, or forest crops or livestock feedlot operations; 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. or is converted to bona fide agricultural or improved pasture use as described in Subsection (B) of § 10.1-1163;

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

(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;

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

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

(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;

(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) 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.

(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.

(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) Soil and water conservation district means a political subdivision of this Commonwealth organized in accordance with the provisions of Virginia Code Article 3 (Section 10.1-506 et seq.) of Chapter 5.

(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.

(u) Vegetation includes but is not limited to trees, shrubs and plants of any kind. (5-82-104; 43-88-104; 15-89-104; 9-90-104; 21-93-104; 38-94-104; 12-00-104; 37-03-104.)

Section 104-1-8. Conservation standards.

(a) Conservation standards or standards shall be the State Erosion and Sediment Control Regulations and the Standards & Specifications as contained in the current Virginia Erosion and Sediment Control Handbook with modifications as follows:

(1) Standard & Specification #3.04 Straw Bale Barriers--Rebars are not to be used to stake these barriers. Straw bales are to be used only for sheet flow application; they are not to be used for any drainageway, or channel flow applications or site development perimeter control.

(2) Standard & Specification #3.06 Brush Barrier--This practice is not to be used without the specific authorization of the Director.

(3) Standard & Specification #3.07 Storm Drain Inlet Protection--Any storm drain inlet protection measure which completely blocks the drain throat or entrance is not to be used. Straw bales and cinder block wrapped with filter fabric are not to be used for curb inlet protection.

(4) Standard & Specification #3.13 Temporary Sediment Trap--For land areas designated as Resource Protection Areas (RPAs), the storage volume shall be two hundred two (202) cubic yards per acre of disturbed area. Pipe outlet sediment traps shall be required for drainage areas of one (1) to three (3) acres. For land areas designated as RPAs, pipe outlet sediment traps may also be required for areas of less than one (1) acre where topographical and drainage conditions are favorable for field implementation (see Plate 2-11 of the current Public Facilities Manual for details). Stone outlets for temporary sediment traps under one (1) acre of drainage area outside of RPAs shall be constructed according to current Virginia Erosion and Sediment Control Handbook specifications.

(5) Standard & Specification #3.14 Temporary Sediment Basin--For land areas designated as RPAs, the storage volume shall be two hundred two (202) cubic yards per acre of disturbed area.

(6) Standard & Specification #3.34 Bermuda Grass and Zoysia Grass Establishment--This practice is not to be employed in Fairfax County.

(7) Standard and Specification #3.38 Tree Preservation and Protection--This section is not to be used in Fairfax County. In its place, Article 12, "Vegetation Preservation and Planting," of the Public Facilities Manual shall be used.

(8) Standard & Specification #3.02 Temporary Stone Construction Entrance--The minimum length for the temporary gravel construction entrance shall be seventy-five (75) feet and a woven filter fabric underliner is required. If the action of vehicles traveling over the gravel pad is not sufficient to remove the majority of the mud, then a wash rack shall be required with an appropriate water source to wash the mud off the tires before entering the public road.

(9) Standard & Specification #3.31 Temporary Seeding--Temporary seeding and mulching shall be required once an area is denuded for a maximum of fourteen (14) days except for that portion of the site in which work will be continuous beyond fourteen (14) days. For winter stabilization, any area denuded for fourteen (14) days after November 1, shall be seeded and mulched with the appropriate seed mixture as specified in Chapter 3 of the current Virginia Erosion and Sediment Control Handbook.

(10) Standard & Specification #3.05 Silt Fence--Manufacturer's certification shall be required to meet the physical properties given for synthetic filter fabric per the construction specifications as specified in the current Fairfax County Checklist for Erosion and Sediment Control Manual. This certification shall be presented to the Fairfax County inspector prior to installation in the field.

(b) Authorization for more stringent standards. The Board of Supervisors is authorized to adopt more stringent soil erosion and sediment control regulations than those necessary to ensure compliance with the State's minimum regulations. However, this section shall not be construed to authorize the Board of Supervisors to impose any more stringent regulations for plan approval or permit issuance than those specified in Sections 104-1-3 and 104-1-4. (5-82-104; 27-88-104; 15-8-104; 9-90-104; 21-93-104; 38-94-104.)

Section 104-1-9. Interpretation and conflict.2

2. Formerly, § 101-1-10; renumbered by 21-93-104.

(a) In their interpretation and application, the requirements of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

(b) Conflict With Public and Private Provisions:

(1) Public provisions: This Ordinance is not intended to interfere with, abrogate or annul any order of a court of competent jurisdiction, statute, regulation, or other provision of law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other provision of County ordinances or regulations or other provisions of law, whichever provisions are more restrictive or impose higher standards shall control unless the intent is clearly otherwise.

(2) Private provisions: This Ordinance is not intended to abrogate any legally enforceable easement, covenant or any other private agreement, or restriction; provided, that where the provisions of this Ordinance are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of this Ordinance shall govern. Where the provisions of the easement, covenant or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of this Ordinance, and such private provisions are not inconsistent with this Ordinance or determinations thereunder, then such private provisions shall be operative and supplemental to this Ordinance and determinations made thereunder. (5-82-104; 21-93-104.)

Section 104-1-10. Saving provision.3

3. Formerly, section 104-1-11; renumbered by 21-93-104.

This Ordinance shall not be construed as abating any legal action pending under, or by virtue of, the prior existing Erosion and Sediment Control Ordinance or regulations, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the County under any section or provision existing at the time of adoption of this Ordinance or as vacating or annulling any rights obtained by any person, firm or corporation, by virtue of lawful action of the County, except as shall be expressly provided for in this Ordinance. (5-82-104; 21-93-104.)

Section 104-1-11. Reservations and repeal.4

4. Editor's note--Reference to Section 104-1-1 in this section refers to provisions before amendment by Ord. No. 5-82-104. See the editor's note 1. at the beginning of this chapter. Formerly section 104-1-12; renumbered by 21-93-104.

Upon the effective date of this Ordinance according to law, the "Erosion and Sediment Control Ordinance" of Fairfax County adopted November 4, 1970, as amended, is hereby repealed and replaced by a new Section 104-1-1. (5-82-104; 21-93-104.)

Section 104-1-12. Penalties, injunctions and other legal actions.5

5. Formerly, section 104-1-13; renumbered by 21-93-104.

(a) Violations: Violators of Section 104-1-2 or 104-1-5 of this Article shall be guilty of a Class 1 misdemeanor.

(b) Civil Action for Damages: In addition to any criminal penalties provided under this Article, any person who violates any provision of this Article may be liable to the County in a civil action for damages.

(c) Stop-Work Order: Upon receipt of a sworn complaint of a violation under Section 104-1-2 or 104-1-5 of this Article, the Director may, in conjunction with or subsequent to a notice to comply as specified above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in Section 104-1-2, the Director may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in Sections 104-1-2 and 104-1-5. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the Director or the permit holder for appropriate relief to the Circuit Court. If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the Director may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit

application or the land records of the County. The owner may appeal the issuance of an order to the Circuit Court. Any person violating or failing, neglecting or refusing to obey an order issued by the Director may be compelled in a proceeding instituted in the Circuit Court to obey same and comply therewith by injunction, mandamus or other appropriate remedy. The order shall be lifted immediately following completion and approval of the corrective action or obtaining the approved plan or any required permits. Nothing in this section shall prevent the Director from taking any other action specified in Section 104-1-2 or Section 104-1-5.

(d) Injunctive Relief: The County may apply to the Fairfax County Circuit Court for injunctive relief to enjoin a violation or a threatened violation under Section 104-1-2 or 104-1-5 of this Article, without the necessity of showing that there does not exist an adequate remedy at law.

(e) Enforcement: The Commonwealth's Attorney shall, upon request of the County, take legal action to enforce the provisions of this Article.

(f) Compliance as Defense Against Damages: Compliance with the provisions of this Article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met; and the complaining party must show negligence in order to recover any damages.

(g) Use of Escrow: As provided for in Section 104-1-5 of this Article, the Director may authorize the County agents to use escrow funds posted by the applicant to provide conservation measures as may be necessary due to the applicant's failure to initiate appropriate conservation action as a result of his land-disturbing activity. In the event that escrow funds are used by the County pursuant to this Article, the applicant shall deposit, within ten (10) days of such disbursement, an amount sufficient to restore the amount to its original balance.

(h) Civil Penalty: Without limiting the remedies which may be obtained in this Section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this Section shall be subject, in the discretion of the court, to a civil penalty not to exceed Two Thousand Dollars (\$2,000.00) for each violation.

(i) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or any condition of a permit or any provision of this Article, the Director may provide, in an order issued by the Director against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection (h) of this Section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection (h). (5-82-104; 37-86-104; 15-89-104; 21-93-104; 38-94-104.)