

**SOIL EROSION AND SEDIMENT CONTROL ORDINANCE
OF THE COUNTY OF AMELIA, VIRGINIA**

SECTION 1 – TITLE AND PURPOSE

This Ordinance shall be known as the "Erosion and Sediment Control Ordinance of the County of Amelia, Virginia."

The County of Amelia Board of Supervisors has determined that the lands and waters comprising the watersheds of the County are valuable and important natural resources, which provide subsistence life, and in the public interest, demand reasonable preservation. The purpose of this Ordinance is to prevent to the greatest practical extent the erosion of land and sediment deposition in waters within the watersheds of the County, so that said waters remain unpolluted and unspoiled to such a degree that fish and aquatic life, recreation and other uses of the land and water will not be adversely affected, and further, to preserve the natural agricultural or forestal productivity of the land. The purpose of the Ordinance is also to conserve the land, water, air and other natural resources of the County by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.

SECTION 2 – AUTHORITY FOR CHAPTER

This chapter is authorized by the Code of Virginia, 1950, as amended, Title 10.1, Chapter 5, Article 4 (10.1-560 et seq.), known as Erosion and Sediment Control Law.

SECTION 3 – DEFINITIONS: As used in this ordinance, unless the context requires a different meaning:

A. "Administrator": means the County Administrator who is the person in charge of the County of Amelia Erosion and Sediment Control Program.

B. "Agreement in lieu of a plan": means a contract between the County E&S Official and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the County E&S Official in lieu of a formal site plan. (Amended 4-17-96)

C. "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.

D. "Board": the Virginia Soil and Water Conservation Board.

E. "Clearing": means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

F. "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 the entire unit or units of land will be so treated to achieve the conservation objectives.

G. "County": means the County of Amelia.

H. "Denuded": means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

I. "Development": means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential units.

J. "District" or "Soil and Water Conservation District": means the Piedmont Soil and Water Conservation District, a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (Sec. 10.1-506 et. seq.) of Chapter 5 of Title 10.1.

K. "District Official" or "Conservation District Official": means the directors of the Piedmont Soil and Water Conservation District or its staff, and their successors.

L. "Dormant": refers to denuded land that is not actively being brought to a desired grade or condition.

M. "Erosion Control Handbook" or "Handbook": means the Virginia Erosion and Sediment Control Handbook with such amendments as may, from time to time, be properly adopted.

N. "Erosion Impact Area": means an area of land not associated with current land-disturbing activity 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 of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

O. "Excavating": means any digging, scooping or other methods of removing earth materials.

P. "Filling": means any depositing or stockpiling of earth materials.

Q. "Governing Body": means the County of Amelia Board of Supervisors.

R. "Grading": means any excavating of or filling with earth material or any combination thereof, including the land in its excavated or filled conditions.

S. "Inspector": means the Soil Erosion Inspector who acts as the Soil Erosion and Sediment Control Officer.

T. "Land Disturber": means a person engaged in land disturbing activity as defined herein.

U. "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:

(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 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;

(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 of agricultural, horticultural, or forest crops and products, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation.

(8) 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, Article 2, (Sec. 10.1 – 604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation.

(9) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company:

(10) Disturbed land areas of less than ten thousand (10,000) square feet;

(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 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; and (Amended 7-16-03)

(13) 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 requirements of the Piedmont Soil and Water Conservation District;

(14) Construction, installation, or maintenance of electric, telephone, and cable utility lines;

(15) Any state agency that undertakes a project involving a land disturbing activity pursuant to Section 10.1-564 of the Code of Virginia, 1950, as amended.

V. "Land Disturbing Permit": means a permit issued by the County of Amelia for the clearing, filling, excavating, grading, transferring or any combination thereof or for any purpose set forth herein.

W. "Local Erosion and Sediment Control Program" or "Local Control Program": means an outline or explanation of the various elements or methods employed by the County of Amelia to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the State program and may include such items as local Ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.

X. "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.

Y. "Permittee": means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Z. "Permit Issuing Authority": shall be the office of the County Administrator.

AA. "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 the Commonwealth, any interstate body, or any other legal entity.

AB. "Plan Approving Authority": means the Piedmont Soil and Water Conservation District, which is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land and for approving plans.

AC. "Post-development": refers to conditions that may be reasonable expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

AD. "Pre-development": refers to conditions at the time the erosion and sediment control plan is submitted to the plan-approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

AE. "Single-family residence": means a noncommercial dwelling that is occupied exclusively by one family.

AF. "Stabilized": means an area that can be expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.

AG. "Standards" or "Conservation Standards": means the standards adopted by the conservation district officials, pursuant to the Code of Virginia, 1950, as amended, Title 10.1, Chapter 5, Article 4 (10.1-560 et seq.) and the Virginia Erosion and Sediment Control Handbook.

AH. "State Erosion and Sediment Control Program" or "State Program": means the program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code including regulations designed to minimize erosion and sedimentation.

AI. "State Waters": means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

AJ. "Transporting": means any moving of earth materials from one place to another place, other than such movement incidental to grading, when such movement results in destroying the vegetation ground cover either by tracking or the buildup of earth materials to the extent that the erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

SECTION 4 – LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

A. The County of Amelia hereby adopts the regulations promulgated by the Virginia Soil and Water Conservation Board pursuant to Section 10.1-562, Code of Virginia, 1950, as amended, for the effective control of soil erosion, sediment deposition and non-agricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. The Virginia Erosion and Sediment Control Regulations, the Virginia Erosion and Sediment Control Handbook, as amended periodically, are as the standards, reference and guidelines for the local program.

B. The County of Amelia designates the Piedmont Soil and Water Conservation District as the plan approving authority.

C. The program and regulations provided for in this Ordinance shall be made available for public inspection at the office of the County Administrator.

SECTION 5 – REGULATED LAND-DISTURBING ACTIVITIES, SUBMISSION AND APPROVAL OF PLANS

A. Except as provided herein, no person shall engage in any land-disturbing activity until he/she has submitted to the office of the County Administrator an erosion and sediment control plan for land-disturbing activity and such plan has been approved by the plan approving authority and a land disturbing permit issued therefore. It is the intent of this Ordinance to be an adjunct to both the County's Subdivision Ordinance and Zoning Ordinance wherein such applies to the development of previously subdivided land within the County of Amelia.

Where land-disturbing activities involve lands under the jurisdiction or more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned.

B. 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 authorized by the County E&S Official. (Amended 4-17-96)

C. Any person who intends to undertake land disturbing activity, as cited in this Ordinance, shall submit, to the Office of the County Administrator, two (2) copies of a conservation plan for control of soil erosion and sedimentation. Upon receipt of the plan, one (1) copy of such plan shall be referred to the plan approving authority. The plan approving authority shall, within 45 days, approve any such plan, if it determines that the plan meets the requirements of the Board's regulations, and if the person responsible for carrying out the plan certifies that he/she will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this Ordinance.

D. As a prerequisite to approval of the plan engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the individual holding a certificate of competence to the program authority, as provided by Section 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 article. 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 the plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by Section 10.1-561. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this article. (Amended 7-16-03)

E. The standards contained within the "Virginia Erosion and Sediment Control Regulations: and the Virginia Erosion and Sediment Control Handbook are to be used by the applicant when making a submittal under the provisions of this Ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.

F. The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When a plan is determined to be inadequate, the plan approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

G. An approved plan may be changed by the plan approving authority when:

- (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- (2) The person responsible for carrying out the 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 Ordinance, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

H. In order to prevent further erosion, Amelia County may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

I. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. Whenever electric and telephone utility companies or railroad companies undertake any of the activities included in subdivisions 1 and 2 of this subsection, they shall be considered exempt from the provisions of this Ordinance. However, they shall file general erosion and sediment control specifications annually with the Virginia Soil and Water Conservation Board.

1. Construction, installation and maintenance of electric and telephone utility lines;
and

2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the County of Amelia Erosion and Sediment Control Program, pursuant to Code of Virginia, 1950, as amended, Section 10.1-563D.

K. State agency projects are exempt from the provisions of this Ordinance except as provided for in the Code of Virginia, 1950, as amended, Section 10.1-564.

SECTION 6 – LAND DISTURBING PERMITS; FEES; BONDING; ETC.

A. No person shall engage in any land-disturbing activity until he/she has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this Ordinance, and has paid the fees and posted the required bond.

B. Fees: A plan review and inspection fee of \$50.00 for projects involving one (1) acre of land or less plus \$10.00 per acre of land or portion thereof in excess of one (1) acre shall be paid to the "Treasurer of Amelia County" at the time of filing erosion and sediment control plans.

C. No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed. An approved plan is required for issuance of grading, building or other permits.

D. Bond: All applicants for permits shall provide to the County of Amelia a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the County Administrator to ensure that measures could be taken by the County of Amelia at the applicant's expense should the applicant fail within the time specified to initiate or maintain appropriate conservation measures required of him/her as a result of his/her land-disturbing activity. Should it be necessary for the County of Amelia to take such conservation action, the County of Amelia may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of the achievement of adequate stabilization, as determined by the County Administrator, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated. These requirements are in

addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

SECTION 7 – MONITORING, REPORTS, AND INSPECTIONS

A. The Soil Erosion and Sediment Control Officer shall provide for and/or conduct periodic inspections of the land-disturbing activity and require that an individual holding a certificate of competence, as provided by Section 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity and may require monitoring and reports from the person responsible for carrying out the plan to insure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. 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. The owner, occupier or operator shall be given an opportunity to accompany the inspector. If the Soil Erosion and Sedimentation Control Officer determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this Ordinance and, upon conviction, shall be subject to the penalties provided by the Ordinance. (Amended 7-16-03)

B. Upon determination of a violation of this Ordinance, the Soil Erosion and Sediment Control Officer may, in conjunction with or subsequent to a notice to comply as specified in this Ordinance, 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.

If land-disturbing activities have commenced without an approved plan, the Soil Erosion and Sediment Control Officer may, in conjunction with or subsequent to a notice to comply as specified in this Ordinance, 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 this Ordinance. 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 days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court of the County of Amelia.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Soil Erosion and Sediment Control Officer may issue an order to the owner requiring that all construction and other work on 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 of Amelia.

The owner may appeal the issuance of an order to the Circuit Court of the County of Amelia.

Any person violating or failing, neglecting or refusing to obey an order issued by the Soil Erosion and Sediment Control Officer may be compelled in a proceeding instituted in the Circuit Court of the County of Amelia to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the Soil Erosion and Sediment Control Officer from taking any other action authorized by this Ordinance.

SECTION 8. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

A. Violators of this Ordinance shall be guilty of a Class I Misdemeanor.

B. Any person who violates any provision of this Ordinance shall, upon a finding of the District Court of the County of Amelia, be assessed a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense.

In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.

C. The Soil Erosion and Sediment Control Officer may apply to the Circuit Court of the County of Amelia to enjoin a violation or a threatened violation of this Ordinance, without the necessity of showing that an adequate remedy at law does not exist.

D. In addition to any criminal penalties provided under this Ordinance, any person who violates any provision of this Ordinance may be liable to the County of Amelia in a civil action for damages.

E. 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 \$2,000 for each violation. A civil action for such violation or failure may be brought by the County of Amelia.

Any civil penalties assessed by a court shall be paid into the treasury of the County of Amelia, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this Ordinance, the County of Amelia may provide for the payment of civil charges for violations in specific sums, not to

exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection E.

G. An attorney selected by the governing body shall, upon request of the Board of Supervisors or the permit issuing authority, take legal action to enforce the provisions of this Ordinance.

H. Compliance with the provisions of this Ordinance 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.

I. The review, approval, and enforcement of the erosion and sediment control plans and specifications shall not constitute a representation, guarantee, or warranty of any kind by the County, or by any official or employee thereof, of the practicability or safety of any structure, use, or other plan proposed and shall create no liability upon or cause of action against such public body, official, or employee for any damage that may result pursuant thereof.

SECTION 9 – APPEALS AND JUDICIAL REVIEW

A. Any applicant under the provision of this Ordinance who is aggrieved by any action of the County of Amelia or its agent in disapproving plans submitted pursuant to this Ordinance shall have the right to apply for and receive a review of such action by the County of Amelia Board of Supervisors. In reviewing the agent's actions, the governing body shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the action. The Board of Supervisors' decision shall be final, subject only to review by the Circuit Court of the County of Amelia. Any applicant may seek an appeal hearing before the governing body, provided that the Board of Supervisors and other involved parties have at least 30 days prior notice.

B. Final decisions of the County of Amelia under this Ordinance shall be subject to review by the County of Amelia Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

SECTION 10 – SEVERABILITY

A. Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof other than the part so held to be unconstitutional or invalid.

SECTION 11 – EFFECTIVE DATE

A. This Ordinance was duly considered, following a required public hearing held on February 16, 1994, and was adopted by the County of Amelia Board of Supervisors at its regular meeting held on February 16, 1994. This Ordinance shall be effective upon adoption and subsequent amendments thereto, as follows: April 17, 1996, October 17, 2001, and July 16, 2003. (Amended 7-16-03)