

1                   **AN ORDINANCE TO AMEND RAPPAHANNOCK COUNTY CODE SECTIONS**  
2                   **RELATED TO EROSION AND SEDIMENT CONTROL**

3  
4   **IT IS HEREBY RESOLVED, ADOPTED, AND ORDAINED BY THE BOARD OF**  
5   **SUPERVISORS OF RAPPAHANNOCK COUNTY, VIRGINIA, THAT CHAPTER 98, EROSION**  
6   **AND SEDIMENT CONTROL, OF THE RAPPAHANNOCK COUNTY CODE SHALL BE**  
7   **AMENDED TO ALIGN WITH UPDATES TO THE CODE OF VIRGINIA AND VIRGINIA**  
8   **ADMINISTRATIVE CODE, EFFECTIVE JULY 1, 2024:**

9  
10 *Italicized and underlined* language is language to be added. Language that is ~~stricken through~~ is to be  
11 deleted.

12                                   **Chapter 98**  
13                                   **Erosion and Sediment Control**

14                                   Article I  
15                                   **Soil and Water Agreement**

16   **[Adopted 3-1-1982]**

17   **§ 98-1 Purpose.**

- 18   A. This memorandum of understanding was entered into this first day of March 1982 by and between  
19       the County of Rappahannock, Virginia, hereinafter called the "County," and the Culpeper Soil and  
20       Water Conservation District, Commonwealth of Virginia, hereinafter called the "district."
- 21   B. Recognizing the need for close working relationships in carrying out the responsibilities for which  
22       each is charged, the County and district enter into this memorandum of understanding as the  
23       foundation for an enduring cooperative working relationship. Such cooperation allows joint effort  
24       in the solution of problems relating to the planning and development of soil, water and related  
25       natural resources in Rappahannock County.

26   **§ 98-2 Technical assistance.**

27   The district will make technical assistance available as requested by the County. This assistance, as set  
28   forth below, will be provided by federal, state and local resource agencies which work through the  
29   district, within the limitations of their budgets and availability of personnel and in accordance with  
30   established policies for reimbursement of certain costs.

31   **§ 98-3 Obligations of district.**

32   The district agrees to:

- 33   A. Provide available basic natural resource data, such as soil surveys, inventories of potential water  
34       impoundment sites, outdoor recreation suitability appraisals, etc.
- 35   B. Provide interpretations of soils for various uses.
- 36   C. Assist in the development of policies, ordinances and programs for the conservation of soil, water  
37       and related natural resources.



- 38 D. Provide current soil and water conservation practice standards and specifications including those  
39 for erosion and sediment control to be used as a basis for developing conservation plans on lands  
40 within the County and on County-owned property.
- 41 E. Review, comment and approve, as required by local ordinance, plans which impact on soil, water  
42 and related resources.
- 43 F. Assist in developing and conducting training programs for carrying out an effective erosion and  
44 sediment control program.
- 45 G. Assist the County with an annual review of the effectiveness of the local erosion and sediment  
46 control program.
- 47 H. Inform the County of programs available through the district and its cooperating agencies which  
48 affect natural resource management.
- 49 I. Assist with local educational programs relating to natural resource conservation and protection of  
50 the environment.
- 51 J. Delegate a member of the District Board of Directors to serve as a liaison representative to the  
52 County.
- 53 K. Furnish a copy of its long-range program and annual report of accomplishments.
- 54 L. Prepare and submit to the County an annual plan of work and a budget request for carrying out the  
55 plan.

56 **§ 98-4 Obligations of County.**

57 The County agrees to:

- 58 A. Assist the district in the development of effective soil and water conservation programs.
- 59 B. Provide the district with a copy of the comprehensive plan, land use plan and any other plan(s) for  
60 the County.
- 61 C. Consult with the district in the development or review of policies, ordinances and programs which  
62 deal with soil, water and related natural resources.
- 63 D. Use natural resource data and soil and water conservation standards and specifications furnished by  
64 the district in its local programs and on County-owned property.
- 65 E. Delegate a member of the County Board of Supervisors to serve as a liaison representative to the  
66 district.
- 67 F. Help carry out an education program designed to make the public aware of the need for the proper  
68 use and management of natural resources.
- 69 G. Sponsor an annual review to determine the effectiveness of the local erosion and sediment control  
70 program.
- 71 H. Provide the district with funding in support of the district's annual plan of work.



72 § 98-5 **Mutual obligations.**

- 73 A. The County, and the district may/will meet annually to further coordinate their respective programs  
74 and activities for optimum mutual benefit.
- 75 B. Special emphasis will be given by the County and district to maximize the effectiveness of the local  
76 erosion and sediment control program.
- 77 C. This memorandum may be amended or terminated at any time by mutual consent of the parties  
78 hereto or may be terminated by either party by giving 60 days notice, in writing, to the other party.

79 Article II  
80 **Erosion and Sediment Control**

81 **§98-6 Title, purpose, and authority**

82  
83 *This ordinance shall be known as the 'Erosion and Sediment Control Ordinance of Rappahannock*  
84 *County.' The purpose of this ordinance is to prevent the unreasonable degradation of properties,*  
85 *stream channels, waters and other natural resources of Rappahannock County by establishing*  
86 *requirements for the effective control of soil erosion, sediment deposition and non-agricultural*  
87 *runoff and by establishing procedures whereby these requirements shall be administered and*  
88 *enforced.*

89  
90 A. *This ordinance is authorized by § 62.1-44.15:54 of the Code of Virginia.*

91  
92 **§98-7 Definitions**

93  
94 *The following words and terms, when used in this Chapter, shall have the following meanings, unless*  
95 *the context clearly indicates otherwise.*

96  
97 **AGREEMENT IN LIEU OF A PLAN**

98 *A contract between the VESCP authority and the owner that specifies conservation measures that*  
99 *must be implemented to comply with the requirements of this Chapter for the construction of a (i)*  
100 *single-family detached residential structure or (ii) farm building or structure on a parcel of land*  
101 *with a total impervious cover percentage, including the impervious cover from the farm building or*  
102 *structure to be constructed, of less than five percent; this contract may be executed by the VESCP*  
103 *authority in lieu of formal site plan.*

104  
105 **APPLICANT**

106 *Any person submitting an erosion and sediment control plan for approval in order to obtain*  
107 *authorization for land-disturbing activities to commence.*

108  
109 **BOARD**

110 *The State Water Control Board.*

111  
112 **CERTIFIED INSPECTOR FOR ESC**

113 *An employee or agent of the VESCP authority who (i) holds a certificate of competence from the*  
114 *department in the area of project inspection or (ii) is enrolled in the department's training*  
115 *program for project inspection and successfully completes such program within one year after*



116 enrollment.

117  
118 **CERTIFIED PLAN REVIEWER FOR ESC**

119 An employee or agent of the VESCP authority who (i) holds a certificate of competence from the  
120 department in the area of plan review, (ii) is enrolled in the department's training program for  
121 plan review and successfully completes such program within one year after enrollment, or (iii) is  
122 licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to  
123 Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil  
124 scientist as defined in § 54.1-2200.

125  
126 **CERTIFIED PROGRAM ADMINISTRATOR FOR ESC**

127 An employee or agent of the VESCP authority who holds a certification from the department in the  
128 classification of program administrator or (ii) is enrolled in the department's training program for  
129 program administration and successfully completes such program within one year after enrollment.

130  
131 **CLEARING**

132 Any activity which removes the vegetative ground cover including, but not limited to, root mat  
133 removal or topsoil removal.

134  
135 **COUNTY**

136 The County of Rappahannock or Rappahannock County.

137  
138 **DEPARTMENT**

139 The Virginia Department of Environmental Quality.

140  
141 **DISTRICT or SOIL AND WATER CONSERVATION DISTRICT**

142 The Culpeper Soil and Water Conservation District (CSWCD).

143  
144 **EROSION AND SEDIMENT CONTROL PLAN or PLAN**

145 A document containing material for the conservation of soil and water resources of a unit or group  
146 of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and  
147 management information with needed interpretations, and a record of decisions contributing to  
148 conservation treatment. The plan shall contain all major conservation decisions to ensure that the  
149 entire unit or units of land will be so treated to achieve the conservation objectives.

150  
151 **EROSION IMPACT AREA**

152 An area of land that is not associated with a current land-disturbing activity but is subject to  
153 persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state  
154 waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used  
155 for residential purposes

156  
157 **FARM BUILDING OR STRUCTURE**

158 The same as that term is defined in § 36-97 of the Code of Virginia and also includes any building  
159 or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious  
160 surfaces including roads, driveways, and parking areas.

161  
162 **EXCAVATING**

163 Any digging, scooping or other methods of removing earth materials.

164



165 **FILLING**

166 Any depositing or stockpiling of earth materials.

168 **GRADING**

169 Any excavating or filling of earth material or any combination thereof, including the land in its  
170 excavated or filled conditions.

172 **LAND DISTURBANCE or LAND-DISTURBING ACTIVITY**

173 A man-made change to the land surface that may result in soil erosion or has the potential to  
174 change its runoff characteristics, including the clearing, grading, excavating, transporting, and  
175 filling of land.

177 **LAND-DISTURBING PERMIT OR APPROVAL**

178 A permit or an approval allowing a land-disturbing activity to commence issued by VESCP  
179 authority after the requirements of § 62.1-44.15:55 of the Code of Virginia have been met.

181 **NATURAL CHANNEL DESIGN CONCEPTS**

182 The utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate,  
183 restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream  
184 that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull  
185 bench and its floodplain.

187 **OWNER**

188 The same as provided in § 62.1-44.3 of the Code of Virginia. For a land-disturbing activity that is  
189 regulated under Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of  
190 Virginia and this Chapter, "owner" also includes the owner or owners of the freehold of the  
191 premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver,  
192 executor, trustee, lessee, or other person, firm, or corporation in control of a property.

194 **PEAK FLOW RATE**

195 The maximum instantaneous flow from a prescribed design storm at a particular location.

197 **PERCENT IMPERVIOUS**

198 The impervious area within the site divided by the area of the site multiplied by 100.

200 **PERMITTEE**

201 The person to whom the permit is issued.

203 **PERSON**

204 Any individual, partnership, firm, association, joint venture, public or private corporation, trust,  
205 estate, commission, board, public or private institution, utility, cooperative, county, city, town, or  
206 other political subdivision of the Commonwealth, governmental body, including a federal or state  
207 entity as applicable, any interstate body, or any other legal entity.

209 **RESPONSIBLE LAND DISTURBER or RLD**

210 An individual holding a certificate issued by the department who is responsible for carrying out the  
211 land-disturbing activity in accordance with the approved erosion and sediment control plan. The  
212 RLD may be the owner, applicant, permittee, designer, superintendent, project manager,  
213 contractor, or any other project or development team member. The RLD must be designated on the



214 erosion and sediment control plan or permit as defined in the Virginia Erosion and Stormwater  
215 Management Regulation (9VAC25-875) as a prerequisite for engaging in land disturbance. The  
216 RLD must be designated on the erosion and sediment control plan or permit as defined in this  
217 ordinance as a prerequisite for engaging in land disturbance.

#### 218 **RUNOFF VOLUME**

219 The volume of water that runs off the land development project from a prescribed storm event.

#### 220 **SINGLE-FAMILY DETACHED RESIDENTIAL STRUCTURE**

221 A noncommercial dwelling that is occupied exclusively by one family.

#### 222 **STATE WATERS**

223 All water, on the surface and under the ground, wholly or partially within or bordering the  
224 Commonwealth or within its jurisdiction, including wetlands.

#### 225 **TRANSPORTING**

226 Any moving of earth materials from one place to another place other than such movement  
227 incidental to grading, when such movement results in destroying the vegetative ground cover either  
228 by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result  
229 from the soil or earth materials over which such transporting occurs.

#### 230 **TOWN**

231 The incorporated town of Washington, Virginia.

#### 232 **VIRGINIA EROSION AND SEDIMENT CONTROL PROGRAM or VESCP**

233 A program approved by the department that is established by a VESCP authority for the effective  
234 control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-  
235 disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters,  
236 and other natural resources and shall include such items where applicable as local ordinances,  
237 rules, policies and guidelines, technical materials, and requirements for plan review, inspection,  
238 and evaluation consistent with the requirements of the Erosion and Sediment Control Law (ESCL).

#### 239 **VIRGINIA EROSION AND SEDIMENT CONTROL PROGRAM AUTHORITY or VESCP** 240 **AUTHORITY**

241 For the purposes of this Chapter means Rappahannock County, which has been approved by the  
242 department to operate a Virginia Erosion and Sediment Control Program in accordance with  
243 Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1, the State Water Control Law, of Title 62.1 of  
244 the Code of Virginia.

#### 245 **VESCP PLAN-APPROVING AUTHORITY**

246 The CSWCD, as designated in Article I, is responsible for determining the adequacy of a plan  
247 submitted for land-disturbing activities on a unit or units of lands and for approving plans.

#### 248 **VIRGINIAN STORMWATER MANAGEMENT HANDBOOK**

249 A collection of pertinent information that provides general guidance for compliance with the  
250 Virginia Erosion and Stormwater Management Act and associated regulations and is developed by  
251 the Department with advice from a stakeholder advisory committee, as amended.

#### 252 **VPDES PERMIT**



A General VPDES (Virginia Pollutant Discharge Elimination System) Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880, issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

#### **§ 98-8 Local erosion and sediment control program**

Pursuant to § 62.1-44.15:54 of the Code of Virginia, the VESCP authority hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources) and the Virginian Stormwater Management Handbook. In accordance with § 62.1-44.15:52 of the Code of Virginia, 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, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified 9VAC25-875-600, unless such land-disturbing activities are in accordance with the grandfathering provisions of 9VAC25-875-490.

B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer for ESC. Inspections of land-disturbing activities shall be conducted by a certified inspector for ESC. The Erosion and Sediment Control Program of Rappahannock County shall contain a certified program administrator for ESC, a certified plan reviewer for ESC, and a certified inspector for ESC (who may be the same person.)

C. Rappahannock County hereby designates the CSWCD as the VESCP plan-approving authority.

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

#### **§ 98-9 Regulated land-disturbing activities**

A. Land-disturbing activities that meet the criteria below are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, is less than one acre, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).

#### **§ 98-10 Activities not required to comply with the ESCL**



311 A. Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not  
312 Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following  
313 activities are not required to comply with the ESCL unless otherwise required by federal law:  
314

- 315 1. Disturbance of a land area of less than 10,000 square feet in size;  
316
- 317 2. Minor land-disturbing activities such as home gardens and individual home landscaping,  
318 repairs, and maintenance work;  
319
- 320 3. Installation, maintenance, or repair of any individual service connection;  
321
- 322 4. Installation, maintenance, or repair of any underground utility line when such activity occurs  
323 on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity  
324 is confined to the area of the road, street, or sidewalk that is hard surfaced;  
325
- 326 5. Installation, maintenance, or repair of any septic tank line or drainage field unless included  
327 in an overall plan for land-disturbing activity relating to construction of the building to be  
328 served by the septic tank system;  
329
- 330 6. Permitted surface or deep mining operations and projects, or oil and gas operations and  
331 projects conducted pursuant to Title 45.2 of the Code of Virginia;  
332
- 333 7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling,  
334 planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot  
335 operations; agricultural engineering operations, including construction of terraces, terrace  
336 outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing,  
337 contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally  
338 set forth by the board in regulations. However, this exception shall not apply to harvesting of  
339 forest crops unless the area on which harvesting occurs is reforested artificially or naturally  
340 in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the  
341 Code of Virginia or is converted to bona fide agricultural or improved pasture use as  
342 described in subsection B of § 10.1-1163 of the Code of Virginia;  
343
- 344 8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts  
345 or poles;  
346
- 347 9. Land-disturbing activities in response to a public emergency where the related work requires  
348 immediate authorization to avoid imminent endangerment to human health or the  
349 environment. In such situations, the VESCP authority shall be advised of the disturbance  
350 within seven days of commencing the land-disturbing activity, and compliance with the  
351 administrative requirements of §§ 98-11, 98-12, and 98-13 of this Chapter are required  
352 within 30 days of commencing the land-disturbing activity; and  
353
- 354 10. Discharges to a sanitary sewer or a combined sewer system that are not from a land-  
355 disturbing activity.  
356

#### 357 § 98-11 Submission and approval of plans; contents of plans

358

359 A. Except as provided herein, no person may engage in any regulated land-disturbing activity until he



or she has submitted to the VESCP authority an erosion and sediment control plan for the regulated land-disturbing activity and such plan has been approved by the VESCP authority. No approval to begin a land disturbing activity will be issued unless evidence of VPDES permit coverage is obtained where it is required. Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.

B. The standards contained within the "Virginia Erosion and Stormwater Management Regulation (9VAC25-875)" and "Virginia Stormwater Management Handbook", as amended are to be used by the applicant when making a submittal under the provisions of this Chapter and in the preparation of an erosion and sediment control plan. The VESCP 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 Virginia Erosion and Stormwater Management Regulation shall take precedence.

C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law for Localities not Administering a Virginia Erosion and Stormwater Management Program and 9VAC25-875, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this Chapter. 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 the responsible land disturber to the VESCP authority, as required by 9VAC25-875-300 and 9VAC25-875-550, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, 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.

D. However, the VESCP plan-approving authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. If a violation occurs during the land-disturbing activity associated with the construction of the single-family detached residential structure, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of the responsible land disturber to the VESCP authority. Failure to provide the name of the responsible land disturber shall be a violation of this Chapter.

E. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice 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.

F. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.



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*G. The VESCP authority may require changes to an approved plan when:*

- 1. A site 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 Chapter, are agreed to by the VESCP plan-approving authority and the person responsible for carrying out the plans.*

*H. Variances: The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be 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 VESCP plan-approving authority 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 VESCP plan-approving authority. The VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving authority 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 VESCP authority 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.*

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

*J. When a 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.*

*K. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34 of the Code of Virginia to the VESCP authority, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted.*



458 **§ 98-12 Erosion and sediment control plan; contents of plans**

459  
460 *A. An erosion and sediment control plan shall be filed for a development and the buildings constructed*  
461 *within, regardless of the phasing of construction. The erosion and sediment control plan shall be*  
462 *consistent with the criteria, techniques, and methods in 9VAC25-875-560. The erosion and*  
463 *sediment control plan shall contain all major conservation decisions to ensure that the entire unit*  
464 *or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The*  
465 *erosion and sediment control plan may include:*

466  
467 *1. Appropriate maps;*

468  
469 *2. An appropriate soil and water plan inventory and management information with needed*  
470 *interpretations; and*

471  
472 *3. A record of decisions contributing to conservation treatment.*

473  
474 *B. The person responsible for carrying out the plan shall provide the name of an individual holding a*  
475 *certificate who will be in charge of and responsible for carrying out the land-disturbing activity to*  
476 *the VESMP authority. [Note: The VESMP authority may waive the Responsible Land Disturber*  
477 *certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or §*  
478 *62.1-44.15:55 of the Code of Virginia.]*

479  
480 *C. If individual lots or sections in a residential development are being developed by different property*  
481 *owners, all land-disturbing activities related to the building construction shall be covered by an*  
482 *erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property*  
483 *owner.*

484  
485 *D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential*  
486 *development shall not be considered exempt from the provisions of the VESMA, ESCL, or this*  
487 *Chapter if the total land-disturbing activity in the development is equal to or greater than 10,000*  
488 *square feet.*

489  
490 **§ 98-13 Permits; fees; security for performance**

491  
492 *A. Agencies authorized under any other law to issue grading, building, or other permits for activities*  
493 *involving land-disturbing activities shall not issue any such permit unless the applicant submits*  
494 *with his application an approved erosion and sediment control plan, certification that the plan will*  
495 *be followed, and evidence of VPDES permit coverage where it is required.*

496  
497 *B. No person may engage in any land-disturbing activity until he or she has acquired a land-*  
498 *disturbing permit (unless the proposed land-disturbing activity is specifically exempt from the*  
499 *provisions of this Chapter), has paid the fees and has posted the required bond.*

500  
501 *C. An administrative fee in an amount to be determined by the fee schedule adopted separately by the*  
502 *County shall be paid to Rappahannock County at the time of submission of the erosion and*  
503 *sediment control plan.*

504  
505 *D. No land-disturbing permit shall be issued until the applicant submits with his or her application an*  
506 *approved erosion and sediment control plan, or agreement in lieu of an approved erosion and*



507 sediment control plan, and certification that the plan will be followed.

508  
509 E. Applicants for permits may be required to provide to the County a performance bond with surety,  
510 cash escrow, or an irrevocable letter of credit acceptable to the Certified Program Administrator,  
511 to ensure that measures could be taken by the County at the applicant's expense in the event that the  
512 applicant fails, after proper notice, within the time specified to initiate or maintain appropriate  
513 conservation measures required of him or her by the approved plan as a result of his land-  
514 disturbing activity.

515  
516 The amount of the bond or other security for performance shall not exceed the total of the estimated  
517 cost to initiate and maintain appropriate conservation action based on unit price for new public or  
518 private sector construction in the locality and a reasonable allowance for estimated administrative  
519 costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action.  
520 Should it be necessary for the County to take such conservation action, the County may collect from  
521 the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of  
522 adequate stabilization, as determined by the Certified Program Administrator in any project or  
523 section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated  
524 portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage  
525 of stabilization accomplished in the project or project section. These requirements are in addition  
526 to all other provisions relating to the issuance of permits and are not intended to otherwise affect  
527 the requirements for such permits.

528  
529 **§ 98-14 Monitoring, reports, and inspections**

530  
531 A. The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and  
532 responsible for carrying out the land-disturbing activity and provide for periodic inspections of the  
533 land-disturbing activity. The person responsible for carrying out the plan shall monitor the land-  
534 disturbing activity. The person responsible for carrying out the plan will maintain records of these  
535 inspections and maintenance, to ensure compliance with the approved plan and to determine  
536 whether the measures required in the plan are effective in controlling erosion and sedimentation.

537  
538 B. A Certified Inspector shall periodically inspect the land-disturbing activity in accordance with  
539 9VAC25-875-330 to ensure compliance with the approved plan and to determine whether the  
540 measures required in the plan are effective in controlling erosion and sedimentation. The owner,  
541 permittee, or person responsible for carrying out the plan shall be given notice of the inspection  
542 and shall such inspection in accordance with § 62.1-44.15:60 and the land-disturbing permit.

543  
544 If the Certified Inspector determines that there is a failure to comply with the plan, notice to comply  
545 may be served upon the permittee or person responsible for carrying out the plan. Such notice shall  
546 be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of  
547 delivery to the address specified in the permit application or in the plan certification, if available,  
548 or in the land records of the locality; or by delivery at the site of the land-disturbing activities to the  
549 agent or employee supervising such activities.

550  
551 The notice to comply shall specify the measures needed to comply with the land-disturbance  
552 approval conditions or shall identify the plan approval or land-disturbance approval needed to  
553 comply with this article and shall specify a reasonable time within which such measures shall be  
554 completed. Upon failure to comply within the specified time, any plan approval or land-  
555 disturbance approval may be revoked and the permittee or person responsible for carrying out the



plan shall be subject to the penalties provided by this Chapter.

C. Upon issuance of an inspection report denoting a violation of § 62.1-44.15:55 of the Code of Virginia, the Certified Program Administrator may, in conjunction with or subsequent to a notice to comply as specified in this Chapter, 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 Certified Program Administrator 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, such a stop work order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this Chapter. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.

The stop work 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 County or permit holder for appropriate relief to the Circuit Court of Rappahannock County. The County shall serve such order for disturbance without an approved plan upon the owner by mailing with confirmation of delivery to the address specified in the land records. The order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan within seven days from the date of service of the stop work order, the Certified Program Administrator 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 has been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of the County.

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

Any person violating or failing, neglecting or refusing to obey an order issued by the Certified Program Administrator may be compelled in a proceeding instituted in the Circuit Court of Rappahannock County 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, the order shall immediately be lifted.

Nothing in this section shall prevent the Certified Program Administrator from taking any other action authorized by this Chapter or other applicable laws.

#### **§ 98-15 Penalties, injunctions, and other legal actions**

A. Any person who has violated or failed, neglected, or refused to obey any order, notice, or



requirement of the VESCP authority, any condition of a land-disturbance approval, or any provision of this Chapter shall, upon a finding of the District Court of Rappahannock County, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, 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 \$10,000, 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.

*B. The Certified Program Administrator, or the owner or property which has sustained damage, or which is in imminent danger of being damaged, may apply to the Circuit Court of Rappahannock County to enjoin a violation or a threatened violation of §§ 62.1-44.15:55 or 62.1-44.15:58 of the Code of Virginia, without the necessity of showing that an adequate remedy at law does not exist.*

*However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.*

*C. In addition to any criminal or civil penalties provided under this Chapter, any person who violates any provision of the Erosion and Sediment Control Law may be liable to Rappahannock County in a civil action for damages.*

*D. 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 Rappahannock County.*

*Any civil penalties assessed by a court shall be paid into the treasury of Rappahannock County, 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.*

*E. 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 Chapter, or order of the VESCP authority the County may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection D of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection A or D.*

*F. The Commonwealth's Attorney shall, upon request of the Certified Program Administrator, take legal action to enforce the provisions of this Chapter.*

#### **§98-16 Appeals and judicial review**

*A. Final decisions of the County under this Chapter shall be subject to review by the Circuit Court of Rappahannock County, 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.*

**[Adopted 11-1-2004]**

**§ 98-6 Title, purpose and authority.**

This article shall be known as the "Erosion and Sediment Control Ordinance of Rappahannock County." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of Rappahannock County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced. This article is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (§ 10.1-560 et seq.), known as the "Virginia Erosion and Sediment Control Law."

**§ 98-7 Definitions.**

As used in the ordinance, unless the context requires a different meaning, the following terms shall have the meaning indicated:

**AGREEMENT IN LIEU OF A PLAN**

A contract between the plan approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single family residence; this contract may be executed by the plan approving authority in lieu of a formal site plan.

**APPLICANT**

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.

**BOARD**

The Virginia Soil and water Conservation Board.

**CERTIFIED INSPECTOR**

An employee or agent of a program authority who holds a certificate of competence from the Board in the area of project inspection or is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

**CERTIFIED PLAN REVIEWER**

An employee or agent of a program authority who holds a certificate of competence from the Board in the area of plan review, is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

**CERTIFIED PROGRAM ADMINISTRATOR**

An employee or agent of a program authority who holds a certificate of competence from the Board in the area of program administration or is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment. Generally, the County Administrator shall be the Certified Program Administrator for Rappahannock County.



693 **CLEARING**  
694 Any activity which removes the vegetative ground cover including, but not limited to, root mat  
695 removal or top soil removal.

696 **COUNTY**  
697 The County of Rappahannock.

698 **DEPARTMENT**  
699 The Department of Conservation and Recreation.

700 **DEVELOPMENT**  
701 A tract of land developed or to be developed as a single unit under single ownership or unified  
702 control which is to be used for any business or industrial purpose or is to contain three or more  
703 residential dwelling units.

704 **DIRECTOR**  
705 The Director of the Department.

706 **DISTRICT OR SOIL AND WATER CONSERVATION DISTRICT**  
707 Refers to the Culpeper Soil and Water Conservation District.

708 **EROSION AND SEDIMENT CONTROL PLAN OR PLAN**  
709 A document containing material for the conservation of soil and water resources of a unit or group  
710 of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and  
711 management information with needed interpretations and a record of decisions contributing to  
712 conservation treatment. The plan shall contain all major conservation decisions to assure that the  
713 entire unit or units of land will be so treated to achieve the conservation objectives.

714 **EROSION IMPACT AREA**  
715 An area of land not associated with current land disturbing activity but subject to persistent soil  
716 erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This  
717 definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for  
718 residential purposes.

719 **EXCAVATING**  
720 Any digging, scooping or other methods of removing earth materials.

721 **FILLING**  
722 Any depositing or stockpiling of earth materials.

723 **GRADING**  
724 Any excavating or filling of earth material or any combination thereof, including the land in its  
725 excavated or filled conditions.

726 **LAND-DISTURBING ACTIVITY**  
727 Any land change which may result in soil erosion from water or wind and the movement of  
728 sediments into state waters or onto lands in the commonwealth, including, but not limited to,  
729 clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

730 A.—Minor land disturbing activities such as home gardens and individual home landscaping, repairs



- 731 and maintenance work;
- 732 B. Individual service connections;
- 733 C. Installation, maintenance, or repair of any underground public utility lines when such activity  
734 occurs on an existing hard surfaced road, street or sidewalk provided such land disturbing activity  
735 is confined to the area of the road, street or sidewalk which is hard surfaced;
- 736 D. Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity  
737 relating to construction of the building to be served by the septic tank system;
- 738 E. Surface or deep mining;
- 739 F. Exploration or drilling for oil and gas, including the well site, roads, feeder lines, and off site  
740 disposal areas;
- 741 G. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot  
742 operations; including engineering operations and agricultural engineering operations as follows:  
743 construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to  
744 comply with the Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6, ditches, strip  
745 cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land  
746 irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on  
747 which harvesting occurs is reforested artificially or naturally in accordance with the provisions of  
748 Chapter 11 (§ 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved  
749 pasture use as described in Subsection B of § 10.1-1163;
- 750 H. Repair or rebuilding of the tracks, rights of way, bridges, communication facilities and other  
751 related structures and facilities of a railroad company;
- 752 I. Disturbed land areas of less than 10,000 square feet in size;
- 753 J. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- 754 K. Emergency work to protect life, limb or property, and emergency repairs; provided that if the land  
755 disturbing activity would have required an approved erosion and sediment control plan, if the  
756 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in  
757 accordance with the requirements of the plan approving authority.

758 **LAND DISTURBING PERMIT**

759 A permit issued by Rappahannock County for the clearing, filling, excavating, grading, transporting  
760 of land or for any combination thereof or for any purpose set forth herein.

761 **LOCAL EROSION AND SEDIMENT CONTROL PROGRAM or LOCAL CONTROL**  
762 **PROGRAM**

763 An outline of the various methods employed by Rappahannock County to regulate land disturbing  
764 activities and thereby minimize erosion and sedimentation in compliance with the state program  
765 and may include such items as local ordinances, policies and guidelines, technical materials,  
766 inspection, enforcement, and evaluation.

767 **OWNER**

768 The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee



769 in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or  
770 corporation in control of a property.

771 **PERMITTEE**

772 The person to whom the permit authorizing land disturbing activities is issued or the person who  
773 certifies that the approved erosion and sediment control plan will be followed.

774 **PERSON**

775 Any individual, partnership, firm, association, joint venture, public or private corporation, trust,  
776 estate, commission, board, public or private institution, utility, cooperative, County, city, town or  
777 other political subdivision of the commonwealth, any interstate body, or any other legal entity.

778 **PLAN-APPROVING AUTHORITY**

779 The Culpeper Soil and Water Conservation District, which is responsible for determining the  
780 adequacy of a plan submitted for land disturbing activities on a unit or units of lands and for  
781 approving plans.

782 **PROGRAM AUTHORITY**

783 Rappahannock County, which has adopted a soil erosion and sediment control program approved  
784 by the Board.

785 **RESPONSIBLE LAND-DISTURBER**

786 An individual from the project or development team, who will be in charge of and responsible for  
787 carrying out a land disturbing activity covered by an approved plan or agreement in lieu of a plan,  
788 who holds a responsible land-disturber certificate of competence, holds a current certificate of  
789 competence from the Board in the areas of combined administration, program administration,  
790 inspection, or plan review, holds a current contractor certificate of competence for erosion and  
791 sediment control, or is licensed in Virginia as a professional engineer, architect, certified landscape  
792 architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

793 **SINGLE-FAMILY RESIDENCE**

794 A noncommercial dwelling that is occupied exclusively by one family.

795 **STATE EROSION AND SEDIMENT CONTROL PROGRAM or STATE PROGRAM**

796 The program administered by the Virginia Soil and Water Conservation Board pursuant to the Code  
797 of Virginia, including regulations designed to minimize erosion and sedimentation.

798 **STATE WATERS**

799 All waters on the surface and under the ground wholly or partially within or bordering the  
800 commonwealth or within its jurisdiction.

801 **TRANSPORTING**

802 Any moving of earth materials from one place to another place other than such movement  
803 incidental to grading, when such movement results in destroying the vegetative ground cover either  
804 by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result  
805 from the soil or earth materials over which such transporting occurs.

806 **§ 98-8 Local erosion and sediment control program.**

807 A. Pursuant to § 10.1-562 of the Code of Virginia, Rappahannock County hereby adopts the



808 regulations, references, guidelines, standards and specifications promulgated by the Board for the  
809 effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of  
810 properties, stream channels, waters and other natural resources. Said regulations, references,  
811 guidelines, standards and specifications for erosion and sediment control are included in but not  
812 limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and  
813 Sediment Control Handbook, as amended.

814 B. Before adopting or revising regulations, Rappahannock County shall give due notice and conduct a  
815 public hearing on the proposed or revised regulations, except that a public hearing shall not be  
816 required when the Rappahannock County is amending its program to conform to revisions in the  
817 state program. However, a public hearing shall be held if the Rappahannock County proposes or  
818 revises regulations that are more stringent than the state program.

819 C. Pursuant to § 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved  
820 until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be  
821 conducted by a certified inspector. The Erosion Control Program of Rappahannock County shall  
822 contain a certified program administrator, a certified plan reviewer, and a certified inspector, who  
823 may be the same person.

824 D. Rappahannock County hereby designates the Culpeper Soil and Water Conservation District as the  
825 plan approving authority.

826 E. The program and regulations provided for in this article shall be made available for public  
827 inspection at the office of the Building Official.

828 **§ 98-9 Submission and approval of plans; contents of plans.**

829 A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has  
830 submitted to the Building Office for Rappahannock County an erosion and sediment control plan  
831 for the land-disturbing activity and such plan has been approved by the plan approving authority.  
832 Where land-disturbing activities involve lands under the jurisdiction of more than one local control  
833 program, an erosion and sediment control plan, at the option of the applicant, may be submitted to  
834 the Board for review and approval rather than to each jurisdiction concerned.

835 B. Where the land-disturbing activity results from the construction of a single family residence, an  
836 agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed  
837 by the plan approving authority.

838 C. The standards contained within the Virginia Erosion and Sediment Control Regulations and the  
839 Virginia Erosion and Sediment Control Handbook are to be used by the applicant when making a  
840 submittal under the provisions of this article and in the preparation of an erosion and sediment  
841 control plan. The plan approving authority, in considering the adequacy of a submitted plan, shall  
842 be guided by the same standards, regulations and guidelines. When the standards vary between the  
843 publications, the state regulations shall take precedence.

844 D. The plan approving authority shall, within 45 days, approve any such plan, if it is determined that  
845 the plan meets the requirements of the local program and if the person responsible for carrying out  
846 the plan certifies that he or she will properly perform the erosion and sediment control measures  
847 included in the plan and will conform to the provisions of this article.

848 E. The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in  
849 writing or by disapproving said plan in writing and giving specific reasons for its disapproval. If no



850 action is taken within 45 days, the plan shall be deemed approved and the person authorized to  
851 proceed with the proposed activity. When the plan is determined to be inadequate, the plan-  
852 approving authority shall Specify such modifications, terms and conditions that will permit  
853 approval of the plan.

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

- 855 (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- 856 (2) The person responsible for carrying out the pleat finds that because of changed circumstances or for  
857 other reasons the approved plan cannot be effectively carried out, and proposed amendments to the  
858 plan, consistent with the requirements of this article, are agreed to by the plan approving authority  
859 and the person responsible for carrying out the plans.

860 G. In order to prevent further erosion, Rappahannock County may require approval of a plan for any  
861 land identified in the local program as an erosion impact area.

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

865 I. Utilities.

866 (1) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline  
867 companies and railroad companies shall file general erosion and sediment control specifications  
868 annually with the Board for review and written comments. The specifications shall apply to:

869 (a) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and  
870 pipelines; and;

871 (b) Construction of the tracks, rights of way, bridges, communication facilities and other related  
872 structures and facilities of the railroad company.

873 (2) Individual approval of separate projects within Subsection I(1)(a) and (b) is not necessary when  
874 Board approved specifications are followed; however, projects included in Subsection I(1)(a) and  
875 (b) must comply with Board approved specifications. Projects not included in Subsection I(1)(a)  
876 and (b) shall comply with the requirements of the Rappahannock County erosion and sediment  
877 control program.

878 J. State agency projects are exempt from the provisions of this article except as provided for in the  
879 Code of Virginia, § 10.1-564.

880 § 98-10 Permits; fees; security for performance.

881 A. Agencies authorized under any other law to issue grading, building, or other permits for activities  
882 involving land disturbing activities may not issue any such permit unless the applicant submits with  
883 his application an approved erosion and sediment control plan and certification that the plan will be  
884 followed.

885 B. No person may engage in any land disturbing activity until he has acquired a land disturbing  
886 permit, unless the proposed land disturbing activity is specifically exempt from the provisions of  
887 this article, and has paid the fees and posted the required bond. 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 to the program authority the name of a responsible land disturber, who will be in charge of and responsible for carrying out the land-disturbing activity, in accordance with the approved plan. Failure to provide the name of a responsible land disturber prior to engaging in land-disturbing activities may result in revocation of plan approval and the person responsible for carrying out the plan shall be subject to the penalties provided in this article. A responsible land disturber shall not be required for agreements in lieu of a plan. However, if a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall be required to provide the name of a responsible land disturber to the program authority. Failure to provide the name of a responsible land disturber shall be a violation of this article.

C. An administrative fee of \$150 shall be paid to Rappahannock County at the time of submission of the erosion and sediment control plan.

D. 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.

E. All applicants for permits shall provide to Rappahannock County a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Building Official in sufficient amount to pay for measures taken by Rappahannock County at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the cost of the conservation action. Should it be necessary for Rappahannock County to take such conservation action, Rappahannock County may collect, on demand, from the surety, escrow agent or any other person or entity holding funds pledged to insure the applicant's performance, all sums expended or contracted for by Rappahannock County to bring the applicant into compliance with this article or any permit, project or plan approved pursuant to this article, and the applicant shall be liable to Rappahannock County for any of its costs in excess of those collected from others.

F. Within 60 days of adequate stabilization, as determined by the Building Official in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section.

G. 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.

#### **§ 98-11 Monitoring, reports and inspections.**

A. Rappahannock County may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

B. The Building Official shall periodically inspect the land-disturbing activity in accordance with Section 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure



931 compliance with the approved plan and to determine whether the measures required in the plan are  
932 effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for  
933 carrying out the plan shall be given notice of the inspection.

934 C. If the Building Official determines that there is a failure to comply with the plan, notice shall be  
935 served upon the permittee or person responsible for carrying out the plan by registered or certified  
936 mail to the address specified in the permit application or in the plan certification, or by delivery at  
937 the site of the land-disturbing activities to the agent or employee supervising such activities. The  
938 notice shall specify the measures needed to comply with the plan and shall specify the time within  
939 which such measures shall be completed. Upon failure to comply within the specified time, the  
940 permit may be revoked and the permittee or person responsible for carrying out the plan shall be  
941 deemed to be in violation of this ordinance and shall be subject to the penalties provided by this  
942 article.

943 D. Upon determination of a violation of this article, the Certified Program Administrator may, in  
944 conjunction with or subsequent to a notice to comply as specified in this article, issue an order  
945 requiring that all or part of the land-disturbing activities permitted on the site be stopped until the  
946 specified corrective measures have been taken.

947 E. If land-disturbing activities have commenced without an approved plan, the Certified Program  
948 Administrator may, in conjunction with or subsequent to a notice to comply as specified in this  
949 article, issue an order requiring that all of the land-disturbing activities be stopped until an  
950 approved plan or any required permits are obtained.

951 F. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion  
952 of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the  
953 land-disturbing activities have commenced without an approved plan or any required permits, such  
954 an order may be issued without regard to whether the permittee has been issued a notice to comply  
955 as specified in this article. Otherwise, such an order may be issued only after the permittee has  
956 failed to comply with such a notice to comply. The order shall be served in the same manner as a  
957 notice to comply and shall remain in effect for a period of seven days from the date of service  
958 pending application by the enforcing authority or permit holder for appropriate relief to the Circuit  
959 Court of Rappahannock County.

960 G. If the alleged violator has not obtained an approved plan or any required permits within seven days  
961 from the date of service of the order, the Certified Program Administrator may issue an order to the  
962 owner requiring that all construction and other work on the site, other than corrective measures, be  
963 stopped until an approved plan and any required permits have been obtained. Such an order shall be  
964 served upon the owner by registered or certified mail to the address specified in the permit  
965 application or the land records of Rappahannock County. The owner may appeal the issuance of an  
966 order to the Circuit Court of Rappahannock County.

967 H. Any person violating or failing, neglecting or refusing to obey an order issued by the Certified  
968 Program Administrator may be compelled in a proceeding instituted in the Circuit Court of  
969 Rappahannock County to obey same and to comply therewith by injunction, mandamus or other  
970 appropriate remedy. Upon completion and approval of corrective action or obtaining an approved  
971 plan or any required permits, the order shall immediately be lifted.

972 I. Nothing in this section shall prevent the Certified Program Administrator from taking any other  
973 action authorized by this article.



974 **§ 98-12 Penalties, injunctions and other legal actions.**

975 A. Violators of this article shall be guilty of a Class I misdemeanor.

976 B. The Certified Program Administrator, or the owner of property which has sustained damage or  
977 which is in imminent danger of being damaged, may apply to the Circuit Court of Rappahannock  
978 County to enjoin a violation or a threatened violation of this article, without the necessity of  
979 showing that an adequate remedy at law does not exist.

980 C. However, an owner of property shall not apply for injunctive relief unless:

981 (1) He has notified, in writing, the person who has violated the local program, and the program  
982 authority, that a violation of the local program has caused, or creates a probability of causing,  
983 damage to his property; and

984 (2) Neither the person who has violated the local program nor the program authority has taken  
985 corrective action within 15 days to eliminate the conditions which have caused, or create the  
986 probability of causing, damage to his property.

987 D. In addition to any other penalties provided under this article, any person who violates any provision  
988 of this article may be liable to Rappahannock County in a civil action for damages.

989 E. Without limiting the remedies which may be obtained to this section, any person violating or  
990 failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained  
991 pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to  
992 exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by  
993 Rappahannock County.

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

997 G. With the consent of any person who has violated or failed, neglected or refused to obey any  
998 regulation or condition of a permit or any provision of this article, Rappahannock County may  
999 provide for the payment of civil charges for violations in specific sums, not to exceed the limit  
1000 specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil  
1001 penalty which could be imposed, under Subsection E.

1002 H. The commonwealth's Attorney shall, upon request of Rappahannock County or the permit-issuing  
1003 authority, take legal action to enforce the provisions of this article.

1004 I. Compliance with the provisions of this article shall be prima facie evidence in any legal or  
1005 equitable proceeding for damages caused by erosion, siltation or sedimentation that all  
1006 requirements of law have been met, and the complaining party must show negligence in order to  
1007 recover any damages.

1008 **§ 98-13 Appeals and judicial review.**

1009 A. Any applicant under the provision of this article who is aggrieved by any action of Rappahannock  
1010 County or its went in disapproving plans submitted pursuant to this article shall have the right to  
1011 apply for and receive a review of such action by the Board of Supervisors provided an appeal is  
1012 filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before  
1013 the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public



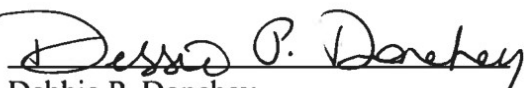
1014 hearing, provided that the Board of Supervisors and other involved parties have at least 30 days'  
1015 prior notice. In reviewing the agent's actions, the Board of Supervisors shall consider evidence and  
1016 opinions presented by the aggrieved applicant and agent. After considering the evidence and  
1017 opinions, the Board of Supervisors may affirm, reverse or modify the action. The Board of  
1018 Supervisor's decision shall be final, subject only to review by the Circuit Court of Rappahannock  
1019 County.


1020 B. Final decisions of Rappahannock County under this article shall be subject to review by the  
1021 Rappahannock County Circuit Court, provided an appeal is filed within 30 days from the date of  
1022 any written decision adversely affecting the rights, duties, or privileges of the person engaging in or  
1023 proposing to engage in land disturbing activities.

1024  
1025 The foregoing Ordinance was adopted by the Board of Supervisors of Rappahannock County, Virginia,  
1026 on June 3, 2024 at its regular monthly public meeting held at the Rappahannock County Courthouse, 250  
1027 Gay Street, Washington, Virginia, after having advertised that it proposed to do so in accordance with §  
1028 15.2-1427 of the Code of Virginia, and after holding a public hearing. The roll-call vote of the Board of  
1029 Supervisors on a motion to adopt the Ordinance was as follows:

	MOTION	SECOND	ABSENT/ ABSTAIN	AYE	NAY
Debbie P. Donehey				✓	
Keir A. Whitson				✓	
Van C. Carney	✓			✓	
Donna D. Comer		✓		✓	
Christine Smith				✓	

1033  
1034 I certify the foregoing accurately reflects the actions of the Rappahannock County Board of Supervisors  
1035 taken at the time and place stated above.

1036  
1037   
1038 Debbie P. Donehey  
1039 Chair, Board of Supervisors

 6/3/2024  
Garrey W. Curry, Jr.  
Clerk for the Board of Supervisors