

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Expedited Bill 1-13, Erosion and Sediment Control – Amendments

Transportation, Infrastructure, Energy and Environment Committee recommendation: enact with a minor amendment.

Expedited Bill 1-13, Erosion and Sediment Control - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on January 15, 2013. A public hearing was held on February 5, at which Rick Brush of the Department of Permitting Services (DPS), representing, the County Executive, was the only speaker (see testimony, ©62-63). After the hearing, the Montgomery Soil Conservation District and Poolesville Farmers submitted comments (see ©64-66). A Transportation, Infrastructure, Energy and Environment Committee worksession was held on March 11, at which the Committee recommended enactment of the Bill with one amendment.

Bill 1-13 would bring County erosion and sediment control requirements into compliance with the Maryland Stormwater Management Act of 2007 and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control, and require persons that engage in land disturbing activity in a special protection area to pay a monitoring fee to the Department of Environmental Protection instead of developing and implementing their own best management practices monitoring plan.

Committee amendment Both the Soil Conservation District (see ©64-65) and Poolesville Farmers (see ©66) objected to language in the Bill (see ©4, lines 34-36) that would exclude logging and timber removal and nursery operations from the definition of (and exemption for) “agricultural land management practice”. Poolesville Farmers also objected to certain other provisions relating to agriculture, some of which are in the current law. The Committee recommended adoption of the amendment requested by the District (see ©4 line 36).

This packet contains:

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Expedited Bill No. 1-13
Concerning: Erosion and Sediment
Control – Special Protection Areas --
Amendments
Revised: 1-10-13 Draft No. 4
Introduced: January 15, 2013
Expires: July 15, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) bring County erosion and sediment control requirements into compliance with the Maryland Stormwater Management Act of 2007 and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control;
- (2) require persons that engage in land disturbing activity in an area designated as a special protection area to pay a monitoring fee to the Department of Environmental Protection in lieu of developing and implementing their own best management practices monitoring plan; and
- (3) generally amend County law regarding erosion, sediment control, and special protection areas.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Article I, Erosion and Sediment Control
Sections 19-2, 19-3, 19-4, 19-5, 19-6, 19-7, 19-8, 19-9, 19-10, 19-11, 19-12, 19-13, 19-14, 19-15, 19-16, and 19-17
Article V, Water Quality Review in Special Protection Areas
Sections 19-60, 19-62, 19-64, 19-65, 19-66, and 19-67

By renumbering and amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Article I, Erosion and Sediment Control
Sections 19-1 to 19-1A

By adding

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Article I, Erosion and Sediment Control
Sections 19-1, 19-4A, 19-5A, 19-5B, 19-8A, and 19-12A

By repealing

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Article I, Erosion and Sediment Control
Section 19-3A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 19, Article I and Article V, are amended as follows:**

2 **ARTICLE I. EROSION AND SEDIMENT CONTROL.**

3 **19-1. [Definitions] Purpose and scope.**

4 The purpose of this Chapter is to protect, maintain, and enhance the public
5 health, safety, and general welfare by establishing minimum requirements and
6 procedures to control the adverse impacts associated with land disturbances. The
7 goal is to minimize soil erosion and prevent off-site sedimentation by using soil
8 erosion and sediment control practices designed in accordance with the applicable
9 state law and regulations . Implementing this Chapter will help reduce the negative
10 impacts of land development on water resources, maintain the chemical, physical,
11 and biological integrity of streams, and minimize damage to public and private
12 property.

13 This Chapter contains minimum erosion and sediment control requirements
14 and does not limit or repeal any other powers granted to the County by State law.

15 **19-1A. Definitions.**

16 In this Article, these words and phrases have the following meanings:

17 **[(1) Approved plan:** A set of representational drawings or other documents
18 submitted by an applicant as a prerequisite to obtaining a sediment control
19 permit and containing the information and specifications as required by the
20 department and the district under regulations adopted in accordance with
21 procedures set forth in this Chapter in order to minimize off-site sedimentation
22 from land-disturbing activities, and approved by the district as being adequate
23 to meet the requirements of the state sediment control law and approved by the
24 department as being adequate to meet the provisions of this Chapter.]

25 **Administration** means the Maryland Department of the Environment Water
26 Management Administration.

Adverse impact means any deleterious effect on any water or wetland, including its quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses, which is, or may become, potentially harmful to human health, welfare, safety or property, biological productivity, diversity, or stability.

Agricultural land management practice means a method or procedure used in the cultivation of land to further crop and livestock production and conservation of related soil and water resources. *Agricultural land management practice* does not include logging and timber removal operation [[or wholesale or retail nursery operation]].

Applicant means any person, firm, or government agency that executes the necessary forms to apply for a permit or approval to construct a project.

[(2)] As-built plan[: A] means a record drawing or plan prepared and certified by a licensed professional engineer or land surveyor that represents the actual dimensions, contours, elevations, and other characteristics of a completed structure or facility.

Best management practice means a structural device or nonstructural practice designed to temporarily store or treat stormwater runoff to mitigate flooding, reduce pollution, and provide other amenities.

[(3)] Clearing[: The] means the act of removing vegetative cover in a manner that does not disturb root mat or existing soil surface.

Concept plan means the first of 3 plans submitted under the comprehensive review and approval process required by state law and includes the information necessary to allow an initial evaluation of a proposed project.

[(4)] Department[: The] means the Department of Permitting Services.

[(5)] Developer: A person, partnership, or corporation for whose benefit any of the activities covered by this chapter are commenced or carried on. An

individual who builds a house for the individual's own occupancy is not a developer.]

[(6)] **Director**[: The] means the Director of the Department of Permitting Services or [a duly authorized agent] the Director's designee.

[(7)] **District**[: The] means the Montgomery Soil Conservation District.

Drainage area means the area contributing runoff to a single point measured in a horizontal plane that is enclosed by a ridge line.

Environmental site design means the use of small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

[(8)] **Erosion**[: The] means the process by which the ground surface is worn by the action of the wind, water, ice, gravity, or artificial means.

Erosion and sediment control means a system of structural and vegetative measures that minimize soil erosion and off-site sedimentation.

Erosion and sediment control plan means an erosion and sediment control strategy or plan designed to minimize erosion and off-site sedimentation.

[(9)] **Excavating**[: Any] means any act by which soil, earth, sand, gravel, rock, or any similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed, and includes the conditions that result from that act.

[(10)] **Federal project**: Any project on federally owned land that involves grading, or any project that involves grading and is administered by a federal agency.]

[(11)] **Fence, approved**: A permanent, semi-permanent or portable fence not less than forty-two (42) inches in height so constructed and so located as is approved in the permit application to surround sediment basins, steep

excavations or ponding areas where required for the safety of members of the public.]

[(12)] **Filling**[: Any] means any act by which soil, earth, sand, gravel, rock, or any similar material is deposited, placed, pushed, pulled, or transported, and includes the conditions that result from that act.

Final erosion and sediment control plan means, along with the final stormwater management plan, the last of 3 plans submitted under the comprehensive review and approval process required by state law. A final erosion and sediment control plan must be prepared and approved as required by the Department and this Chapter and designed under state Standards and Specifications.

[(13)] **Finished grade**[: The] means the final grade or elevation of the ground surface conforming to the approved grading plan.

[(14)] **Grading**[: An] means an act by which soil is cleared, stripped, stockpiled, or any combination thereof.

Grading unit means the maximum contiguous area allowed to be graded at a given time. For this Chapter, a **grading unit** is 20 acres or less.

Highly erodible soil means soil with a slope greater than 15% or soil with a soil erodibility factor greater than 0.35 and with slopes greater than 5%.

Inspection agency means the Administration or, if delegated enforcement authority, the Department.

[(15)] **Land-disturbing activity**[: Any] means any earth movement and land changes which may result in soil erosion from water or wind or the movement of sediments into state waters or onto lands in the state, including tilling, clearing, grading, excavating, stripping, stockpiling, filling and related activities, and the covering of land surfaces with an impermeable material.

107 [(16)] **Low-maintenance ground cover**[: Vegetative] means vegetative
108 ground cover that provides a thick, stabilizing root mat on slopes with a
109 gradient between 3:1 and 2:1, and continues to provide that stabilization
110 without requiring mowing or fertilization more than once each year.

111 **Maximum extent practicable** means designing a stormwater management
112 system so that all reasonable opportunities for using environmental site design
113 planning techniques and treatment practices are exhausted and only where
114 absolutely necessary is a structural best management practice implemented.

115 [(17)] **Natural ground surface**[: The] means the ground surface in its original
116 state before grading, stripping, excavating or filling, or other land-disturbing
117 activities.

118 **Owner/Developer** means a person undertaking, or for whose benefit is
119 undertaken, any activity covered by this Chapter. *Owner/Developer* does not
120 include a general contractor or subcontractor who does not have a proprietary
121 interest in a project.

122 [(18)] **Permit**[: The] means the [Montgomery County] sediment control
123 permit issued by the Department authorizing land-disturbing [activities]
124 activity [in accordance with the requirements of] under this Chapter.

125 [(19)] **Permittee**[: Any] means any person to whom a permit is issued
126 [pursuant to] under this Chapter.

127 [(20) **Person**: Any individual, corporation, partnership, joint venture, agency,
128 unincorporated association, municipal corporation, County or state agency
129 within the state, or any combination thereof.]

130 **Person** means the federal government, the State, any county, municipality, or
131 other political subdivision of the State, or any of their units, or an individual,
132 receiver, trustee, guardian, executor, administrator, fiduciary, or representative

of any kind, or any partnership, firm, association, public or private corporation,
or any of their affiliates, or any other entity.

[(21)] **Professional engineer** means an engineer duly registered by the State
[of Maryland] to practice professional engineering under [the requirements of
Title 14 of the Business Occupations and Professions Article of the Maryland
Code] state law.

[(22)] **Professional land surveyor** means a person who is duly registered and
licensed as such under [the requirements of Title 14 of the Business
Occupations and Professions Article of the Maryland Code] state law.

[(23)] **Responsible personnel**[: Any] means any foreman, superintendent, or
project engineer who is in charge of on-site clearing and grading operations or
the implementation and maintenance of an erosion and sediment control
[associated with earth changes or disturbances] plan.

[(24)] **Sediment**[: Soils] means soil, sand, stone, or other surface [materials]
material transported or deposited by the action of wind, water, ice, or gravity[,
or artificial means].

[(25)] **Site**[: Any lot or parcel of land or a series of lots or parcels of land
adjoining or contiguous or joined together under one (1) ownership where
grading, excavating or filling is, was, or will be performed.] means any tract,
lot, or parcel of land, or combination of tracts, lots, or parcels of land that are
contiguous and in one ownership , or contiguous and in diverse ownership,
where development is to be performed as part of a unit, subdivision, or project.
Site development plan means the second of 3 plans submitted under the
comprehensive review and approval process required by state law. A site
development plan must include the information necessary to allow a detailed
evaluation of a proposed project.

Stabilization means the protection of exposed soils from erosion by the application of seed and mulch, seed and matting, sod, other vegetative measure, or structural means.

[(26)] **Slope**[: The] means the inclined surface of a fill, excavation, or natural terrain.

[(27)] **Soil**[: Any] means any earth, sand, gravel, rock, or any other similar material.

[(28)] **Standards and specifications**[: The] means the “[1983] 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control” or any [subsequent revisions] later revision.

[(29)] **State project**: Any project on state-owned land that involves grading. Use of state funds does not necessarily qualify an activity as a state project.]

Stormwater means water that originates from a precipitation event.

Stormwater management system means a natural area, environmental site design practice, stormwater management measure, or any other structure through which stormwater flows, infiltrates, or discharges from a site.

[(30)] **Stripping**[: Any] means any activity which removes the vegetative surface cover, including tree felling or removal, clearing, grubbing and storage, or removal of topsoil.

[(31)] **Tree**[: Any] means any woody plant having at least [one (1)] 1 well-defined stem or trunk measuring at least [three (3)] 3 inches diameter at breast height [(DBH)].

Tree canopy means the area of one or many crowns of the trees on a site, including trees in forested areas.

Variance means a modification of minimum erosion and sediment control requirements for exceptional circumstances when strict adherence to the

requirements would result in unnecessary hardship and not achieve the purposes of this Chapter.

[(32)] **Watercourse** [or **drainageway**: Any] means any natural or artificial watercourse, including [but not limited to streams, rivers, creeks, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes] any stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently[; and including any area adjacent to it]. **Watercourse** includes an adjacent area that is subject to inundation [by reason of] from overflow or floodwater.

Watershed means the total drainage area contributing runoff to a single point.

19-2. Permits required.

(a) [A] Except as provided in this Chapter, a person must not engage in any land-disturbing activity without first obtaining a permit [from the Department, except as provided in this Chapter].

[(b)] This Chapter must not be construed to be in conflict with state sediment control law.]

[(c)] (b) A permit is not required under this Chapter for [the following]:

(1) [Any] any minor land-disturbing activity that:

[(a)] (A) [Is] is not associated with construction of a new residential or commercial building;

[(b)] (B) [Involves] involves less than 100 cubic yards of earth movement;

[(c)] (C) [Disturbs] disturbs less than 5,000 square feet of surface area; [and]

[(d)] (D) is not associated with a change of use from residential to any other use; and

(E) [Is] is promptly stabilized to prevent erosion and sedimentation;

- (2) [Accepted] accepted agricultural land management practices and agricultural best management practices used in the cultivation of land [in order] to further crop and livestock production, such as plowing and construction of an agricultural [structures] structure on land that:

[(a)] (A) [Has] has been farmed by, or with the permission of, the same owner during the [proceeding] preceding 5 years; or

[(b)] (B) [In] in the event of a transfer of ownership or other appropriate circumstance, is the subject of a declaration of intent to farm under [Title 13 of the Tax-Property Article of the Maryland Code] state tax law or a comparable declaration filed with the Department by the owner[. This exemption does not include wholesale or retail nursery operations or logging and timber removal operations];

- (3) [Tree] tree cutting [at or above existing ground] that leaves the stump, ground cover, and root mat intact and which disturbs less than 5,000 square feet of [surface] tree canopy area;

- (4) [Utility] utility work performed under a Washington Suburban Sanitary Commission utility sediment control permit [that is issued under the rules and regulations that the Commission adopts under the state sediment control law]; or

- (5) [Federal or state projects exempted under the state sediment control law.] any clearing or grading activity that is subject exclusively to State approval and enforcement under State law and regulations.

239 **19-3. Application [of] for permit.**

240 (a) [To obtain a permit an applicant first must file an application in writing
241 upon forms furnished by the department. The application must be
242 signed by the owner of the property, or an authorized agent of the
243 owner, where the land-disturbing activity is to be performed. If the
244 owner is a corporation, the application must be signed by the president
245 or vice-president and attested by the secretary or assistant secretary. The
246 corporate seal must be affixed to the application.] An application for a
247 permit must be filed on forms approved by the Department and include:

- 248 (1) all information required by the Department, including identity of
249 property owner, developer of the property, and land disturbing
250 activity to be performed;
251 (2) written permission from the owner for agents of the Department
252 to enter the property specified in the application for inspection
253 and enforcement under this Chapter;
254 (3) all required fees;
255 (4) all related soil erosion and sediment control plans; and
256 (5) any required financial security.

257 [(b) A sediment control permit must be issued in the name of the current
258 property owner.

259 (c)] (b) A separate permit is required for each [separate noncontiguous] site.

260 [(d)] (c) [Sediment] A sediment control [permits are not] permit is transferable.

261 [(e)] (d) A permit must not be issued for land disturbance associated with
262 building or development that is not permitted by [existing] applicable
263 zoning, special exceptions, and variances [applicable to the land].

264 (e) A permit must not be issued to a person who must comply with Chapter
265 22A until a final forest conservation plan is approved and any required

financial security is provided. However, a permit may be issued before a final forest conservation plan is approved if the land disturbing activity is specified on the approved preliminary plan of subdivision, preliminary forest conservation plan, project plan, development plan, or approved plan amendment. Any land-disturbing activity must comply with all terms and conditions of the permit.

(f) The Department must issue a permit to an applicant if the application and plans comply with this Chapter, applicable regulations, and the Standards and Specifications.

[(f)] (g) A sediment control permit must not be issued for any grading or land-disturbing activity that is located [within] in or within [twenty-five (25)] 25 feet of a 100-year floodplain if the activity requires and has not received a floodplain district permit under [article] Article III.

[19-3A. Permit limitations.]

[(a)] (1) This Section applies to any proposed land-disturbing activity or associated development that is required to be reviewed under Chapter 22A, Forest Conservation - Trees, before the land-disturbing activity or associated development can occur.

(2) Except as provided in subsection (b), the director must not issue a sediment control permit to a person who must comply with Chapter 22A, Article II, until:

(A) a final forest conservation plan, if required, is approved; and

(B) any financial security instrument required under Chapter 22A is provided.

(b) Land-disturbing activities may occur before approval of a final forest conservation plan if the activities are specified on the approved

preliminary plan of subdivision, preliminary forest conservation plan, project plan, development plan, or development plan amendment, and are in accordance with the terms of the sediment control permit.]

19-4. [Engineered plans] Variances.

- [(a) (1) An application for a permit must be accompanied by:
 - a. An erosion and sediment control plan that, where applicable, is approved by the State Department of Natural Resources or Maryland National Capital Park and Planning Commission;
 - b. The permit fee; and
 - c. A performance bond.
- (2) Plans must be prepared and certified by:
 - a. A professional engineer, land surveyor, or architect; or
 - b. Other person qualified and approved by the department.
- (3) Erosion and sediment control plans must be designed in accordance with:
 - a. The provisions of this chapter, regulations, and the standards and specifications; and
 - b. Requirements of the Montgomery Soil Conservation District.
- (b) (1) A copy of the plan must be referred to the district for review of the proposed erosion and sediment control measures.
- (2) The district must notify the department of its recommendations or approval so that the application may be processed in a timely manner.
- (3) A permit must not be issued until the plan is approved by the department and the district.

- (c) (1) The department may waive the requirement for plans or drawings if it finds that the information on the application is sufficient to show that proposed work will conform to the requirements of this chapter.
- (2) This waiver must not be construed as waiving the requirements of the district.
- (3) The permittee is bound by conditions of the application, this chapter, and regulations.
- (4) Failure to comply with these requirements may result in the department requiring submission and approval of an engineered erosion and sediment control plan.
- (d) (1) Utility construction must not take place in Montgomery County until an erosion and sediment control plan is submitted to and approved by the Washington Suburban Sanitary Commission and the department.
- (2) A note must be included on that approved plan that requires the utility contractor to repair and maintain in effective condition any erosion and sediment control measures affected by the utility construction.]

The Department may only grant a variance from the requirements of the Standards and Specifications when strict adherence will result in exceptional hardship and not achieve the purposes of this Article. The applicant must submit a written request for a variance to the Department. The request must specify the variance sought and the reasons to allow it. The Department must not grant a variance unless the unique circumstances of the site justify the variance.

19-4A. Review and Approval of Erosion and Sediment Control Plans.

- (a) The Department must review each erosion and sediment control plan to determine compliance with this Chapter and the Standards and Specifications before the plan can be approved. In approving a plan, the Department may impose conditions necessary to ensure compliance with this Chapter and state law and to protect public health and safety.
- (b) The review and approval process must be part of the comprehensive and integrated plan approval process described in state law.
- (c) A concept plan must at least include the mapping of natural resources and sensitive areas, including highly erodible soils and slopes greater than 15%.. If these areas would not remain undisturbed, either the concept or site development plan must describe any enhanced protection strategy for these areas during construction.
- (d) A site development plan application must include all concept plan information and indicate how any proposed erosion and sediment control practice will be integrated with any proposed stormwater management practice. The stormwater management practice must be shown through a narrative and an overlay plan showing both environmental site design and any erosion and sediment control practice. An applicant should submit an initial sequence of construction and proposed project phasing to achieve the grading unit restriction. If the Director approves, the concept plan and site development plan may be combined .
- (e) An applicant must submit a final erosion and sediment control plan to the Department for review and approval. The plan must include all information required by the concept plan and site development plan and any relevant information not already submitted.

- (f) A final erosion and sediment control plan is not approved until the Department signs and dates the plan.

19-5. Modifications of plans.

- (a) [Major modifications] Any major modification of [the] an approved [plans] plan must be submitted to the [department, reprocessed] Department and processed in the same manner as the original plan, [and referred in accordance with section 19-4 of this chapter] where:

(1) [Field] field inspection or evaluation of the plan has revealed the inadequacy of the plan to accomplish erosion and sediment control objectives; or

(2) [The] the person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out.

- (b) The [department] Department may, in emergency situations and at its discretion, require the installation of interim erosion and sediment control measures to protect stream channels, other properties, or the general public from damage, that will remain in effect until modifications or revisions to the plan are approved and implemented.

- (c) [Field modifications of a minor nature may be authorized by the department] The Department may allow a minor field modification; provided, that those revisions are] if the modification is consistent with [the requirements of] this [chapter] Chapter, regulations, and [the standards and specifications] state law. The [department and the district] Department must establish a list of allowable field modifications, [for this purpose] subject to approval by the Administration.

- (d) If a violation of the limits of disturbance shown on the approved plan involves removal or damage to trees, the permittee must obtain and implement an approved reforestation plan from the [Maryland-National Capital Park and] Planning [Commission] Board.

19-5A. Contents of an Erosion and Sediment Control Plan.

- (a) An applicant is responsible for submitting an erosion and sediment control plan that meets the requirements of the Department, this Chapter, and state law. The plan must include sufficient information to evaluate the environmental characteristics of the affected area, the potential impacts of the proposed grading on water resources, and the effectiveness and acceptability of any measure proposed to minimize soil erosion and off-site sedimentation.

- (b) An applicant must at least submit:

(1) a letter of transmittal and/or application;

(2) the name, address, and telephone number of:

(A) the owner of the property where the grading is proposed;

(B) the developer; and

(C) the applicant;

(3) a vicinity map indicating north arrow, scale, site location, and other information necessary to easily locate the property;

(4) a drainage area map at 1" = 200' minimum scale, showing existing, interim, and proposed topography, any proposed improvement, standard symbols for proposed sediment control features, and pertinent drainage information, including provisions to protect downstream areas from erosion for at least the closer of 200 feet downstream or the next conveyance system;

- (5) the location of any natural resource, wetland, floodplain, highly erodible soil, slopes 15% and steeper, and any other sensitive area;
- (6) a general description of the predominant soil types on the site, as described in appropriate soil survey information available through the local soil conservation district or the USDA Natural Resources Soil Conservation Service;
- (7) any proposed stormwater management practice;
- (8) an erosion and sediment control plan, including:
- (A) the existing topography and improvements, and any proposed topography and improvements, at a scale between 1" = 10' and 1" = 50' with 2 foot contours or another approved contour interval. For any project with more than minor grading, interim contours may also be required;
- (B) scale, project and sheet title, and north arrow on each plan sheet;
- (C) the limit of disturbance (LOD), including:
- (i) limit of grading (grading units, if applicable);
- (ii) initial, interim, and final phases; and
- (iii) staging and stockpile areas, including those on existing impervious areas;
- (D) the proposed grading and earth disturbance, including:
- (i) total disturbed area;
- (ii) volume of cut and fill quantities; and
- (iii) volume of borrow and spoil quantities;
- (E) any storm drainage feature, including:

- (i) any existing or proposed bridge, storm drain, culvert, or outfall;
- (ii) velocities and peak flow rates at outfalls for 2-year and 10-year frequency storm events; and
- (iii) site conditions around points of all surface water discharge from the site;
- (F) any erosion and sediment control practice to minimize on-site erosion and prevent off-site sedimentation, including:
- (i) salvage and reuse of topsoil;
- (ii) phased construction and implementation of a grading unit to minimize disturbance, both in extent and duration;
- (iii) the location and type of any proposed sediment control practice;
- (iv) design details and data for any erosion and sediment control practice; and
- (v) any specification for any temporary and permanent stabilization measure, including:
1. The “Standard Stabilization Note” on the plan stating:
- “Following initial soil disturbance or re-disturbance, permanent or temporary stabilization must be completed within:
- a. 3 calendar days as to the surface of any perimeter dike, swale, ditch, perimeter slope, and any slope steeper than 3 horizontal to 1 vertical (3:1); and

- b. 7 calendar days as to any other
disturbed or graded area on the project
site not under active grading.”;
2. any detail for an area requiring accelerated
stabilization; and
3. any maintenance requirement under state law;
- (G) a sequence of construction describing the relationship
between the implementation and maintenance of any
control, including permanent and temporary stabilization,
and the stages or phases of each disturbance and
construction. The Department must approve any revision
to the sequence of construction before construction begins.
The sequence of construction must include:
- (i) a request for a pre-construction meeting with the
appropriate enforcement authority;
- (ii) clearing and grubbing as necessary to install
perimeter controls;
- (iii) construction and stabilization of perimeter controls;
- (iv) remaining clearing and grubbing within installed
perimeter controls;
- (v) road grading;
- (vi) grading for the rest of the site;
- (vii) utility installation and connections to each existing
structure;
- (viii) construction of any building, road, and other
construction;
- (ix) final grading, landscaping, and stabilization;

(x) installation of any stormwater management measure;

(xi) approval of the appropriate enforcement authority before removing any sediment control; and

(xii) removal of any control and stabilization of any area that is disturbed by the removal of a sediment control;

(H) a statement requiring the permittee to contact the Department at the following stages of the project or as required in the approved erosion and sediment control plan, grading permit, or building permit:

(i) before beginning any earth disturbance;

(ii) after completing the installation of any perimeter erosion and sediment control, but before any other earth disturbance or grading;

(iii) before beginning another phase of construction or opening of another grading unit; and

(iv) before removing any sediment control practice;

(I) certification by the permittee that any clearing, grading, construction, or development will be done as required by the approved erosion and sediment control plan. The certification must also require that the responsible personnel involved in the construction project have earned a Certificate of Training at an training program approved by the state Department of the Environment for the control of erosion and sediment before beginning the project; and

(J) certification by a professional engineer, land surveyor, landscape architect, architect, certified professional in erosion and sediment control, or forester (for forest harvest operations only) registered in the State, that the plan complies with erosion and sediment control laws, regulations, and standards, if required by the Department or the Administration; and

(9) any additional information or data that the Department specifies.

19-5B. Standard Erosion and Sediment Control Plan.

(a) The Department may adopt a standard erosion and sediment control plan for any activity with minor earth disturbance, such as a single-family residence, small commercial or other similar building site, minor maintenance grading, and minor utility construction.

(b) A standard erosion and sediment control plan must meet the requirements of this Chapter and state law.

(c) The state Department of the Environment must approve a standard plan before the Department adopts it.

19-6. Fees.

The [county executive, by written regulations, adopted under method (3) of section 2A-15 of this Code,] County Executive, by Method 3 regulation, may establish, increase, or decrease permit and inspection fees and set nonrefundable fee schedules for filing, additional submissions, and permit renewals in an amount that does not [to] exceed the reasonable cost of administering and enforcing this [chapter] Chapter.

19-7. Permit conditions.

[In granting any permit, the director may attach the conditions that the director deems reasonably necessary to prevent sedimentation to public or private property or

any sewer, storm drain, or watercourse, to prevent the operation from being conducted in a manner hazardous to life or property, or in a manner likely to create a nuisance. Those conditions may include the erection or installation of walls, drains, dams and structures, plantings, erosion and sediment control measures or devices, furnishing necessary easements and a specified method of performing the work. These items must be identified on the sediment control plan submitted for approval. A permit must not be issued until an erosion and sediment control plan is approved by the department and the district, and the owner certifies that all land-disturbing activities will be performed pursuant to the erosion and sediment control plan and modifications incorporated pursuant to section 19-5. The approved plan must be a condition of the permit. In addition, the permit must not conflict with conditions shown on the approved subdivision plan, development plan, development plan amendment, forest conservation plan, or the approved site plan regarding building restriction lines, limits of disturbance, forest or tree conservation areas, and conservation easements. A person must not violate any permit condition.]

(a) The Director must attach any condition to each permit that is necessary to:

- (1) prevent sedimentation to public or private property or a sewer, storm drain, or water course;
- (2) prevent a land disturbing activity from being hazardous to life or property;
- (3) prevent an adverse environmental impact; and
- (4) assure compliance with the plan.

(b) Each condition must be listed on or attached to the plan. These conditions may include requirements for a wall, drain, dam, structure, planting, erosion and sediment control device, or necessary drainage easement.

(c) The Director must require each permittee to designate responsible personnel to take charge of on-site clearing, grading or sediment control associated with an approved land disturbing activity. Any individual so designated must have completed a training program approved by the Administration.

(d) Responsible personnel must:

(1) inspect the site each week to assure compliance with the plan; and

(2) maintain a log which details the results of any inspection, assessment of conditions and maintenance of any sediment control device.

(e) The Director may require a permittee to provide an independent design professional to monitor and report to the Department on installation and maintenance of an erosion and sediment control device if a violation of the plan caused serious environmental impact to a watercourse or when a land disturbing activity is taking place in an environmentally sensitive area.

(f) The Director must require a permittee to implement any reasonable precaution to prevent particulate matter from becoming airborne when any land disturbing activity is planned in a potential asbestiform area.

19-8. Permit expiration and renewal.

[Permits issued under this chapter expire at the end of the period of time set out in the permit. Permits will be renewed provided that the interval between documented sediment control inspections does not exceed six (6) months and that erosion and sediment control plan approval by the district is not expired or withdrawn. Where the director determines that the extension of time will require a substantial modification of the grading, erosion and sediment control plan, any

extension of a permit is subject to approval of a revised erosion and sediment control plan by the department and the district.] Any permit and plan is valid for 2 years after it is issued.. The Director may extend any permit or plan for 1 year if a permittee so requests. The Director may impose an additional standard or requirement as part of any extension. The Director may require a plan modification as part of any extension.

19-8A. Grandfathering of Approved Plans.

- (a) Any plan that is finally approved after January 9, 2013, must comply with this Chapter and state law.
- (b) A plan that is finally approved on or before January 9, 2013, may be reapproved with existing conditions if any grading activity begins on the site by January 9, 2015, except any stabilization requirement.
- (c) Any stabilization practice must comply with this Chapter and state law by January 9, 2013, regardless of when an approved erosion and sediment control plan was approved.

19-9. Permit revocation or suspension; stop work order.

- (a) [Any] The Director may suspend or revoke any permit issued under this [chapter] Chapter [may be revoked or suspended by the director], after notice, for:
 - (1) [Violation] violation of the plan or any [other] condition of the permit;
 - (2) [Violation] violation of [any provision of] this [chapter] Chapter or any other applicable law[, ordinance, rule,] or regulation relating to the work;
 - (3) [Existence of] any condition or [the doing of any] act [constituting or] creating a nuisance[, or hazard, or endangering human life or the property of others; or

- (4) [Failure] failure of the approved erosion and sediment control plan to achieve required erosion and sediment control objectives due to site characteristics or conditions.
- (b) In addition to the Director's authority under subsection (a), the [director] Director may post a site with a stop work order directing that all land-disturbing activity [cease] stop immediately, [provided that] if:
- (1) [The] the land-disturbing activity violates a condition or requirement of a [Montgomery] County or Washington Suburban Sanitary Commission sediment control permit, application or approved plan or [any provisions of] this [chapter] Chapter or applicable regulations;
- (2) [Written] the Department has given written warning notice [is furnished] to the permittee or [the] its representative [of the permittee] that lists any corrective measures required and the time [within] by which the corrections must be made; and
- (3) [The] the permittee [fails to] does not comply with the warning notice within the specified time.
- (c) [A] The Director may issue a stop work order [may be issued] without a warning notice where:
- (1) land disturbance is taking place that requires a permit under this Chapter and [for which one] a permit has not been issued;
- (2) required sediment control measures are not installed, inspected, and approved before the land disturbance;
- (3) the limits of disturbance are being violated; or
- (4) inspection reveals the existence of any condition or [the doing of any] act that[:
- a. Is or creates a nuisance or hazard; or

- b. Endangers] endangers human life [or the], property of others, or water quality.
- (d) The [department] Department must provide written notice to the permittee or [a] its representative [of the permittee] when a stop work order is issued. That notice must specify the extent to which work is stopped and the conditions under which work may resume. The permittee is responsible for the actions of its agents [of the permittee] and must notify those agents when a stop work order is issued that will affect an area within which the agents are to work. In this [application] context, “agent” [is defined as] includes any person who acts at the instruction, with the permission, or to the benefit of the permittee.
- (e) A person must not continue or permit the continuance of work in an area covered by a stop work order, except any work required to correct a sediment control violation.
- (f) This Section does not restrict the department from proceeding directly with any available alternative enforcement [procedures] procedure under Section 19-69.
- (g) If trees have been cut in violation of this Chapter, the Department may require as a corrective measure that the violator comply with a reforestation plan approved by the Planning Director [of the Planning Board].
- 19-10. [Performance bond.] Financial Security.**
- (a) (1) The [director] Director must, before issuing a permit, require a corporate bond or an irrevocable letter of credit from a financial institution, or a cash bond, a certificate of guarantee, or other instrument, in a form satisfactory to the [director] Director and approved by the County Attorney. That instrument [is] must be

693 conditioned [upon] on the faithful performance of the conditions
694 in the permit, and any soil erosion and sediment control
695 [measures] measure specified in the permit, within the time
696 specified by the [director] Director or [within] any extension
697 granted by the [director] Director. [For the purposes of this
698 article] In this Article, a certificate of guarantee is an instrument
699 issued by an organization or entity that is approved by the
700 [director] Director and meets the capitalization and other
701 reasonable criteria [as are] established by [executive] regulation,
702 including:

- 703 (A) the demonstrated expertise of the issuing organization or
704 its members in erosion and sediment control;
- 705 (B) the estimated square footage of the land included in the
706 land-disturbing activity to be performed by the permittee;
- 707 (C) the estimated square footage of the area of all land-
708 disturbing activities guaranteed by the issuing organization
709 or entity; and
- 710 (D) the incidence of violation of, or otherwise failing to
711 comply with, [the provisions of] this [chapter] Chapter by
712 all members of the issuing organization or entity.

- 713 (2) [Certificates] A certificate of guarantee must only be issued by an
714 approved organization or entity on behalf of members in good
715 standing of that organization or entity. Any question as to the
716 eligibility of a permittee to post a certificate of guarantee must be
717 resolved by the [director] Director in the Director's sole
718 discretion [of the director].

- (3) The amount of the bond, irrevocable letter of credit, certificate of guarantee, or other instrument required by this section is [three hundred dollars (\$300.00)] \$300, plus [two cents (\$0.02)] 2 cents per square foot of the area included in the land-disturbing activity, plus [amounts as deemed necessary] an amount set by the [director] Director to secure the costs of improvements required in approved plans, which must not [to] exceed a total [amount] of [ten thousand dollars (\$10,000.00)] \$10,000.
- (4) The instruments required under this Section may be combined with the instruments required under Section 19-32 pertaining to a storm water management facility, so that one [(1)] instrument may be used to satisfy both requirements.
- (5) The [director] Director may grant a partial or complete waiver of the bond, letter of credit, certificate of guarantee, or other instrument, upon application, [where] if the [director] Director finds minimal impairment of existing surface drainage, minimal erosion hazard, and minimal sedimentation hazard [upon] on any adjacent land or watercourse, and no hazard to human life or property.
- (6) A corporate bond or letter of credit must be executed and maintained by a financial institution, surety, or guaranty company qualified to do business in this state and must be conditioned [upon] on the faithful performance of the conditions and soil erosion and sediment control measures specified in the permit. A cash bond must be deposited with the [director of finance] Director of Finance, who must give a receipt for it, reciting that

the cash has been deposited in compliance with and subject to
[the provisions of] this Section.

(7) The bond, letter of credit, certificate of guarantee, or other instrument obligates the permittee, the permittee's executors, administrators, successors and assigns, jointly and severally with the surety or issuing organization or entity, and inures to the benefit of the County[, its officers, employees,] and to any person aggrieved by the permittee's failure to comply with the conditions of the permit. The permittee and the issuing organization or surety must, under the bond, letter of credit, certificate of guarantee, or other instrument, continue to be firmly bound under a continuing obligation [for the payment of] to pay all necessary costs and expenses or liabilities which may be incurred or expended by the [department] Department to meet the minimum requirements of this [chapter] Chapter.

(b) [Whenever] If the [department] Department finds that a default has occurred in the performance of any term or condition of the permit, bond, letter of credit, certificate of guarantee, or other instrument, the Department must give written notice [must be given] to the permittee and to the surety or issuing organization or entity. That notice must [state] specify the work to be done, the estimated cost, and the period of time [deemed by] the [department] Department finds to be reasonably necessary [for completion of] to complete the work.

(c) If a cash bond has been posted, notice of default as provided by the preceding paragraphs must be given to the permittee; and if compliance is not obtained [within] in the time specified, the [department] Department must proceed without delay, and without further notice or

proceedings, to use the cash deposited, or any [portion] part of the deposit, to cause the required work to be done by contract or otherwise in the Director's discretion [of the director].

- (d) [In the event of] After any default in the performance of any term or condition of the permit, bond, letter of credit, certificate of guarantee, or other instrument, the [county] County, the surety, the issuing organization or entity, or any person employed or engaged on its behalf [has a right to go upon] may enter the site to complete the required work necessary to control erosion and sedimentation to protect properties, watercourses, and persons. [In the event] If the [department] Department undertakes this work with the funds from a forfeited cash or corporate bond, letter of credit, certificate of guarantee, or other instrument, the funds must be used to pay the cost of contracting, including engineering and administration, for necessary restoration of the site to control erosion and sedimentation [within the requirements of] as required by the plan, permit, bond, letter of credit, certificate of guarantee, other instrument, or this [chapter] Chapter. If the cost of the work necessary to control erosion and sedimentation or to protect properties, watercourses, and persons exceeds the amount of the cash or corporate bond, letter of credit, certificate of guarantee, or other instrument, the permittee must continue to be [firmly bound under a continuing obligation for payment of] obligated to pay all excess costs and expenses incurred by the [county] County. The cost and expenses are a lien [upon] on all property and all rights to property, real or personal, of any person liable to pay that cost. The cost [is] may be listed on the tax bill and [is] collected in the manner of ordinary taxes.

(e) A person must not interfere with or obstruct the [ingress or egress] access to or from a site or premises by an authorized representative or agent of any surety, issuing organization or entity, or the [department] Department, engaged in completing the work required to be performed under the permit or in complying with the [terms or conditions of the] permit.

(f) A corporate bond, letter of credit, certificate of guarantee, or other instrument remains in [full force and] effect until a completion certificate is issued [pursuant to section] under Section 19-14 [of this chapter]. A cash bond must be returned to the depositor or to the depositor's successors or assigns [of the depositor upon issuance of] when a completion certificate is issued for the work [in accordance with section] under Section 19-14 [of this chapter], except any portion that may have been used.

(g) The [director] Director immediately must [revoke] suspend the permit or issue a stop work order [upon failure of] when any permittee [to] does not maintain the bond or certificate of guarantee. If the [director] Director finds a violation of an applicable law or regulation by an organization or entity issuing certificates of guarantee, the [director] Director may immediately revoke all permits of members of that organization or entity for which a certificate of guarantee is posted, and may post stop work orders wherever applicable until an appropriate bond or other instrument acceptable to the [county] County is substituted for the certificates of guarantee.

19-11. Liability insurance.

(a) If[, in the opinion of the director,] the Director finds that the nature of the work [is such that is] may create a hazard to human life or endanger

adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other public property, [then] the [director] Director may, before issuing the permit, require [that] the applicant for a permit to file a certificate of insurance.

(b) [That] The certificate must show that the applicant is insured against claims for damages [for damages] for personal injury and property damage in an amount not less than [twenty-five thousand dollars (\$25,000.00)] \$25,000. Those damages include damage to the County by deposit or washing of material onto County streets or other public improvements, which may arise from or out of the performance of the work, whether the [performance be] work is performed by the applicant, [the] a subcontractor [of the applicant], or any person directly or indirectly employed by the applicant.

(c) The Director must set the amount of insurance [must be prescribed by the director in accordance with] according to the nature of the risks involved. Insurance must be written by a company licensed to do business in the state and approved by the County. [Neither issuance] Issuance of a permit, [nor] or compliance with [these provisions] this Chapter or any condition imposed by the Department, [relieves] does not relieve any person from any responsibility for damage to persons or property otherwise imposed by law[, nor] or impose any liability [upon the county] on the County for damages to persons or property.

19-12. Inspections.

(a) [Authorized representatives] Any authorized representative of the [department] Department may enter [properties] any property permitted under this [chapter] Chapter [for the purpose of inspection] to inspect

and [enforcement of the provisions of the] enforce this [chapter]
Chapter.

(b) Land-disturbing activity [may] requiring a permit must not proceed until
[approved by] the [department] Department approves. All work must
be performed in accordance with [a sequence shown on the approved
plan or a revised] the sequence approved by the [department]
Department.

(c) The permittee [shall] must notify the [department] Department [forty-
eight (48)] 48 hours before [commencing] beginning any land-
disturbing activity and, unless [waived by] the [department] Department
waives the meeting, [is required to] must hold a preconstruction meeting
[between the permittee or the representative of the permittee and] with
an authorized representative of the [department] Department.

(d) [A] The permittee must keep a copy of the approved erosion and
sediment control plan and the [sediment control] permit [must be]
available on the site for inspection by any authorized [representatives]
representative of the [department] Department. Field markings showing
limits of disturbance must be on site during any [installation of sediment
control measures, construction, or other] land-disturbing [activities]
activity.

(e) Each site that has [a designed] an erosion and sediment control plan
must be inspected [as necessary to ensure that sediment control
measures are installed and effectively maintained in compliance with
the approved plan and permit requirements] on average, every 2 weeks.
[As a minimum] Unless waived, the permittee must obtain an inspection
by the [department] Department at the following stages:

- (1) [Following the installation of] after installing any sediment control [measures] measure or [practices] practice and [prior to] before any other land disturbance;
- (2) [During] during the construction of any sediment [basins] basin or stormwater management [structures] structure, at [the] each required inspection [points] point;
- (3) [During] during rough grading, including hauling of any imported or wasted [materials] material;
- (4) [Prior to the removal or modification of] before removing or modifying any sediment control measure or practice; and
- (5) [Upon completion of] after completing final grading, including established ground [covers] cover and planting, installation of [all] any vegetative [measures] measure, and all other work [in accordance with] required by the approved plan.
- (f) If [there is a failure to] a person does not comply with [the requirements of] this [chapter] Chapter, the [department] Department must inspect the work and notify the permittee [or] and the [representative of the permittee] responsible personnel in writing. The notice issued must[, as a minimum,] at least state the nature of the violation, any practice or plan [deficiencies] deficiency, required corrective action, and compliance time. Any [portion] part of the work that does not comply promptly must be corrected by the permittee. The [department] Department may make additional inspections as it deems necessary, and [has the right to] may waive inspections, [excluding] other than the final inspection [as provided in section] under Section 19-14. The [department] Department must maintain a permanent record of each inspection. [Included] That record must [be] include the date, the

location or project identification, whether [or not] the approved plan has been implemented and measures maintained, and, if a violation exists, the [type of] enforcement action taken.

(g) When approved plans developed under [the provisions of] this [chapter] Chapter show the use of temporary basins or permanent stormwater management structures, the [department] Department may require the submission of supportive documents such as test results, as-built plans, or material certifications. If necessary, in addition to its own inspections, the [department] Department may require [that] any [portion] part of the construction of basins or structures to be inspected and certified by a licensed professional engineer or land surveyor. At the [director's] Director's option, the permittee may secure the services of a licensed professional engineer or land surveyor to inspect the construction of the facilities and provide the [department] Department with a fully documented certification that all construction is done in accordance with [the provisions of] the approved plan[,] and all applicable rules, regulations and specifications. If a certification is provided to the [department] Department, the Department may waive any [inspections] inspection required under [section] Section 19-12(e)(2) for that basin or structure [may be waived]. In these cases, the [department] Department must be notified at the required inspection points and may make spot inspections.

(h) This Section does not restrict the Department from proceeding directly with any available alternative enforcement procedure under Section 19-69.

19-12A. Complaints.

The Department must accept and investigate any complaint about erosion and sediment control concerns from any source, and must:

- (a) conduct an initial investigation within 3 working days after receiving the complaint;
- (b) notify the complainant of the initial investigation and findings within 7 days after receiving the complaint; and
- (c) take appropriate action when any violation is discovered during the complaint investigation.

19-13. Maintenance of structures, measures and devices.

- (a) The permittee or the owner of any property on which work has been done [pursuant to] under a permit granted under this [chapter] Chapter, or any other person or agent in control of that property, must maintain in good and effective condition and promptly repair or restore [all grade surfaces, walls, drains, dams and structures, plantings, vegetation, erosion and sediment control measures, and other protective devices] any grade surface, wall, drain, dam or structure, planting, vegetation, erosion and sediment control measure, or other protective device. Repair or restoration, and maintenance, must be in accordance with the approved [plans, standards and specifications] plan, Standards and Specifications, and permit as required by this [chapter] Chapter until permanent measures are accepted by the [department] Department.
- (b) Any person who performs work under a Washington Suburban Sanitary Commission utility sediment control permit is responsible for the repair or maintenance of all erosion and sediment control measures affected by the utility construction. Repair or maintenance must be completed [in accordance with] as provided in subsection (a) [of this section].

19-14. Completion.

957 Immediately [upon completion of the] after completing a project, the permittee
958 must notify the [department] Department and schedule a final inspection. If, upon
959 final inspection of the project, the [department] Department finds that all work
960 subject to inspection has been satisfactorily completed in accordance with [the
961 requirements of] this [chapter] Chapter, the permit, approved plans and
962 specifications, [rules and] applicable regulations, and the Department accepts any
963 supporting documents required under [section] Section 19-12(g) [are accepted], the
964 Department must issue a completion certificate covering the work [must be issued] to
965 the permittee [by the department, with a copy submitted to the district].

966 **19-15. Protection of adjacent property [during clearing, grading and**
967 **excavating activities].**

968 [A person must not initiate clearing, grading, or excavating activities
969 sufficiently close to the property line so as to endanger any adjoining property,
970 including a public street, sidewalk, or alley. The adjoining property should be
971 supported and protected from damage that may result from clearing, grading, or
972 excavating activities including settling, cracking or vegetative damage. If, in the
973 opinion of the director, the clearing, grading, or excavation creates a hazard to life or
974 property unless adequately safeguarded, the applicant must construct walls, fences,
975 guard rails, or other structures to safeguard the adjoining private property or public
976 street, sidewalk, alley, or other public property and persons, as the director may
977 require.] Any land-disturbing activity must not be conducted without adequate
978 protection and support for any adjoining property. The Director may require
979 installation of a wall, fence, rail, sediment control measure, or other item to protect
980 people and property.

981 **19-16. Deposits of soil or other material prohibited.**

- 982 (a) A person must not engage in any land-disturbing activity or by any
983 action cause or permit any soil, earth, sand, gravel, rock, stone, or other

material, to be deposited [upon] on or to roll, flow, or wash [upon] on or over the [premises] land of another [in a manner to] and cause damage [to the premises] without the express written consent of the owner of the affected premises [affected]. A [person] permittee must not engage in any land-disturbing activity or by any action cause or permit any soil, earth, sand, gravel, rock, stone, or other material to be deposited on or to roll, flow, or wash [upon] on or over any public street, street improvement, road, sewer, storm drain, watercourse, right-of-way, or any public property in a manner to damage or to interfere with the use of that property.

(b) A person must not, when hauling soil, earth, sand, gravel, rock, stone, or other material over any public street, road, alley, or public property, allow those materials to blow or spill over [and upon] or on any street, road, alley, or public property or adjacent private property.

(c) If any soil, earth, sand, gravel, rock, stone, or other material is caused to be deposited [upon] on or to roll, flow, or wash [upon] on any public or private property in violation of [subsections] subsection (a) [and] or (b) [above], the permittee or person responsible must be notified by the Department and must cause the material to be removed from that property within [twenty-four (24)] 24 hours. In [the event of] an immediate danger to the public health or safety, the Department must give notice [must be given] by the most expeditious means, and the material must be removed immediately. [In the event it] If the material is not [so] removed, the [department] Department may [cause the] arrange for its removal; and the cost of that removal [by the department] must be paid to the [county] County by the person who failed to remove the material [and is a debt due the county]. The cost of removal is a lien

[upon] on all property and all rights to property, real or personal, of any person liable to pay that cost. The cost of removal must be listed on the tax bill and must be collected in the manner of ordinary taxes. [; provided, however, that] However, this [section must] Section does not [be interpreted as prohibiting] prohibit the [department] Department from proceeding directly with any alternative enforcement [procedures set forth in section 19-19 of this chapter] procedure under Section 19-69.

19-17 Regulations.

- (a) The [director] Director may recommend [written] regulations [for administration of the provisions of] to administer this [article] Article, may hold public hearings [as part of this process] on any proposed regulation, and must obtain recommendations from the Montgomery Soil Conservation District before forwarding the recommendations to the County Executive. These regulations must include:
- (1) minimum erosion and sediment control plan requirements;
 - (2) maximum duration of exposure;
 - (3) critical slope protection;
 - (4) on-site grading controls;
 - (5) on-site drainage controls; and
 - (6) protection of specimen trees.
- (b) The [director] Director may recommend one or more [methodologies for calculating] methods to calculate the amount of surface area affected by tree cutting, including using tree cover measurements.
- (c) [Regulations] The County Executive must adopt any regulation under subsection (a) [of this section are adopted by the county executive] under method (2) [of section 2A-15 of this Code].

1038 [(d) The director may recommend written regulations to establish, increase,
1039 or decrease fees under section 19-6 of this chapter. Regulations to set
1040 fees are adopted by the county executive under method (3) of section
1041 2A-15 of this Code.]

1042 [(e)] (d) Regulations adopted under this Section must not conflict with [nor] or
1043 waive any [provisions] provision of this Chapter, and must not be less
1044 restrictive than applicable requirements of state law or regulation.

1045 **ARTICLE V. WATER QUALITY REVIEW IN SPECIAL PROTECTION**
1046 **AREAS.**

1047 **19-60. Findings and purpose.**

1048 * * *

1049 (b) The purposes of this Article are to:

1050 * * *

1051 (2) establish coordinated procedures, performance goals, [criteria,]
1052 and requirements for development in special protection areas that
1053 will mitigate adverse impacts on water resource areas during and
1054 after construction or other land disturbing activities;

1055 * * *

1056 **19-61. Definitions.**

1057 In this Article, the following words and phrases have the following meanings:

1058 * * *

1059 [(a)] * * *

1060 [(b)] **Best Management Practices Monitoring Plan** means a [statement
1061 prepared by an applicant describing how] written plan that documents
1062 the [applicant will monitor and] scientific work necessary to assess the
1063 effectiveness of [its] best management practices in maintaining water
1064 quality.

DEP Director means the Director of the Department of Environmental Protection or the Director's designee.

[(c)] * * *
[(d)] * * *
[(e)] * * *
[(f)] * * *
[(g)] * * *
[(h)] * * *
[(i)] * * *
[(j)] * * *
[(k)] * * *
[(l)] * * *
[(m)] * * *
[(n)] * * *

19-62. Applicability.

* * *

(b) *Privately owned property.* Except as otherwise expressly provided in this Chapter, the requirements for a water quality inventory and a preliminary and final water quality plan under Section 19-64 apply in any area designated as a special protection area to a person proposing a land disturbing activity on privately owned property:

* * *

19-64. Water Quality Inventory Submittal; Water Quality Plans.

* * *

(b) *Preliminary water quality plan submission.* Except where exempt under this Article, a person must submit the following, in addition to any information required for a water quality inventory, as part of a

complete application for development approval as provided in Section 19-65[(b)]:

* * *

(3) Description of any other mitigation techniques proposed by the applicant or required by applicable guidelines, law, or regulations; and

(4) Documentation of anticipated performance on water quality of each proposed measure, individually and together[;]. [and]

[(5) Proposed best management practices monitoring plan, including:

(A) Location, nature, form, and frequency of the monitoring to be conducted; and

(B) Dates of report submissions and monitoring milestones.]

(c) *Final water quality plan submission.* A final water quality plan must be submitted as provided in Section 19-65 and must include the following:

* * *

(3) Proposed compliance program, revised as required by the Director, that describes the installation[,] and inspection[, and monitoring schedule] of [best] all stormwater management [practices monitoring plan, including detailed instructions concerning how the] facilities [operate and should be maintained];

(4) Draft maintenance agreements and easements covering routine maintenance, long-term repair or replacement of any stormwater management facility or other facilities required by the water quality plan, and an assurance of access to the facilities for inspection and monitoring;

- 1118 (5) Copy of valid water quality certification approved by state and
1119 federal agencies or, if not available, a report on the status of the
1120 certification review and a copy of any [revisions] revision made
1121 to the certification application;

1122 * * *

1123 **19-65. Application, review, and approval procedures.**

1124 (a) *General.*

1125 * * *

1126 (2) *Division of approval responsibilities.*

1127 * * *

- 1128 (B) In acting on a preliminary or final water quality plan, the
1129 Planning Board's approval must conform to the approval of
1130 the DPS Director on any element for which the DPS
1131 Director has lead agency responsibility. Those elements
1132 include:

1133 (i) Performance goals [or criteria] for the approved best
1134 management practices;

1135 [(ii) Best management practices monitoring plan;]

1136 [(iii)] (ii) Stormwater management concept plan;

1137 [(iv)] (iii) Erosion and sediment control concept plan;
1138 and

1139 [(v)] (iv) Any other element of the plan for which the
1140 Department has primary lead agency design, review,
1141 and approval responsibility.

- 1142 (C) The Department of Environmental Protection has the lead
1143 agency responsibility for the [stream] monitoring program,

including the [stream] monitoring [plan] of streams and best management practices.

* * *

(c) *Review.* After receiving a preliminary or final water quality plan, the Planning Director must refer the plan to the DPS Director and other reviewing agencies. The DPS Director must transmit to the Planning Director within the time limits for acting on a plan established by law:

(1) Findings on compliance with this Chapter of any:

(A) stormwater management concept plan;

(B) erosion and sediment control concept plan;

[(C) best management practices monitoring plan;]

[(D)] (C) stream monitoring plan and best management practices monitoring plan as prepared and implemented by the Department of Environmental Protection;

[(E)] (D) maintenance agreements and easements; and

[(F)] (E) other element of a plan in which the Department has primary lead agency review and approval responsibility.

* * *

(d) *Condition of approval.*

* * *

(3) The final water quality plan, as amended by the Planning Board, must be a condition of approval of the development application and must conform to:

* * *

(D) any bond provisions required under Section 19-10 and 19-32, and [to ensure implementation of best management

practices monitoring and] any element in the water quality plan required by the Planning Board; and

[(E) provisions to implement the best management practices monitoring plan; and]

[(F)] (E) any other condition necessary to implement this Article.

* * *

19-66. Enforcement, appeals, waiver.

(a) *Enforcement agreement.* Each final water quality plan must contain an enforceable agreement, including an approved financial security instrument, with the Planning Board and the DPS Director, requiring maintenance of all facilities required by the plan [and best management practices monitoring]. The financial security instrument may be combined with any other financial security instrument required by this Chapter.

(b) *Transference of responsibility.* Each approved final water quality plan for a residential project must provide that neither ownership [and] nor maintenance of any feature of the water quality plan [must not] may be transferred to the County, a homeowners association, or any resident until the DPS Director or the Planning Board, depending on which is the lead agency to review the feature, finds that:

(1) each feature has been installed in accordance with the specifications shown on the approved plan;

(2) each feature has been verified, by inspection[, monitoring, or otherwise,] to have been operational and functioning as designed for a reasonable period of time after construction of all units and facilities associated with the last phase of the development project[. The length of time must not exceed 5 years and must

1197 relate to site-specific characteristics and the type and nature of the
1198 particular feature]; and

1199 * * *

1200 (d) *Event of default.*

1201 (1) Events of default are:

1202 (A) Required stormwater management facilities, erosion and
1203 sediment control facilities, or other mitigation techniques
1204 have not been installed or maintained in a correct manner.

1205 [(B) Monitoring under a best management practices monitoring
1206 plan has not been performed or reported as required.]

1207 [(C)] (B) An applicant has not complied with any other
1208 requirement of a water quality plan or this Article.

1209 [(D)] (C) Required fees have not been paid to support a stream
1210 monitoring program.

1211 * * *

1212 (e) *Waiver*

1213 * * *

1214 (2) *Review and action.*

1215 * * *

1216 (B) the applicant would still comply with all applicable
1217 federal, state, or [county] County water quality standards;
1218 and

1219 * * *

1220 **19-67. Implementation.**

1221 * * *

1222 (b) *Regulations; technical manual; environmental guidelines; performance*
1223 *goals [and criteria].*

* * *

[(6) qualifications for persons submitting data under this Article;

(7) procedures and standards for developing and implementing a best management practices monitoring program;

(8) parameters of any generic and site-specific performance goals under a best management practices monitoring program;]

[(9)] (6) model language for an enforcement agreement or a homeowners association maintenance agreement;

[(10)] performance criteria based on monitoring results that will be used to evaluate water quality plans to ensure compliance with all relevant federal, state, and county laws. Until monitoring results are available, the Department must develop interim performance goals; and]

[(11)] (7) other appropriate program requirements consistent with this Article.

[(d)] (c) *Annual Report*. The Directors of Environmental Protection and Permitting Services jointly must prepare an annual report, in coordination with the Planning Board, to the County Council that describes the effectiveness of best management practices and the observed impact of development on the biological integrity of streams in special protection areas. [The report must also discuss progress made toward the development of best management practices performance-based and in-stream biological enforcement mechanisms.] A copy of the report must be sent to the Planning Board and other responsible agencies.

[(e)](d) *Fee*.

- (1) The Directors of Environmental Protection and Permitting Services may set a fee in an amount not to exceed the reasonable cost of administering, implementing, and enforcing their respective duties under this Article. The fee, including the time when it must be paid, must be set by regulation under Method (3). The Planning Board may set a fee under Chapter 50. A person to whom this Article applies must pay the fees.
- (2) The fees established under this subsection may be based on the size of a tract or other relevant factor and are intended to offset the cost of:
- (A) permit review and enforcement of conditions; and
 - (B) [stream] monitoring of streams and best management practices to determine the impact of a particular development on stream water quality as well as the effectiveness of certain best management practices in maintaining stream water quality.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

Approved:

Nancy Navarro, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 1-13

Erosion and Sediment Control - Amendments

DESCRIPTION:	Amends Chapter 19, Article I of the County Code to comply with the Maryland Regulation (26.17.01) for Erosion and Sediment Control and amends Chapter 19 Article V to require developers to pay a monitoring fee to the Department of Environmental Protection rather than perform the monitoring in Special Protection Areas (SPAs).
PROBLEM:	In January 2012, the Maryland Department of the Environment adopted revised erosion and sediment control regulations and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control. In addition, the adopted revisions bring erosion and sediment control requirements in line with the Stormwater Management Act of 2007. Local jurisdictions are required to modify local codes for compliance with an effective date of January 9, 2013. The quality and consistency of the best management practice (BMP) monitoring performed as part of the SPA program has been problematic.
GOALS AND OBJECTIVES:	The County legislation mirrors the requirements in State law and regulations. These include more stringent stabilization requirements and the establishment of maximum grading unit criteria. This legislation also includes provisions for grandfathering and includes procedural changes to improve efficiency. The Maryland Department of the Environment has reviewed and approved the County legislation. Improved consistency and quality of SPA BMP monitoring
COORDINATION:	Department of Permitting Services, Department of Environmental Protection
FISCAL IMPACT:	The Department of Permitting Services estimates the need for 4.0 work years of additional staff to implement this bill. There would be no fiscal impact from the changes to the SPA law.
ECONOMIC IMPACT:	The proposed use of grading units will place limits on the amount of land under construction at any one time on large development sites. This may mean that dirt will have to be stockpiled initially and moved later to balance the cut and fill requirements of individual sites. It will also create additional needs for phased grading and development. Stabilization will be required much more quickly than under existing requirements. This may create additional costs. There would be no economic impact from the changes to the SPA law.
EVALUATION:	For compliance with State law and regulation
EXPERIENCE ELSEWHERE:	MDE approval of erosion and sediment control legislation is required for all counties and municipalities in Maryland.
SOURCE OF INFORMATION:	Rick Brush, Chief, Division of Land Development, DPS, 240-777-6343; Steve Shofar, Chief, Division of Watershed Management, DEP, 240-777-7736

APPLICATION All except Rockville and Gaithersburg.
WITHIN
MUNICIPALITIES:

PENALTIES: Class A

F:\LAW\BILLS\1301 Erosion And Sediment Control\LRR.Doc



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 26, 2012

TO: Roger Berliner, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation to Comply with the State Erosion and Sediment Control Requirements

I am forwarding to the Council for introduction a bill to revise (1) Chapter 19, Article I of the County Code to comply with State erosion and sediment control requirements; and (2) Chapter 19, Article V of the County Code to revise the best management practice (BMP) monitoring under the Special Protection Area (SPA) program. I am also forwarding a Legislative Request Report, Fiscal Impact Statement and Economic Impact Statement for this bill.

In January 2012, the Maryland Department of the Environment (MDE) adopted revised erosion and sediment control regulations. These regulations adopted the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control, included more stringent criteria for stabilization and grading units, and brought erosion and sediment control requirements in line with the State Stormwater Management Act of 2007.

This bill mirrors the requirements established in State law and regulations. The legislation includes provisions for grandfathering and procedural changes to improve efficiency.

The bill also changes the BMP monitoring requirement under the SPA program to require the monitoring be performed by the Department of Environmental Protection (DEP) rather than a consultant hired by the developer. This change has been recommended in the SPA annual report for a number of years and is also a recommendation of the County Executive's ongoing Streamlining Development Initiative.

Roger Berliner, Council President
November 26, 2012
Page 2

For more information on this bill, please contact Rick Brush, Chief, Division of Land Development, DPS at 240-777-6343 or Steve Shofar, Chief, Division of Watershed Management, DEP at 240-777-7736. Please note that amendments to the bill are subject to the review and approval by MDE.

Attachments (3)

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Diane Schwartz Jones, Director, Department of Permitting Services
Robert Hoyt, Director, Department of Environmental Protection
Jennifer Hughes, Director, Office of Management and Budget
Joe Beach, Director, Department of Finance



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

November 9, 2012

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Bill XX-12 Erosion and Sediment Control – Special Protection Areas - Revisions

Attached please find the fiscal and economic impact statements for the above referenced legislation.

JAH:aw

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Joseph F. Beach, Director, Department of Finance
Diane Schwartz-Jones, Director, Department of Permitting Services
Bob Hoyt, Director, Department of Environmental Protection
Patrick Lacefield, Director, Office of Public Information
Rick Brush, Department of Permitting Services;
Steve Shofar, Department of Environmental Protection
Ernest Lunsford, Department of General Services;
Bill Selby, Department of Transportation;
Nooshin Amirpour, MCPS;
Carl Morgan, M-NCPPC
Christopher Cullinan, WSSC
Alex Espinosa, Office of Management and Budget
Ayo Apollon, Office of Management and Budget
Amy Wilson, Office of Management and Budget

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
www.montgomerycountymd.gov

Fiscal Impact Statement
Bill xx-12 Erosion and Sediment Control – Special Protection Areas - Revisions

1. Legislative Summary

The proposed bill amends Chapter 19, Article I of the County Code to comply with the Maryland Regulation (26.17.01) for Erosion and Sediment Control. In January 2012, the Maryland Department of the Environment adopted revised erosion and sediment control regulations and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control. In addition, the adopted revisions bring erosion and sediment control requirements in line with the Stormwater Management Act of 2007. Local jurisdictions are required to modify local codes for compliance with an effective date of January 9, 2013.

The proposed bill also amends Article V of the County Code, changing the Best Management Practices (BMP) monitoring requirements under the Special Protection Area (SPA) program to require the monitoring be performed by the Department of Environmental Protection (DEP) instead of by permittees. Permittees would pay fees to cover the costs of monitoring.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Include source of information, assumptions, and methodologies used.

MCG:

- Department of Permitting Services (DPS) estimates additional staffing will be necessary to meet the required reviews and inspections:
 - 1 Senior Permitting Services Specialist (Grade 26);
 - 2 Senior Permitting Services Inspectors (Grade 23); and
 - 1 Senior Permit Technician (Grade 19).

First year expenditures are projected at \$419,490 consisting of \$328,580 in personnel costs and \$90,910 in operating costs of which \$72,540 are one-time costs for vehicles and equipment. DPS recommends increasing Sediment Control, Stormwater Management Concept, and Special Protection Area permit and plan review fees by approximately 10.5% to cover the additional costs. Based on the average fees collected over the past five years a 10.5% increase would generate additional revenue of approximately \$347,240 annually.

- Department of General Services (DGS) estimates the cost of an average county project will increase between \$10,000 and \$25,000. The impact to a larger area project, such as the Webb Tract, would be more.
- Department of Transportation (DOT) does not anticipate additional costs associated with the proposed changes.
- Department of Environmental Protection (DEP) estimates expenditures to increase approximately \$210,000 annually for contractual services to perform BMP monitoring. To cover the increased cost, DEP recommends collecting from the developer, a \$1,500 BMP monitoring fee which would generate revenue of \$187,500 to \$210,000 per year. Revenue projections are calculated on a per acre fee for BMP monitoring. Projections are based on a proposed BMP monitoring fee of \$1,500; the mean and median per acre values for the posted monitoring bonds for SPA

developments in post-construction monitoring; and estimated annual monitoring of 125 – 140 acres.

MCPS projects there will be slight impact to engineering costs for additional phasing details and information such as identifying areas with highly erodible soils and slopes greater than 15% and estimates that hard and soft costs related to site work costs for projects 20 acres or larger would increase by 20 – 30%. The site will have to be stabilized and re-stabilized in smaller segments than current practice in addition to increased stockpiling. There will be more interruptions of work as the required and increased inspections take place in addition to the added cost related to additional inspections and reporting.

M-NCPPC projects no major financial impact to its projects. Projects larger than 20 acres will be dealt with during design. M-NCPPC already budgets for stabilization in its projects so impact should be minimal.

WSSC projects no fiscal impact.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Based on a proposed \$1,500 BMP monitoring fee, DEP projects an increase in revenue of \$187,500 to \$210,000 per year for a six year total of \$1.125M to \$1.260M. However, annual revenues may decrease as the larger sites in the process are permitted and the amount of developable land in SPAs decreases. DEP projects contract costs to be \$210,000 annually or \$1.26M over six years. DEP projects that the proposed changes would be cost neutral. Revenues generated from fee collection would cover contractual costs for monitoring services.

DPS projects expenditures of \$428,170 during year one and \$346,226 annually thereafter for a six-year total of \$2,159,300. DPS recommends increasing Sediment Control, Stormwater Management Concept, and Special Protection Area permit and plan review fees to cover the additional costs. Fees would increase approximately 10.5%. Based on the average fees collected over the past five years, a 10.5% increase would generate additional revenue of \$347,240 annually for a six-year total of \$2,083,440.

Expenditure estimates for county and agency construction projects will vary based on the number and scope of projects undertaken.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Future state actions may cause expenditures to change based on imposed mandatory requirements. Expenditures may increase if the County adopts requirements that are more stringent than statewide requirements.

6. An estimate of the staff time needed to implement the bill.

DPS estimates additional staffing will be necessary to meet the required reviews and inspections:

- 1 Senior Permitting Services Specialist (Grade 26)
- 2 Senior Permitting Services Inspectors (Grade 23)
- 1 Senior Permit Technician (Grade 19)

For the permitting services specialist job class the enactment of the bill includes additional reviews for sediment control in the preliminary plan and site plan process as well as further field documentation of existing natural resource conditions. This amounts to approximately 6 hours of additional review time per plan by a permitting services specialist. The mean number of affected plans per year is 150. Therefore, the subtotal of plan review time is 900 hours.

The new requirements will also increase the amount of time to review sediment control plans that do not need to go through the subdivision process by an additional 2 hours per plan. The mean number of affected plans is 500 per year which amounts to an additional 1,000 hours of plan review time.

The total amount of additional hours required for the permitting services specialist class is 1,900 hours.

For the permitting services inspector class, the enactment of the bill will generate an additional 2,250 sediment control inspections due to the new requirements for faster stabilization and due to more complex grading requirements. Based on past performance, each inspector can perform approximately 1,100 inspections per year. Therefore, two additional inspectors can perform an additional 2,200 inspections per year.

DPS anticipates the need for an additional permit technician because of the bill's increased permit application requirements and a greater need to provide administrative and technical support to the plan review and inspection staff.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

DPS projects that four additional staff will be necessary to meet the required number of reviews and inspections. The additional review and inspection requirements can be incorporated into existing sediment control permitting and inspection processes as well as the existing stormwater management concept process in the preliminary and site plan stages of development.

8. An estimate of costs when an additional appropriation is needed.

No additional appropriation is required in FY13. In FY14 and beyond additional appropriation will be required to cover estimated costs for DPS (\$346,226) and DEP (\$210,000). Costs will be offset by increased revenues.

9. A description of any variable that could affect revenue and cost estimates.

The number and scope of projects undertaken by the county and agencies will impact the cost estimates.

Revenue estimates for BMP monitoring will be impacted by the number and size of projects and the amount of developable land in SPAs.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

See response to #9 above.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Rick Brush, Department of Permitting Services;
Steve Shofar, Department of Environmental Protection
Ernest Lunsford, Department of General Services;
Bill Selby, Department of Transportation;
Nooshin Amirpour, MCPS;
Carl Morgan, M-NCPPC; and
Christopher Cullinan, WSSC
Amy Wilson, Office of Management and Budget;



Jennifer A. Hughes, Director
Office of Management and Budget

11/12/12
Date

Economic Impact Statement
Revisions to Chapter 19, Article 1, Erosion and Sediment Control and
Article 5, Water Quality Review in Special Protection Areas

Background:

This proposed legislation amends Chapter 19, Article 1 (Sediment Control) of the County Code to comply with Maryland Regulation (COMAR 26.17.01). The amendments to Article 5 are recommended in the Special Protection Area (SPA) annual report and in the Streamlining Development Initiative.

1. The sources of information, assumptions, and methodologies used.

- Department of Permitting Services (DPS)
- Department of Environmental Protection (DEP)
- Montgomery County Public Schools (MCPS)
- Maryland Department of Environment (MDE)
- Maryland- National Capital Building Industry Association (BIA)

2. A description of any variable that could affect the economic impact estimates.

- The number of acres of land disturbance from the development
- Direct cost of either maintaining the land disturbance onsite which includes the construction and maintenance costs of a facility to stockpile and stabilize in 20-acre increments of land disturbance or transporting the excess soil in each 20 acres of land disturbance offsite
- Direct cost to develop a design plan for each 20 acres of land disturbance
- Permitting costs
- Time value of money, i.e., the costs incurred to stabilize the land disturbance if maintained onsite and the developer posts a bond or letter of credit to secure a Best Management Practice (BMP).

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

The economic impact will be determined by the size of the development project. Without specificity of data and the size of the development, the overall quantitative effects (i.e., economic impacts, of the amendments) cannot be determined with any certainty. However, the variables listed in item #2 may be significant given the size of the project.

For example, according to information provided by MCPS, there is a "slight impact to our engineering costs for additional phasing details and information such as identifying areas with highly erodible soils and greater than 15% in slope." MCPS also estimates that there would be a more significant impact of 20 to 30 percent in construction costs with areas greater than 20 acres.

Economic Impact Statement
Revisions to Chapter 19, Article 1, Erosion and Sediment Control and
Article 5, Water Quality Review in Special Protection Areas

The Maryland Department of Environment states in the *Proposed Action On Regulations* that the economic impact on large regulated industries and trade groups is minimal to moderate while small businesses "may experience greater net costs as a result of the regulations" due to costs attributed to additional engineering design requirements and any increase in construction time due to the phasing of the project.

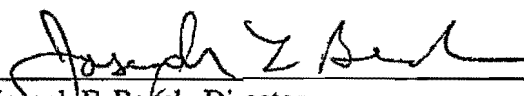
Overall, a project with less than 20 acres of land disturbance would incur minimal additional costs while a project with 20 acres or more of land disturbance could incur 20 to 30 percent additional costs. Each project would have different requirements because it would be site specific.

However, in special protection areas developers would save time and costs because they would finish the construction project three to five years more quickly [for special protection areas] since they would not be responsible for post-construction monitoring. The developer would pay the Department of Environmental Protection a fee to complete the best management practice (BMP) monitoring rather than incurring a cost of hiring a consultant, which could include change orders, to complete the monitoring. Therefore cost savings to the developer would include no expenses for obtaining a bond and permit for monitoring and no administration costs of a consultant contract. Therefore, the revisions provide a certainty of costs to the developer.

4. If a Bill is likely to have no economic impact, why is that the case?

The Bill will likely have an economic impact due to the additional costs of maintaining the 20-acre criteria.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance; Rick Brush, Permitting Services; Steve Shofar, Environmental Protection.



Joseph F. Beach, Director
Department of Finance

10/22/12
Date



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

**Testimony on Behalf of County Executive Isiah Leggett
Regarding Expedited Bill 1-13, Erosion and Sediment Control**

**Rick Brush, Chief
Division of Land Development
Department of Permitting Services**

February 5, 2013

Good afternoon. My name is Rick Brush. I am the Chief of the Division of Land Development in the Department of Permitting Services (DPS). Thank you for the opportunity to testify on behalf of the County Executive in support of Expedited Bill 1-13, which revises the erosion and sediment control requirements of County law to comply with State law.

The State modified its sediment and erosion control requirements last year and gave local jurisdictions one year to adopt those changes. This bill modifies County law to comply with the statewide requirements that took effect on January 9, 2013. For convenience, one additional measure was added to the bill that does not relate to State law. This part of the bill implements a recommendation of the Cross-Agency Streamlining Initiative which was roundly embraced by all participating stakeholders.

Currently, County law requires developers in Special Projection Areas to monitor the Best Management Practices (BMP) that are used on their projects for stormwater management and sediment control. Typically, this monitoring is done during construction and for up to five years after construction ends by a consultant hired by the developer. During the monitoring period, the permit remains open, a bond is retained by the County, and the developer retains responsibility for a completed facility that is slated to be turned over to the County for structural maintenance.

The County Executive recommends amending County law to create a more efficient monitoring process. Specifically, he recommends that the current monitoring requirement be replaced with an administrative fee that will be set by Executive Regulation and used by DEP to monitor BMP practices. This change will benefit the County because monitoring protocols and results will be more uniform and consistent and permits will be closed out at the end of construction rather than five years later. The change will also benefit the development community because they will no longer be required to keep permits open, post bonds, hire consultants, and retain responsibility for a stormwater management facility after construction is completed.

The Maryland Department of the Environment has approved Bill 1-13 pending a final review after Council action. Representatives of DEP and DPS can provide more information on specific requirements of the Bill. The County Executive thanks the Council for its consideration of the Bill and asks that Council act expeditiously on it.

I would be happy to address any questions you may have.



Montgomery Soil Conservation District

18410 Muncaster Road • Derwood, MD 20855 • Phone (301) 590-2855
www.montgomeryscd.org

March 5, 2013

The Honorable Roger Berliner
Chair, T&E Committee
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RE: Expedited Bill 1-13, Erosion and Sediment Control

Dear Council Member Berliner:

The Montgomery Soil Conservation District (MSCD) Board of Supervisors respectfully requests that the Transportation and Environment Committee amend Expedited Bill 1-13, Erosion and Sediment Control to insure that logging, timber removal operations, and nursery operations continue to be considered as agricultural land management practices. As landowners in Montgomery County, MSCD Board members feel strongly that these critical components of our farming operations should be viewed as agricultural land management practices.

Agricultural land management practices provide valuable options for managing agricultural resources regardless of whether a farmer is growing corn, apples, Christmas trees, sod, nursery stock, or forest products. The production of food and fiber must continue to include all viable operations in order for farmers to meet the financial and environmental challenges of the future. We request that the T and E Committee consider substituting the language in the current State Law for the objectionable language in Bill 1-13 to define an "Agricultural land management practice". The following language from Bill 1-13, line 32 should be amended:

"Agricultural land management practice means a method or procedure used in the cultivation of land to further crop and livestock production and conservation of related soil and water resources. Agricultural land management practice does not include logging and timber removal operation or wholesale or retail nursery operation."

This section should be changed to remain consistent with the language found in the State Law:

"Agricultural land management practices" means those methods and procedures used in cultivation of land in order to further crop and livestock production and conservation of related soil and water resources. Logging and timber removal operations are not to be considered a part of this definition.

Honorable Roger Berliner

March 5, 2013

Page 2

While the differences between these two versions are slight, we believe the State Law recognizes that logging and timber removal operations are "agricultural land management practices", but are to be considered separately from the perspective of erosion and sediment control. Furthermore, the reference to "wholesale or retail nursery operations" should be dropped from Bill 1-13 altogether because it is inconsistent with State Law.

We appreciate your consideration of our concerns regarding Expedited Bill 1-13 and we look forward to working with the Council to insure this does not result in an erosion of farmers' rights to produce and harvest food and fiber.

Sincerely,



George Lechliden

Chairman, MSCD Board of Supervisors

Cc: Nancy Floreen, County Council
Hans Riemer, County Council
Craig Rice, County Council
Michael Faden, Council Staff
Amanda Mihill, Council Staff
Jeremy Criss, DED-AS
Rick Brush, DPS

COMMENTS OF POOLESVILLE FARMERS
ON
AMENDMENT TO SEC. 1, CH. 19, ART. I OF COUNTY CODE
EROSION AND SEDIMENT CONTROL

(-- inserted material --)

Much of the County Code Ch. 19 has no counterpart in the state statutes and is not required. The following are our comments and suggestions on improving the County Code:

1. At line 34-36 we suggest deleting the last sentence. We cannot imagine why nursery operations need to require a permit or be prohibited in the name of erosion control or why silviculture should require an expensive permit if it complies with Ch. 22A of the Code.
2. At line 106 before "covering" insert --permanently--; after "covering" insert --more than 1 acre--; after "surfaces" insert --other than existing driveways, roads, and parking lots--. This is to allow temporarily placing a tarp over a pit being dug or other farm operations (such as storing hay bales on tarps), and resurfacing existing driveways and the like.
3. At line 210 delete the addition of "(D) is not associated with a change of use from residential to any other use." The landowner should be allowed to discontinue residential use and convert to another use (e.g., farm storage) without a permit if only a minor land disturbance is involved.
4. On line 217 the change to the singular, allowing only one agricultural structure, should be rejected. Not only a barn, but equipment and grain and feed storage sheds also are needed. The original wording of the Code was appropriate and correct.
5. The 5 year rule on lines 219-227 should be deleted. A farm might be taken out of production and converted to grassland to participate in the USDA's Conservation Reserve Program (10 years), and the program might not be available at the end of the term. Or a farm might be taken out of production temporarily because grain prices are too low to make a profit. Or the farmer might be unable to farm for personal reasons. Under any of these situations, the 5 year rule would say that he cannot resume farming if the nonfarming hiatus was more than 5 years. This makes no sense. In the Agricultural Reserve no business other than agriculture may be conducted, while the 5 year rule says agriculture cannot be resumed. Thus, all uses of the land are prohibited. The provision for regaining farming rights in "or other appropriate circumstance" is too vague a term to use in a statute and leaves the farmer or potential farmer not knowing what he is entitled to do and puts him at risk. The entire 5 year rule on lines 219-227 should be eliminated by deleting those lines.
6. On line 228 after "cutting" insert --and removal--. Removal of cut trees should be allowed.

Add to the Code:

-- If a land disturbing activity may be corrected or mitigated, the landowner shall be notified and given ample opportunity to correct or mitigate the activity before a violation is found. No fines shall be assessed for time periods during which a notice of violation is under administrative or judicial appeal or review.--

With fines of \$500 per day or more, any administrative communications or appeals would be prohibitive in cost without this provision.