

New Kent

C O U N T Y • V I R G I N I A



A GREAT PLACE TO GROW

EROSION AND SEDIMENT CONTROL AGREEMENT IN LIEU OF

BETWEEN

(Property Owner and/or Property Owner and Contractor Jointly)

AND

THE NEW KENT COUNTY, VIRGINIA BOARD OF SUPERVISORS

DATE:	
TAX MAP NO. OR SUBDIVISION NAME:	
AMOUNT OF SECURITY:	
SECURITY NUMBER	

**NEW KENT COUNTY
EROSION AND SEDIMENT CONTROL
AGREEMENT IN LIEU**

No.	Principle No.	Check list
1	Plan the development to fit the particular topography, soils, drainage patterns and natural vegetation of the site.	
2	Minimize the extent of the area exposed at one time and duration of exposure.	
3	Apply erosion control practices to prevent excessive on-site damage.	
4	Apply perimeter control practices to protect the disturbed area from off-site runoff and to prevent sedimentation damage to areas below the development site.	
5	Keep runoff velocities low and retain runoff on the site.	
6	Stabilize disturbed areas immediately after final grade has been attained.	
7	Implement a thorough maintenance and follow-up program.	
8	Clearing or grading is permitted only in areas so designated and approved on the project plans. No storage of materials or land disturbance is permitted outside of the limits of clearing. Areas not to be disturbed shall be protected by fencing methods approved by the Engineering and Resource Protection Division and shall be maintained throughout construction. Acceptable fencing methods are presented in the Virginia Erosion and Sediment Control Handbook (VESCH), Specification 3.38, and include snow fence, board fence, cord fence, plastic fence, earth berms, and silt fence.	
9	All sediment control structures shall be regularly inspected and maintained in an effective operating condition.	
10	All soil stockpiles shall be protected by a sediment control measure or be seeded and covered with a mulch material as presented in VESCH Specification 3.35	
11	A construction entrance made of VDOT No. 1 or No. 3 size stone placed on a filter fabric underliner shall be installed as a first step, prior to lot clearing. All vehicle ingress and egress shall be directed over the installed construction entrance to prevent the tracking of mud onto public roads.	
12	Only suitable fill material may be used on site.	
13	Development shall not impair existing surface drainage or constitute a potential sediment hazard. Stormwater runoff shall not be conveyed or discharged onto adjacent properties in a manner which may cause damage.	

SUMMARY OF IMPROVEMENTS

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

EROSION AND SEDIMENT CONTROL

AGREEMENT IN LIEU OF

THIS EROSION AND SEDIMENT CONTROL PERFORMANCE AGREEMENT (the “In Lieu of Agreement”) is entered into _____, 20____, by (each property owner, or an individual or a corporation with authority to legally act for them) _____, (the “Property Owner”), and NEW KENT COUNTY, VIRGINIA BOARD OF SUPERVISORS, (the “County”), in order to assure performance by the Property Owner.

IN CONSIDERATION OF the approval by the County, through its Agent, of the erosion and sediment control measures set forth in this Agreement on real property identified as Tax Map Parcel No. _____ (the “Development”), Property Owner for itself and its personal representatives, agents, assigns, and other successors in interest, agrees to construct, install and complete all of the erosion and sediment control measures as set forth in the Summary of E&S Measures (the “Improvements”) necessary to comply with all statutory requirements, including but not limited to the provisions of the Virginia Code, the Virginia Erosion and Sediment Control Handbook, Third Edition, the New Kent County Code, as each may be amended from time to time, and all rules and regulations adopted pursuant to these statutes (the “Requirements”). Any reference in this E&S Agreement to completion or construction of Improvements shall be deemed to include all functions, goods, and services and design and engineering work necessary to conform the Improvements to the Requirements.

If after work has commenced, in the opinion of the Director of Community Development (“Director”), the Improvements are inadequate to ensure that they will conform to the Requirements, the Property Owner, upon the demand of the Director, shall implement such improvements as may be specified by the Director and, if determined necessary by the Administrator, prepare and submit Erosion and Sediment Control plans conforming to the Requirements and shall construct the Improvements in accordance with such plans.

SECTION I PROPERTY OWNER COVENANTS

The Property Owner covenants and agrees as follows:

1. To comply with all Requirements in the construction and maintenance of all Improvements and to assure that all land disturbance and stabilization activities on the Development is complete and remains stabilized for a period of one (1) year following certification of plan completion.

2. To request inspections, file applications, and take any other actions required of the Property Owner for the purpose of effecting acceptance or approval of the Improvements by the County.

3. To assign or grant to the County all property rights necessary for completion of the Improvements in the event of default by the Property Owner, or to post bond for all costs of acquisition of such property rights.

4. To provide and maintain security satisfactory to the County to secure performance under this E&S Agreement:

(a) The security shall be provided and maintained in the form of a cash escrow or an irrevocable letter of credit in an amount calculated pursuant to the following formula:

- Total acreage X \$500.00 = Base Amount Plus
- Base Amount X 10% Administrative Fee

(b) The security shall be in a form approved by the County Attorney. If the security provided is not for an indefinite period of time, the duration of the security shall be until _____, 20_____.

(c) In the event all Improvements are not completed ninety (90) days prior to the expiration date of the security, the Property Owner shall provide an alternative security instrument within sixty (60) days of the expiration date or shall be deemed to be in default.

(d)(i) Partial Release: Once the County issues an approved certification of plan completion, the Property Owner may request in writing a partial security release, up to seventy five percent (75%) of the security, provided that the remaining twenty-five percent (25%) is not less than \$500.00. If the remaining twenty-five percent (25%) is less than \$500.00, the County will retain the minimum of \$500.00.

(ii) Final Release: A full release of the security will occur when the land has been stabilized for one year following issuance of a certification of plan completion (the "Stabilization Period"). If, in the opinion of the Administrator, the land is not stabilized during the Stabilization Period, the County will issue a written notice of such to the Property Owner. The Property Owner shall have ten (10) days to stabilize the land in accordance with the Requirements and this Agreement. If the land is not stabilized within these ten (10) days, the Property Owner will be in default.

5. To defend and indemnify the County and hold the County harmless for all loss or damage to property, or injury, or death of any and all persons; for any suits, claims, liability or demands in connection with the physical improvements and facilities, however caused, including those arising directly or indirectly from construction, failure to maintain, or use of such Improvements prior to final acceptance.

6. To be responsible for, and agree to pay, any and all costs incurred by the County for use of consultants utilized by the County for purposes associated enforcement of the terms of this E&S Agreement.

7. To give the County all rights to enter upon the property as an invitee for any and all activities related to the enforcement of this E&S Agreement and for the purposes of the public health, safety, and welfare, and the ability to conduct inspections on the property pursuant to this agreement.

8. To be jointly and severally liable for all obligations of this E&S Agreement, including performance and payment.

SECTION II DEFAULT

1. A default shall be deemed to have occurred on the part of the Property Owner if the Property Owner (a) fails to perform or observe any provision or condition to be performed or observed by Property Owner under this E&S Agreement within the specified time in the Plan or any extensions that may have been given by the Director in writing; or (b) prior to the expiration of such period, if in the judgment of the Director, the Property Owner has:

- (i) abandoned the performance of its obligations under the E&S Agreement; or
- (ii) renounced or repudiated its obligations under the E&S Agreement; or
- (iii) demonstrated through insolvency, inaction, or otherwise, that its obligations under the E&S Agreement cannot be completed or maintained as required in this E&S Agreement.

2. In the event of default, the Property Owner shall be mailed a Notice of Default and given ten (10) days after receipt of the written notice (or such additional time as may be expressly authorized in writing by the Director) to: (i) provide satisfactory evidence that no default exists; (ii) cure the default; or (iii) in the event curing the default reasonably requires more than ten (10) days to complete, commence the cure no later than such ten (10) day period and diligently proceed to cure the default, but in no event shall such cure extend longer than sixty (60) days from the receipt of the Notice of Default unless extended by the Director. No notice of default shall be required for failure to give any notice in a timely manner. Failure of the Director to give notice of default shall not constitute waiver of such default unless otherwise expressly stated in writing.

3. If the Property Owner fails to cure the default within the ten (10) days from receipt of the written notice:

(a) The Property Owner's right to complete the Agreement terminates and the County will draw upon the security and use such funds to complete the obligations under this Agreement.

(b) The Property Owner acknowledges and agrees that the County is under no obligation to give any notice to the Property Owner of its intent to draw on posted security when default occurs.

(c) The County shall not be liable to the Property Owner or to any third party for the manner or in which the Improvements are completed or for any delay in fulfilling the Property Owner's obligations under this E&S Agreement.

(d) The Property Owner shall be liable to the County for payment of the cost of completion of the Improvements, in addition to all administrative costs, regardless of whether the ultimate cost exceeds that of the security posted. The cost of completion shall include all functions, goods and services, and design and engineering work necessary to bring the Improvements into conformance with the Requirements. Administrative costs shall include the time expended by the County's staff, County Attorney, consultants, and all legal fees and costs associated with the Development and enforcement of this Agreement.

(e) The County shall not be bound by the Property Owner's plans if unforeseen conditions within the Development require the County to deviate from the approved plan. Such deviations shall be reasonable with regard to costs, time, and exigency and shall be at the sole discretion of the Director.

(f) In any action at law or in equity to enforce any provision of this Agreement, the County shall be entitled to recover reasonable attorneys' fees and expenses through any final appeal.

**SECTION IV
MISCELLANEOUS**

1. If any clause or portion of this E&S Agreement is found not to be valid and binding, the remainder shall continue in full force and effect.

2. The failure or refusal of the County to take any action, proceedings, or step to enforce any remedy or exercise any right under this E&S Agreement or the taking of any action, proceeding, or step by the County, acting in good faith upon the belief that same is permitted shall not in any way release the Property Owner from the obligations of this E&S Agreement.

3. This E&S Agreement shall be administered and interpreted in accordance with the laws of the Commonwealth of Virginia. Any actions arising out of this E&S Agreement or other obligations securing the obligations of this E&S Agreement shall be filed and maintained in the District Court or Circuit Court of New Kent County, Virginia.

4. The purpose and effect of this E&S Agreement is to secure the completion of all Improvements required by the Virginia Code, the Virginia Erosion and Sediment Control Handbook, Third Edition, as amended, the New Kent County Code, the New Kent County Zoning and Subdivision Ordinances, and all other applicable statutes, ordinances, rules and regulations. The County does not waive or modify any provision or requirement of those statutes, ordinances, rules or regulations by this E&S Agreement. Any approved plan or revision referred to anywhere in this E&S Agreement is incorporated for reference purposes only to the extent that it meets, at a minimum, the unmodified requirements of those statutes, ordinances, regulations and rules.

5. Whenever notice is required, it shall be deemed given if mailed registered, return receipt requested, in the names and to the addresses given below; provided, however, that notice of change of address shall be effective if given in accordance with this paragraph.

DEVELOPER

COUNTY

County Administrator
P.O. Box 150
12007 Courthouse Circle
New Kent, Virginia 23124

The parties have acknowledged this E&S Agreement by their signatures and seals set out below.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

The parties have acknowledged this E&S Agreement by their signatures and seals set out below.

PROPERTY OWNER:

Type of Organization (Individual/
Sole Proprietorship/Partnership/
Corporation):

Legal Name(s) & Mailing Address(es):
(Print or type)

Signature:

Name (Print or type):

Address (if different from above):

COMMONWEALTH OF VIRGINIA

County of New Kent, to wit:

_____, acknowledged the foregoing instrument before me this ____ day
of _____, 2012.

(SEAL)

Notary Public

My Commission Expires: _____

Notary Number: _____

NEW KENT COUNTY, VIRGINIA

County Administrator
P. O. Box 150
New Kent, Virginia 23124-0050

Signature: _____(SEAL)
County Administrator or Designee

COMMONWEALTH OF VIRGINIA

County of New Kent, to wit:

_____, acknowledged the foregoing instrument before me this ____ day
of _____, 2012.

_____(SEAL)
Notary Public

My Commission Expires: _____
Notary Number: _____

Reviewed as to form:

County Attorney