

At a meeting of the Spotsylvania County Board of Supervisors held on \_\_\_\_\_ on a motion by \_\_\_\_\_, seconded by \_\_\_\_\_ and passed \_\_\_\_\_, the Board adopts the following ordinance:

AN ORDINANCE No. 8-16

CA21-0001: Erosion and Sediment Control Ordinance Amendments

To amend the Code of the County of Spotsylvania, Virginia (“Code Amendments”) Chapter 8, Erosion and Sediment Control. The proposed amendments to the Ordinance include definition and local program procedural updates consistent with the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, known as the Virginia Erosion and Sediment Control Law.

PUBLIC HEARING: \_\_\_\_\_

WHEREAS, staff has reviewed the Code Amendment and recommends approval as stated in the Executive Summary dated \_\_\_\_\_; and

WHEREAS, the Spotsylvania County Planning Commission held a public hearing on this item on February 17, 2021, which was duly advertised in a local newspaper for a period of two weeks, and interested citizens were given an opportunity to be heard; and

WHEREAS, the Spotsylvania County Planning Commission recommended \_\_\_\_\_ of the Code Amendment with a vote of \_\_\_\_\_; and

WHEREAS, the Spotsylvania County Board of Supervisors held a public hearing on \_\_\_\_\_, which was duly advertised in a local newspaper for a period of two weeks, and interested citizens were given an opportunity to be heard; and

WHEREAS, good land use practice and general welfare are served by approval of the Code Amendments.

NOW, THEREFORE, THE BOARD OF SUPERVISORS FOR THE COUNTY OF SPOTSYLVANIA HEREBY ORDAINS:

§ 1. That Chapter 8 be and is hereby amended and reordained as follows:

Chapter 8 - EROSION AND SEDIMENT CONTROL<sup>11</sup>

~~Appendix A—Fees~~

~~Appendix B—Agreement in Lieu of a Plan and Checklist~~

Footnotes:

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**Editor's note**— Ord. No. 8-1, adopted July 27, 1993, amended and reordained chapter 8, erosion and sediment control, in its entirety. Previously, Ord. No. 8-1, adopted Nov. 28, 1989, enacted erosion and sediment control regulations which had been codified as superseding the provisions of former Ch. 8 which pertained to similar subject matter and which derived from Code 1980, §§ 7-1—7-6, 7-8—7-22; and ordinances adopted March 9, 1982; Oct. 9, 1984; Oct. 24, 1987; and Sept. 13, 1988.

Subsequently, Ord. No. 8-6, adopted Feb. 11, 2003, amended and reordained chapter 8, §§ 8-4—8-6, 8-17, 8-19, 8-20, 8-31, 8-34—8-36, 8-38(a), 8-39, 8-31, 8-42, 8-44, 8-45, 8-61—8-63 and 8-71, to read as herein set out.

**Cross reference**— Buildings and building regulations, Ch. 5; subdivisions, Ch. 20; water, sewers and sewage disposal, Ch. 22; erosion and sediment control at Ni River Reservoir, § 22-231; zoning, Ch. 23; erosion control in trailer camps generally, § 23-289; erosion control in recreational trailer camps, § 23-322.

**State Law reference**— ~~This Chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, known as the Virginia Erosion and Sediment Control Law. Erosion and Sediment Control Law, Code of Virginia, §§ 10.1-560—10.1-572; local control programs, § 10.1-562.~~

## ARTICLE I. - IN GENERAL

### Sec. 8-1. - Title.

This ~~chapter~~Chapter shall be known as the "Erosion and Sedimentation Control Ordinance of Spotsylvania County".

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. X)

### Sec. 8-2. - Purpose of ~~chapter~~Chapter.

The purpose of this ~~chapter~~Chapter is to prevent degradation of properties, stream channels, waters, and other natural resources of Spotsylvania County and to promote the public health and welfare of the people of the County by establishing requirements for the control of soil erosion, sediment deposition, and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

~~conserve the land, water, air and other natural resources of the county and to promote the public health and welfare of the people of the county by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.~~

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. X)

### Sec. 8-3. - Authorization for ~~chapter~~Chapter.

This Chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, known as the Virginia Erosion and Sediment Control Law, that This chapter is authorized by Title 10.1, Chapter 5, Article 4, of the Code of Virginia, known as "Erosion and Sediment Control Law". This article provides for a comprehensive statewide program with criteria, standards, and specifications to control soil erosion and sedimentation, which is implemented on the local level.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. X)

### Sec. 8-4. - Definitions.

For the purposes of this ~~chapter~~Chapter, the following words and phrases shall have the meanings respectively ascribed to them in ~~this section~~Sec. 8-4, unless the context requires a different meaning:

~~Aggrieved landowner means any landowner whose property sustains pecuniary damage resulting from a violation of an approved plan or required permit or from the conduct of land-disturbing activities commenced without an approved plan or required permit.~~

~~Agreement in lieu of plan means a contract between the County and the Owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.~~the county, signed by the program administrator and the owner which specifies conservation measures which must be implemented in the construction of a single family residence in lieu of a formal site plan. The ~~p~~Program ~~a~~Administrator executes said contract on behalf of the ~~county~~County if the contract meets the requirements of this ~~chapter~~Chapter.

~~Applicant means the owner~~Owner, or a person authorized by limited power of attorney or other acceptable document to sign on behalf of the ~~owner~~Owner, submitting an ~~erosion and sediment control plan~~Erosion and Sediment Control Plan for approval or requesting, by written application, the issuance of a permit authorizing ~~land-disturbing activities~~Land-Disturbing Activities to commence.

~~Board means the Virginia Soil and Water Conservation Board, as described in Section 10.1-502 of the Code of Virginia.~~State Water Control Board.

~~Certified inspector means an employee or agent of a VESCP program authority who (i) holds a certificate of competence from the board~~Board in the area of project inspection, or (ii) is enrolled in the ~~board's~~Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

~~Certified plan reviewer means an employee or agent of a program VESCP authority who (i) holds a certificate of competence from the board~~Board in the area of plan review, (ii) is enrolled in the ~~board's~~Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Code of Virginia Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in Sec. 54.1-2200.~~article 1 (section 54.1-400 et seq.) of Chapter 4 of Title 54.1.~~

~~Certified program administrator or Program administrator means an employee or agent of a program VESCP authority who (i) holds a certificate of competence from the board~~Board in the area of program administration, or (ii) is enrolled in the ~~board's~~Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

~~Clearing means any activity which removes the vegetative ground cover, including but not limited to, the removal of root mat and/or topsoil.~~

~~Conservation plan, erosion and sediment control plan or plan means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.~~

County means the County of Spotsylvania.

~~DCR means Virginia Department of Conservation and Recreation.~~Department of Environmental Quality or DEQ means the Virginia Department of Environmental Quality.

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

*Director* means the Director of the Virginia Department of Environmental Quality, Spotsylvania County erosion and sediment control director or any person designated by the director to act on his or her behalf.

*District or ~~soil~~Soil and water conservation district* means ~~a political subdivision of the state organized in accordance with the provisions of Chapter 5, Article 3 of Title 10.1 of the Code of Virginia, as amended,~~ refers to the Tri-County/City Soil and Water Conservation District.

*Erosion and sediment control plan or ESC plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the VESCP plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives and comply with the minimum standards set out in Title 9, Agency 25, Chapter 840, Section 40 of the Virginia Administrative Code (9VAC25-840-40).

*Erosion impact area* means an area of land not associated with current ~~land-disturbing activity~~Land-Disturbing Activities but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into ~~state waters~~State Waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

*Excavating* means any digging, scooping, or other methods of removing earth materials. ~~depositing or stockpiling of earth materials.~~

*Exceptionally-large-scale land disturbance construction area* means a land-disturbance activity area of Development four hundred (400) acres or larger.

*Fee schedule* means the County's Unified Fee Schedule for Land Use and Building.

*Filling* means any depositing or stockpiling of earth materials.

*Governing body* means the Spotsylvania County Board of Supervisors.

*Grading* means any ~~excavating~~Excavating or ~~filling~~Filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

*Land-disturbing activities* means any ~~land-man-made~~ change to the land surface which that may result in soil erosion from water or wind and the movement of sediments into ~~state waters~~State Waters or onto lands in the ~~commonwealth~~Commonwealth, including, but not limited to, ~~clearing~~Clearing, ~~grading~~Grading, ~~excavating~~Excavating, ~~transporting~~, and ~~filling~~ of land, including the covering of land with gravel, millings, or any material that changes the run off characteristics of the area, except that the following activities shall not be considered ~~land-disturbing activities~~Land-Disturbing Activities for the purpose of this ~~chapter~~Chapter:

- (1) Minor ~~land-disturbing activities~~Land-Disturbing Activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk; provided, such ~~land-disturbing activity~~Land-Disturbing Activities ~~are~~ confined to the area of the road, street, or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for ~~land-disturbing activity~~Land-Disturbing Activities relating to construction of the building to be served by the septic tank system;
- (5) Permitted ~~S~~surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Code of Virginia Title 45.1;
- ~~(6) Exploration or drilling for oil and gas including the well site, roads and off-site disposal areas;~~

- (76) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 ([Sec. 10.1-1100 et seq.](#)) [of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163 of this Title 10.1 of the Code of Virginia, as amended, or is converted to bona fide agricultural or improved pasture use as described in subsection B of section 10.1-1163 of the Code of Virginia, as amended;](#)
- (87) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
- (98) Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds (not required to comply with the Dam Safety Act, Chapter 6, Article 2, of Title 10.1 of the Code of Virginia, as amended), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- (409) Disturbed land areas of less than twenty-five hundred (2,500) square feet in size;
- (4410) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;
- (4211) Shoreline erosion control projects on tidal waters when [the projects are all of the Land-Disturbing Activities are within the regulatory authority of and](#) approved by local wetland boards, the Marine Resources Commission, or the U.S. Army Corps of Engineers; [however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and](#)
- (4312) Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved [erosion and sediment control plan](#) [Erosion and Sediment Control Plan](#), if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of [the local plan approving authority this Chapter.](#)

*Land-disturbing permit or approval* means a permit [or other form of approval](#) issued by the [eCounty](#) for [the Clearing, Filling, Excavating, Grading, or Transporting of land or for any combination thereof or for any other land](#) [Land-d](#) [Disturbing a](#) [Activities](#) regulated by this chapter.

*Local erosion and sediment control program or local control program* means an outline or explanation of the various elements or methods employed by the county to regulate [land-disturbing activities](#) [Land-Disturbing Activities](#) and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as a local ordinance, policies and guidelines, technical matters, inspection, enforcement and evaluation.

*Natural channel design concepts* mean [the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.](#)

*Owner* means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation in control of property.

*Peak flow rate* means [the maximum instantaneous flow from a given storm condition at a particular location.](#)

*Permit issuing authority* means [the erosion and sediment control program administrator.](#)

~~Permittee~~ means the ~~owner~~Owner of the property and/or the person to whom the permit authorizing ~~land-disturbing activities~~Land-Disturbing Activities is issued and/or the person who certifies that the approved ~~erosion and sediment control plan~~Erosion and Sediment Control Plan will be followed.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility cooperative, county, city, town or other political subdivision of this state, any interstate body or any other legal entity.

~~Plan approving authority~~ means the ~~erosion and sediment control program administrator~~.

~~Program authority~~ means the ~~locality which has adopted a soil erosion and sediment control program approved by the board~~.

Program Administrator means the person or persons responsible for administering and enforcing the erosion and sediment control program of Spotsylvania County.

~~Responsible land disturber or RLD~~ means an individual holding a certificate issued by the DEQ who is responsible for carrying out the Land-Disturbing Activity in accordance with the approved ESC Plan. The RLD may be the Owner, Applicant, Permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC Plan or permit as a prerequisite for engaging in land disturbance. ~~means an individual from the project or development team, who will be in charge or responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of plan, who (i) holds a responsible land disturber certificate of competence, (ii) holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review, (iii) holds a current contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article I (section 54.1-400 et seq.) of Chapter 4 of Title 54.1.~~

Runoff volume means the volume of water that runs off the land Development project from a prescribed storm event.

*Single family residence/home/dwelling* means a noncommercial dwelling that is occupied exclusively by one family.

State permit means an approval to conduct Land-Disturbing Activities issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit.

*State waters* mean all waters on the surface and under the ground wholly or partially within or bordering the ~~commonwealth~~Commonwealth or within its jurisdiction.

*Subdivision* has the same meaning in this chapter as the definition set forth in the Spotsylvania County Subdivision Ordinance (Chapter 20).

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

Virginia Erosion and Sediment Control Program or VESCP means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and non-agricultural runoff associated with Land-Disturbing Activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

VESCP Permit-issuing authority means the Program Administrator or designee responsible for issuing permits for Land-Disturbing Activities.

VESCP Plan-approving authority means the Program Administrator or designee responsible for determining the adequacy of a plan submitted for Land-Disturbing Activities on a unit or units of lands and for approving plans.

VESCP authority or Program authority means the County which has adopted a soil erosion and sediment control program that has been approved by the Board.

Water quality volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land Development project.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-2, 7-12-94; Ord. No. 8-6, 2-11-03; Ord. No. 8-15, § 1, 11-15-18; Ord. No. X)

Sec. 8-5. - Violation; injunction and other legal actions by the ~~county~~County.

(a) Violators of this ordinance shall be guilty of a Class I misdemeanor.

(b) Any person who violates any provision of Code of Virginia Sec. 62.1-44.15:55, 62.1-44.15:56 shall, upon a finding of the District Court of Spotsylvania County, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of Land-Disturbing Activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of Land-Disturbing Activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. Any such civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of Sec. 62.1-44.15:63.

(c) The Program Administrator, or the Owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of Spotsylvania County to enjoin a violation or a threatened violation of Code of Virginia Sec. 62.1-44.15:55, 62.1-44.15:56, without the necessity of showing that an adequate remedy at law does not exist.

However, an Owner of property shall not apply for injunctive relief unless (i) he/she has notified in writing the person who has violated the local program, and the Program Authority, that a violation of the local program has caused, or creates a probability of causing, damage to his or hers property, and (ii) neither the person who has violated the local program nor the Program Authority has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or create the probability of causing, damage to his or her property.

(d) In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to Spotsylvania County in a civil action for damages.

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

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

(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the VESCP Authority the County may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Sec. 8-5 Subsection (b) or (e).

(g) The Commonwealth's Attorney shall, - upon request of the County, take legal action to enforce the provisions of this ordinance.

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

~~(a) Violations of this chapter, or of any code, standard or regulation incorporated by this chapter, or of the condition of a permit issued pursuant to this chapter, shall be subject to a civil penalty. The civil penalty for any one (1) violation shall be five hundred twenty five dollars (\$525.00). Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00).~~

~~(b) The program administrator may apply to the circuit court to enjoin a violation or a threatened violation of this chapter without the necessity of showing that an adequate remedy at law does not exist.~~

~~(c) In addition to any other penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.~~

~~(d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation.~~

~~(e) With the consent of any person who has violated or failed, neglected, or refused to obey any order, notice or requirement of the program administrator, any condition of a permit issued pursuant to this chapter, any provision of this chapter, or any code, standard or regulation incorporated by this chapter, the program administrator may provide, in an order issued by him, against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (a) or (d) of this section.~~

~~(f) Upon request of the program administrator, the county attorney or the commonwealth's attorney shall take appropriate legal action to enforce the provisions of this chapter.~~

~~(g) In addition to any other remedies provided for in this section, the program administrator may utilize a permittee's erosion bond to arrange for initiation or maintenance of appropriate conservation action when the permittee fails to do so after proper notice from the program administrator.~~

~~(h) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.~~

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. 8-12, 11-13-07; Ord. No. 8-14, 11-14-13; Ord. No. X)

#### Sec. 8-6 Liability for damages.

Neither the approval of an erosion and sediment control plan under the provisions of this article nor the compliance with the conditions of such plan shall relieve any person from responsibility for damage to other persons or property or impose any liability upon the County from damage to other persons or property.

#### Sec. 8-6. - Violation; action by aggrieved owner.

~~(a) An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved plan or required permit, or from the conduct of land disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the program administrator.~~

~~(b) Upon receipt of the notice from the aggrieved owner the program administrator shall conduct an investigation of the aggrieved owner's complaint.~~

~~(c) If the program administrator has not responded to the alleged violation in a manner which causes the violation to cease and abates the damage to the aggrieved owner's property within thirty (30) days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that DCR require the violator to stop the violation and abate the damage to the property.~~

~~(d) If (i) DCR's investigation of the complaint indicates that the program administrator has not responded to the alleged violation as required by this chapter, (ii) the program administrator has not responded to the alleged violation within thirty (30) days from the date of the notice given pursuant to subsection (a) of this section; and (iii) DCR is requested by the aggrieved owner to require the violator to cease the violation, then the district shall give written notice to the program administrator that DCR will request the board to issue an order pursuant to subsection (e) of this section.~~

~~(e) If the program administrator, has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within ten (10) days following the receipt of the notice from DCR, the board is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the land disturbing activities without an approved plan or required permit to cease all land disturbing activities until the violation of the plan or permit has ceased, or an approved plan and required permits are obtained, as appropriate, and specified correction measures have been taken.~~

~~(Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03)~~

Secs. 8-7—8-15. - Reserved.

## ARTICLE II. - LOCAL EROSION AND SEDIMENTATION CONTROL PROGRAM

### DIVISION 1. - GENERALLY

#### Sec. 8-16. - Regulations.

Pursuant to Code of Virginia Sec. 62.1-44.15:54 of the Code of Virginia, Spotsylvania County hereby establishes a VESCP Program and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources).

(a) In accordance with Code of Virginia Sec. 62.1-44.15:52, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to:

(1) detain the Water Quality Volume and to release it over 48 hours;

(2) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and

(3) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

(b) For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified in Sec. 62.1-44.15:28 of the Virginia Stormwater Management Act and 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) regulations, unless such Land-Disturbing Activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Regulations.

(c) Pursuant to Code of Virginia Sec. 62.1-44.15:53, an ESC Plan shall not be approved until it is reviewed by a Certified Plan Reviewer. Inspections of Land-Disturbing Activities shall be conducted by a Certified Inspector. The Erosion Control Program of Spotsylvania County shall contain a Certified Program Administrator, a Certified Plan Reviewer, and a Certified Inspector (who may be the same person).

(d) Spotsylvania County hereby designates the Program Administrator as the Plan-Approving Authority.

(e) The program and regulations provided for in this ordinance shall be made available for public inspection at the office of Environmental Codes.

~~The regulations promulgated by the Virginia Soil and Water Conservation Board, pursuant to section 10.1-561 of the Code of Virginia and the mandatory provisions of Chapter 5, Article 4, of Title 10.1 of the Code of Virginia, in their current form and as each is amended in the future, as they relate to the board and the district, hereby are made a part of the county's erosion and sediment control program and this chapter, as if such regulations were set forth herein. In addition to the provisions of this chapter, the county may adopt supplemental and substitute regulations, consistent with those of the board, which shall be a part of the county's erosion and sediment control program, as if such regulations were set forth herein.~~

~~(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-2, 7-12-94; Ord. No. 8-4, 7-25-95; Ord. No. X)~~

Sec. 8-17. - Consistency with state program.

The ~~county~~ County may adopt more stringent soil erosion and sediment control regulations than those necessary to ensure compliance with the ~~board's~~ Board's minimum regulations, however, the ~~county~~ County may not impose any more stringent regulations for plan approval or permit issuance than those specified in VESCL ~~40.1-563~~62.1-44.15:55 and ~~40.1-565~~62.1-44.15:57 (VESCL ~~40.1-570~~62.1-44.15:65(A)). Where provisions of this ~~chapter~~ Chapter are stricter than the state law and/or regulations, the provisions of this ~~chapter~~ Chapter shall govern.

~~(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. X)~~

Sec. 8-18. - Virginia Erosion and Sediment Control Handbook adopted.

The Virginia Erosion and Sediment Control Handbook, ~~third edition, in its current form~~ and as amended in the future, by reference, is adopted as the official handbook of the ~~local~~ County's ~~VESCP~~ program and incorporated by reference into this ~~chapter~~ Chapter.

~~(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-2, 7-12-94; Ord. No. 8-4, 7-25-95; Ord. No. X)~~

~~Sec. 8-19. - Use of guidelines and conservation standards.~~

~~The Virginia Erosion and Sediment Control Handbook, the regulations of the state soil and water conservation board and the provisions of this chapter shall be used by the applicant, in making a submittal under the provisions of this chapter, in preparing an erosion and sediment control plan. The~~

~~program administrator of erosion and sediment control, in considering the adequacy of such submitted plan, shall be guided by these same authorities.~~

~~(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03)~~

~~Sec. 8-20. Ten-year frequency storm for man-made channels.~~

~~Notwithstanding section 1.5(19)(b)(2) of the board's regulations or any other provision of the board's regulations or the per 4 VAC 50-30-40 (19)(b)(2), natural channels shall be analyzed by the use of a ten-year frequency storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed, or banks.~~

~~(Ord. No. 8-3, 11-8-94; Ord. No. 8-6, 2-11-03)~~

~~Secs. 8-2119—8-3029. - Reserved.~~

## DIVISION 2. - PLANS AND PERMITS

Sec. 8-30. Submission and approval of plans; contents of plans.

- (a) Except as provided herein, no person may engage in any Land-Disturbing Activity until he or she has submitted to the Program Administrator an ESC plan for the Land-Disturbing Activity and such plan has been approved by the VESCP Plan-Approving Authority. No approval to begin Land Disturbing Activities will be issued unless evidence of State Permit coverage is obtained where it is required. Where Land-Disturbing Activities involve lands under the jurisdiction of more than one VESCP, an ESC plan, at the option of the applicant, may be submitted to the DEQ for review and approval rather than to each jurisdiction concerned. Where the Land-Disturbing Activity results from the construction of a single-family residence, an Agreement in Lieu of Plan may be substituted for an ESC plan if executed by the Plan-Approving Authority.
- (b) The standards contained within the "Virginia Erosion and Sediment Control Regulations" (the Virginia Erosion and Sediment Control Handbook, as amended) and any local handbook or publication are to be used by the Applicant when making a submittal under the provisions of this ordinance and in the preparation of an ESC plan. The Plan-Approving Authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations, and guidelines. When the standards vary between the publications, the State regulations shall take precedence.
- (c) The VESCP Plan-Approving Authority shall review ESC plans submitted to it and grant written approval within sixty (60) days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law and the Board's regulations, and if the person responsible for carrying out the plan certifies that he or she will properly perform the measures included in the plan and will conform to the provisions of this ordinance. In addition, as a prerequisite to engaging in the Land-Disturbing Activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the Responsible Land Disturber, to the Program Authority, as provided by Sec. 62.1-44.15:52, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the Land-Disturbing Activity. Failure to provide the name of the Responsible Land Disturber, prior to engaging in Land-Disturbing Activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.
- (d) When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the Applicant within forty-five (45) days. The notice shall specify such modifications, terms, and conditions that will permit approval of the plan. If

no action is taken within forty-five (45) days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(e) The VESCP Authority shall act on any ESC Plan that has been previously disapproved within forty-five (45) days after the plan has been revised, resubmitted for approval, and deemed adequate.

(f) The VESCP Authority may require changes to an approved plan when:

(1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or

(2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the Plan-Approving Authority and the person responsible for carrying out the plans.

(g) In order to prevent further erosion, the County may require an approved plan for any land identified in the VESCP Program as an Erosion Impact Area.

(h) When a Land-Disturbing Activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an ESC plan shall be the responsibility of the Owner.

(i) In accordance with the procedure set forth in Code of Va. Sec. 62.1-44.15:55 (E), any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board. Approval of general erosion and sediment control specifications does not relieve the Owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

Sec. 8-31. - Regulated land-disturbing activities; submission and approval of a erosion and sediment control plan. ~~Plans and agreements in lieu of a plan—Permits—Activities prohibited without approved plan or agreement; exceptions.~~

(a) Except as provided in ~~§ 10.1-564~~Code of Virginia Sec. 62.1-44.15:56 of the Code of Virginia "state agency projects", or as otherwise expressly exempted by this ~~chapter~~Chapter, no person shall engage in any ~~land-disturbing activity~~Land-Disturbing Activity until ~~he~~he or she has submitted to the ~~program~~Program a ~~Administrator~~Administrator an ~~erosion and sediment control~~ESC plan ~~Plan~~ for the ~~land-disturbing activity~~Land-Disturbing Activity and until that plan has been reviewed and approved by the ~~program~~Program a ~~Administrator~~Administrator, and a permit issued.

(b) ~~When land-disturbing activity results from the construction of a single family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan, if approved by the program administrator. An agreement in lieu of a plan may also be substituted for an erosion and sediment control if approved by the program administrator, for land disturbance of two thousand five hundred (2,500) square feet on parcels where there is an existing single family dwelling. Failure to comply with the terms of an agreement in lieu of a plan~~Agreement in Lieu of Plan shall constitute a violation of this ~~chapter~~Chapter. Requirements of this ~~chapter~~Chapter which ~~that~~ relate to plans shall also similarly relate to agreements in lieu of a plan.

(c) Plan review and inspection fees, ~~not to exceed an amount commensurate with the services rendered,~~ shall be paid to the ~~county~~ County at the time of filing applications for erosion and sediment control permits and at such other times, if specified in this ~~chapter~~ Chapter. The dollar amount of these fees shall be set out in the ~~county's~~ County's Unified Fee Schedule – Land Use fee schedule, reviewed and adopted by the ~~board~~ Spotsylvania County Board of ~~s~~Supervisors on a periodic basis.

~~(d) All permits issued pursuant to this chapter shall be signed by the applicant as defined herein.~~

~~(e) The applicant, as an option, may have the board review and approve plans for multi-jurisdictional projects per VESCL 10.1-563A.~~

~~(f) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general ESC specifications annually with the Virginia Soil & Water Conservation Board (VASWCB) DEQ for review and written comments. Ref. VESCL 10.1-563-D62.1-44.15:55(D).~~

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-5, 6-26-01; Ord. No. 8-6, 2-11-03; Ord. No. 8-9, 7-12-05; Ord. No. X)

~~Secs. 8-32- Installation of erosion control facilities.~~

~~In accordance with an approved ESC Plan all sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.~~

~~(Ord. No. 8-1, 7-27-93; Ord. No. X)~~

~~Sec. 8-33. – 8-36. - Reserved.~~

~~DIVISION 3. – SPECIAL REQUIREMENTS~~

~~Sec. 8-34. – Requirements within subdivisions.~~

~~In addition to all other requirements that may be set forth in this chapter, before any occupancy permit for any dwelling located in a section of a subdivision can be issued, the following must be completed:~~

- ~~(1) Where the subdivision is served by public water and/or sewer, the system within the section of the subdivision wherein the dwelling is located shall be completed.~~
- ~~(2) All drainage systems within the section of the subdivision wherein the dwelling is located shall be installed and completed in accordance with the engineer's or surveyor's design of such drainage system, and shall have been approved in writing by the program administrator.~~
- ~~(3) All streets within the section of the subdivision wherein the dwelling is located shall be completed to the point that all base material is in place.~~
- ~~(4) All seeding of street right of way and any areas disturbed during construction and development of the section of the subdivision wherein the dwelling is located shall be completed and approved in writing by the program administrator.~~

~~(Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03)~~

~~Sec. 8-35. – Requirements for rights-of-way, streets or drainage easements.~~

- ~~(a) No building materials shall be stored upon streets, rights-of-way, or drainage easements, or in any way that interferes with erosion control.~~
- ~~(b) No construction work shall be allowed within rights-of-way dedicated for roads or streets without the prior permission of the program administrator. In the event of a violation of this provision, a right-of-way inspection fee shall be imposed upon the permittee for inspection of said construction work within such right-of-way. No occupancy permit shall be issued until such inspection fee is paid.~~

~~(Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03)~~

~~Sec. 8-36. Requirements for issuance of final erosion inspection.~~

~~The following requirements shall be met before a final erosion inspection or occupancy permit can be approved.~~

- ~~(1) Each lot or site shall have positive drainage away from dwelling structures with no ponding of water. Grade shall be 6"-10' Residential Ref. CABO Code 401.3, Commercial shall be 1"-12" Ref. BOCA 1813.7.~~
- ~~(2) Each lot shall be graded in such a manner as to direct drainage runoff to a designated drainage channel.~~
- ~~(3) Drainage ditches, channels and swales that are within drainage easements, or which are installed by the developer of subdivision shall not be disturbed during home construction. Damage to such facilities which is caused by building the dwelling structure or by grading the property shall be corrected by the permittee. Corrective action shall be in conformance with the original design of such drainage channel, ditch or swale.~~
- ~~(4) Any drainage swales that may be necessary to carry runoff water to its proper drainage channel shall be installed along the property line wherever possible.~~
- ~~(5) Driveway culverts shall be set at the elevation of the roadway ditch grade and be sized as set forth by the design plans of the subdivision. Culvert pipes which are damaged during construction shall be repaired or replaced.~~
- ~~(6) Water meter barrels shall be set in a manner to have no less than thirty-six (36) inches of ground cover on all sides around the meter barrel. The top of meter barrel lid shall be flush with finished grade of the yard. No excessive mounding of dirt will be allowed to enable the lid to become flush with the finished grade. It shall be the responsibility of the permittee to have the finished grade of the yard established at the time the plumber makes the water tie in at the meter site. Any adjusting of the meter or meter barrel shall be made at that time.~~
- ~~(7) Water meters shall be set eighteen (18) inches to twenty-two (22) inches from the top of meter barrel lid. The water line from the meter to the house shall have a minimum of thirty-six (36) inches of cover, except where said water line enters the building and then it shall be under the foundation. No water meter shall be set if these requirements are not met.~~
- ~~(8) All sanitary sewer cleanouts shall be set flush with the finished grade of the yard and must have a cast iron top with a brass plug.~~
- ~~(9) All loose roots, rocks and large dirt clods shall be raked and removed from the site, leaving a well-graded surface that can be mowed and maintained in a reasonable condition.~~
- ~~(10) All yards shall be limed at a rate of two (2) tons per acre or equal; fertilized at a rate of six hundred (600) pounds of 10-10-10 per acre or equal; seeded using Kentucky Fescue-31 at a rate of one hundred (100) pounds per acre or equal; and mulched using small grain straw at a rate of two (2) tons per acre or equal.~~
- ~~(11) A provisional erosion inspection in lieu of a final erosion inspection may be given on building lots or sites from December 1 to March 1. A provisional erosion inspection at any other time shall be given only upon approval of and in the discretion of the program administrator. On any~~

~~building lots or sites with a provisional erosion inspection shall have erosion control measures in place and maintained by the permittee until final grading and seeding of lot or site is complete. Any such, lots or sites having a provisional erosion inspection shall be required to pass a final erosion inspection by May 15 or such other time as determined by the program administrator. Owners, permittees or persons responsible for carrying out the plan who fail to pass the final erosion inspection by the specified deadline above shall be subject to the remedies provided for in this chapter. The program administrator may grant an extension of this deadline for a period of not more than thirty (30) days.~~

~~(12) Minimum yard sod requirement for subdivision lots served by public water and public sewer. Sod shall be installed in order to provide vegetative stabilization on residential building lots of twelve thousand (12,000) square feet or less. Such sod shall be installed in accordance with the standards and specifications for sodding found in the Virginia Erosion and Sediment Control Handbook.~~

~~(Ord. No. 8 1, 7 27 93; Ord. No. 8 6, 2 11 03; Ord. No. 8 8, 2 8 05)~~

Sec. 8-37. - ~~Fees for inspection of corrections of violations of the provisions of this chapter.~~ Permits and fees.

~~(a) No Land-Disturbing Permit shall be issued until the Applicant submits with his or her application an approved ESC Plan or agreement in lieu of an approved ESC Plan, certification that the plan will be followed, and evidence of State Permit coverage where it is required.~~

~~(b) No person may engage in any Land-Disturbing Activity until he or she has acquired a Land-Disturbing Permit (unless the proposed Land-Disturbing Activity is specifically exempt from the provisions of this ordinance), and has paid the fees and posted the required bond.~~

~~(c) An administrative fee identified in the Fee Schedule shall be paid to the County at the time of submission of the ESC Plan.~~

~~(1) Fees for exceptionally-large-scale land disturbance construction fees area inspections shall be authorized by the board of supervisors from time to time to off-set erosion and sedimentation control departmental program administration and inspection costs and shall be designated in accordance to the unified fee schedule Fee Schedule and shall meet the following conditions. -~~

~~(1)a. In accordance with the unified fee schedule fee amount shall be and determined by based upon the total land disturbance acreage calculationated on the approved site plan in accordance to the Fee Schedule. - The applicant Applicant shall be billed for the monthly inspection fee on the first day of each month during the period of validity of the construction site plan. Thereafter, the applicant will continue to be billed for the required monthly fee on the first day of the month until the site receives a final bond release inspection and approval. The applicant Applicant shall must remit payment within fifteen (15) days of invoicing to the zoning and environmental Environmental eCodes department division by check payable to the county County treasurer Treasurer. Failure to stay current pay each invoice within fifteen days of the date of the invoice on construction fee billing shall is cause for issuance of a project stop work order until such fees are paid current.~~

~~(2)b. If the monthly fee schedule amount received is more than the amount of billed third-party inspection costs required during any month, then the county collection overage amount will be discounted towards the next calculated county fee invoice to the applicant submitted on the subsequent first day of the next month's invoice equalized to the monthly fee per the fee schedule.~~

~~(3)be. If, in any month, the monthly amount billed for an Exceptionally-large-scale land disturbance construction fee schedule amount invoice is insufficient to cover reimburse the County the for amounts billed to the County by third-party inspectors, inspection costs for any particular~~

~~monthly billing cycle, then the applicant unreimbursed balance will be added to the monthly fee on the Applicant's next or a subsequent invoice shall be invoiced for the county's fee collection underage on the subsequent month's invoicing in an equal amount totaling third-party inspections billing for that current month plus the previous month's collection underage and must be paid when invoiced.~~

~~(4)d. At the closure of the land disturbance permit by a final bond release inspection, the applicant shall be due any county fee collection overage compared to the last month's third party billing cycle up to final bond release inspection.~~

- (d2) Where any violation of this ~~chapter~~ Chapter requires more than one (1) inspection to the site by the ~~erosion and sediment control department~~ County, there will be imposed a reinspection fee for each additional inspection. No occupancy permit shall be issued until such fees are paid.

(Ord. No. 8-1, 7-27-93; Ord. No. 8-15, § 2, 11-15-18; Ord. No. X)

Sec. 8-38. - Responsibility of owner for expense of control measures; performance bonds.

- (a) All control measures required by the provisions of this ~~chapter~~ Chapter shall be undertaken at the expense of the ~~owner~~ Owner. Pending such actual provision thereof, the ~~owner~~ Owner shall execute and file with the ~~program~~ Program a Administrator, prior to issuance of the ~~land~~ Land-disturbing Disturbing permit Permit, a performance bond with surety, cash escrow, letter of credit, any combination thereof, or other legal arrangement as is acceptable to the ~~county attorney~~ Program Administrator. The performance bond shall be in an amount determined by the ~~program~~ Program administrator Administrator, equal to the approximate total cost of providing erosion and sedimentation control improvements and must include a reasonable allowance of twenty-five (25) percent contingency of the cost of the conservation action for estimated administrative costs and inflation. These documents shall be approved by the ~~county~~ County and are to ensure that measures could be taken by the ~~county~~ County, at the ~~applicant's~~ Applicant's expense, should the ~~applicant~~ Applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action. If the ~~county~~ County takes such conservation action upon such failure by the ~~permittee~~ Permittee, the ~~county~~ County shall be entitled to collect from the ~~owner~~ Owner for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
- (b) Within sixty (60) days of the achievement of adequate stabilization and completion of the ~~land-disturbing activity~~ Land-Disturbing Activity, as determined by a final inspection, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the ~~owner~~ Owner or terminated, as the case may be.
- (c) These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

(Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. X)

Sec. 8-39. - Approval required for certain existing conditions.

- (a) It shall be unlawful for any owner of land in an erosion impact area to willfully permit erosion and sedimentation of his land to cause reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.
- (b) When the Program Administrator determines that erosion and sedimentation is occurring in an erosion impact area, he or she shall give notice of the erosion and sedimentation to the land owner in writing at the address for the owner contained in the real estate assessor's records, and require the owner to obtain a land-disturbance permit for the purpose of engaging in land-

disturbing activity to control the erosion and sedimentation. If the owner fails or refuses to obtain a land-disturbance permit within five days after the notice is mailed, or if the owner fails or refuses to install or maintain the erosion and sediment controls required by the approved erosion and sediment control plan after the land-disturbance permit is issued and within five days after the Program Administrator has given him or her written notice of such failure or refusal, the owner shall be in violation of this chapter. The Program Administrator may extend the five-day period if the owner demonstrates good cause for an extension.

(c) In order to prevent further erosion, the Program Administrator may designate any land within the county as an erosion impact area.

~~When plan required in absence of land-disturbing activities.~~

~~In order to prevent further erosion, the program administrator may require submittal and approval of a conservation plan and application for and receipt of a permit as provided by this chapter, for any land identified by the program administrator as an erosion impact area.~~

(Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. X)

Sec. 8-40. - Reserved.

#### DIVISION 4. - ACTION ON CONTROL PLAN

Sec. 8-41. - Approval of plan.

- (a) The ~~program~~Program administrator~~Administrator~~ shall review ~~conservation plan~~Conservation Plan~~the plan submitted to him~~ and grant written approval within ~~forty-five (45)~~sixty (60) days of the receipt of the plan, if ~~he or she determines that~~ the plan meets the requirements of this ~~chapter~~Chapter and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan.
- (b) All erosion control plans must have an ~~individual holding a certificate of competence, also known as a responsible land disturber, (RLD)~~, as a prerequisite for approval and the person responsible for the plan shall provide the name, certification number, and expiration date of the ~~(RLD)~~. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.
- (c) Notwithstanding subsection (b) above, a RLD shall not be required when ~~land-disturbing activity~~Land-Disturbing Activity results from the construction of a ~~single~~single-family residence and an ~~agreement in lieu of a plan~~Agreement in Lieu of Plan has been approved in accordance with subsection 8-31(b) of this ~~chapter~~Chapter.

This exception shall not apply where there is a resource protection area (RPA), as defined in Chapter 6A of ~~this the County Code~~, or a flood plain located on the property where the ~~land-disturbing activity~~Land-Disturbing Activity is to occur.

- (d) If a violation occurs during the ~~land-disturbing activity~~Land-Disturbing Activity where there is an ~~agreement in lieu of a plan~~Agreement in Lieu of Plan, then the person responsible for carrying out the ~~agreement in lieu of a plan~~Agreement in Lieu of Plan (the signatory to the agreement) shall correct the violation and provide the name, certification number, and expiration date of an ~~individual holding a certificate of competence~~RLD, as provided by ~~§ 10.1-561 of the Code of Virginia.~~

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. 08-13, 7-14-09; [Ord. No. X](#))

**State Law reference**— Code of Virginia §~~62.1-44.15:51 to :66~~ [§ 10.1-563\(B\), 10.1-566\(A\)](#).

Sec. 8-42. - Inadequate plan; notice to applicant of changes; approval if no action taken.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the ~~applicant~~[Applicant within forty-five \(45\) days](#). The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken by the program administrator within the time specified above, the plan shall be deemed approved and the person shall be authorized to proceed with the proposed activity. [The Program Administrator shall act on any erosion and sediment control plan that has been previously disapproved within forty-five \(45\) days after the plan has been revised, resubmitted for approval, and deemed adequate.](#)

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; [Ord. No. X](#))

Sec. 8-43. - Responsible party.

~~For the purposes of this chapter, when land-disturbing activity will be conducted by a contractor pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner. However, both the contractor and owner may be subject to the remedies provided for by this chapter for actions which constitute a violation of this chapter.~~

[The owner and responsible land disturber, as designated by the owner, are responsible for implementing and maintaining the approved erosion and sediment control plan and certify that they will perform the erosion and sediment control measures in accordance with the approved plan and any other erosion and sediment control measures deemed necessary by the Program Administrator or designee.](#)

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; [Ord. No. X](#))

Sec. 8-44. - Change of approved plan in certain cases.

An approved ~~ESC p~~[Plan](#) may be changed by the ~~program~~[Program administrator](#)~~Administrator~~ in the following cases:

- (1) Where inspection has revealed the inadequacy of the plan to satisfy applicable regulations; or
- (2) Where 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, and proposed amendments to the plan, consistent with the requirements of this ~~chapter~~[Chapter](#), are agreed to by the ~~director~~[Program Administrator](#) and the person responsible for carrying out the plan.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; [Ord. No. X](#))

Sec. 8-45. - Variances ~~per VESCR—Section 1.6.~~

The ~~program~~[Program administrator](#)~~Administrator~~ may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

- (1) At the time of plan submission an ~~applicant~~Applicant may request a variance to become part of the approved ~~erosion and sediment control plan~~ESC Plan. The ~~applicant~~Applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the ~~program~~Program administrator~~Administrator~~ shall be documented in the plan.
- (2) During construction, ~~the person responsible for implementing the approved plan may request a variance in writing from the program~~Program a~~Administrator~~. ~~The Program Administrator~~ shall respond in writing either approving or disapproving such a request. If the ~~program~~Program administrator~~Administrator~~ does not approve a variance within ten (10) business days of receipt of the written request, the request shall be considered to be disapproved. Following disapproval, the applicantApplicant may submit a new application for variance request with additional documentation.
- (3) The ~~program~~Program administrator~~Administrator~~ shall consider each variance request judiciously, keeping in mind both the need of the ~~applicant~~Applicant to maximize cost effectiveness and the need to protect off-site properties and resources from drainage.

(Ord. No. 8-6, 2-11-03; Ord. No. X)

~~Sec. 8-46. — As built site plans and grading requirement changes for subdivision lots served by public sewer and public water.~~

- ~~(a) — Residential as-built site plans shall be submitted to the ESC administrator and reviewed for conformity with the original approved site plans for the individual subdivision lot, or the residential subdivision site plan approval granted by the subdivision agent and/or ESC administrator. Additionally, all residential site plans shall require certification from an approved Virginia licensed professional at one (1) stage of the construction process prior to framing, as follows:~~
  - ~~(1) — A licensed professional certification shall be required at the completion of all structural foundations (primary dwellings), and the licensed professional shall certify lowest floor elevations, wall check locations, and provide electronic certification copy to the ESC administrator, on lots containing wetlands, resource protection areas, reservoir protection overlay district buffers, or flood plain areas.~~
  - ~~(2) — The approved and applicable erosion and sediment control plan shall be available on the construction site at the time of all erosion control inspections.~~

~~(Ord. \_\_\_\_\_ No. \_\_\_\_\_ 8-8, \_\_\_\_\_ 2-8-05)~~

~~Sec. 8-47. — Required yard—Established front, side, and rear yard slope criteria for subdivision lots served by public sewer and public water.~~

- ~~(a) — Before an erosion and sedimentation bond release inspection is conducted, each residential subdivision lot shall have, at a minimum, an established fifteen (15) foot front yard, and fifteen (15) foot rear yard, inspected and approved by ESC staff, or which remain consistent with all applicable zoning design setback standards from all structures (primary dwellings), exclusive of resource protection areas, wetland areas, reservoir protection overlay district buffer yard. Within the required established developed minimum fifteen (15) foot front, and fifteen (15) foot rear yards adjacent the primary dwelling, no slope shall be less than 20 to 1 ratio (i.e. 5% slope/6" every 10'), or greater than 10 to 1 ratio (i.e. 10% slope/12" every 10'), measured perpendicular to the foundation; provided however, a waiver or variance may be granted for slope requirements by the ESC administrator upon written request due to specific architectural design needs or scenic view considerations.~~
- ~~(b) — For purposes of this section, established yard is defined as an installed mature and living vegetative cover, or other nonerodable ground covering consistent with the slope requirements of (a) listed above, and all applicable zoning design setback standards from all structures (primary dwellings).~~

~~(c) Effective date: This section shall be effective for subdivision lots served by public water and sewer and approved by preliminary plan dated on or after July 1, 2005.~~

(Ord. No. 8-8, 2-8-05; Ord. No. X)

Secs. 8-~~4846~~—8-60. - Reserved.

#### DIVISION 5. - MONITORING OF LAND-DISTURBING ACTIVITIES

Sec. 8-61. - Inspections required periodically.

(a) The RLD shall be in charge of and responsible for carrying out the Land-Disturbing Activities and provide for inspections of the Land-Disturbing Activities as determined by the Program Administrator. The RLD will maintain records of these inspections and maintenance, to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(b) The ~~program~~Program administratorAdministrator shall provide for periodic inspections of ~~land-disturbing activity~~Land-Disturbing Activity in accordance with 9VAC25-840-60 of the Virginia Erosion and Sediment Control Regulations, and may require monitoring and reports from the owner, permittee or person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment. The ~~owner~~Owner, ~~permittee~~Permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-5, 6-26-01; Ord. No. 8-6, 2-11-03; Ord. No. X)

Sec. 8-62. - Noncompliance with plan; notice to comply.

If the ~~program~~Program administratorAdministrator determines that there is a failure to comply with the plan, written notice shall be served upon the ~~owner~~Owner, ~~permittee~~Permittee, or person responsible for carrying out the plan by ~~registered or certified mail~~mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or by delivery at the site of the ~~land-disturbing activities~~Land-Disturbing Activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the owner, ~~permittee~~Permittee, or person responsible for carrying out the plan shall be deemed to be in violation of this ~~article~~Article and shall be subject to the remedies provided for in this ~~chapter~~Chapter.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. X)

Sec. 8-63. - Stop work orders.

(a) Upon issuance of an inspection report denoting a violation of Code of Virginia Sec. 62.1-44.15:55, - 44.15:56, the Program Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the Land-Disturbing Activities permitted on the site be stopped until the specified corrective measures have been taken.

(b) If Land-Disturbing Activities have commenced without an approved plan, the Program Administrator may issue an order requiring that all of the Land-Disturbing Activities be stopped until an approved plan or any required permits are obtained.

- (c) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the Land-Disturbing Activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.
- (d) The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the County or permit holder for appropriate relief to the Circuit Court of Spotsylvania County. The County shall serve such order for disturbance without an approved plan or permits upon the Owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.
- (e) If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the Program Administrator may issue an order to the Owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the Owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of Spotsylvania County.
- (f) The Owner may appeal the issuance of an order to the Circuit Court of Spotsylvania County. Any person violating or failing, neglecting or refusing to obey an order issued by Program Administrator may be compelled in a proceeding instituted in the Circuit Court of Spotsylvania County to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.
- (g) Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- (h) Nothing in this section shall prevent the Program Administrator from taking any other action authorized by this ordinance.

~~Upon receipt of a sworn complaint of a violation, the program administrator or his designee may, in conjunction with or subsequent to a notice to comply as specified above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken; or, if land-disturbing activities have commenced without an approved plan, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful land-disturbance; or where land-disturbing activities have commenced without an approved plan or any required permits such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified above. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect until the terms of the order have been followed. Upon completion of corrective action, the order shall immediately be lifted. Where issuance of the initial stop work order does not result in compliance with the provisions of this chapter, a second stop work order may be issued which requires all construction activity on the site to stop. Nothing in this section shall prevent the county from taking any other action specified in this chapter.~~

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. X)

~~Sec. 8-64. Drainage improvement grant program—Purpose and effective date.~~

- ~~(a) The board of supervisors finds that the forces of nature acting over time have degraded storm water channels and related facilities in our community that are, consequently, in need of corrective action in order to mitigate damage to property and/or adverse health or safety impacts. Degraded storm water channels and related facilities decrease water quality which adversely impacts the~~

~~Chesapeake Bay. To assist in improving the water quality of the Chesapeake Bay, the board of supervisors hereby establishes the drainage improvement grant program.~~

~~(b) The purpose of this section is to provide a grant program to promote the health, safety and welfare of our citizens by mitigating surface storm water impacts to real property where no construction bond or other financing exists to address storm water issues, where there is surface water run-off because of inadequate drainage infrastructure, and where slope or channel erosion is occurring. This program shall be administered and enforced by the environmental engineering office and shall be effective beginning on June 12, 2007.~~

~~(Ord. No. 8-7, 7-13-04; Ord. No. 8-10, 10-10-06; Ord. No. 8-11, 6-12-07; Ord. No. X)~~

~~Sec. 8-65. Same—Criteria for grant.~~

~~(a) Citizen applications for participation in the drainage improvement grant program shall be made to the erosion and sediment control (ESC) administrator Program Administrator on forms provided, and shall demonstrate with narrative and/or photographic evidence, a need, pursuant to the program's criteria. Grants will only be awarded for reimbursement of costs on completed drainage improvement projects.~~

~~(b) Applicants shall demonstrate the following:~~

~~(1) The repair was performed since September 1, 2004 (the date on which the previous drainage repair program began); and~~

~~(2) The repair was performed in a drainage easement that is recorded in the land records of the circuit court; and~~

~~(3) Proof of the payment of funds along with a detailed invoice/contract for the work performed; and~~

~~(4) The property on which the improvement was performed was in existence and had a water and/or sewer account as of February 28, 2006 (the last date on which funds were collected under the previous drainage repair program); and~~

~~(5) The water and/or sewer account for the property is not in arrears; and~~

~~(6) One of the following:~~

~~a. Severe to moderate slope or channel erosion was occurring; or~~

~~b. Significant damage to real property was occurring; or~~

~~c. Imminent threat to property, conditions required immediate mitigation action, and potential adverse health conditions could have resulted if the condition was not repaired.~~

~~(c) The ESC administrator Program Administrator shall review each application, evaluating the, feasibility, cost, and cost/benefit of mitigation. The ESC administrator Program Administrator shall then make a recommendation on the award of the grant to the county County a Administrator who shall present such recommendation to the board Board of supervisors Supervisors.~~

~~(d) The amount of the grant shall equal the total expense incurred in performing the drainage repairs less three hundred dollars (\$300.00), which shall be the contribution by the property owner Owner. The maximum amount of the grant shall not exceed nine thousand seven hundred dollars (\$9,700.00).~~

~~(Ord. No. 8-7, 7-13-04; Ord. No. 8-10, 10-10-06; Ord. No. 8-11, 6-12-07; Ord. No. X)~~

~~Sec. 8-66. Award of grant—Approval of board of supervisors.~~

~~(a) Award of the grant funds is subject to board Board of sSupervisors appropriation of funds and the availability of funding.~~

~~(b) The board Board of sSupervisors shall consider the application for the grant and the recommendation of staff.~~

~~(c) The board Board of sSupervisors shall award the grant and approve the disbursement of funds.~~

~~(Ord. No. 8 7, 7 13 04; Ord. No. 8 11, 6 12 07; Ord. No. X)~~

Secs. 8-~~6764~~—8-70. - Reserved.

#### DIVISION 6. - MISCELLANEOUS PROVISIONS

Sec. 8-71. - Administrative appeal; judicial review.

~~(a) Final decisions of the program administrator shall be subject to review by the board of supervisors, provided an appeal is filed within thirty (30) days from the date of any written decision by the program administrator which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.~~

(b) Final decisions of the ~~board of supervisors~~Program Administrator, under this chapter, shall be subject to review by the ~~court of record of the county~~Spotsylvania County Circuit Court, provided an appeal is filed within thirty (30) days from the date of any written decision by the ~~board~~Program Administrator which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in ~~land-disturbing activities~~Land-Disturbing Activities.

(c) Nothing in this section shall stay the enforcement of any violation of the provisions of this chapter.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. X)

~~Sec. 8-72. - Installation of erosion control facilities.~~

~~Erosion control facilities protecting the perimeter of any site and any sediment detention or retention facilities shall be functioning prior to disturbance of more than twenty five hundred (2,500) square feet or larger of land beyond that necessary for constructing the perimeter and detention or retention facilities. Such perimeter facilities shall be identified on the approved plan.~~

~~(Ord. No. 8-1, 7-27-93; Ord. No. X)~~