

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: March 9, 2021

WHEREAS, staff has reviewed the Code Amendment and recommends approval as stated in the Executive Summary dated March 9, 2021; 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 approval of the Code Amendment with a vote of 7-0; and

WHEREAS, the Spotsylvania County Board of Supervisors held a public hearing on March 9, 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, 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^{[11](#)}

Footnotes:

--- (1) ---

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.

*Board of Supervisors of Spotsylvania County
Adopted March 9, 2021*

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.

ARTICLE I. - IN GENERAL

Sec. 8-1. - Title.

This 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. 8-16, 3-9-21)

Sec. 8-2. - Purpose of Chapter.

The purpose of this 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.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-16, 3-9-21)

Sec. 8-3. - Authorization for 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 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. 8-16, 3-9-21)

Sec. 8-4. - Definitions.

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

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 VESCP authority in lieu of a formal site plan. The Program Administrator executes said contract on behalf of the County if the contract meets the requirements of this Chapter.

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

Board means the Virginia State Water Control Board.

Certified inspector means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of project inspection, or (ii) is enrolled in the 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 VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the 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. *Certified program administrator or Program administrator* means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of program administration, or (ii) is enrolled in the 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.

County means the County of Spotsylvania.

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.

District or Soil and water conservation district 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 to ensure 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 Activities but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into State Waters. This definition shall not apply to any lot or parcel of land of 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.

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 or Filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Land-disturbing activities means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into State Waters or onto lands in the Commonwealth, including, but not limited to, Clearing, Grading, 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 for the purpose of this Chapter:

- (1) Minor Land-Disturbing Activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk; provided, such Land-Disturbing 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 Activities relating to construction of the building to be served by the septic tank system;

(5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Code of Virginia Title 45.1;

(6) 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;

(7) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

(8) Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds (not required to comply with the Dam Safety Act, 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;

(9) Disturbed land areas of less than twenty-five hundred (2,500) square feet in size;

(10) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when 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

(12) 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, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this Chapter.

Land-disturbing permit or approval means a permit or other form of approval issued by the County for the Clearing, Filling, Excavating, Grading, or Transporting of land or for any combination thereof or for any other Land-Disturbing 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 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.

Permittee means the Owner of the property and/or the person to whom the permit authorizing Land-Disturbing Activities is issued and/or the person who certifies that the approved 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.

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.

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 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 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. 8-16, 3-9-21)

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

(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. 8-16, 3-9-21)

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.

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.

(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. 8-16, 3-9-21)

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

The County may adopt more stringent soil erosion and sediment control regulations than those necessary to ensure compliance with the Board's minimum regulations, however, the County may not impose any more stringent regulations for plan approval or permit issuance than those specified in VESCL 62.1-44.15:55 and 62.1-44.15:57 (VESCL 62.1-44.15:65(A)). Where provisions of this Chapter are stricter than the state law and/or regulations, the provisions of this 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. 8-16, 3-9-21)

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

The Virginia Erosion and Sediment Control Handbook, third edition, and as amended in the future, by reference, is adopted as the official handbook of the County's VESCP program and incorporated by reference into this 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. 8-16, 3-9-21)

Secs. 8-19—8-29. - 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.

(Ord. No. 8-16, 3-9-21)

Sec. 8-31. - Regulated land-disturbing activities; submission and approval of an erosion and sediment control plan.

- (a) Except as provided in Code of Virginia Sec. 62.1-44.15:56 “state agency projects”, or as otherwise expressly exempted by this Chapter, no person shall 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 until that plan has been reviewed and approved by the Program Administrator, and a permit issued.
- (b) Failure to comply with the terms of an Agreement in Lieu of Plan shall constitute a violation of this Chapter. Requirements of this Chapter which relate to plans shall also similarly relate to agreements in lieu of a plan.
- (c) Plan review and inspection fees, shall be paid to the County at the time of filing applications for erosion and sediment control permits and at such other times, if specified in this Chapter. The dollar amount of these fees shall be set out in the County’s Unified Fee Schedule – Land Use, reviewed and adopted by the Spotsylvania County Board of Supervisors on a periodic basis.
- (d) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general ESC specifications annually with DEQ for review and written comments. *Ref. 62.1-44.15:55(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. 8-16, 3-9-21)

Sec. 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. 8-16, 3-9-21)

Sec. 8-33. – 8-36. - Reserved.

Sec. 8-37. - 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) Exceptionally-large-scale land disturbance construction fees shall be designated in accordance to the Fee Schedule and shall meet the following conditions.

a. A fee amount shall be determined based upon the total land disturbance acreage calculated on the approved site plan in accordance to the Fee Schedule. The Applicant shall be billed for the monthly inspection fee on the first day of each month until the site receives a final bond release inspection and approval. The Applicant must remit payment within fifteen (15) days of invoicing to the Environmental Codes division by check payable to the County Treasurer. Failure to pay each invoice within fifteen days of the date of the invoice is cause for issuance of a project stop work order until such fees are paid.

b. If, in any month, the amount billed for an Exceptionally-large-scale land disturbance construction fee is insufficient to reimburse the County for amounts billed to the County by third-party inspectors, the unreimbursed balance will be added to the monthly fee on the Applicant's next or a subsequent invoice and must be paid when invoiced.

(2) Where any violation of this Chapter requires more than one (1) inspection to the site by the 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. 8-16, 3-9-21)

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

- (a) All control measures required by the provisions of this Chapter shall be undertaken at the expense of the Owner. Pending such actual provision thereof, the Owner shall execute and file with the Program Administrator, prior to issuance of the Land-Disturbing Permit, a performance bond with surety, cash escrow, letter of credit, any combination thereof, or other legal arrangement as is acceptable to the Program Administrator. The performance bond shall be in an amount determined by the Program 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 and are to ensure that measures could be taken by the County, at the Applicant's expense, should the Applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action. If the County takes such conservation action upon such failure by the Permittee, the County shall be entitled to collect from the 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, 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 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. 8-16, 3-9-21)

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.

(Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. 8-16, 3-9-21)

Sec. 8-40. - Reserved.

DIVISION 4. - ACTION ON CONTROL PLAN

Sec. 8-41. - Approval of plan.

- (a) The Program Administrator shall review the plan and grant written approval within sixty (60) days of the receipt of the plan, if the plan meets the requirements of this 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 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 results from the construction of a single-family residence and an Agreement in Lieu of Plan has been approved in accordance with subsection 8-31(b) of this Chapter.

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

- (d) If a violation occurs during the Land-Disturbing Activity where there is an Agreement in Lieu of Plan, then the person responsible for carrying out the 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 RLD.

(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. 8-16, 3-9-21)

State Law reference— Code of Virginia §62.1-44.15:51 to :66.

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 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. 8-16, 3-9-21)

Sec. 8-43. - Responsible party.

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 to meet the minimum standards outlined within this Chapter.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-16, 3-9-21)

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

An approved ESC Plan may be changed by the Program 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, are agreed to by the 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. 8-16, 3-9-21)

Sec. 8-45. - Variances

The Program 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 may request a variance to become part of the approved ESC Plan. The Applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the Program 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 Administrator. The Program Administrator shall respond in writing either approving or disapproving such a request. If the Program 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 Applicant may submit a new application for variance request with additional documentation.
- (3) The Program Administrator shall consider each variance request judiciously, keeping in mind both the need of the Applicant to maximize cost effectiveness and the need to protect off-site properties and resources from drainage.

(Ord. No. 8-6, 2-11-03; Ord. No. 8-16, 3-9-21)

Secs. 8-46—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 Administrator shall provide for periodic inspections of Land-Disturbing Activity in accordance with 9VAC25-840-60 of the Virginia Erosion and Sediment Control Regulations 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, 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. 8-16, 3-9-21)

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

If the Program Administrator determines that there is a failure to comply with the plan, written notice shall be served upon the Owner, Permittee, or person responsible for carrying out the plan by 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 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, or person responsible for carrying out the plan shall be deemed to be in violation of this Article and shall be subject to the remedies provided for 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. 8-16, 3-9-21)

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.

(Ord. No. 8-1, 11-28-89; Ord. No. 8-1, 7-27-93; Ord. No. 8-6, 2-11-03; Ord. No. 8-16, 3-9-21)

Secs. 8-64—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 Spotsylvania County Circuit Court, 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) 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. 8-16, 3-9-21)