

WESTMORELAND COUNTY



EROSION & SEDIMENT CONTROL ORDINANCE

1998

CASE #9807-ESO-1 - Request by the Westmoreland County Board of Supervisors on their own motion to repeal Section 7, Erosion and Sediment Control, Articles I and II of the Code of the County of Westmoreland in its entirety and adopt a new ordinance reflecting State Code requirements repealed the existing Erosion and Sediment Control Ordinance and adoption of a new Erosion and Sediment Control Ordinance at the public hearing on Monday, July 6, 1998.

TABLE OF CONTENTS

Sec. 7-1 Chapter title.....	325
Sec. 7-2 Purpose of chapter.....	325
Sec. 7-3 Authority.....	325
Sec. 7-4 Relation of chapter to other laws.....	325
Sec. 7-5 Definitions.....	325
Secs. 7-6 - 7-10 Reserved.....	329
PROGRAM	
Sec. 7-11. Adopted.....	330
Sec. 7-12 Amendments.....	330
Sec. 7-13 Certification of staff.....	330
Sec. 7-14 Plan approving authority.....	330
Sec. 7-15 Application of chapter in towns.....	330
Sec. 7-16 Public access to documents.....	331
Secs. 7-17 - 7-25. Reserved.....	331
REGULATED ACTIVITIES	
Sec. 7-26 Requirements for approval of erosion and sediment control plan.....	332
Sec. 7-27 Owner's responsibility.....	332
Sec. 7-28 Erosion impact areas.....	332
Sec. 7-29 Utilities and railroads.....	332
Sec. 7-30 State agency projects.....	333
Secs. 7-31 - 7-39. Reserved.....	333
PLAN SUBMISSION AND REVIEW PROCEDURES	
Sec. 7-40 Plan standards.....	334
Sec. 7-41 Department responsible for administering program.....	334
Sec. 7-42 Pre-submission conference.....	334
Sec. 7-43 Plan submission and preliminary erosion and sediment control plans.....	334
Sec. 7-44 Plan review.....	335
Sec. 7-45 Modifications to approved plans.....	336
Sec. 7-46 Board review.....	336
Sec. 7-47 Administrative review.....	336
Sec. 7-48 Judicial review.....	336
Secs. 7-49 - 7-59. Reserved.....	336
PERMITS, FEES AND BONDING	
Sec. 7-60 Agency cooperation.....	337
Sec. 7-61 Other permits.....	337
Sec. 7-62 Fees.....	337
Sec. 7-65 Other requirements.....	338
Secs. 7-66 - 7- 74. Reserved.....	338

CHESAPEAKE BAY PRESERVATION AREA

Sec. 7-75 Performance criteria. 339
Sec. 7-76 Administrative waivers and exemptions...... 339
Secs. 7-77 - 7-84. Reserved. 339

ENFORCEMENT

Sec. 7-85 On-site inspection enforcement. 340
Sec. 7-86 Violations...... 340
Sec. 7-87 Responsibility for notification. 341
Sec. 7-88 Penalties, injunctions, and other legal actions. 341
Secs. 7-89 - 7-94. Reserved. 342

SEVERABILITY AND EFFECTIVE DATE

Sec. 7-95 Severability...... 343
Sec. 7-96 Effective date..... 343

ARTICLE I

IN GENERAL

Sec. 7-1 Chapter title.

This chapter shall be known as the "Erosion and Sediment Control Ordinance of Westmoreland County, Virginia".

Sec. 7-2 Purpose of chapter.

The purpose of this chapter is to conserve the land, water, air and other natural resources of Westmoreland County and promote the public health and welfare of the people in the county by establishing requirements for the control of erosion and sediment, and by establishing procedures whereby these requirements shall be administered and enforced.

Sec. 7-3 Authority.

This chapter is authorized by the Code of Virginia, title 10, ordinance 5, article 4, (§10.1 560 et. seq.), known as the "Erosion and Sediment Control Law", Erosion and Sediment Control Regulations (VR 625-02-00), the Chesapeake Bay Preservation Act, Va. Code §§ 10.1-2100 et seq. and the Chesapeake Bay Preservation Area Designation and Management Regulations (VR 173-02-01).

Sec. 7-4 Relation of chapter to other laws.

The provisions contained in this chapter shall be considered separate from, supplemental to and additional to the provisions contained elsewhere in this Code, other county ordinances or Virginia State Statutes. Nothing contained in this section shall be construed as excusing compliance with all other applicable provisions of this Code, other county ordinances or Virginia State Statutes. Whenever these standards are at variance with the requirements of any other lawfully adopted statutes, rules, regulations or ordinances, the most restrictive, or that imposing the higher standards shall govern.

Sec. 7-5 Definitions.

For the purposes of this chapter, the following words and terms shall have such meaning as set forth herein, unless a specific meaning to the contrary is indicated elsewhere in this chapter. Words and terms not defined herein shall be interpreted in accordance with such normal dictionary meaning or customary usage as is appropriate to the context or this chapter.

ADMINISTRATOR: The representative of the governing body who serves as the agent in administering this chapter. The administrator shall be the director of planning and community development or his/her designee.

AGREEMENT IN LIEU OF A PLAN: A contract between the county and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

APPLICANT: The person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

BOARD: The Virginia Soil and Water Conservation Board.

BUFFER AREA: An area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

CERTIFIED INSPECTOR: An employee or agent of the county 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: An employee or agent of the county who (i) holds a certificate of competence from the board in the area of plan review, (ii) enrolls in the board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (§ 54.1-400 et seq.) of chapter 4 of title 54, Code of Virginia.

CERTIFIED PROGRAM ADMINISTRATOR: An employee or agent of the county who (i) holds a certificate of competence from the board in the area of program administration or (ii) enrolls in the board's training program for program administration and successfully completes such program within one (1) year after enrollment.

CHESAPEAKE BAY PRESERVATION AREA: Any land designated by the governing body pursuant to part III of the Chesapeake Bay Preservation Area Designation and Management Regulations VR 173-02-01, §10.1-2100 et seq. of the Chesapeake Bay Preservation Act, and article 7 of the Westmoreland County Zoning Ordinance, Chesapeake Bay Preservation Area Overlay District. A Chesapeake Bay Preservation Area shall consist of a resource protection area and/or a resource management area.

CLEARING: Any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or top soil removal.

COUNTY: The County of Westmoreland, Virginia.

DEPARTMENT: The department of conservation and recreation.

DEVELOPMENT: A tract 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 two (2) or more residential dwelling units.

DIRECTOR: The director of the department of conservation and recreation.

DISTRICT OR SOIL AND WATER CONSERVATION DISTRICT: The Northern Neck Soil and Water Conservation District, a political subdivision of the Commonwealth organized in accordance with title 21, ordinance 1, Code of Virginia, 1950, as amended.

EROSION IMPACT AREA: An area of land not associated with current land disturbing activity 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 two thousand five hundred (2,500) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

EROSION AND SEDIMENT CONTROL PLAN, CONSERVATION PLAN OR PLAN: A document containing material for the conservation of soil and water resources of a unit or group of units of land. The plan may include appropriate maps, 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 set forth in this chapter.

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

FILLING: Any depositing or stockpiling of earth materials.

GOVERNING BODY: The Board of Supervisors of Westmoreland County, Virginia.

GRADING: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition(s).

LAND DISTURBING ACTIVITY: Any land change which 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, except that the term shall not include:

- (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 the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;
- (4) Septic tank line(s) or drainage field(s) unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system so long as such disturbances do not exceed twenty five hundred (2,500) square feet;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and/or gas including the well site, roads, feeder lines and off-site disposal areas;
- (7) 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 not required to comply with the provisions of the Dam Safety Act, Article 2 (§§ 10.1-604 et seq. of ordinance 6 of title 10.1, Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however this exception shall not apply to the harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of chapter 11 (§§ 10.1-1100 et seq) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of §§10.1-1163.
- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Disturbed land areas of less than twenty five hundred (2,500) square feet;
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

- (11) Shore erosion control projects on tidal waters when the projects are approved by the Westmoreland County Wetlands Board, the Marine Resources Commission or the U.S. Army Corps of Engineers, as required, and do not exceed twenty five hundred (2,500) square feet of land disturbance beyond the jurisdiction of the respective agencies;
- (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 the plan approving authority.
- (13) Archaeological digs and associated research and excavation work.

LAND DISTURBING PERMIT: A permit issued by the County of Westmoreland for clearing, filling, excavating, grading or transporting soils or land, or any combination thereof.

LOCAL EROSION AND SEDIMENT CONTROL PROGRAM: The policies and provisions set forth in this chapter, including the methods and procedures employed by Westmoreland County to regulate land disturbing activities and thereby implement, administer and enforce such policies and provisions. The Erosion and Sediment Control Regulations (VR 625-02-00) effective March 22, 1995, together with all erosion and sediment control provisions of The Chesapeake Bay Preservation Area Designation and Management Regulations (VR 173-02-01) and Article 7 of the Westmoreland County Zoning Ordinance are declared to be an integral part of the administration of this chapter.

OWNER: 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 a property.

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

PERSON: 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 the commonwealth, any interstate body, or any other legal entity.

PLAN APPROVING AUTHORITY: The land use administration department is responsible for determining the adequacy of a conservation plan

submitted for land disturbing activities on a unit or units of lands and for approving such plan if the plan is determined to be adequate. The administrator is designated as the plan approving authority and is responsible for the administration of the Westmoreland County Erosion and Sediment Control Ordinance.

PROGRAM AUTHORITY: The County of Westmoreland that has adopted a soil erosion and sediment control program approved by the board.

RESOURCE MANAGEMENT AREA (RMA): That component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

RESOURCE PROTECTION AREA (RPA): That component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

SINGLE-FAMILY RESIDENCE : A noncommercial dwelling that is occupied exclusively by one (1) family.

STATE EROSION AND SEDIMENT CONTROL PROGRAM OR STATE PROGRAM: The program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code including regulations designed to minimize erosion and sedimentation.

STATE WATERS: All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdiction.

SUBDIVISION: The division of a parcel of land into two (2) or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

TRANSPORTING: Any moving of earth materials from one place to another, 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.

Secs. 7-6 - 7-10 Reserved.

ARTICLE II

PROGRAM

Sec. 7-11. Adopted.

Pursuant to § 10.1-562 of the Code of Virginia, the County of Westmoreland hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation 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. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in, but not limited to, the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook (Third Edition 1993), as amended from time to time.

Erosion and sediment control plans submitted under this chapter shall assure compliance with the buffer area requirements affecting the Chesapeake Bay Preservation Area as expressed in article 7 of the Westmoreland County Zoning Ordinance.

Sec. 7-12 Amendments.

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

Sec. 7-13 Certification of staff.

Pursuant to § 10.1-561.1, Code of Virginia, an erosion control 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 the county shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

Sec. 7-14 Plan approving authority.

The county hereby designates the land use administration department as the plan approving authority.

Sec. 7-15 Application of chapter in towns.

This chapter shall apply to any land disturbing activity in any incorporated town within the boundaries of the county which has indicated,

through appropriate action taken by the governing body of the town, the intention to have the land-disturbing activities within its boundaries covered by the terms and provisions of this chapter.

Sec. 7-16 Public access to documents.

At a minimum, the program and regulations provided for in this chapter shall be made available for public inspection at the office of land use administration and the clerk of the circuit court.

Secs. 7-17 - 7-25. Reserved.

ARTICLE III

REGULATED ACTIVITIES

Sec. 7-26 Requirements for approval of erosion and sediment control plan.

Except as provided for herein, no person shall engage in any land disturbing activity in Westmoreland County until that person has submitted to the administrator an erosion and sediment control plan for such land-disturbing activity and until that plan has been reviewed and approved by the administrator.

An erosion and sediment control plan shall be filed for land-disturbing activity not exempted from this chapter.

Where the 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 executed by the plan approving authority.

Sec. 7-27 Owner's responsibility.

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

Sec. 7-28 Erosion impact areas .

The governing body may designate areas in the county as erosion impact areas. Any such designation shall be deemed to be a component of the local control program regardless of whether or not a land disturbing activity is or has taken place.

Consistent with this chapter, and in order to prevent further erosion, the administrator may require the approval of a conservation plan for any erosion impact area. Such plan shall be subject to all review, bonding, inspection and enforcement provisions of this chapter which apply to approved land-disturbing permits. The required plan shall be submitted by the owner of property designated as an erosion impact area.

Sec. 7-29 Utilities and railroads .

Whenever electric and telephone utility companies or railroad companies undertake any of the activities included in subsections (1) and (2) of this section, they shall be considered exempt from the provisions of this chapter.

- (1) Construction, installation and maintenance of electric and telephone utility lines; and
- (2) Construction of the tracks, rights-of-way, bridges,

communication facilities and other related structures and facilities of the railroad company.

Projects not included in subsections (1) and (2) of this section shall comply with the requirements of the county erosion and sediment control program, pursuant to § 10.1-563 D, Code of Virginia.

Sec. 7-30 State agency projects.

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

Secs. 7-31 - 7-39. Reserved.

ARTICLE IV

PLAN SUBMISSION AND REVIEW PROCEDURES

Sec. 7-40 Plan standards.

The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook and this chapter are to be followed by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The administrator, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines.

Sec. 7-41 Department responsible for administering program.

All correspondences and plans should be directed to the director of planning and community development.

Sec. 7-42 Pre-submission conference.

Prior to submitting the required elements of the plan, the applicant may submit a preliminary erosion and sediment control plan and request a pre-submission conference with the administrator for the purpose of discussion and advice. The preliminary plan should contain the following information:

- (1) All major soil types.
- (2) Approximate limits of clearing and grading.
- (3) Tentative means of erosion and sediment control.
- (4) Phasing of development to minimize area and duration of exposure.
- (5) Contour lines.

Sec. 7-43 Plan submission and preliminary erosion and sediment control plans.

(a) The applicant shall submit five (5) copies of black or blue line plans with a letter of transmittal. The letter of transmittal shall contain:

- (1) The name, address and phone number of the applicant.
- (2) The name, address and phone number of the landowner of record.
- (3) The name, address and phone number of the person

responsible for implementing the plan.

- (4) The location of the site, including the county tax map number.
- (5) Such additional information as may be requested by the administrator as a result of the pre-submission conference or other discussions.

(b) The plan shall contain a narrative and maps with the following information:

- (1) The narrative shall include, but not be limited to, an explanation of erosion and sediment control decisions (i.e. how the minimum standards of the Virginia Erosion and Sediment Control Regulations are addressed), a description of existing site conditions, construction schedules and the Checklist for Erosion and Sediment Control Plans.
- (2) The maps shall be prepared to scale at a scale of not less than one inch equals one hundred feet (1" = 100)' and shall incorporate good engineering practices designed in accordance with applicable erosion and sediment control practices.
- (3) The map shall contain all information necessary for carrying out the conservation measures and will include a graphic scale, north arrow, date, owners of record, engineer's certification, approval signature block, vicinity map at a scale of not less than one inch equals one thousand feet (1" = 1000)' and contour lines.
- (4) The map shall show other information as required by the Administrator.
- (5) The plan preparer will be responsible for guiding the contractor toward properly implementing the plan on all land disturbing activities where the erosion and sediment bond is or is expected to exceed twenty five thousand dollars (\$25,000.00).

Sec. 7-44 Plan review.

The administrator has authority for the administration and enforcement of the provisions of this chapter.

- (1) In reviewing plans, the administrator may seek or receive

recommendations or comments from the Virginia Department of Transportation, the Virginia Department of Health, the Virginia Department of Environmental Quality, Division of Soil and Water Conservation, the Chesapeake Bay Local Assistance Department and such other federal, state or local agencies that the administrator deems appropriate.

- (2) The plan shall be approved, within forty-five (45) days from receipt thereof if such plan meets the requirements of the Westmoreland County Erosion and Sediment Control Ordinance and if the person responsible for carrying out the plan certifies that they will properly perform the control measures included in the plan as required by this chapter.
- (3) If the plan is disapproved, within forty-five (45) days from receipt thereof, the administrator shall specify in writing such modification, terms and conditions, if any, that will permit approval of the plan and communicate these requirements to the applicant.
- (4) If no action is taken by the administrator within forty-five (45) days of receipt of the plan, the plan shall be deemed approved. Certification of this fact shall be provided by the administrator to the applicant. Regardless of the method by which the applicant secures approval for the erosion and sediment control plan, the administrator shall require the applicant to pay any applicable fees for a land disturbing permit and to submit a reasonable performance bond with surety or other financial instruments to ensure performance, as specified in section 7-6.3 of this Chapter.

Sec. 7-45 Modifications to approved plans.

An approved plan may be modified by the administrator in the following cases:

- (1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of this chapter; 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 are necessary consistent with the requirements of this chapter.

Sec. 7-46 Board review .

A plan for land-disturbing activities on lands located in Westmoreland County and other political subdivisions, may, at the option of the applicant, be

submitted to the Virginia Division of Soil and Water Conservation for the review and approval in lieu of submission to the respective localities. If the applicant chooses to submit the plan to the Virginia Division of Soil and Water Conservation, the applicant shall so notify, by certified mail, the administrator of each locality at the time of submission.

Sec. 7-47 Administrative review.

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

Sec. 7-48 Judicial review.

Final decisions of the governing body under this chapter shall be subject to review by the Circuit Court of Westmoreland County provided an appeal is filed within thirty (30) days from the date of the final written decision by the governing body which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Secs. 7-49 - 7-59. Reserved.

ARTICLE V

PERMITS, FEES AND BONDING

Sec. 7-60 Agency cooperation .

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed. Such agencies include, but are not limited to, the county building official, county wetlands board, Virginia Department of Health, Virginia Marine Resources Commission and U.S. Army Corps of Engineers.

Sec. 7-61 Other permits.

Each applicant shall be required to comply with the provisions of this section as a condition precedent to the issuance of other applicable approvals or permits by officials of the county. Each applicant shall be responsible for obtaining all necessary federal, state and local approvals or permits prior to the commencement of any land disturbing activity.

Sec. 7-62 Fees.

An administrative fee shall be paid to the county at the time of submission of the erosion and sediment control plan or agreement in lieu of a plan as stated in the fee schedule established by the board of supervisors to help defray the cost of administering this chapter and program.

Land-disturbing permits and agreements in lieu of a plan shall be valid for one (1) year from date of approval. Upon expiration the land disturbing permit or agreement in lieu of a plan shall be renewed by the applicant within ten (10) days of expiration of such permit. Renewal fees for land disturbing permits shall be based on the existing disturbed area and any remaining area to be disturbed. Agreements in lieu of plan shall be renewed based on original cost of the agreement.

Sec. 7-63 Performance bond, cash escrow, letter of credit, etc.

No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land disturbing activity is specifically exempt from the provisions of this chapter, and has paid the fees and posted the required bond. No land-disturbing permit shall be issued until the applicant submits with the application an approved erosion and sediment control plan and certification that the plan will be followed.

- (1) Bond: A surety bond with corporate surety, cash deposit or letter of credit made out to the governing body in an amount equal to the full cost of conservation measures which are required by this

chapter, said surety bond with corporate surety, cash deposit or letter of credit being legally sufficient to assure the governing body that said conservation measures will be carried out in accordance with this chapter.

- (2) Escrow agreement: A fund delivered to a reputable banking institution by the applicant to be held by the bank until such time that all conservation measures have been performed as required by this chapter.

The amount of the bond or other acceptable instrument shall equal the total cost of the conservation measures in the approved plan. The amount will be determined by the administrator. Within sixty (60) days of adequate stabilization, as determined by the administrator, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated.

Sec. 7-64 Erosion and sediment control agreement.

A legal binding agreement shall be executed by each applicant for an approved erosion and sediment control plan to provide right of entry by the appropriate persons for the purpose of inspection, monitoring, and installation, or maintenance of erosion and sediment control measures in the event the applicant fails to install or maintain such measures after notice in writing.

Sec. 7-65 Other requirements.

These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

Secs. 7-66 - 7- 74. Reserved.

ARTICLE VI

CHESAPEAKE BAY PRESERVATION AREA

Sec. 7-75 Performance criteria.

Prior to approval of any erosion and sediment control plan, issuance of any land-disturbing permit or approval of any agreement in lieu of an erosion and sediment control plan, pursuant to the provisions of this chapter, it shall be demonstrated to the satisfaction of the administrator that any use, development, or redevelopment of land within the Chesapeake Bay Preservation Area meets the performance criteria set forth in article 7 of the Westmoreland County Zoning Ordinance.

Sec. 7-76 Administrative waivers and exemptions.

- (a) Construction, installation, and maintenance of water, sewer, and local gas lines shall be exempt from the criteria in this chapter provided that:
- (1) To the degree possible, the location of such utilities and facilities should be outside resource protection areas;
 - (2) No more land shall be disturbed than is necessary to provide for the desired utility installation;
 - (3) All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality.
 - (4) Any land disturbance exceeding an area of (2,500) square feet complies with all erosion and sediment control requirements of this chapter.
- (b) Any other waivers or exemptions specifically authorized by the provisions of article 7 of the Westmoreland County Zoning Ordinance shall be applicable in the administration and enforcement of this chapter.

Secs. 7-77 - 7-84. Reserved.

ARTICLE VII

ENFORCEMENT

Sec. 7-85 On-site inspection enforcement.

The administrator will be responsible for the enforcement of this chapter and will direct the on-site inspection of each project.

- (1) The land use administration department shall periodically inspect the land-disturbing activity as required under the State program to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.
- (2) The administrator may require the person responsible for carrying out the plan to monitor and maintain the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- (3) The land use administration department is responsible for developing and maintaining a monitoring system for all land-disturbing projects. The system shall contain a record of each inspection, date of inspection, date land-disturbing activities commenced and comments concerning compliance or noncompliance. The administrator may require monitoring and reports from the person responsible for carrying out the plan. The district may inspect, monitor, and make reports for the administrator upon request.

If the administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail 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 specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided by this chapter.

Sec. 7-86 Violations.

Upon determination that a violation exists, the administrator:

- (1) Shall issue notice to comply which shall contain a detailed description of the conservation measures necessary for compliance. If no action is taken within forty-eight (48) hours of delivery of the notice to comply, the administrator or their agent shall prepare a letter of intent to utilize the performance bond or cash escrow to correct the violation. The county attorney shall be consulted prior to sending the letter by registered mail to the person responsible for carrying out the plan. If no corrective action is taken at the site within the time specified in the letter, the administrator may seek compliance with the permit and chapter including, but not limited to, utilizing the proceeds from the performance bond or other instrument to implement the plan;
- (2) May issue a stop work order on all or part of a land-disturbing activity if a permit holder fails to comply with a notice to comply. The administrator may issue a stop work order on all or part of a land-disturbing activity without first issuing a notice to comply if the alleged noncompliance is causing, or there exists an imminent danger of causing, harmful erosion of land or sediment deposition in state waters or on adjacent property. The administrator shall issue a stop work order on all land-disturbing activity which is regulated by the Westmoreland County Erosion and Sediment Control Ordinance which has commenced without an approved plan or permit; and
- (3) Shall notify all permit issuing authorities and request withholding all future permits of the permit holder until the violation is corrected, and, upon failure to comply within the time specified in the notice to comply, the permit for the project in violation may be revoked.

Sec. 7-87 Responsibility for notification.

When it is determined that the erosion and sediment control measures are ineffective notwithstanding compliance with the approved erosion and sediment control plan, the administrator shall be notified by the applicant and shall take appropriate actions pursuant to this chapter.

Sec. 7-88 Penalties, injunctions, and other legal actions.

Any person who violates any provision of this chapter shall, upon a finding of the General District Court of Westmoreland County, be assessed a civil penalty. The civil penalty for any one (1) violation shall be (\$100), 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 (\$3,000), 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).

The administrator may apply to the Circuit Court of Westmoreland County for injunctive relief to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that there does not exist an adequate remedy at law.

In addition to any 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.

Without limiting the remedies which may be obtained in this chapter, 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 (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the locality.

Any civil penalties assessed by a court shall be paid into the treasury of the 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.

With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the administrator, or any condition of a permit or any provision of this chapter, the administrator may issue an order for the payment of civil charges for violations in specific sums, not to exceed the limit specified in section 7-88 of this chapter. Such civil charges shall be in lieu of any civil penalty which is authorized by section 7-88 of this chapter.

The county attorney or the commonwealth's attorney, as appropriate, shall, upon request of the director of planning and community development, take legal action to enforce the provisions of this chapter.

Compliance with the provisions of this chapter 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.

Secs. 7-89 - 7-94. Reserved.

ARTICLE 9

SEVERABILITY AND EFFECTIVE DATE

Sec. 7-95 Severability.

If any provision of this chapter is held to be unconstitutional or otherwise invalid, such invalidity shall not affect the remaining provisions.

Sec. 7-96 Effective date .

This chapter shall be effective on and after 12:00 p.m., July 13, 1998.