



Land Use Administration

P. O. Box 1000
Montross, VA 22520
Phone 804-493-0120 FAX 804-493-0604

Building Official
Zoning Official
Planning Commission
Board of Zoning Appeals
Board of Building Appeals
Wetlands Board

**Chapter 54
of the
County Code of Ordinances
Erosion and Sediment Controls**

SECTION 54-1 TITLE, PURPOSE, AND AUTHORITY

- A. This Ordinance shall be known as the "Erosion and Sediment Control Ordinance of Westmoreland County, Virginia". The purpose of this Chapter is to prevent degradation of land, stream channels, waters and other natural resources of Westmoreland County and the surrounding region by establishing requirements and standards for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced. *(Adopted on and effective July 28, 2008)*
- B. This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law, and other general authority.

SECTION 54-2 DEFINITIONS

The following terms are defined as used in the Ordinance, unless the context requires a different meaning.

"Administrator" means the Planning and Community Development Director of the Land Use Department.

"Administrative Waiver" means a deviation from the regulation as approved by the Certified Plan Reviewer for a site specific condition.

"Agreement-In-Lieu-Of-Plan" means a contract between the plan-approving authority and the owner of the land that specifies conservation measures that must be implemented in the construction of a single-family residence, their additions and accessory structures. This contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Agent" means any person, firm or corporation authorized by the owner or Land Use Department employee to act on their behalf.

"Applicant" means any person, firm, corporation, owner or Responsible Land Disturber submitting an Erosion and Sediment Plan or Agreement-In-Lieu-Of-Plan for approval or requesting the issuance of a permit, as may be required, authorizing commencement of land-disturbing activities. Also the term may include and be synonymous with the owner, agent, contractor, permittee and every other person responsible for carrying out the plan or otherwise subject to the provisions of this Code.

"Board" means the Virginia Soil and Water Conservation Board.

"Certified Inspector" means a Land Use Department employee or agent who:

- (i) Holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of project inspection; or
- (ii) Is enrolled in the Virginia Soil and Water Conservation Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified Plan Reviewer" means a Land Use Department employee or agent who:

- (i) Holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review;
- (ii) Is enrolled in the Virginia Soil and Water Conservation 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 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

"Certified Program Administrator" means a Land Use Department employee or agent who:

- (i) Holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of program administration; or
- (ii) Is enrolled in the Virginia Soil and Water Conservation Board's training program for program administration and successfully completes such program within one year after enrollment.

"Clearing" or "Clearing Limits" means any land-disturbance activity which removes trees, brush, shrubs, or the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

"Clearing Limits" see "Construction footprint" and/or "Clearing"

"County" means the County of Westmoreland, Virginia.

"Construction Footprint" means the maximum clearing limits of land-disturbance activity area of development that includes, but is not limited to, the building, clearing, grading, fill, excavation and land disturbed either on site or at remote location.

"Department" means the Department of Conservation and Recreation (DCR).

"Development" means the construction footprint on a lot, parcel or 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 three or more residential dwelling units.

"Director" means the Director of the Department of Conservation and Recreation.

"District" or "Soil and Water Conservation District" refers to the Soil and Water Conservation District having authority over Westmoreland County.

"Erosion Control Program" means the contents of this Ordinance which govern the land-disturbance activities on land within Westmoreland County.

"Erosion and Sediment Plan", "Erosion Control Plan" or "Plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the Land Use Department to insure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion Impact Area" means 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 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.

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

"Grading" means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

"Land Use Department" means the department or its administrator as appointed by the Board of Supervisors as the plan-approval authority.

"Land-Disturbing Activity" means 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 being less than 2,500 square feet in size and/or less than 833 square feet of impervious area;
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 lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Surface or deep mining;
6. Exploration or drilling for oil and 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 and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6 of the Code of Virginia, 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 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;
8. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
9. Disturbed land areas of less than 2,500 square feet in size and/or less than 833 square feet of impervious area on any site;
10. Installation of fence, sign post or telephone and electric poles and other kinds of posts and 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 wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this 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 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.

"Land-Disturbing Permit" means a permit issued by the Land Use Department for the clearing, filling, excavating, grading, transporting of land or for any combination thereof, or for any purpose set forth herein.

"Local Erosion and Sediment Control Program" or "Local Control Program" means an outline of the various methods employed by Land Use Department to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the State program, and may include such items as local Ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

“Natural Channel Design Concepts” means 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 a property.

“Peak Flow Rate” means the maximum instantaneous flow from a given storm condition at a particular location.

"Permittee" means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved Erosion and Sediment 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 the Commonwealth, any interstate body, or any other legal entity.

“Plan” See the definition of “Site Plan”.

"Plan-Approving Authority" means the Department of Conservation and Recreation or the certified staff under the direction of the Administrator of the Land Use Department responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands for approving plans.

"Program Authority" means the Land Use Department which has adopted a soil erosion and sediment control program that has been approved by the Board of Supervisors.

“Responsible Land Disturber” means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or by an Agreement-In-Lieu-Of -Plan who:

- (i) holds a Responsible Land Disturber certificate of competence;
- (ii) holds a current certificate of competence from the Virginia Soil and Water Conservation Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review;
- (iii) holds a current Contractor certificate of competence for erosion and sediment control; or
- (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

“Runoff Volume” means the volume of water that runs off the land development project from a prescribed storm event.

"Single-Family Residence" means a non-commercial dwelling that is occupied exclusively by one family and the related accessory structures on the same lot, parcel or tract of land.

"Site Plan" means a plan prepared in compliance with the County Zoning Code and this Ordinance.

"Slopes, Steep" means an existing or proposed grade upon the building site exceeds a twenty five percent (25%) grade as measured along a horizontal distance in any direction for twenty five (25') on said property.

"Slopes, Extremely Hazardous" means an existing or proposed grade upon the building site exceeds fifty percent (50%) grade as measured along a horizontal distance in any direction for twenty five (25') on said property.

"State Erosion and Sediment Control Program" or "State Program" means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, including regulations designed to minimize erosion and sedimentation.

"State Waters" means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth, or within its jurisdiction.

"Town" means the incorporated town within the County of Westmoreland.

"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.

"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.

SECTION 54-3 ADMINISTRATION

The Land Use Department including certified staff under the direction of the Planning and Community Development Director is hereby appointed and authorized to administer and enforce the provisions of this Ordinance. All authority to enforce this Ordinance is vested in the Land Use Department, its Administrator, or certified staff. All necessary authority is given said Land Use Department to take whatever action is allowed by this Ordinance and related laws to achieve said compliance.

54-3.1 Permits

A. The Certified staff members of the Land Use Department are hereby authorized by the Board of Supervisors to issue permits in accordance with the standards herein defined for all regulated projects in Westmoreland County.

- B. Agencies authorized under any other laws to issue grading, building, or other permits for land-disturbing activities may not issue any permit unless the applicant submits, with his application an approved Erosion and Sediment Plan and a certification that the same shall be implemented.
- C. No person shall engage in any land-disturbing activity until the owner or his authorized agent has obtain a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this Ordinance.
- D. No land-disturbing permit shall be issued until the applicant submits and receives approval of an Erosion and Sediment Plan or an Agreement-In-Lieu-Of-Plan and a certification that the same plan will be implemented.

54-3.2 Fees

When submitting an Erosion and Sediment Plan or Agreement-In-Lieu-Of-Plan for the proposed project, an administrative fee shall be submitted with the permit application to the Land Use Department, in accordance with the adopted fee schedule.

54-3.3 Surety submitted to assure performance of requirements

- A. All applicants for permits shall provide the Land Use Department a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Administrator. This requirement insures that any failure by the applicant to implement his plan as submitted shall have sufficient security in place in the event the Land Use Department is compelled to finish the project because the applicant has failed to comply with the submitted plan.
- B. The amount of the performance bond or other surety or security for performance shall be determined by the Administrator. Such cost shall be based on unit price for new public or private sector construction in the locality, for the total erosion and sediment control installation, maintenance and repair along with the plan of development in accordance with the Chesapeake Bay Preservation Area Overlay District of the County Zoning Code for the replacement vegetation. In addition to the base estimated amount twenty-five (25%) percent shall be added for administrative costs and expenses for all conservation action.
- C. Within sixty (60) days of the confirmation of full implementation by the applicant with adequate stabilization under the plan, as determined by Land Use Department certified staff or its agent, the whole or part of any bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be refunded to the person, firm or corporation that submitted the bond. Should the total bond not be able to be released, a reduction in the bond amount may be allowed based upon the percentage of stabilization accomplished in the project or project section as approved by the Planning and Community Development Director.
 - a. All projects shall require a site inspection prior to any partial refund or reduction of the bond amount.
 - b. A final inspection shall be required before a full refund of the bond or other surety and/or final release of the project.

- D. Should it be necessary, the Land Use Department shall assume the total bond and undertake such conservation actions necessary and shall charge and collect from the applicant, owner or agent any costs expended in excess of the amount of the performance bond or other security held for the performance of the project.

54-3.4 Variance, Appeals and Judicial Review

- A. Prior to the permits being issued, any applicant pursuant to the provisions of this Ordinance who is aggrieved by any action of the Land Use Department or its agents in rejecting plans submitted pursuant to this Ordinance shall have the right to apply for a variance to the regulation or appeal of said rejection and receive a review by the County Planning Commission, provided an appeal is filed within 30 days from the date of the action or rejection.
1. The applicant shall submit the application, plans and fees with all other appropriate forms furnished by the Land Use Department that sets forth the basis for requesting a variance.
 2. The application, plans and submitted materials shall require a public hearing before the Planning Commission and shall be heard at the next regularly scheduled public hearing of the Planning Commission, provided all involved parties have at least 30 days prior notice. The notice shall be publicized in a paper of local circulation in two consecutive week's publication not less than 30 days or greater than 14 days prior to the scheduled public hearing.
 3. In reviewing the agent's actions, the Planning Commission shall consider evidence and opinions presented by the aggrieved applicant and Land Use Department agent. After considering the evidence and opinions, the Planning Commission may affirm, reverse or modify the action of the Land Use Department.
 4. Should a specific variance be granted it shall be documented and reflected upon the approved Plan.
 5. The final decision of the Planning Commission may be appealed by either party to the Board of Zoning Appeals, provided an appeal is filed within 30 days from the date of any written decision from said Planning Commission.
 6. The final decisions of the Board of Zoning Appeals may be appealed by either party to the Westmoreland County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision from said Board of Zoning Appeals.
- B. After a permit has been issued and/or during construction, the person responsible for implementing the approved plan may request an administrative waiver in writing to the Land Use Department. All responses shall be in writing either approving or disapproving such a request. If the request for an administrative waiver is not approved within 10 business days of receipt of the request, the request shall be considered to be rejected. Following rejection, the applicant may resubmit a variance request with additional documentation and such modifications as may be deemed appropriate.

1. After a permit has been issued and any land disturbing activity has begun on the site, any notice or order may be appealed in accordance with Section 54-7 (G) of this Ordinance.

SECTION 54-4 SUBMISSION AND APPROVAL OF PLANS

- A. A minimum of three (3) complete sets of site plans shall be submitted in compliance with the "Virginia Erosion and Sediment Control Regulations" and the Chesapeake Bay Preservation Area Overlay District Article 3 of the Zoning Code to the Land Use Department for an Erosion and Sediment Plan for the land-disturbing activity. The site plans shall clearly illustrate the minimal construction footprint or clearing limits established for the development of the site.
- B. All land-disturbance activity shall take place outside of the Resource Protection Area as identified by Article 3 of the Zoning Code known as the Chesapeake Bay Preservation Area Overlay District, unless a plan of development is approved by the Zoning Administrator. The maximum allowed land-disturbed area on a site shall be three (3) times sixteen (16%) for a total of forty eight (48%) percent, otherwise allowed by the Chesapeake Bay Preservation Area Overlay District.
- C. All plans shall be approved by a certified plan reviewer prior to any land-disturbance activity commencing.
- D. Where land-disturbing activities involve lands under the jurisdiction of more than one governmental agency or another local control program, an Erosion and Sediment Plan, at the option of the applicant, may be submitted to the Virginia Soil and Water Conservation Board for review and approval rather than the Land Use Department; however, any such approved plan shall comply with this Ordinance.
- E. Where the land-disturbing activity results from the site preparation and construction of a single-family residence, an Agreement-In-Lieu-Of-Plan may be substituted for an Erosion and Sediment Plan if executed by the Land Use Department or plan-approving authority in compliance with this Ordinance.
- F. All applicants for permits shall provide to the Land Use Department a secured bond or guaranty in accordance with Section 54-3.3 of this Ordinance prior to any land-disturbing activity.
- G. 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, adopted by the Administrator, are to be used by the applicant when making a submittal under the provisions of this Ordinance and in the preparation of an Erosion and Sediment Plan. The Land Use Department, 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.
- H. Plans and Agreements-In-Lieu-of-Plan shall be reviewed and written approval granted within 45 days of the receipt of the plan, provided the following conditions have been met:
 1. The plan meets the requirements of the Virginia Soil and Water Conservation Board's regulations. and the applicant certifies that he will comply with and implement the plan as submitted.

2. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan and/or on the permit, the person responsible for carrying out the plan shall provide a certificate of competence of the Responsible Land Disturber to the Land Use Department, as provided by § 10.1-561 of the Virginia Erosion and Sediment Control Law. This Responsible Land Disturber shall be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide said certificate prior to engaging in land-disturbing activities shall result in revocation of the approval of the plan and shall be subject to the penalties provided in this Ordinance.
 3. The Land Use Department may waive the certificate of competence requirement for the owner that is performing upon an Agreement-In-Lieu-Of-Plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the Agreement-In-Lieu-Of-Plan shall immediately correct the violation and provide the Certificate of Responsible Land Disturber as provided by § 10.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide this information shall be a violation of this Ordinance and subject to its penalties.
- I. The plan shall be acted upon within 45 days from receipt thereof. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity shall be entitled to commence.
 - J. An approved plan may be modified by the Land Use Department or other plan-approving authority upon the following conditions:
 1. The inspection reveals that the plan is inadequate to satisfy applicable regulations or achieve its purpose; or
 2. The site conditions have changed or have been determined to be different than represented ;
 3. For any other reason the approved plan cannot be effectively implemented.
 - K. Special erosion impact areas shall be implemented when any of the following are apparent:
 1. Steep slopes, greater than 25% or 4 to 1 slope, shall be required a setback to all proposed buildings or structures as follows:
 - a. A minimum of twenty five (25') feet from the top of the determined steep slope as identified by a site plan prepared by a licensed engineer or surveyor in the State;
 - b. A minimum of fifteen (15') feet from the determined toe of slope as defined by a site plan prepared by a licensed engineer or surveyor in the State.
 2. Extremely hazardous slopes, greater than 50% or 1 to 1 slope, shall be required to have a setback to all proposed buildings or structures:

- a. A minimum of fifty (50') feet from the top of the determined steep slope as identified by a site plan prepared by a licensed engineer or surveyor in the State;
 - b. A minimum of twenty five (25') feet from the determined toe of extremely hazardous slope as defined by a site plan prepared by a licensed engineer or surveyor in the State.
3. Agreement-In-Lieu-Of-Plan shall not be allowed for construction or any development upon steep slope and/or extremely hazardous slopes described above.
 4. No construction or development shall be allowed on steep slopes or extremely hazardous slopes within the one hundred (100') foot Resource Protection Area (RPA) unless a variance has been granted in accordance with Section 54-3.4 or compliance has been achieved through compliance with Section 54-4 (K) (5) below.
 5. Construction or development impacting steep or hazardous slopes must comply pursuant to a certified site plan that meets the requirements of this Ordinance and the Zoning Code. All buildings, structures, impervious surfaces, drainfields, septic tanks, etc., shall utilize a design approved by a licensed engineer who shall also submit the result of a site specific soils test to the Land Use Department in accordance with the following requirements:
 - a. The construction footprint or clearing limits shall be identified on the plan and shall be no greater than twenty (20') feet from the face of a foundation of the principal building or a maximum of ten (10') feet from accessory structures. Accessory structures include, but not limited to porches, decks, sheds and patios, either of wood, grass or other surfaces with the same intended use, drainfields, septic tanks as defined and permitted in the Zoning Code.
 - b. A Landscape Development Plan shall be submitted by a landscape architect or designer meeting the requirements of the Chesapeake Bay Preservation Area Overlay District of the County Zoning Code and approved by the Zoning Administrator. In addition to the above, the landscape development plan shall comply with the following design criteria:
 - 1) All trees that are removed whether within or outside the construction footprint or clearing limits that measure six (6") inches and larger at the Diameter at Breast Height (DBH) shall be replaced at a ratio of three (3) to one (1) for each one (1") inch of tree removed.
 - 2) The replacement trees and/or approved understory trees and/or shrubbery shall be placed in such a manner to minimize the potential of erosion upon the site as approved by the Zoning Administrator.
 - 3) The smallest tree allowed to be planted shall be three and one-half (3.5") inches DBH at the time of planting unless otherwise approved by the Zoning Administrator.

- 4) In lieu of tree and vegetation replacement, either in whole or part of the construction footprint area Low Impact Development design or other permanent erosion structures may be utilized as approved by the Zoning Administrator.
- L. When land-disturbing activity shall be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an Erosion and Sediment Plan shall be the ultimate responsibility of the owner and applicant.
- M. In accordance with the procedure set forth by §10.1-563 (E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration, which has been approved and is carried out in accordance with applicable federal and State laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, (pursuant to a mitigation banking instrument sign 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 Virginia Soil and Water Conservation Board for review and approval consistent with guidelines established by the Virginia Soil and Water Conservation Board.
- N. State agency projects are exempt from the provisions of this Ordinance except as provided otherwise in the Code of Virginia, Sec. 10.1-564.

SECTION 54-5 LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

- A. Pursuant to Section 10.1-562 of the Code of Virginia, the Westmoreland County Board of Supervisors hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board and any local handbook or publication adopted for use by the Administrator 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, as amended.
- B. In addition, in accordance with Section 10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are deemed not to be man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.
- C. In accordance with Section 10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management provisions and is intended to address any flow rate capacity and velocity requirements for natural or man-made channels shall be deemed to 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 in sufficient quantity 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 one and a half (1.5), two (2), and ten (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 that shall be indicated.
- D. Pursuant to Section 10.1-561.1 of the Code of Virginia, all land-disturbance activities shall be inspected by a certified inspector and any erosion control plan shall be reviewed and accepted by a certified plan reviewer. The County Erosion Control Program shall be administered by the Land Use Department whereby one or more persons shall function as the certified program administrator, a certified plan reviewer, and a certified inspector.
- E. The program policies, best management practices and regulations as adopted under this Ordinance shall be available for public review at the office of the County Land Use Department.

54-5.1 MONITORING

The Land Use Department shall require either the owner, contractor or other person(s) responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of inspections and maintenance work, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

54-5.2 INSPECTIONS

The Land Use Department shall periodically inspect the land-disturbing activity in accordance with Section 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations 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.

SECTION 54-6 NOTICE TO COMPLY

- A. If it is determined 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.
- B. 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 Ordinance and shall be subject to the penalties provided by this Ordinance.

SECTION 54-7 NOTICE OF VIOLATION

- A. Upon determination of a violation of this Ordinance, including the commencement of land-disturbance activities without an approved plan, and in conjunction with or subsequent to a notice to comply being issued, the Administrator shall issue an order requiring in whole or part of the land-disturbing activities on the site be stopped until the specified corrective measures have been taken and if necessary, stopped until plans are approved and the necessary permits have been issued before the land-disturbance activity may commence.
- B. If land-disturbing activities have commenced without an approved plan, in conjunction with or subsequent to a notice to comply as specified in this Ordinance, the Land Use Department shall 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 identified non-compliance is causing or presents an imminent danger of causing harmful erosion of lands or sediment deposition in waters within the Potomac River and/or other 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 permittee has been issued a notice to comply as specified in this Ordinance. Otherwise, such an order may be issued only after the permittee 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 of the notice, pending application by either the Land Use Department, enforcing authority or permit holder, for the initial hearing for appropriate relief to the Circuit Court of Westmoreland County, Virginia.
- E. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the original notice, an additional order may be issued 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 to the owner by registered or certified mail to the address specified in the permit application or the land records of the Land Use Department.
- F. Any person violating or failing, neglecting or refusing to obey any notice or order issued by the Land Use Administrator, certified staff or agent may be compelled in a proceeding instituted in the Circuit Court of Westmoreland County, Virginia to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- G. APPEALS – After any land disturbing activity has begun, the owner, applicant or Responsible Land Disturber may appeal the issuance of any notice or order to the Circuit Court of Westmoreland County, Virginia; however, pending the determination by the Court, the action of the Land Use Department shall continue to be in effect.

- H. Nothing in this section shall prevent the Land Use Administrator, Land Use Department, certified staff or agent from taking any other action authorized by this or other Ordinances of Westmoreland County.

SECTION 54-8 AMENDING THIS ORDINANCE

Before adopting or revising regulations, the Board of Supervisors of Westmoreland 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 Board of Supervisors for Westmoreland County is amending its program to conform to revisions in the State program. However, a public hearing shall be held if the Board of Supervisors of Westmoreland County proposes or revises regulations that are more stringent than the State program.

SECTION 54-9 PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

- A. Violators of this Ordinance shall be guilty of a Class I misdemeanor.
- B. Any person who violates any provision of this Ordinance shall, upon a finding of the District Court of Westmoreland County, Virginia, 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.
- C. Any owner who alleges damages to his property or the imminent threat of damage to his property may apply to the Circuit Court of Westmoreland County, Virginia to enjoin a violation or a threatened violation of this Ordinance, without the necessity of showing that an adequate remedy at law does not exist.
1. However, an owner of property shall not apply for injunctive relief unless he has notified in writing the person who has violated the local program, and the Land Use Department, that a violation of the local program has caused, or creates a probability of causing, damage to his property; and
 2. Neither the person who has violated the local program nor the Land Use Department has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing damage to his property.
- D. In addition to any criminal penalties provided under this Ordinance, any person who violates any provision of this Ordinance may be liable to Westmoreland County in a civil action for damages.
- E. Without limiting the remedies which may be utilized by the County 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 the Land Use Department.

- F. Any civil penalties assessed by a court shall be paid into the treasury of Westmoreland 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.
- G. 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, the Land Use Department may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section.
- H. The Commonwealth's Attorney shall, upon request of Westmoreland County or the permit issuing authority, take legal action to enforce the provisions of this Ordinance.
- I. Compliance with the provisions of this Ordinance shall be prima facie evidence in any legal or equitable proceeding seeking damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence by either the actions of the owner, applicant or Responsible Land Disturber in order to recover any damages.

Date: November 12, 2008



Darryl E. Fisher, Chairman
Board of Supervisors