

EROSION AND SEDIMENT CONTROL

Chapter 5

EROSION AND SEDIMENT CONTROL

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Editor's note – An ordinance adopted 2/03/09 repealed and re-enacted former Chapter 5, adopted 12/7/93, §§ 5-1—5-15, repealed former Ch. 5 §§5-1—5-15 and enacted new provisions as herein included. Former Ch. 5 also pertained to erosion and sediment control and derived from Ord. of 2-5-91, §§4.1-1—4.1-16

Cross references—Town Administration, §2-108; building, ch.4; floodplain district, ch.7; nuisances, ch.13; subdivisions, ch.18; waiver of requirements of subdivision regulations, §18-12; erosion and sediment control under subdivision regulations, §18-14; storm drainage systems in subdivisions, §18-77; trailers and trailer camps, ch.21; zoning, ch.23

State law reference – Virginia Erosion and Sediment Control Law, Code of Virginia §10.1 et seq

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Erosion and Sediment Control

ARTICLE I. IN GENERAL

Sec. 5.1 – TITLE, PURPOSE, AND AUTHORITY:

This ordinance shall be known as the “Erosion and Sediment Control Ordinance of the Town of Stephens City.” The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the Town of Stephens City by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

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.

SECTION 5.2 – DEFINITIONS: As used in the Chapter, unless requires a different meaning:

Agreement in lieu of a plan means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan approving authority in lieu of a formal site plan.

Applicant means any 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 means the Virginia Soil and Water Conservation Board.

Certified Inspector means an employee or agent of a program 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 year after enrollment.

Certified Plan Reviewer means an employee or agent of a program 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 year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article (Sec. 54.1-400 et. seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Certified Program Administrator means an employee or agent of a program 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 year after enrollment.

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Clearing means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

Department means the Department of Conservation and Recreation.

Development means 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 three or more residential dwelling units.

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

Erosion and Sediment Control Plan or Plan means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, and 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 plan approving authority to assure 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.

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-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 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;

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- (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 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 areas of less than 5,000 square feet in size;
- (10.) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (11.) 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.

Land-disturbing Permit means a permit issued by the Town of Stephens City 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 the Town of Stephens City 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.

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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 mortgage 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 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 the Commonwealth, any interstate body, or any other legal entity.

Plan-approving Authority means the Town Engineer or Combined Administrator responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit of lands and for approving plans

Program Authority means the Town of Stephens City which has adopted an erosion and sediment control program that has been approved by the Board.

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 agreement in lieu of a plan who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article I (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 noncommercial dwelling that is occupied exclusively by one family.

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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 of Stephens City.

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.

For purposes of this chapter all terms as defined in the Code of Virginia 10.1-560 shall be used.

SECTION 5.3 – RULES OF CONSTRUCTION:

This Chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. The following rules of construction shall apply in the construction of this Chapter, unless such application would be contrary to the purposes of this Chapter or the context clearly indicates otherwise:

- (1.) All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this Chapter and includes any amendment thereafter or reissue in a subsequent edition.
- (2.) Any reference to “this Article” or Article II shall include references to all applicable references of Article I.
- (3.) All references to “days” shall be to calendar days.
- (4.) All references to a “fee schedule” shall mean and refer to a schedule of the fees and charges associated with the various applications, inspections, permits and approvals required by this Chapter, as approved and amended by the Town Council from time to time. All required fees shall be made payable to the Town Treasurer.

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SECTION 5.4 – LOCAL EROSION AND SEDIMENT CONTROL PROGRAM:

- (a.) Pursuant to section 10.1-562 of the Code of Virginia, the Town of Stephens City hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, water and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to “Virginia Erosion and Sediment Control Regulations” and the Virginia Erosion and Sediment Control Handbook, as amended.
- (b.) Before adopting or revising regulations, the Town of Stephens City 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 Town of Stephens City is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the Town of Stephens City proposes or revises regulations that are more stringent than the state program.
- In addition, in accordance with 10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.
- In accordance with Section 10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) 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 manmade channels.
- (c.) Pursuant to Section 10.1-561.1 of the 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 Town of Stephens City shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- (d.) The Town of Stephens City hereby designates the Town Engineer and Combined Administrator as the plan-approving authority.

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- (e.) The program and regulations provided for in this ordinance shall be made available for public inspection at the Town Planner.

SECTION 5.5 – SAVING PROVISION:

The adoption of this Chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, not waive any right of the Town under any provision in effect prior to the date of the adoption of this Chapter, unless expressly provided for in this Chapter. Any erosion and sediment control plan approved prior to the date of adoption of this Chapter shall remain in full force and effect, and all rights and remedies of the Town in enforcing such plans, permits and plats are hereby preserved.

SECTION 5.6 – APPEALS FROM DECISIONS UNDER THIS CHAPTER:

- (a.) Any person who is aggrieved by a decision of the program authority pursuant to this Chapter shall have the right of review of such action by the Town Council. Any such appeal shall be filed in writing with the clerk of the Town Council within ten (10) days of the date of such decision.
- (b.) An appeal received by the Town Council pursuant to this section shall be referred to the planning commission for review and findings of fact. The planning commission shall review the appeal at its next regular meeting following the date the notice of appeal is received by the clerk of council, and shall report its findings to Town Council. The Town Council shall review the appeal within thirty (30) days after the date of the planning commission meeting.
- (c.) The Town Council shall consider evidence presented by the owner, the program authority, and any other aggrieved person. The council shall render its decision in writing and may affirm, reverse or modify the program authority's decision. The council's decision shall constitute the final decision of the Town on the matter(s) which are the subject of the appeal.
- (d.) Any person aggrieved by a final decision of the Town Council pursuant to this section shall have the right of review of such decision by the general district circuit court of Frederick County. Any such appeal shall be filed in writing with the general district circuit court of Frederick County within thirty (30) days of the council's final decision.
- (e.) For the purposes of this section, "aggrieved person" is limited to the owner, a permittee, owners of adjacent and downstream property and any interested governmental agency or officer thereof.

SECTION 5.7- COMPLIANCE WITH CHAPTER PREREQUISITE TO ISSUANCE OF PERMITS AUTHORIZING LAND DEVELOPMENT ACTIVITIES:

A grading, building, or other permit for activities involving land disturbing activities may be issued by the program authority only provided herein:

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- (a.) The owner shall submit with his application for such permit a proposed erosion and sediment control plan as may be required by this Chapter, for review and approval pursuant to this Article, or an approved erosion and sediment control plan and certification that the plan(s) will be followed. The permit-issuing authority shall not issue a permit until all such required plans have been approved and the required certification(s) are submitted.
- (b.) Prior to issuing a permit, the permit-issuing authority shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the program authority, to ensure that measures could be taken by the Town at the applicants expense, should he/she fail, after proper notice, within the time specified to initiate or maintain appropriate corrective action which may be required of him/her by the approved plan as a result of his/her land disturbing activity.
- (c.) A bond or other surety required by the permit-issuing authority shall not exceed the total of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms and conditions of the plan.
 - (1.) The amount of the bond or other surety shall be based on unit prices for new public or private sector construction in the Town of Stephens City, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms and conditions of the plan.
 - (2.) If approved by the program authority, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in connection with a site plan, subdivision plat or other required approval.
- (d.) If the program authority is required to take corrective action pursuant to this Article, then the Town may collect from the owner the amount by which the reasonable cost of such corrective action exceeds the amount of the surety.
- (e.) Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity in any land development project or section thereof, the 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 based upon the percentage of stabilization accomplished in the project or section thereof.

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ARTICLE II.

DIVISION 1. IN GENERAL

SECTION 5.8 – PURPOSE:

The purpose of this chapter is to provide for the control of erosion and sedimentation, both during and following development within Stephens City, and to establish procedures for the administration and enforcement of such controls. For purposes of this chapter all terms as defined in the Code of Virginia 10.1-560 shall be used.

SECTION 5.9 – PERMIT REQUIRED FOR LAND DISTURBING ACTIVITIES:

No person shall engage in any land disturbing activity within the Town until they have acquired a permit from the DCR Certified Program Administrator for the Town of Stephens City. For purposes of this Chapter all terms as defined in Code of Virginia 10.1-560.

State Law Reference- Code of Virginia, (10.1-561.1, 562-563)

SECTION 5.10 – DETERMINATION OF LAND DISTURBING ACTIVITY:

The determination of whether an activity is a land disturbing activity for purposes of this Chapter shall be made as provided herein:

- (a.) The program authority shall determine whether an activity is a land disturbing activity, including any claim by an owner that the activity is exempt from requirements of this Chapter.
- (b.) If a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, the program authority may either:
 - (1.) Consider the off-site activity as being part of the land disturbing activity, and require an erosion and sediment control plan to be submitted and approved; or
 - (2.) If the off-site activity is already covered by an erosion and sediment control plan approved by the Town, require the owner to provide proof of the approval and to certify that the plan will be implemented in accordance with this Chapter.
- (c.) If a property will be developed in phases, the determination of whether an activity constitutes a land disturbing activity shall be determined by considering the development of the property as a whole, regardless of phasing of the development.

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- (d.) Land disturbing activity of less than 5,000 square feet on individual lots in residential development shall not be exempt from this Chapter if the total land disturbing activity in the residential development is equal to or greater than 5,000 square feet.
- (e.) Upon the determination by the program authority that an activity is a land disturbing activity the owner shall immediately comply with the requirements of this Chapter.

State Law Reference- Code of Virginia, (10.1-563)

SECTION 5.11 – DETERMINATION OF EROSION IMPACT AREA:

The determination of whether an erosion impact area exists on property shall be rendered as provided herein:

- (a.) The program authority shall determine whether an erosion impact area exists on a property and the property and the owner thereof are subject to the requirements of the Chapter. The program authority shall make this determination after an investigation of program administrator or designee's initiative or upon the complaint of any citizen.
- (b.) Upon making a determination that an erosion impact area exists, the program authority shall immediately notify the owner of the property, in writing, of its determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the Town, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and approval as provided in the Chapter, and (ii) state the date by which the plan must be submitted.
- (c.) Upon receipt of the notice required by this section, the owner shall immediately submit to the program authority a conservation plan designed to prevent erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this Chapter. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.
- (d.) For good cause shown, the program authority may grant to an owner an extension of time to comply with the requirements of this section and this Chapter.

State Law Reference- Code of Virginia, (10.1-563)

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DIVISION 2. – EROSION AND SEDIMENT CONTROL PLAN FOR LAND DISTURBING ACTIVITIES

SECTION 5.12 – APPLICABILITY:

This Chapter shall apply to any land disturbing activity. Each owner shall comply with the requirements of this Chapter, as provided herein:

- (1.) Prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on the property;
- (2.) At all times during any land disturbing activity until it is completed, including all times when the land disturbing activity is performed by a contractor engaged in construction work; and
- (3.) When notified by the program authority that an erosion impact area exists on the land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.

State Law Reference- Code of Virginia, (10.1-563)

SECTION 5.13 – RESPONSIBILITIES OF OWNER OF LAND WHEN WORK TO BE CONDUCTED BY CONTRACTOR:

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the require erosion and sediment control plan shall be the responsibility of the owner of the land.

State Law Reference- Code of Virginia, (10.1-563)

SECTION 5.14 – CONFORMITY TO COMMONWEALTH OF VIRGINIA HANDBOOK:

Except as modified below, all plans and specifications submitted under this Chapter shall be in conformance with the standards, specifications and criteria of the Virginia Erosion and Sediment Control Handbook and those regulations promulgated by the Virginia Soil and Water Conservation Board, including, without limitation, the criteria, techniques and methods set forth in 4VAC50-30-40, as amended. The following subsections are hereby changed of VAC 50-30-40 of the Virginia Erosion and Sediment Control Regulations:

- (1.) The provision found in Subsection 19b. (1) is deleted.

State Law Reference- Code of Virginia, (10.1-563)

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SECTION 5.15 – REVIEW AND INSPECTION FEE:

A plan review and inspection fee shall be submitted at the time of filing any erosion and sediment control plan. This fee shall be an amount as set forth within the most recent fee schedule approved by Town Council.

State Law Reference- Code of Virginia, (10.1-562 (I))

SECTION 5.16 – EROSION AND SEDIMENT CONTROL PLAN:

Each owner subject to this Chapter shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

- (a.) The owner shall submit a completed application on a form provided by the program authority, together with three (3) copies of the erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.
- (b.) The plan shall include specification for temporary and permanent controls of soil and erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this Chapter. As a minimum, the plan shall follow the format and conform to the approved standards and specifications for control techniques as set forth in the “Virginia Erosion and Sediment Control Handbook”, which by reference is adopted as part of this Chapter. The plan shall be consistent with the criteria, techniques and methods as set forth in the Minimum Standards (4 VAC 50-30-40) of the Virginia Erosion And Sediment Control Regulations adopted by the Virginia Soil and Water Conservation Board. The plan shall identify the person holding a certificate of competence, as described in the Virginia Code 10.1-561 who shall be in charge of and responsible for carrying out the land disturbing activity.
- (c.) The program authority may require additional information as may be necessary for its complete review of the plan.
- (d.) In lieu of paragraphs (a)-(c), above, if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at their option, choose to have a conservation plan approved by the Virginia Department of Conservation and Recreation Division of Stormwater Management. The owner shall notify the program authority of such plan approval by such board.

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(e.) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

- (1.) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;
- (2.) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivision 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specification. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the Town of Stephens City erosion and sediment control program.

(f.) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

State Law Reference- Code of Virginia, (10.1-563)

SECTION 5.17 – REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLAN:

Each erosion and sediment control plan submitted pursuant to this Chapter shall be reviewed and approved as provided herein:

- (a.) The plan shall be reviewed by the program authority to determine its compliance with the requirements of the Chapter and with applicable Commonwealth of Virginia laws and regulations.
- (b.) During its review of the plan, the program authority may correspond with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved.
- (c.) Except as provided in paragraph (d), below, the program authority shall approve or disapprove a plan in writing within forty-five (45) days for the date of complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Chapter and with applicable Commonwealth of Virginia laws and regulations. If the plan is disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. The decision shall be communicated to the applicant by mail or delivery.

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- (d.) If the program authority fails to act on the plan within 45 days from the date the complete application was received by, then the plan shall be deemed approved.
- (e.) If the owner is required to obtain approval of a site plan or subdivision plat, the program authority shall not approve a land disturbance permit unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority determined that review and approval of the land disturbance permit will not affect approval of the site plan or plat. The program authority may approve an land disturbance permit prior to approval of a required site plan or plat in the following circumstances:
 - (1.) To correct any existing erosion and other condition conducive to excessive sedimentation which is occasioned by any violation of this Chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;
 - (2.) To clear and grub stumps and other activity directly related to selective cutting of trees, as may be permitted by law;
 - (3.) To fill earth with spoils obtained from grading, excavation or other similar, lawful activities;
 - (4.) To construct temporary access roads, provided that the area disturbed shall be returned to substantially its previous condition. With no significant change in surface contours, within thirty (30) days of the completion of such temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to such temporary use, whichever period shall be shorter.
 - (5.) To establish burrow, fill, or waste areas, if permitted by the Town's zoning ordinance.

State Law Reference- Code of Virginia, (10.1-563)

SECTION 5.18 – AGREEMENT IN LIEU OF A PLAN:

- (a.) If land disturbing activity is for the purpose of establishing or modifying a single family detached dwelling, the program administrator may allow an agreement in lieu of plan for the construction of such a dwelling, provided:
 - (1.) The single family dwelling is located on an individual lot which is not part of a subdivision; or
 - (2.) The single family dwelling is located within a residential development or subdivision, and the individual lots are being developed by different property owners; or

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- (3.) The single family dwelling is located within a subdivision that no longer has an active erosion and sediment control plan, and
 - (4.) The agreement in lieu of plan identifies the person holding a certificate of competence, as described in Virginia Code 10.1- 561, who shall be in charge of and responsible for carrying out the land disturbing activity.
- (b.) In determining whether to allow an agreement in lieu of a plan, the program authority shall include as part of its consideration the potential threat to water quality and to adjacent land resulting from the land disturbing activity. When an agreement in lieu of a plan is authorized and approved by the program authority, the program authority and the owner shall have all of the rights, responsibilities and remedies set forth in this Article as though such agreement in lieu of plan was an erosion and sediment control plan.

SECTION 5.19 – AMENDMENT OF APPROVED PLAN:

The program authority may change an approved erosion and sediment control plan, and/or require an owner to submit an amended plan, in the following circumstances:

- (1.) An inspection reveals that the plan is inadequate to satisfy the requirements of this Chapter; or
- (2.) The owner 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 authority and the owner; or
- (3.) The land disturbing activity was not commenced during the one hundred eighty (180) days, and the existing plan has been evaluated to determine whether it still satisfies the requirements of this Chapter and the Commonwealth of Virginia erosion and sediment control criteria and to verify that all design factors are still valid, and it has been determined that the plan is inadequate. In such a case, the land disturbing activity shall not be resumed until a modified plan is submitted and approved as provided in this Chapter.

State Law Reference- Code of Virginia, (10.1-563)

SECTION 5.20 – DUTY TO COMPLY, MAINTAIN AND REPAIR:

Upon approval by the program authority of an erosion and sediment control plan, each owner shall:

- (1.) Comply with the approved plan when performing, or allowing to be performed, any land disturbing activities, or activities to correct an erosion impact area;

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- (2.) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
- (3.) Comply with all requirements of this Chapter; and
- (4.) Have person holding a certificate of competence, as described in Virginia Code 10.1-561, in charge of and responsible for carrying out the land disturbing activity. This person shall be designated prior to commencement of land disturbing activity.

State Law Reference- Code of Virginia, (10.1-563)

SECTION 5.21 – INSPECTION AND MONITORING:

- (a.) As a condition of approval of erosion and sediment control plan, the program authority may require the owner to monitor and report to the program authority as provided herein:
 - (1.) Any monitoring conducted shall be for the purpose of ensuring compliance with erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment.
 - (2.) The condition requiring monitoring and reporting shall state: (i) the method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.
- (b.) The program authority shall inspect any land disturbing activity or erosion impact area as provided herein:
 - (1.) The program authority shall conduct periodic inspections of land disturbing activities and erosion impact areas to determine compliance with the approved erosion and sediment control plan, and to determine whether such approval plan and permit as implemented are adequate to satisfy the requirements of this Chapter.
 - (2.) Except as provided in paragraph (3), below, inspections shall be conducted
 - (i) during or immediately following initial installation of erosion and sediment controls; (ii) at times indicated by Section 4VAC50-30-60B in the Virginia Erosion and Sediment Control Regulations and: (iii) upon completion of the land development project prior to the release of any surety. The inability of the program authority to conduct inspections within the time periods set forth within this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the Town, the program authority, or to any official or employee thereof shall arise therefrom.

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- (3.) Notwithstanding paragraph (2), above, the program authority is authorized to establish an alternative inspection program which ensures compliance with an approved erosion and sediment control plan. Such alternative inspection program shall be: (i) approved by the Virginia Soil and Water Conservation Board prior to implementation; (ii) established in writing; (iii) based on a system of priorities which, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; (iv) documented by inspection records; and (v) maintained and available for public review in the department of Public Services and Engineering.
- (4.) The program authority shall have the right to enter upon property subject to an erosion and sediment control plan for the purposes of conducting an inspection as provided in this section or an investigation pertaining to an erosion or sedimentation complaint. The owner shall be given notice of the inspection. Such notice may be verbal and in writing.

State Law Reference- Code of Virginia, (10.1-566)

SECTION 5.22 – DETERMINATION OF NONCOMPLIANCE WITH PLAN

Upon a determination by the program authority that an owner has failed to comply with an approved erosion and sediment control plan, the following procedures shall apply:

- (a.) The program authority shall immediately serve upon the owner a written notice to comply. The notice shall (i) instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent erosion or sedimentation problems; (ii) state specifically the measures needed to come into compliance with the approved plan; and (iii) state a reasonable time for compliance. The notice shall be served by certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employees at the site of the permitted activities who is supervising such activities.
- (b.) If the owner fails to take corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any permit it has issued related to the land disturbing activity and the owner shall be deemed to be in violation of this Chapter. Furthermore, he/she shall be deemed to be in violation of this Chapter and shall be subject to the penalties provided by the Chapter.
- (c.) If the owner fails, within the time specified in the notice, to take the corrective measures for compliance stated in the notice, the program authority, upon finding that such action is reasonably necessary to protect the public health, safety and welfare, may take all corrective measures it deems necessary in order to protect the public health, safety and welfare, and shall be entitled to recover the expenses of such action from the owner.

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(d.) Upon receipt of a sworn complaint of a violation of this Chapter or of an approved erosion and sediment control plan, from an employee or representative of the program authority responsible for ensuring program compliance, the Program Administrator or designee may, in conjunction with or subsequent to a notice of violation, issue an order requiring that all or part of the land disturbing activities permitted on site be stopped until the specified corrective measures have been taken or, if land disturbing activities have commenced without an approved plan, requiring that all land disturbing activities be stopped until an approved plan and any required permits have been obtained.

- (1.) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands, sediment deposition in waters, or water quality problems 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 whether or not the alleged violator has been issued a notice to comply. Otherwise, such an
- (2.) Order may be issued only after the alleged violator has failed to comply with a notice to comply.
- (3.) A stop-work order shall be served in the same manner as a notice to comply, and it shall remain in effect for seven (7) days from the date of service, pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court.
- (4.) If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of a stop-work order, the Program Administrator or designee may issue an order to the owner requiring, that all construction or other work on the site, other than corrective measures, be stopped until 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 certified mail to the address specified in the permit application.
- (5.) The owner may appeal the issuance of any stop-work order to the circuit court.
- (6.) Final decision of the Plan Approving Authority under this Chapter shall be subject to review by the circuit court of Frederick County provided an appeal is filed within thirty (30) days from the date of the final written decision adversely affecting the rights, duties or privileges of the person engaging or proposing to engage in land disturbing activities.
- (7.) Any person violating or failing, neglecting or refusing to obey an order issued by the Program Administrator or designee may be compelled in a proceeding

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instituted in the circuit court to obey the order and to comply therewith, by injunction, mandamus, or other appropriate remedy.

- (8.) Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- (9.) Nothing in this section shall prevent the Program Administrator or designee from taking any other action authorized by this Chapter or by any other provision of law.

State Law Reference- Code of Virginia, (10.1-569 & 10.1-569.1)

SECTION 5.23 - CERTIFICATION OF PROGRAM PERSONNEL:

As required by the Commonwealth of Virginia law, the Town's erosion and sediment control program shall meet, within one (1) year following the adoption of this section, the following minimum standards for effectiveness:

- (1.) An erosion and sedimentation control plan shall not be approved until it is reviewed by a certified plan reviewer;
- (2.) Inspections of land disturbing activities shall be conducted by a certified inspector; and
- (3.) The Town's erosion control program shall contain a certified administrator, a certified plan reviewer and a certified project inspector, who may be the same person.

Under the Code of Virginia section 10.1-566-1, the locality shall report to the Department of Conservation and Recreation all plans approved by the Town.

SECTION 5.24 – PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS:

- (a.) Any person violating the provisions of this Chapter shall, upon conviction, be guilty of a Class I misdemeanor.
- (b.) The following may apply to the circuit court for injunction relief to enjoin a violation or a threatened violation of this Chapter, without the necessity of showing that an adequate remedy at law does not exist:
 - (1.) The Town of Stephens City.
 - (2.) The owner of property that has sustained damage or that is in imminent danger of being damaged; 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 provisions of this Chapter, and the program authority, that a violation of this Chapter has caused, or creates a probability of causing,

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damage to his/her property, and (ii) neither person who has violated this Chapter nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to the owner' property.

- (c.) In addition to any criminal penalties provided for a violation of this Chapter, any person who violates any provision of this Chapter may be liable to the Town in a civil action for damages.
- (d.) Each violation of any regulation or order of the Board, any provision of this Chapter, or any provision of Title 10.1, Chapter 5, Article 4 of the Code of Virginia shall be subject to a civil penalty of one hundred dollars (\$100.00). Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00). 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 \$10,000.00. An appropriate official or employee of the program authority, or a certified inspector for the Town, may issue a summons for collection of the civil penalty and the action may be prosecuted by the Town.
- (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 \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the Town against such person.
- (f.) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Program Administrator issued under this Chapter any condition of a permit issued under this Chapter or any provision of this Chapter the Program Administrator may provide, in an order against such person, for the payment of civil charges for violations in specific sums, not to exceed \$2,000.00. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) or (e) of this section.
- (g.) Any civil penalties assessed by a court pursuant to this section shall be paid into the Town Treasurer, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the Commonwealth of Virginia treasury.

Authority- Code of Virginia, (10.1-562-569)