

Chapter 6  
**EROSION AND SEDIMENTATION CONTROL**

***Article 1. In General***

- Sec. 6-1-1. Purpose.
- Sec. 6-1-1.1. Authority.
- Sec. 6-1-2. Definitions.
- Sec. 6-1-3. Erosion and sedimentation control plan required; applicability of chapter.
- Sec. 6-1-4. Erosion and sedimentation control plan standards and techniques; procedures generally.
- Sec. 6-1-5. Fees generally.
- Sec. 6-1-5.1. Reserved
- Sec. 6-1-6. Plan approval generally; changes in approved plans.
- Sec. 6-1-7. Approved plan required for issuance of building permit or other development permits; certification; bonding of performance.
- Sec. 6-1-8. Inspection and enforcement generally.
- Sec. 6-1-9. Erosion impact areas.
- Sec. 6-1-10. Administrative appeal; judicial review.
- Sec. 6-1-11. Violations and penalties.
- Sec. 6-1-12. Conflicting requirements.

***Article 2. Procedures for Plan Submission and Review,  
On-site Inspection and Chapter Enforcement.***

- Sec. 6-2-1. Plan submission and preliminary erosion and sediment control plans.
- Sec. 6-2-2. Preliminary plan for discussion, etc., purposes.
- Sec. 6-2-3. Department responsible for administering program.
- Sec. 6-2-4. Plan review and approval procedures generally.
- Sec. 6-2-5. Issuance of grading, building or other permits.
- Sec. 6-2-6. Performance bond, cash escrow, letter of credit, etc.
- Sec. 6-2-7. Erosion and sediment control agreement providing for right-of-entry, etc.
- Sec. 6-2-8. Appeal of decision of administrator, etc.
- Sec. 6-2-9. Responsibility of administrator for on-site inspections, enforcement of chapter, etc.

## Chapter 6

**EROSION AND SEDIMENTATION CONTROL<sup>1</sup>****Sec. 6-1-1. Purpose.**

The purpose of this chapter is to conserve the land, water, air and other natural resources of the County and promote the public health and welfare of the people in the County by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-1.1. Authority.**

The County of Fluvanna has authority to establish the erosion and sedimentation controls described herein pursuant to Section 10.1-562 of the Code of Virginia. (Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-2. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Administrator.* The official designated by the governing body to serve as its agent to administer this chapter, or his designee. The county administrator for the County is hereby designated as administrator of this chapter.

*Agreement in Lieu of a Plan.* A contract between the plan-approving authority and the owner, specifying conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

*Applicant.* 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.* The Board of Supervisors of the County of Fluvanna.

*Certified inspector.* An employee or agent of the County who has been designated as such by the administrator. A certified inspector shall (i) hold a certificate of competence from the

---

<sup>1</sup> For state law as to erosion and sediment control, see Code of Va., § 10.1-560 et seq.

*Editor's note.* - - The Ordinance adopted 6-20-07 amended and reenacted this Chapter 6, Erosion and Sedimentation Control.

Virginia Soil And Water Conservation Board in the area of project inspection or (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for project inspection and successfully complete such program within one year after enrollment.

*Certified plan reviewer.* A County employee or agent who has been designated as such by the administrator. A certified plan reviewer shall (i) hold a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for plan review and successfully complete such program within one year after enrollment, or (iii) be 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, as it may be amended from time to time.

*Certified program administrator.* A County employee or agent designated as such by the administrator. A certified program administrator shall (i) hold a certificate of competence from the Virginia Soil and Water Conservation Board in the area of program administration or (ii) be enrolled in the Virginia Soil and Water Conservation Board's training program for program administration and successfully complete such program within one year after enrollment.

*Clearing.* Any activity which removes the vegetative ground cover including but not limited to the cutting or removal of vegetation, root material or topsoil.

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

*County.* The County of Fluvanna.

*Erosion impact area.* An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 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.* Any digging, scooping, or other methods of removing earth materials.

*Filling.* Any depositing or stockpiling of earth materials.

*Grading.* Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled condition.

*Land-disturbing activity.* Any land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands including, but not limited to, clearing, grading, excavating, transporting, or any combination thereof. The following activities shall not be construed as “land disturbing activities” under this ordinance:

- (a) Such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work.
- (b) Individual service connections.
- (c) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk; provided, that such land-disturbing activity is confined to the area of the road, street or sidewalk *that* is hard surfaced.
- (d) 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.
- (e) Surface or deep mining.
- (f) Exploration or drilling for oil and gas, including the well site, roads, feeder lines, and off-site disposal areas.
- (g) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
- (h) Disturbed land areas for commercial or noncommercial uses of less than 10,000 square feet in size.
- (i) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
- (j) Emergency work to protect life, limb and property, and emergency repairs; provided, that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, the land area disturbed shall be shaped and stabilized in accordance with the requirement of the local plan approving authority.

(k) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering 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 (Virginia Code section 10.1-604 et. seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing; land drainage; 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 (Virginia Code Sec. 10.1-110 et seq.) of Title 10.1 or is converted to bona fide agriculture or improved pasture use as described in subsection B of Virginia Code Sec. 10.1-1163.

*Land disturbing permit.* A permit issued by the County for clearing, filling, excavating, grading or transporting, or any combination thereof.

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

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

*Plan approving authority.* The county administrator shall be the plan approving authority.

*Program authority* The County of Fluvanna which has adopted a soil erosion and sediment control program approved by the Virginia Soil and Water Conservation Board.

*Responsible Land Disturber* An individual from the project 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 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 I (Virginia Code Sec. 54.1-40, et seq.) of Chapter 4 of Title 54.1.

*Single-family residence.*<sup>2</sup> A structure, other than a multi-family residential structure, maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit.

*State waters.* All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

*Subdivision.*<sup>3</sup> See definition contained in the County subdivision ordinance.

*Transporting.* Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-3. Erosion and sedimentation control plan required; applicability of chapter.**

a) Pursuant to section 10.1-562 of the Code of Virginia, Fluvanna County hereby adopts the references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications are included in but not limited to the “Virginia Erosion and Sediment Control Regulations,” the “Virginia Erosion and Sediment Control Handbook” and “Virginia Stormwater Management Handbook” as amended.

b) Except as otherwise provided in this chapter, no person may engage in any land disturbing activity until such person has submitted to the administrator an erosion and sedimentation control plan for such land-disturbing activity and until that plan for such land-disturbing activity has been reviewed and approved by the administrator.

c) The provisions of this chapter shall apply to all incorporated towns within the boundaries of the County, unless the governing body of any such town has, by appropriate action, adopted an Erosion and Sedimentation Control program specific to its jurisdiction.

---

<sup>2</sup> From Va. Code Ann. § 55-248.4.

<sup>3</sup> *Editor’s note.* - - The Fluvanna County Subdivision Ordinance is found in Chapter 19 of this Code.

d) Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sedimentation control specifications annually with the Virginia Soil and Water Conservation Board for review and written comments.

e) The provisions of this chapter shall not apply to state agency projects, except as provided for in VESCL 10.1-564.

f) A plan for which land-disturbing activities involving lands under the jurisdiction of the County and one or more other localities may, at the option of the applicant, be submitted to the state division of soil and water conservation for the review and approval, rather than submission to each jurisdiction concerned. However, if the applicant chooses to submit his plans to the state division of soil and water conservation rather than the local jurisdiction he shall notify, by certified mail, the administrator of his intention at the same time of submittal. (Ord. 6-20-07)

**Sec. 6-1-4. Erosion and sedimentation control plan standards and techniques; procedures generally.**

An erosion and sedimentation control plan is required under this chapter. The erosion and sedimentation control plan shall detail those methods and techniques to be utilized in the control or erosion and sedimentation. The control plan will follow the format of the Virginia Erosion and Sediment Control Handbook.

Persons submitting plans under this chapter shall follow the procedures set forth in article 2 of this chapter entitled, "Procedures for Plan Submission and Review, On-site Inspection and Chapter Enforcement". (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-5. Fees generally.**

The following fees for the land-disturbing permits and related reviews pursuant to this Chapter shall be paid. The purpose of these fees is to defray the cost of program administration, including costs associated with the issuance of grading or land disturbing permits, plan review, and periodic inspections for compliance with erosion and sediment control plans. The fee schedule set forth in this section shall supersede any fee schedule previously adopted with respect to such permits and related reviews.

Single Family	\$125.00 per lot
All Other	<p>\$ 550.00 plus \$125/ac. (or portion) over one acre for work to be completed within<sup>4</sup> 12 mo.</p> <p>\$500.00 plus \$ 50.00/ac. (or portion over one acre for additional 12 mo. (24 mo. total)</p> <p>\$ 500.00 for each additional 12 mo. (over 24 mo. total)</p> <p>\$ 250.00 initial plan review fee</p> <p>\$ 100.00 per. re-review fee</p>

(Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07; Ord. 6-17-09)

**Sec. 6-1-5.1. Reserved.**

**Sec. 6-1-6. Plan approval generally; changes in approved plans.**

(a) The administrator shall, within forty-five days, approve any erosion and sediment control plan submitted to the administrator if it is determined that the plan meets the requirements of the local control program, and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this chapter. In addition, as a prerequisite to engaging in the land-disturbing activities described in the approved plan, the person responsible for carrying out the plan shall provide the name of a Responsible Land Disturber, who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the approved plan. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this chapter. Under the provisions of this ordinance, the owner of the property in question is ultimately responsible for the preparation, submission and approval of the erosion and sediment control plan.

(b) When a plan is determined to be inadequate, the administrator shall, within forty-five days from receipt, give written notice of disapproval stating the specific reasons for disapproval. The administrator shall specify such modifications terms and conditions as will permit approval of the plan and shall communicate these requirements to the applicant. If no action is taken by the administrator within the time specified above, the plan shall be deemed approved and the person shall be authorized to proceed with the proposed activity.

(c) An approved plan may be changed by the administrator in the following cases:

---

<sup>4</sup> *Editor's note* -- "with" in original; clerical error corrected

(1) Where inspection has revealed the inadequacy of the plan to accomplish the objectives of this chapter, plan changes can be required without approval of the person responsible for carrying out the plan; or

(2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the administrator and the person responsible for carrying out the plan.

(d) All requests for variances must be made in writing, and approved in writing by the administrator, in accordance with VESCR 4VAC50-30-50. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-7. Approved plan required for issuance of building permit or other development permits; certification; bonding of performance.**

(a) The building official, or any agent of the County, shall not issue any building or other permits for activities which involve land-disturbing activities unless the applicant submits with his application an approved erosion and sediment control plan or certification of such approved plan from the administrator, certification that such plan will be followed, and written permission for the administrator (or his agent) to conduct on-site inspections of the land-disturbing activity and of the conservation practices set forth in the plan.

(b) The administrator, prior to approval of any erosion and sedimentation control plan, shall require of the applicant a reasonable performance bond with surety, cash escrow, letter of credit, or combination thereof, or such other legal arrangement as is acceptable to the administrator to insure that measures could be taken by the County at the expense of the person conducting the land-disturbing activity should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him in order to be in compliance with this chapter.

(c) If the County takes such measures upon such failure by the person conducting the land-disturbing activity and the costs of required corrective action exceed the security held, the administrator may collect from such person the difference between the cost of the corrective action required and amount of the security held.

(d) Within sixty days of the stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or his agent or terminated, as the case may be. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-8. Inspection and enforcement generally.**

(a) Inspection and degree of enforcement of this chapter shall rest with the administrator.

(b) The administrator shall periodically inspect the land-disturbing activity, in accordance with VESCR 4VAC-50-30-60B, to insure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land-disturbing activity. The administrator may require monitoring and reports from the person responsible for carrying out the plan. Furthermore, the County may inspect, monitor, and make reports for the administrator, upon request. The right of entry to conduct such inspection shall be expressly reserved in the permit. The person responsible for carrying out the plan, or his duly designated representative, shall be given notice of the inspection and afforded the opportunity to accompany the inspectors.

(c) If the administrator determines that the person responsible for carrying out the plan has failed to do so, the administrator shall immediately serve such person with a notice to comply by registered or certified mail to the address specified in his permit application or by delivery at the site of the land-disturbing activity to the owner, agent or employee supervising such activities. Such notice shall set forth specifically the measures needed in order for the site to come into compliance with such plan and shall specify the time within which such measures shall be completed. If such person fails to comply within the time specified, the permit may be revoked and the permittee or the person responsible for carrying out the plan shall be deemed to be in violation of this chapter and upon conviction shall be subject to the penalties provided for herein.

(d) Upon receipt of a sworn complaint of a substantial violation of this chapter from the designated enforcement officer, the administrator may, in conjunction with or subsequent to a notice to comply as specified above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where alleged noncompliance causes or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection (c) of this section. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have

occurred. Upon completion of corrective action, the order shall be lifted immediately. The remedies provided for in this section are cumulative and shall not be construed to prevent the administrator from taking any other action allowed by law. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-9. Erosion impact areas.**

The Board may designate areas in the County which shall be classified as erosion impact areas. Any such designation and classification shall be deemed to be a component of the local control program.

Consistent with this chapter, and in order to prevent further erosion, the administrator may require the approval of a conservation plan for any erosion impact area. Such plan shall be subject to all review, bonding, inspection and enforcement provisions of this chapter which apply to approved land-disturbing permits. The plan shall be submitted by the property owner. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-10. Administrative appeal; judicial review.**

Final decisions of the administrator under this chapter shall be subject to review by the Board; provided, that an appeal is filed within thirty days from the date of any written decision by the administrator.

Final decisions of the Board under this chapter shall be subject to review by the court of record of the County; provided, that an appeal is filed within thirty days from the date of final written decision. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-1-11. Violations and penalties.**

(a) A violation of this chapter shall be deemed a Class 1 misdemeanor.

(b) The administrator may apply to the circuit court of the County for injunctive relief to enjoin a violation or a threatened violation of this chapter, without the necessity of showing the nonexistence of an adequate remedy at law.

(c) In addition to any and all other remedies provided under this chapter, any person who violates any provision herein shall be liable to the County in a civil action for damages.

(d) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the state soil and water conservation board or the administrator, such board or administrator may provide an order against such person for the payment of civil charges

for violations in specific sums not to exceed \$2000 for each violation. The administrator shall establish a schedule enumerating the violations and the associated civil charges.

(e) The Commonwealth's attorney or the County Attorney, as the case may be, shall, upon request of the administrator, take legal action to enforce the provisions of this chapter.

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

(g) Nothing herein shall prevent the administrator from or be a prerequisite to the administrator taking any other action allowed by law or equity to remedy noncompliance with this chapter. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

#### **Sec. 6-1-12. Conflicting requirements.**

(a) The terms, conditions and provisions of this chapter shall in no way alter, diminish or change the terms, conditions or provisions of any other ordinance of the County.

(b) In the case of any conflict between any term, condition or provision of this chapter with any term, condition or provision of any other ordinance, the more restrictive term, condition or provision shall prevail.

(c) In the case of any conflict between any term, condition or provision of this chapter with any other term, condition or provision contained elsewhere in this chapter, the more restrictive term, condition or provision shall prevail. (Ord. 6-20-07)

### ***Article 2. Procedures for Plan Submission and Review, On-site Inspection and Chapter Enforcement.***

#### **Sec. 6-2-1. Plan submission and preliminary erosion and sediment control plans.**

(a) *Generally.* The applicant under this chapter shall submit five copies of black or blue-line plans with a letter of transmittal. Such letter of transmittal shall contain:

- (1) The name, address and phone number of the applicant.

- (2) The name, address and phone number of the landowner of record.
- (3) The name, address and phone number of the person responsible for carrying out the plan.
- (4) Location of the site, including lot number and tax map number.
- (5) Other information as may be requested by the plan approving authority.

(b) *Final plan.* The final plan shall consist of the narrative and maps as described in the Virginia Erosion and Sediment Control Handbook.

- (1) The maps shall be prepared at a scale of not less than 1" = 100' and shall incorporate good engineering practices designed according to E & S Control Handbook guidelines.
- (2) The map shall contain all information necessary for carrying out the conservation measures and will include a graphic scale, north arrow, date, owners of record, engineers certification (if required), approval signature block, vicinity map and contour lines.
- (3) The map shall show other information as required by the administrator. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-2-2. Preliminary plan for discussion, etc., purposes.**

The applicant under this chapter may submit a preliminary erosion and sediment control plan for the purpose of discussion and advice. The preliminary plan should be clearly marked "Preliminary," should not be cluttered with detailed control measures, and may contain the following information:

- (a) All major soil types.
- (b) Approximate limits of clearing and grading.
- (c) Tentative means of erosion and sediment control.
- (d) Phasing of development to minimize area and duration of exposure.

(e) Contour lines. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord., 7-16-03; Ord. 6-20-07)

**Sec. 6-2-3. Department responsible for administering program.**

All correspondence and plans should be directed to the administrator. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-2-4. Plan review and approval procedures generally.**

(a) The county administrator has been designated as the plan-approving authority.

(b) In reviewing plans, the administrator may seek or receive recommendations or comments from the state department of transportation, health department and such other agencies deemed to have some responsibility in this area.

(c)(1) The preparation and submission of an erosion and sediment control plan to the administrator shall be the responsibility of the owner, lessee, or duly authorized agent of either the owner or lessee.

(2) In determining the adequacy of the plan, the administrator shall be guided by the recommendations contained in the Virginia Erosion and Sediment Control Handbook.

(3) The plan shall be approved, within forty-five days from the receipt thereof, if such plan meets the requirements of this chapter, and if the person responsible for carrying out the plan certifies that he will properly perform the control measures included in the plan as required by this chapter.

(4) If the plan is disapproved, within forty-five days from the receipt thereof, the administrator shall specify in writing such modification, terms and conditions as will permit approval of the plan and communicate these requirements to the applicant.

(5) If no action is taken by the administrator within forty-five days of receipt of the plan, the plan shall be deemed approved. Certification of this fact shall be provided by the administrator to the permit issuing authority issuing building or other permits for the activities involving land-disturbing activities so that such permits may be issued.

(6) An approved plan may be changed:

- a. Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objective of this chapter, plan changes may be required without approval of the person responsible for carrying out the plan in order to comply with the minimum standards promulgated by the Virginia Soil and Water Conservation Board and set forth in the Virginia Erosion and Sediment Control Handbook, which are assumed to be an integral part of every plan; or
- b. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and the proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the administrator and the person responsible for carrying out the plan. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-2-5. Issuance of grading, building or other permits.**

(a) The building official or any other agency authorized under any other provision of this Code or other law to issue building or other permits for land-disturbing activities shall not issue such permits unless:

- (1) The applicant submits with his application the approved erosion and sediment control plan; or
- (2) There is certification of such approved plan from the administrator or certification that a plan was submitted and no action was taken within forty-five days; or
- (3) There is certification from the state division of soil and water conservation, when applicable as specified herein, that the plan has been approved.

(b) When the administrator does not have in hand a certification that the person responsible for carrying out the plan has certified that he will properly perform the control measures included in the plan, the administrator shall obtain the certification or performance prior to issuance of the permit. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-2-6. Performance bond, cash escrow, letter of credit, etc.**

(a) *Generally.* Bonding requirements are a necessary element of an effective control program.

(1) Bond: A bond with surety or other security approved by the administrator made out to the Board in an amount equal to the full cost of conservation measures which are required by this chapter, such bond being legally sufficient to assure that such conservation measures will be carried out in accordance the provisions of this chapter.

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

(3) Letter of Credit: An agreement by a bank made at the request of a customer to honor drafts or demands for payment by the County in the event of the failure of a person to whom a land-disturbing permit has been issued to perform the requirements of an E&S plan as required by this chapter. Such letters of credit shall be accepted only if written by a bank with an office operating within the Commonwealth and shall be in an amount equal to the full cost of conservation measures which are required by this chapter.

(b) *Amount of coverage.* The amount of coverage shall equal the total cost of the conservation measures. The amount will be determined by the administrator or other acceptable person and shall be reviewed by the administrator.

(c) *Required for each project, etc.* Bonding in some acceptable manner shall be required on each project to ensure that the conservation measures could be taken by the County, at the applicant's expense, should he fail within the time specified to initiate appropriate conservation action which may be required as a result of his land-disturbing activities. Such requirement will be a condition for issuance of building or other permits.

(1) No permit for building or other permits involving land-disturbing activities shall be issued by any department or agency of the County, until the requirements of this chapter and the erosion and sediment control program have been met with respect to the performance bonding.

(2) Certified checks shall be made payable to the Treasurer of Fluvanna County.

(3) Within sixty days of the adequate stabilization of the land-disturbing activities, such bond, cash escrow or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be.

(4) These requirements are in addition to all other provisions of law related to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

(Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-2-7. Erosion and sediment control agreement providing for right-of-entry, etc.**

A legal instrument shall be executed by each applicant for an approved erosion and sediment control plan to provide right-of-entry by the appropriate persons for the purpose of inspection, monitoring, and installation, or maintenance of erosion and sediment control measures in the event the applicant fails to install or maintain such measures after notice in writing. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-2-8. Appeal of decision of administrator, etc.**

An appeal made pursuant to this chapter shall be filed with the Board within thirty days of the date of any decision of the administrator. (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

**Sec. 6-2-9. Responsibility of administrator for on-site inspections, enforcement of chapter, etc.**

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

(a) Be responsible for developing and implementing a systematic program for on-site inspection to ensure that the erosion and sediment control measures on approved erosion control plans are actually provided.

(b) Be responsible for developing and maintaining a file system by land-disturbing projects. The file will contain a record of each inspection, date of inspection, date each land-disturbing activity commences and comments and other documents deemed necessary concerning compliance or noncompliance. The administrator may require monitoring and reports from the person responsible for carrying out the plan. Furthermore, the County may inspect, monitor and make reports for the administrator upon request.

(c) In cases of noncompliance, the report shall contain statements of the conservation measures needed for compliance and a recommended time in which such measures should be commenced or completed. Such reports will be communicated immediately to the proper authority.

(d) Upon determination that a violation exists, the *administrator* shall prepare:

(1) *Notice to comply, etc.* A notice to comply which shall contain a detailed description of the conservation measures necessary for compliance. When no action is taken within forty-eight hours of delivery of the notice to comply, the *administrator* shall prepare a letter of intent to utilize the performance bond, cash escrow or letter of credit to apply the conservation measures to correct the deficiency. This letter of intent will be cleared by the County attorney and sent by registered mail to the person responsible for carrying out the plan. If no action is taken within the time specified in the letter, dependent on the urgency of the action, the building official will be requested in writing, with a copy to the person responsible for carrying out the plan, to undertake the corrective measures.

(2) *A stop work order:*

a. The administrator may issue a stop work order on all or part of a land-disturbing activity if a permit holder fails to comply with a notice to comply as provided for in paragraph (1) of this subsection.

b. The administrator may issue a stop work order on all or part of a land-disturbing activity without first issuing a notice to comply if the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth.

c. The administrator shall issue a stop work order on all land-disturbing activity which is regulated by this chapter which has commenced without an approved plan or permit.

(e) The administrator shall notify all permit issuing authorities to withhold all future permits to the permit holder until the violation is corrected, and, upon failure to comply within the time specified in the notice to comply, the permit for the project in violation may be revoked.

(f) The administrator shall be responsible for handling complaints concerning absent or ineffective erosion control measures and will respond to a complaint within fifteen days.

(g) When, upon investigation, it is determined that ineffective erosion control measures are being followed, but such measures comply with the erosion control plan, the administrator shall be notified and shall act pursuant to sections 6-1-4, 6-1-6 and 6-1-7.<sup>5</sup> (Comp. 1974, ch. 21; Ord. 10-21-92; Ord. 7-16-03; Ord. 6-20-07)

---

<sup>5</sup> *Editor's note.* – The ordinance adopted 7-16-03 continued from the previous ordinance the reference in subsection (g) to sections 6-1-5, 6-1-7 and 6-1-8. Those sections were amended and renumbered to 6-1-4, 6-1-6 and 6-1-7 in the 7-16-03 ordinance. Accordingly, the editor made the clerical correction in the text of the Code. The 6-20-07 ordinance contained the corrected numbering.