

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF ROANOKE COUNTY, VIRGINIA, HELD AT THE ROANOKE COUNTY ADMINISTRATION CENTER ON TUESDAY, JULY 27, 2021

ORDINANCE 072721-7 AMENDING CHAPTER 8.1 (EROSION AND SEDIMENT CONTROL) OF THE ROANOKE COUNTY CODE

WHEREAS, in order to protect property, lower impacts to downstream property and reduce water quality degradation due to land development, Roanoke County is proposing revisions to Chapter 8.1 - the Erosion and Sediment Control Ordinance; and

WHEREAS, the first reading of this ordinance was held on July 13, 2021, and the second reading was held on July 27, 2021.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Roanoke County, Virginia, that the Roanoke County Code is hereby amended to read and provide as follows:

Chapter 8.1 - EROSION AND SEDIMENT CONTROL [\[1\]](#)

Footnotes:

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Editor's note— Ord. No. 022316-7, § 1, adopted February 23, 2016, in effect repealed ch. 8.1, §§ 8.1-1—8.1-11 and enacted a new ch. 8.1, §§ 8.1-1—8.1-12 as set out herein. Former ch. 8.1 pertained to similar subject matter and derived from Ord. No. 012704-9, adopted January 27, 2004; Ord. No. 082206-3, adopted August 22, 2006; Ord. No. 092507-5, adopted September 25, 2007; Ord. No. 052708-19, adopted May 27, 2008; and Ord. No. 092308-3 adopted September 23, 2008.

Cross reference— Building regulations, Ch. 7; sewers and sewage disposal, Ch. 18; water, Ch. 22; zoning, App. A; subdivisions, App. B.

State Law reference— Erosion and Sediment Control Law, Code of Virginia, § 10.1-50 et seq.

Sec. 8.1-1. - Title, purpose and authority.

This chapter shall be known as the "Erosion and Sediment Control and Steep Slope Development Ordinance of the County of Roanoke, Virginia." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other

natural resources of the County by establishing requirements for the control of soil erosion, sediment deposition and non-agricultural runoff; by establishing requirements for development of steep slopes; by developing requirements to retain stream buffers; and by establishing procedures whereby these requirements shall be administered and enforced.

This chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, known as the Virginia Erosion and Sediment Control Law, and the regulations implementing the Virginia Stormwater Management Act and the Erosion and Sediment Control Law in 9VAC25-830 through 9VAC25-890, as applicable.

(Ord. No. 022316-7, § 1, 2-23-16)

Sec. 8.1-2. - Applicability of chapter in Town of Vinton.

The provisions of this chapter shall be applicable within the corporate limits of the Town of Vinton. Administrative procedures and review fees may be established to accommodate the review of plans for development located within the town.

(Ord. No. 022316-7, § 1, 2-23-16)

Sec. 8.1-3. - Definitions.

As used in this chapter, unless the context 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. Agreement in lieu of a plan also means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of any land disturbing activity, other than a single-family residence, that disturbs between two thousand five hundred (2,500) square feet and nine thousand nine hundred and ninety-nine (9,999) square feet; 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 State Water Control Board.

Certified inspector means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the board in the area of project inspection or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

Certified plan reviewer means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the board in the area of plan review, (ii) is enrolled in the board's training program for plan review and successfully completes such

program within one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (section 54.1-400 et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in section 54.1-2200 of the Code of Virginia.

Certified program administrator means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the board in the area of program administration or (ii) is enrolled in the board's training program for program administration and successfully completes such program within one (1) year after enrollment.

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

County means the County of Roanoke.

Department means the Department of Environmental Quality.

Development means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units.

Director means the Director of the Department of Environmental Quality.

District or soil and water conservation district refers to the Blue Ridge Soil and Water Conservation District.

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, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the County to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. An erosion and sediment control plan must be prepared by a Virginia professional engineer, land surveyor, landscape architect, architect, or professional soil scientist.

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 ten thousand (10,000) square feet or less used for residential purposes.

Excavating means any digging, scooping or other methods of removing earth materials.

Existing undeveloped land means land that, prior to the issuance of the erosion and sediment control permit, does not contain pavement, structures, or other hardscape within twenty-five (25) feet of any perennial stream or contiguous wetlands, measured horizontally from the edge of the contiguous wetlands, or the ordinary high water mark if no wetlands exist.

Filling means any depositing or stockpiling of earth materials.

Geotechnical report means a report provided at the applicant's expense, prepared and stamped by a professional engineer, that communicates site conditions, and recommends design and construction methods.

- (1) The geotechnical report shall include any or all of the following basic information, as determined by the professional engineer:
 - a. Summary of all subsurface exploration data, including subsurface soil profile, exploration logs, laboratory or in situ test results, and ground water information;
 - b. Interpretation and analysis of the subsurface data;
 - c. Specific engineering recommendations for design;
 - d. Discussion of conditions for solution of anticipated problems; and
 - e. Recommended geotechnical special provisions.
- (2) For guidance in investigating site conditions and preparing geotechnical reports, the professional engineer may refer to all applicable sections of the "Checklist and Guidelines for Review of Geotechnical Reports and Preliminary Plans and Specifications," US Department of Transportation, Federal Highway Administration Publication No. FHWA ED-88-053, as amended.
- (3) The geotechnical report shall be submitted to the plan-approving authority and included in site development files prior to issuance of a land disturbing permit.

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 man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repairs of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk that is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;

- (6) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Section 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of section 10.1-1163 of the Code of Virginia;
- (7) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (8) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act (Section 10.1-604 et seq. of the Code of Virginia), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- (9) Disturbed land areas of less than two thousand five hundred (2,500) square feet in size, except as herein described for residential development in section 8.1-6(e).
- (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 this chapter.

Land-disturbing permit or approval means a permit or other form of approval issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any other land disturbing activity set forth herein.

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.

Ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

Perennial stream means a stream that has a well-defined channel that contains water year-round during a year of normal rainfall. Groundwater is the primary source of water, but the stream also carries stormwater. Disturbance of a perennial stream may require permitting from the Virginia Department of Environmental Quality and/or the United States Corps of Engineers.

Permittee means the person to whom the land-disturbing approval 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.

Previously developed land means land that prior to the issuance of the erosion and sediment control permit contained pavement, structures, or other hardscape within twenty five (25) feet of any perennial stream or contiguous wetlands, measured horizontally from the edge of the contiguous wetlands, or the ordinary high water mark if no wetlands exist.

Responsible land disturber or *RLD* means an individual holding a certificate issued by the Department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. In addition, the RLD may be a Virginia professional engineer, land surveyor, landscape architect, architect, or professional soil scientist, provided that it is the same licensed professional who sealed and signed the ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.

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

Single-family residence means a noncommercial dwelling that is occupied exclusively by one (1) family.

Steep slope means a slope greater than 3:1, or thirty-three and one-third (33.3) percent.

Stream buffer means an area that is adjacent to a perennial stream, or contiguous wetland, where natural grades and natural vegetation are left undisturbed. The stream buffer serves to protect the stream banks from excessive erosion and to allow stormwater runoff from surrounding land to flow through it to the stream in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering out sediment and other nonpoint source pollutants from runoff. No land clearing or land grading that is regulated by this ordinance shall occur in a stream buffer, except as allowed in Section 8.1.6 (v).

State permit means an approval to conduct a land-disturbing activity issued by the board in the form of a state stormwater individual permit or coverage issued under a state general permit.

State waters means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

Town means the incorporated Town of Vinton.

Transporting means any moving of earth materials from one (1) place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Virginia Erosion and Sediment Control Program or *VESCP* means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and non-agricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

VESCP plan-approving authority means the Director of the Roanoke County Office of Development Services or his or her designee, who is responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of land and for approving plans.

VESCP authority or program authority means the county which has adopted a soil erosion and sediment control program that has been approved by the Board.

Water quality volume means the volume equal to the first one-half (½) inch of runoff multiplied by the impervious surface of the land development project.

(Ord. No. 022316-7, § 1, 2-23-16)

Sec. 8.1-4. - Administration of chapter in conjunction with subdivision and zoning ordinances.

This chapter shall be administered, where applicable, in conjunction with the County's subdivision and zoning ordinances wherein such apply to the development and subdivision of land within the County or where such apply to development on previously subdivided land within the County.

(Ord. No. 022316-7, § 1, 2-23-16)

Sec. 8.1-5. - Local erosion and sediment control program.

- (a) Pursuant to section 62.1-44.15:54 of the Code of Virginia, the County hereby establishes a VESCP program and adopts the regulations promulgated by the Board; with the exception that the requirements contained in 9VAC25-840-40.19 do not apply to the regulated land-disturbing activities that meet the requirements of 8.1-7 of this chapter; (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources) and the Virginia Erosion and Sediment Control Handbook, as amended, and those more stringent local criteria which the County Board of Supervisors may adopt by resolution and incorporate into the manual of regulations and policies entitled "Stormwater Management Design Manual" and "Design and Construction Standards Manual."
- (b) In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over forty-eight (48) hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one (1) year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the one and one half (1.5), two (2), and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.
- (c) For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified in § 62.1-44.15:28 of the Stormwater Management Act and 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Regulations.
- (d) The County hereby designates the Director of Development Services or his or her assignee as the plan-approving authority.
- (e) The program and regulations provided for in this chapter shall be made available for public inspection at the office of the Department of Development Services.
- (f) Pursuant to section 62.1-44.15:53 of the Code of Virginia, an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The erosion control program of the County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(Ord. No. 022316-7, § 1, 2-23-16)

Sec. 8.1-6. - Regulated land-disturbing activities; submission and approval of plans; contents of plans.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Department of Development Services an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the VESCP authority. No approval to begin a land-disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required. Where land-disturbing activities involve lands under the jurisdiction of more than one (1) VESCP, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the applicant a fee sufficient to cover the cost associated with conducting the review.
- (b) Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may, at the discretion of the County, be substituted for an erosion and sediment control plan if executed by the plan-approving authority. Additional requirements are given below:
 - (1) Where the land-disturbing activity, from the construction of a single-family residence, results in less than five thousand (5,000) square feet of disturbed area, an "agreement in lieu of a plan" shall be accompanied by a plot plan that meets the County building permit plot plan requirements.
 - (2) Where the land-disturbing activity, from the construction of a single-family residence, results in five thousand (5,000) square feet or more of disturbed area, an "agreement in lieu of a plan" shall be accompanied by a plot plan that meets the County building permit plot plan requirements, prepared by a responsible land disturber, Virginia professional engineer, land surveyor, landscape architect, architect, or professional soil scientist. A responsible land disturber must also be provided and identified.
 - (3) The County may require additional information, or may decline to execute an agreement in lieu of a plan and may require an erosion and sediment control plan in instances where, in the County's opinion, it is necessary to properly protect downstream properties or the environment.
- (c) An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction.
- (d) If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "agreement in lieu of a plan" signed by the property owner. The property owner is responsible for complying with the provisions of (a) or (b) above for each lot to obtain an erosion and sediment control permit.
- (e) Land-disturbing activity of less than two thousand five hundred (2,500) square feet on individual lots in a residential development shall not be considered exempt from

the provisions of this chapter, if the total land-disturbing activity in the development is equal to or greater than two thousand five hundred (2,500) square feet.

- (f) The standards contained with the "Virginia Erosion and Sediment Control Regulations," and The Virginia Erosion and Sediment Control Handbook, as amended and those more stringent local criteria which the County Board of Supervisors may adopt by resolution and incorporate into the manual of regulations and policies entitled "Stormwater Management Design Manual" and "Design and Construction Standards Manual" are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. In cases where one standard conflicts with another, the more stringent applies. The VESCP plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines.
- (g) The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within sixty (60) days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law and the board's regulations, and if the person responsible for carrying out the plan certifies that he will properly perform the measures included in the plan and will conform to the provisions of this chapter. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber, to the program authority, as provided by § 62.1-44.15:52, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter. However, the VESCP plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of the responsible land disturber, as provided by § 62.1-44.15:52 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of the responsible land disturber shall be a violation of this chapter.
- (h) When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five (45) days. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the plan-approving authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- (i) The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within forty-five (45) days after the plan has been revised, resubmitted for approval, and deemed adequate.

- (j) The VESCP authority may require changes to an approved plan when:
 - (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 - (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan approving authority and the person responsible for carrying out the plan; or
 - (3) A land-disturbing activity does not begin during the one hundred eighty (180) day period following plan approval or it ceases for more than one hundred eighty (180) days. In this event, the VESCP authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the VESCP authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

- (k) Variances. The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
 - (1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
 - (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
 - (3) The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

- (l) In order to prevent further erosion, the County may require the property owner of land identified by the County as an erosion impact area to immediately take actions to minimize the delivery of sediment onto neighboring properties or into state waters, and to prepare and submit to the county an Erosion and Sediment Control Plan that details how the erosion impact area will be permanently stabilized. Failure by the property owner to comply with County directions to immediately take actions to minimize the delivery of sediment onto neighboring properties or into state waters; or failure to submit an Erosion and Sediment Control Plan within a

reasonable time period set by the County; or failure to implement the Erosion and Sediment Control Plan after approval by the County within a reasonable time period set by the County shall be a violation of this chapter. Such violation shall be subject to all of the penalties and other legal actions contained in section 8.1-10.

- (m) When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion control plan shall be the responsibility of the property owner.
- (n) In accordance with the procedure set forth in § 62.1-44.15:55 (E) of the Code of Virginia, any person engaging, in more than one (1) jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the department of environmental quality, the Virginia marine resources commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the board for review and approval consistent with guidelines established by the board. Approval of general erosion and sediment control specifications does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.
- (o) State agency projects are exempt from the provisions of this chapter, except as provided for in the Code of Virginia, section 62.1-44.15:56.
- (p) If the grade of a site is more than thirty-three and one-third (33.3) percent, refer to the International Building Code, Chapter 18, as amended, for foundation clearances from slopes.
- (q) Cut slopes or fill slopes shall not be greater than 2:1 (horizontal:vertical), unless a geotechnical report is provided for the proposed slopes.
- (r) Cut slopes or fill slopes shall not be greater than twenty-five (25) vertical feet in height, unless a geotechnical report is provided for the proposed slopes. Cut slopes or fill slopes less than or equal to 3:1 (horizontal:vertical) may exceed twenty-five (25) vertical feet in height and shall not require a geotechnical report.
- (s) For any cut slopes or fill slopes greater than or equal to 2:1 (horizontal:vertical) or greater than or equal to twenty-five (25) vertical feet in height with a slope greater than 3:1 (horizontal:vertical), as-built plans showing that the finished geometry, based on a field survey performed by a licensed surveyor, is in substantial conformity with the design shall be provided to the plan-approving authority.
- (t) Fill materials, compaction methods and density specifications shall be indicated on the site development plans. Fill areas intended to support structures shall also be indicated on the site development plans.

- (u) Development plans for all new subdivisions shall show proposed lot grades to ensure positive drainage.
- (v) Stream buffers.
 - (1) Except as provided in this section, each regulated land disturbing activity shall provide for stream buffers for the purposes of retarding runoff, preventing stream bank erosion, and filtering nonpoint source pollution from runoff.
 - (2) The stream buffer, on existing undeveloped land, shall extend a minimum of twenty five (25) feet on each side of any perennial stream or contiguous wetlands, measured horizontally from the edge of the contiguous wetlands, or the ordinary high water mark if no wetlands exist.
 - (3) The stream buffer, on previously developed land, shall either meet the requirements of (2) above, or extend from the side of any perennial stream or contiguous wetlands, measured horizontally from the edge of the contiguous wetlands, or the ordinary high water mark if no wetlands exist to the edge of existing paved surfaces, structures, or other hardscape; whichever is less.
 - (4) Each stream buffer shall be retained in as natural a condition as possible. Natural ground contours and native vegetation shall be preserved to the fullest extent possible.
 - (5) The following types of improvements and activities shall not be required to retain, establish, or manage a stream buffer, provided that the requirements of this section are satisfied:
 - a. The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code Section 62.1-44.15:51 et seq.) or an erosion and sediment control plan approved by the State Water Control Board.
 - b. The construction, installation, and maintenance by public agencies of storm drainage, water and sewer lines.
 - c. The construction and installation of water and sewer lines constructed by private interests for dedication to public agencies, provided that all of the following are satisfied:
 - i. To the extent practical, as determined by the administrator, the location of the water or sewer lines, shall be outside of all stream buffer areas.
 - ii. No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines.
 - iii. All construction and installation of the water or sewer lines shall comply with all applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

- (6) The following types of structures, control measures and activities shall be allowed in a stream buffer, provided that the requirements of this section are satisfied:
- a. Temporary erosion and sediment control measures, provided that to the extent practical, as determined by the administrator, the control measures shall be located outside of the stream buffer and disturbance impacts are minimized. Upon removal of the temporary measures, grading and plantings shall be provided to reestablish the stream buffer by restoring pre-development grades and providing appropriate plantings.
 - b. Water-dependent facilities; water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archaeological activities; provided that all applicable federal, state and local permits are obtained.
 - c. Storm drainage facilities necessary to drain to the stream, and stormwater management best management practices, provided that the disturbance to the buffer is minimized.
 - d. Roads, streets and driveways, provided that disturbance to the natural stream channel and buffer is limited to the minimum reasonably required to develop the site. Whenever practical, roads, streets, and driveways shall not be constructed parallel to a stream within the buffer.
 - e. Selective removal of invasive plants and reestablishment of vegetative buffer using native plants.
 - f. Stream drainage improvements that comply with all federal and state permitting requirements. Where channel improvements are made, stream buffers shall be reestablished on both sides of the improved channel. There shall be no stream buffer requirements where streams are replaced with storm drainage pipes.
- (7) Stream buffers shall be indicated on erosion and sediment control plans, or plot plans; and they shall be physically marked and protected in the field with safety fencing or other appropriate means prior to the commencement of clearing or grading.
- (8) Any lot that was platted prior to the effective date of this paragraph, and any land disturbance whose erosion and sediment control plan has been submitted to the County for review prior to the effective date of this paragraph, are exempt from the requirements to protect and establish stream buffers.

Sec. 8.1-7. - Special provisions for land-disturbing activities that disturb less than ten thousand (10,000) square feet

- (a) This section applies to all land-disturbing activities that disturb less than ten thousand (10,000) square feet, except that these special provisions shall not apply to any land-disturbing activity of less than ten thousand (10,000) square feet on

individual lots in a residential development, if the total land-disturbing activity in the development is equal to or greater than ten thousand (10,000) square feet.

- (b) Land-disturbing activities shall meet all of the requirements of this chapter, except for the following:
 - (1) The technical provisions contained in 9VAC25-840-40.19 shall not apply to land disturbing activities that meet the requirements of this section. These include:
 - a. The adequacy of downstream channels and pipes are not required to be analyzed and verified.
 - b. No stormwater management measures to address any flow rate capacity or velocity requirements for downstream natural or man-made channels shall be required.
 - (2) An agreement in lieu of a plan may, at the discretion of the County, be substituted for an erosion and sediment control plan if executed by the plan-approving authority. All of the requirements of section 8.1-6(b) shall apply. This provision expands the use of an agreement in lieu of, beyond a single-family residence, to all land-disturbing activities that disturb less than ten thousand (10,000) square feet.
- (c) Nothing in this section shall be construed to negate any requirements of the stormwater management ordinance of the County, where applicable.

(Ord. No. [022316-7](#), § 1, 2-23-16)

Sec. 8.1-8. - Permits; fees; surety; etc.

- (a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed and evidence of state permit coverage where it is required.
- (b) No person shall engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this chapter, and has paid the fees and posted the required surety.
- (c) Fees. An applicant requesting permission to begin land-disturbing activity pursuant to this article shall pay the following fees to cover the administrative expense of review, permitting, and inspection.

Disturbed Area (Square Feet)	Fee
Less than 5,000	\$25.00

5,000 - 9,999	\$50.00
10,000 - or greater	\$100.00 + \$100.00 per disturbed acre, or portion of an acre

- (d) No land-disturbing permit shall be issued until the applicant submits with the application an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed.
- (e) Surety. All applicants for permits shall provide to the County a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Director of Development Services or his assignee, to ensure that measures could be taken by the County at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality plus a contingency for the County's administrative costs and inflation. The contingency shall be ten (10) percent of the total estimated cost to initiate and maintain the appropriate conservation action. Should it be necessary for the County to take such conservation action, the County may collect from the applicant any costs in excess of the amount of the surety held.
- (f) Within sixty (60) days of adequate stabilization and completion of all other site requirements, as determined by the Director of Development Services or his or her assignee, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated.
- (g) These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

(Ord. No. [022316-7](#), § 1, 2-23-16)

Sec. 8.1-9. - Monitoring, reports, and inspections.

- (a) The responsible land disturber, as provided in Section 62.1-44.15:52 of the Code of Virginia, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The County may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- (b) The Department of Development Services shall periodically inspect the land-disturbing activity in accordance with 9VAC25-840-60 of the Virginia Erosion and

Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the Director of Development Services, or his or her assignee, determines that there is a failure to comply with the plan or if the plan is determined to be inadequate, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided by this chapter.

- (c) Upon issuance of an inspection report denoting a violation of Va. Code §§ 62.1-44.15:55,-44.15:56, the Director of Development Services, or his or her assignee, may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue a stop work 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.

If land-disturbing activities have commenced without an approved plan or proper permits, the Director of Development Services or his or her assignee may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue a stop work order requiring that all of the land-disturbing and/or construction activities be stopped until an approved plan or any required permits are obtained. Failure to comply will result in civil charges or penalties as outlined in section 8.1-10 of this chapter.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such a stop work order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such a stop work order may be issued only after the permittee has failed to comply with such a notice to comply.

The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the County or permit holder for appropriate relief to the Circuit Court. The County shall serve such stop work order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said stop work order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the stop work order, the Director of Development Services or his or her assignee may issue a stop work order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the County.

The owner may appeal the issuance of a stop work order to the Circuit Court of Roanoke County. Any person violating or failing, neglecting or refusing to obey a stop work order issued by the Director of Development Services or his or her assignee may be compelled in a proceeding instituted in the Roanoke County Circuit Court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the stop work order shall immediately be lifted. Nothing in this section shall prevent the Director of Development Services or his or her assignee from taking any other action authorized by this chapter.

(Ord. No. [022316-7](#), § 1, 2-23-16)

Sec. 8.1-10. - Penalties, injunctions, and other legal actions.

(a) Violators of this chapter shall be guilty of a Class I misdemeanor.

(b) Civil penalties:

(1) A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:

- a. Commencement of land disturbing activity without an approved plan as provided in section 8.1-6 shall be one thousand dollars (\$1,000.00) per day.
- b. Vegetative measures. Failure to comply with items 1, 2 3, or 5 of the minimum standards shall be three hundred dollars (\$300.00) per violation per day.
- c. Structural measures. Failure to comply with items 4, 6, 7, 8, 9, 10, 11, 15, 17, or 18 of the minimum standards shall be three hundred dollars (\$300.00) per violation per day.
- d. Watercourse measures. Failure to comply with items 12, 13 and 15 of the minimum standards, or unapproved disturbance of stream buffer shall be three hundred dollars (\$300.00) per violation per day.
- e. Underground utility measures. Failure to comply with item 16(a) and/or (c) shall be three hundred dollars (\$300.00) per violation per day.
- f. Failure to obey a stop work order shall be one thousand dollars (\$1,000.00) per day.

- g. Failure to stop work when permit revoked shall be one thousand dollars (\$1,000.00) per day.
- (2) Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00), 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 ten thousand dollars (\$10,000.00). The assessment of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section.
- (c) The Director of Development Services or his assignee, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Roanoke County Circuit Court to enjoin a violation or a threatened violation of Va. Code §§ 62.1-44.15:55, 62.1-44.15:56, without the necessity of showing that an adequate remedy at law does not exist.
- However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- (d) In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the County in a civil action for damages.
- (e) Civil penalty enumerated. 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 two thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the County. Any civil penalties assessed by a court shall be paid into the treasury of the County, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
- (f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the County may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (b)(2) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (b) or (e).
- (g) The County's attorney shall, upon request of the County take legal action to enforce the provisions of this chapter.

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

(Ord. No. 022316-7, § 1, 2-23-16)

Sec. 8.1-11. - Hearings and appeals.

(a) *Hearings.*

- (1) Any permit applicant or permittee, or person subject to the requirements of this chapter, who is aggrieved by any action of the County in approving or disapproving any plans required by this chapter, or by any enforcement action taken pursuant to section 8.1-10, shall have the right to request, in writing, a hearing to the County Administrator or his/her designee provided a petition requesting such hearing is filed with the administrator within thirty (30) days after notice of such action is given by the administrator.
- (2) The hearing shall be held provided that the County Administrator and the aggrieved party has at least thirty (30) days prior notice.
- (3) A verbatim record of the proceedings of such hearings shall be taken and filed with the County Board of Supervisors. Depositions may be taken and read as in actions at law.
- (4) The County Administrator, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of any witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the County Administrator whose actions may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.
- (5) During its review, the County Administrator shall consider evidence presented by all parties. After considering the evidence, the County Administrator's decision shall be final.

(b) *Appeals.*

Final decisions of the County Administrator, under this chapter, shall be subject to judicial review by the Roanoke County Circuit Court, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties, or privileges of any permit applicant, permittee, or person subject to any enforcement action under this chapter.

(Ord. No. 022316-7 , § 1, 2-23-16)

Sec. 8.1-12. - Civil violations, summons, generally.

- (a) The Director of Development Services, or his or her assignee, shall prepare an appropriate erosion and sediment control civil violation summons for use in enforcing the provisions of this chapter.
- (b) Any person of the VESCP plan approving authority charged with enforcing this chapter shall serve upon any owner or permittee in violation of this chapter, a summons notifying the owner or permittee of said violation. If unable to serve the owner or permittee in person, the County may notify by summons an owner or permittee committing or suffering the existence of a violation by certified, return receipt requested mail, of the infraction. The Roanoke County Sheriff's Office may also deliver the summons. The summons shall contain the following information:
 - (1) The name and address of the person charged.
 - (2) The nature of the violation and chapter provision(s) being violated.
 - (3) The location, date, and time that the violation occurred, or was observed.
 - (4) The amount of the civil penalty assessed for the violation.
 - (5) The manner, location, and time that the civil penalty may be paid to the County.
 - (6) The right of the recipient of the summons to elect to stand trial for the infraction and the date of such trial.
- (c) The summons shall provide that any person summoned for a violation may, within five (5) days of actual receipt of the summons or, within ten (10) days from the date of mailing of the summons, elect to pay the civil penalty by making an appearance in person, or in writing by mail to the County Treasurer's Office and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the violation charged and provide that a signature to an admission of liability shall have the same force and effect as a judgment in court; however, an admission shall not be deemed a criminal conviction for any purpose.
- (d) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the County shall cause the sheriff of the County to serve the summons on the person charged in the manner prescribed by law. The violation shall be tried in General District Court in the same manner and with the same right of appeal as provided for in Title 8.01 of the Code of Virginia. In any trial for a scheduled violation authorized by this section, it shall be the burden of the County to show the liability of the violator by the preponderance of the evidence. Any admission of liability, or finding of liability shall not be a criminal conviction for any purpose.
- (e) The remedies provided for in this section are cumulative, and are not exclusive and, except as provided above, shall be in addition to any other remedies by law.
- (f) The owner or permittee may pay the civil penalty to the treasurer prior to the trial date, provided he also pays necessary court costs in addition to the civil penalty.
- (g) Within the time period prescribed in (c), above, the owner or permittee, may contest the violation by presenting it to the Director of Development Services, who shall certify the contest in writing, on an appropriate form, to the General District Court.

(h) Failure to pay the civil penalty, or to contest the violation, within the time period prescribed in (c), above, shall result in the immediate issuance of a stop work order and the revocation of the permit, if any.

(Ord. No. 022316-7, § 1, 2-23-16)

On motion of Supervisor Peters to adopt the ordinance, to become effective immediately, seconded by Supervisor Hooker and carried by the following recorded vote:

AYES: Supervisors Mahoney, Hooker, North, Radford, Peters

NAYS: None

A COPY TESTE:

Deborah C. Jacks
Chief Deputy Clerk to the Board of Supervisors

cc: Tarek Moneir, Director of Development Services
Rachel Lower, Senior Assistant County Attorney