

Chapter 1220
Erosion Control

- 1220.01 Short title; incorporation of Virginia Erosion and Sediment Control Law and Virginia Erosion and Sediment Control Regulations.
- 1220.02 Purpose.
- 1220.03 Authority.
- 1220.04 Application of chapter to agricultural, horticultural and forest lands. (Repealed)
- 1220.05 Definitions.
- 1220.06 Land-disturbing activities.
- 1220.07 Monitoring and compliance.
- 1220.08 Fees.
- 1220.09 Application to incorporated towns and State and Federal agencies.
- 1220.10 Effect on prior activities. (Repealed)
- 1220.11 Effective date.
- 1220.12 Violations; remedies; civil penalty; notice.
- 1220.13 Appeals and Judicial Review.
- 1220.99 Penalty.

CROSS REFERENCES

Virginia Erosion and Sediment Control Law (VESCL) - see

Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, as amended

Code of Virginia §§ 62.1-44.15:51 et seq.

Code of Virginia §§ 10.1-1100, et seq. (Dept. of Forestry)

Code of Virginia §§ 54.1-1400 et seq. (Architects, Engineers, Surveyors, and Landscape Architects)

Code of Virginia §§ 54.1-2208.1 et seq. (Geologists)

Virginia Administrative Code

Virginia Erosion and Sediment Control Regulations (9VAC25-840), as amended

Virginia Erosion and Sediment Control Handbook (VESCH)

Loudoun County Facilities Standards Manual (FSM)

Department of Planning - see ADM. Ch. 238

Planning Commission - see ADM. Ch. 262

Drainage - see P. & Z. 1245.07

1220.01 SHORT TITLE; INCORPORATION OF VIRGINIA EROSION AND SEDIMENT CONTROL LAW AND VIRGINIA EROSION AND SEDIMENT CONTROL REGULATIONS.

This chapter shall be known as the "Loudoun County Erosion and Sediment Control Ordinance." The following law sections are an edited text version of the Virginia Erosion and Sediment Control Law (Title 62. 1, Chapter 3, Article 2.4 of the Code of Virginia, as amended.

The following regulatory sections of the Virginia Erosion and Sediment Control Regulations (9VAC25-840) as amended by the State Water Control Board through 1995, effective March 22, 1995 are incorporated herein.

This chapter also incorporates the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or as amended, as a technical guide which contains certain guidelines, standards, criteria, techniques and methods for the control of erosion and sediment resulting from land-disturbing activities, with modifications (a)(1),(a)(2) and (a)(3), as follow, in the effort to meet the requirements dictated by the Virginia Erosion and Sediment Control Law (VESCL) and the Virginia Erosion and Sediment Control Regulations (VESCR). In addition, the "Handbook Minimum Standards", as set forth in 9VAC25-840, as amended, shall be adopted and enforced to establish minimum design and implementation standards for control measures in the effort to control erosion and sedimentation from land-disturbing activities in Loudoun County.

(a) State Standards & Specifications.

(1) Standard & Specification #1.05 Straw Bale Barrier and #1.07 Brush Barrier. These practices are not to be used without specific authorization from the Director of the Department of Building and Development, with the exception that brush barriers may be used as an interim control prior to the installation of the first phase of the perimeter erosion and sediment controls.

(2) Standard & Specification #1.40 Level Spreader. This practice is not to be used without specific authorization from the Director of the Department of Building and Development.

(3) Standard & Specification #3.13 Temporary Sediment Trap. A pipe outlet sediment trap shall be required for drainage areas of one to three acres. Storage volume calculations shall be based on 134 cubic yards per acre.

(b) State Minimum Standards (MS) 9VAC25-840.

(1) MS-1 - Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.

(2) MS-2 - During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stock piles on site as well as borrow areas and soil intentionally transported from the project site.

(3) MS-3 - A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent stabilization shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.

(4) MS-4 - Sediment Basins and Traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land disturbing activity and shall be made functional before upslope land disturbance takes place.

(5) MS-5 - Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.

(6) MS-6 - Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.

A. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.

B. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of the drainage area. The outfall system shall, at a minimum, maintain the structural integrity of basin during the 25 year storm of 24 hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.

(7) MS-7 - cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

(8) MS-8 - Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.

(9) MS-9 - Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.

(10) MS-10 - All storm sewer inlets that are made operable during construction shall be protected so that sediment laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

(11) MS-11 - Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and the receiving channel.

(12) MS-12 - When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.

(13) MS-13 - When a live watercourse must be crossed by construction vehicles more than twice in any six month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.

(14) MS-14 - All applicable federal, state and local requirements pertaining to working in or crossing live watercourses shall be met.

(15) MS-15 - The bed and banks of a watercourse shall be stabilized immediately after work in the water course is completed.

(16) MS-16 - Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

A. No more than 500 linear feet of trench may be opened at one time.

B. Excavated material shall be placed on the uphill side of trenches.

C. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both and discharged in a manner that does not adversely affect flowing streams or off-site property.

D. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.

E. Restabilization shall be accomplished in accordance with this chapter.

F. Applicable safety requirements shall be complied with.

(17) MS-17 - Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surfaces shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land disturbing activities.

(18) MS-18 - All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed unless otherwise authorized by the VESCP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)

1220.02 PURPOSE.

The purpose of this chapter is to prevent the degradation of properties, stream channels, waters and other natural resources of Loudoun County by establishing requirements for the control of soil erosion, sediment deposition and stormwater runoff and by establishing procedures whereby these requirements shall be administered and enforced and contribute thereby to the health, safety and general welfare of the citizens of Loudoun County.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)

1220.03 AUTHORITY.

This Chapter and reference to the Virginia Erosion and Sediment Control Handbook are authorized by the Code of Virginia, Title 62.1. Chapter 3. Article 2.4 (§§ 62.1-44.15:51 et seq.) known as the Virginia Erosion and Sediment Control Law and Section (9VAC25-840) of the Virginia Administrative Code, known as the Virginia Erosion and Sediment Control Regulations.

(Ord. 95-08. Passed 9-20-95.) (Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)

1220.04 APPLICATION OF CHAPTER TO AGRICULTURAL, HORTICULTURAL AND FOREST LANDS. (REPEALED)

(EDITOR'S NOTE: Section 1220.04 was repealed by Ordinance 90-04, passed May 7, 1990.)

1220.05 DEFINITIONS.

As used in this chapter:

(a) "Applicant" means the person legally responsible for the land-disturbing activity for which a permit is requested, and shall include the owner of the property on which such land-disturbing activity is proposed to be accomplished as well as any contractor, agent or other person who, by virtue of contractual employment or other relationship to the owner of the property on which such land-disturbing activity is proposed to be accomplished, is or will be in actual or effective control of all or a portion of the land-disturbing activity for which an application is or has been made.

(b) "Approved plan" means that plan approved by the Director of the Department of Building and Development by his issuance of a land-disturbing activity permit, which plan contains the permittee's proposed methodology for controlling erosion, sedimentation and storm water runoff resulting from his proposed land-disturbing activity.

(c) "Board" means the State Water Control Board.

(d) "Certified Inspector" means an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of project inspection or is enrolled in the Board's training program for project inspection and successfully completes such program within one year of enrollment.

(e) "Certified Plan Reviewer" means an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of plan review, is enrolled in the Board's training program for plan review and successfully completes such program within one year of enrollment, or is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article I (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.

(f) "Certified Program Administrator" means an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of program administration or is enrolled in the Board's training program for program administration and successfully completes such program within one year of enrollment.

(g) "Clearing" means any activity which removes a substantial amount of vegetative ground cover.

(h) "Director" means the Director of the Department of Building and Development or his designated agent.

(i) "Erosion" as applied to soil, means the disintegration, detachment, carrying away or wearing away of the land surface by running water, wind and/or other natural agents.

(j) "Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into State waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

(k) "Excavating" means any digging, scooping or other method of removing earth materials or a substantial amount of such earth materials.

(l) "Filling" means any depositing or stockpiling of soil or earth materials.

(m) "Grading" means any excavating or filling of earth materials or any combination thereof.

(n) "Land-disturbing activity" means any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

(2) Individual service connections;

(3) 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;

(4) Surface or deep mining;

(5) Repair or rebuilding of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of a railroad company;

(6) Disturbed land areas of less than 5,000 square feet;

(7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(8) Emergency work to protect life, limb or 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, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Director of the Department of Building and Development when applicable;

(9) Installation, maintenance or repair of any underground public utility line, provided that such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;

(10) Exploration or drilling for oil and gas, including the well site, roads, feeder lines and off-site disposal areas; (Ord. 95-08. Passed 9-20-95.)

(11) 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 exemption 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 (Sections 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, or to filling with earth materials imported from off-site.

(12) 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 provisions of the Dam Safety Act, Article 2 (Sec. 10.1-604 et seq.) of Chapter 6 of Title 10.1, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation. However, this exemption shall not apply to filling with earth materials imported from off-site. (Ord. 00-06. Passed 6-5-00.)

(o) "Land-disturbing permit" means a permit issued by the Loudoun County Department of Building and Development for the clearing, filling, excavating, grading, and transporting of soil or for any combination thereof or for any purpose set forth herein.

(p) "Local erosion and sediment control VESCP" means an outline of the various methods employed by a district or locality to regulate land-disturbing activities, and thereby minimize erosion and sedimentation in compliance with the State program, and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

(q) "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.

(r) "Permittee" means an applicant whose application has been approved by the Director of the Department of Building and Development and who has been issued a land-disturbing activity permit by the Director of the Department of Building and Development.

(s) "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.

(t) "Preliminary zoning clearance" means written certification from the County Department of Planning and Zoning, or a town government, where appropriate, that the property which is the subject of the certification has been reviewed for compliance with the appropriate zoning ordinance and been given preliminary approval.

(u) "Responsible Land Disturber" means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan, who (1) holds a Responsible Land Disturber certificate of competence, (2) holds a current certificate of competence from the State Water Control Board in the areas of Combined Administration, Program Administration, Inspection or Plan Review, (3) holds a current Contractor certificate of competence for erosion and sediment control, or (4) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§§ 54.1400 et seq.) of Chapter 4 of Title 54.1.

(v) "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water, gravity or ice and has come to rest on the earth's surface either above or below sea level.

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

(x) "Soil and Water Conservation District" means the Loudoun Soil and Water Conservation District, organized in accordance with the provisions of Title 10.1, Chapter 5, Article 3 of the Code of Virginia.

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

(z) "Stockpile" means the acceptance, collection, accumulation or aggregation of soil or dirt from on-site as well as off-site sources. Stockpiles shall not be located in environmentally sensitive areas such as steep slopes or floodplains.

(aa) "Town" means an incorporated town of Loudoun County.

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

(cc) "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 nonagricultural 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 as, where applicable, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, plan review, inspection and enforcement.

(dd) "Virginia Erosion Control Program Authority" or "VESCP authority" means Loudoun County, which is approved by the State Water Control Board to operate a Virginia Erosion and Sediment Control Program.

(ee) "VESCP plan approving authority" means the Department of Building and Development, which is responsible for determining the adequacy of the Erosion and Sediment Control Plan submitted for land-disturbing activities on a unit or unit of lands and for approving plans.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 11-13. Passed 10-4-11; Ord. 17-12. Passed 12-13-17.)

1220.06 LAND-DISTURBING ACTIVITIES.

(a) Permit Required. No person shall conduct, or authorize another to conduct, any land-disturbing activity in the County, unless such person or his authorized agent first obtains from the Director of the Department of Building and Development, and maintains in good standing, a permit entitling such person and any contractor or agent of such person to conduct such activity. No permit involving land-disturbing activity will be issued without an approved erosion and sediment control plan by Loudoun County and certification that the plan will be carried out by the designated Responsible Land Disturber. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all associated permits required by Federal, State and local laws and regulations shall be obtained and evidence of such permits submitted to the County. The approval of an erosion and sediment control plan shall not relieve the owner or applicant of any applicable local, State or Federal permit requirements. However, if any person conducts, or authorizes another to conduct, any land-disturbing activity involving land under the jurisdiction of more than one local erosion control program, such person may, in lieu of obtaining a permit from the Director, obtain a permit from the State Water Control Board. In the latter case, verification that a State permit has in fact been issued, and notice of any condition applying thereto, shall be filed with the

Director before the land-disturbing activity applicable thereto commences.

Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the State Water Control Board for review and written comments. The specifications shall apply to construction, installation or maintenance of electric transmission, natural gas and telephone utility lines and pipelines and the construction of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.

(b) Permit Application. Application for the permit required by this section to be obtained from the Director of the Department of Building and Development shall be made to such Director on forms furnished by him. No application for such permit shall be made by any applicant, or accepted by the Director, unless such application is accompanied, where appropriate, by a valid preliminary zoning clearance issued as to the property which is the subject of such application. Such application shall be made by, or on behalf of, the owner of the property on which it is proposed to engage in the land-disturbing activity for which the application is made, and such owner shall be deemed responsible for the acts of himself and of any other person engaging in any part of such land-disturbing activity. Such responsibility shall be in addition to the responsibility which this chapter attaches to any applicant or person other than such owner.

(c) Erosion and Sediment Control Plan. The application for a grading permit shall be submitted to and reviewed by the Loudoun County Department of Building and Development, which is the plan-approving authority. The application for a permit shall include a proposed erosion and sediment control plan for the proposed land-disturbing activity and certification from the applicant that the plan will be followed. In addition, as a prerequisite to approval of an Erosion and Sediment Control Plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, who will be in charge of and responsible for carrying out the approved plan. This designee shall be known as the "Responsible Land Disturber." Such erosion and sediment control plan shall propose that a minimum of land-disturbing activity take place in any flood plain and that where such is required, the land-disturbing activity shall be conducted as not to interfere with or otherwise change, other than temporarily, the normal flood flow on the land affected by such activity. The Erosion and Sediment Control plan shall follow the criteria, guidelines and specifications set forth in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, as amended, and, where the Director of the Department of Building and Development deems it appropriate, such plan shall provide for sequentially staging grading operations over time, so that the area and duration of exposure to the elements are minimized. In addition, a two-phase erosion and sediment control plan will be required that specifically addresses the stages of construction. This two-phase plan shall be designed to ensure adequate erosion and sediment control protection from the beginning of a project until its completion. The first phase of the plan will describe the conservation measures required during the initial land clearing and rough grading and the second phase plan will describe the conservation measures required once the storm sewer system is installed and functional and the roads are in a stabilized condition. A detailed narrative must accompany the plan that addresses the topographical and site drainage features and the stage of construction at which the transition is made from the initial plan to the secondary plan. If the plans show stormwater management facilities, it must be clearly stated when such facilities shall be constructed. The use of diversion berms to break up drainage divides to support the use of sediment traps as opposed to sediment basins will not be allowed if such diversion berms inhibit the constructability of the site.

(d) Tree Preservation, Historic and Archaeological Resources and Environmentally Sensitive Areas. The application for a grading permit shall include detailed information on the erosion and sediment control plan and explained in the narrative where there are preservation areas, such as tree preservation areas, historic and archaeological resources, and cemeteries, where such areas are governed by proffers or State or Federal regulations, and areas voluntarily determined for reservation. Such sites to be reserved shall be demarcated with Super Silt Fence as described in the Loudoun County Facilities Standards Manual, or other approved commercially reasonable measures as described in the Virginia Erosion and Sediment Control Handbook to ensure that these resources shall not be impacted during development. Environmentally sensitive areas such as wetlands, steep slopes and floodplains shall be delineated on the erosion and sediment control plan, with appropriate erosion and sediment control measures provided to protect these resources during the course of development.

(e) Erosion Impact Area. The Director of Building and Development may require an erosion and sediment control plan and a grading permit for any land deemed to be an erosion impact area.

(f) Financial Guarantee of Performance. The application for a permit shall include a financial guarantee that the land-disturbing activity will be carried out in a manner consistent with the application, including any amendment to such application. Such financial guarantee shall take the form of a reasonable performance and maintenance bond, cash escrow, letter of credit, or any combination of the same, or any other legal arrangement acceptable to the County. Such bond or such other financial guarantee shall incorporate a right in the Director of the Department of Building and Development to enter upon the property for the purpose of utilizing such financial guarantee to implement the proposed soil and sediment control plan of the applicant or to take whatever other measures are necessary to achieve the goals of such plan where it appears that the applicant is not performing, or that he will not perform, in substantial compliance with

the terms of such plan. If the County takes such conservation action upon such failure by the permittee, the County may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. No permit shall be granted by the Director unless he approves of the proposed financial guarantee of performance and/or maintenance proposed by the applicant. Notwithstanding the foregoing, the Director shall waive the financial guarantee for disturbed land areas of less than 10,000 square feet where the land disturbing activity is for an individual single family detached dwelling and/or associated accessory structures and uses, or for any structure intended for agricultural use, except where such land disturbing activity is proposed within the Mountainside Development Overlay District, the Limestone Overlay District, or Steep Slopes areas, as defined in the Zoning Ordinance. Within sixty days of the achievement of adequate stabilization of the land-disturbing activity, as determined by the Department of Building and Development in any project or section of a project, and after the applicant has applied in writing to the Department of Building and Development for release of such security for performance and submitted any associated administrative fee for such release, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

(g) Right to Monitor Land-Disturbing Activities. The application for a permit shall include a provision for appropriate agents and employees of the County Government, at reasonable times, to go upon the property on which permission has been sought to conduct land-disturbing activities and to monitor such activities. In addition, the Director of Building and Development may require, as a condition for approval of an application for, or as an amendment to a permit, monitoring and reporting to the Director from the person responsible for carrying out the plan to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment.

(h) Application Procedure and Review. Upon receipt of the application by the Director of the Department of Building and Development, it shall be referred to the Loudoun Soil and Water Conservation District, VESCP program authority, or town government where appropriate, for review. Upon completion of review by such District or such town government, the application shall be returned to the Director of the Department of Building and Development, and after receiving the review and recommendation of such District and/or town government and after the posting of a financial guarantee as required by this chapter, but in any event within forty-five days after first officially receiving such application, the Director shall render a final written decision to the applicant either approving or denying the application on the basis of whether or not the plan meets the criteria, guidelines and specifications of the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, as amended, and whether or not the other applicable requirements of this chapter have been met. If the Director denies the application, he shall state in his written decision the specific reasons for such denial and shall specify such modifications, terms and conditions as would permit approval of the plan. Where no final decision is rendered by the Director within such forty-five day period, the application shall be deemed approved and the applicant authorized to proceed with the proposed land-disturbing activity, provided that all fees have been paid as required in Section 1220.08. Where the final written decision of the Director has adversely affected the rights, duties or privileges of the applicant, such applicant may, within thirty days from the date of such final decision of the Director, file a writ of certiorari with the Circuit Court of the County for review of such decision.

(i) Variance Requirements. The Loudoun County Department of Building and Development may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions by granting a variance. A variance must be requested by the applicant in writing and responded to by the Director of Building and Development or his designee, in writing to be considered approved. A variance may be granted under the following conditions:

(1) At the time of erosion and sediment control plan submission, an applicant may request a variance to be incorporated in the erosion and sediment control plan. The applicant shall explain the reasons for requesting the variance in writing. Specific variances, which have been approved by the Department, shall be documented in the plan.

(2) During construction, the person responsible for implementing the approved Erosion and Sediment Control Plan may request a variance in writing from the Department. The Department shall forward a written approval or denial of said request. If the Department does not approve a variance request within 10 days of receipt of the request, the request shall be considered to be denied. Following any denial the applicant may resubmit a variance request with additional information.

(j) Application Fee. The Director of Building and Development shall charge a reasonable fee as established by the Board of Supervisors to defray the cost of program administration.

(k) Duration of Permit. Any permit granted pursuant to this section shall be in effect for no longer than three years after the date of issuance. In addition, any permit granted by this section shall automatically expire as of the date of expiration for, or termination of any financial guarantee tendered by the applicant. If a permitted project is not completed within the three-year time frame, then the applicant must re-apply according to the procedures as described in Section 1220.06 Land Disturbing Activities or appeal in writing to the Director of the Department of Building and Development for an extension of

the grading permit period not to exceed an additional six months. Once a grading permit has been approved in writing by the County, the applicant shall have a period of six months (180 days) from the date of approval to submit and receive County approval of collateral for the project or the permit shall be considered expired.

(l) Re-application. Any applicant whose application has been denied by the Director may re-apply to the Director at any time. Such re-application shall follow the same procedures and meet the same requirements as are otherwise set forth in this chapter relative to an initial application, and there shall be no additional fee requirement for such re-application, except that there shall be charged such fees as are provided in Section 1220.08 for initial applications for a second or greater number of re-applications involving the same, or substantially the same, proposed land-disturbing activity.

(m) Relation of Permit to Other Governmental Review of Land Development. In addition to the requirements set forth in subsection (l) hereof, if a permit required under this chapter is a prerequisite to approval by any department or agency of the County Government or any town for any proposed development of land, and if upon final review by any such department or agency or town, such proposed development is disapproved, such land-disturbing permit shall thereafter be subject to revocation by the Director of the Department of Building and Development.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 11-13. Passed 10-4-11; Ord. 17-12. Passed 12-13-17.)

1220.07 MONITORING AND COMPLIANCE.

(a) Periodic Inspections. The Department of Building and Development, through a certified Virginia Department of Environmental Quality Erosion and Sediment Control Inspector, shall conduct inspections of any land-disturbing activity for which a grading permit has been issued. The inspector shall assess compliance with the approved erosion and sediment control plan and County Codified Ordinances as well as the Virginia Erosion and Sediment Control Law and Regulations. The inspector shall inspect site projects in accordance with the Department of Building and Development Erosion and Sediment Control Program Enforcement Protocol, or as amended, and "Board" approved Alternative Inspection Program in accordance with the Virginia Erosion and Sediment Control Regulations (4VAC50-30-60B).

(b) Procedure in the Event of Noncompliance. If the Director of the Department of Building and Development, or his designee, determines that the permittee has failed to comply with the approved plan, such Director, or his designee, shall immediately serve or have served upon the permittee, by hand delivery or by registered or certified mail, to the address specified by the permittee in his permit application, a notice to comply. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified or to initiate the required corrective action within a reasonable time after such notice, he shall be subject to immediate revocation of his permit by action of the Director and he shall, further, be deemed in violation of this chapter and, upon conviction, shall be subject to the penalties provided in this chapter. In addition, upon failure of the permittee to comply within the time specified, or to initiate the required corrective action within a reasonable time after such notice, the Director shall have the right, at his sole discretion, to immediately enforce the terms of the financial guarantee of performance and maintenance given by the permittee.

Notwithstanding any other provision of this chapter, whenever the Director determines that there has been a failure to comply with a notice of compliance issued under this section, the Director may order or recommend that any other permit associated with the grading permit, or license issued to the permittee, or to any other party, the activity to be performed under which can properly be considered to be dependent on or substantially related to the proper execution of the approved plan, be revoked until such time as the permittee is once again determined by the Director to be in compliance with the approved plan, and this provision shall be deemed authority for any appropriate official of the County Government, or any town, where appropriate, to revoke such other permit or license. Such other permits or licenses shall include, but are not necessarily limited to, building permits, zoning permits and clearances, health permits and other land-disturbing activity permits. In the event of the revocation of a grading permit or the issuance of a Stop Work Order, the owner or applicant shall be required to re-apply for the grading permit and submit the required grading permit fees based on fee schedules at the time of revocation or the issuance of a Stop Work Order for the grading permit, or as amended, and successfully pass site compliance inspection.

(c) Procedure in the Event of Noneffectiveness. At any time after the issuance of a permit under this chapter, the Director of the Department of Building and Development may change or amend the approved plan in either or both of the following cases:

(1) Where inspection has revealed the inadequacy of the plan to satisfy applicable regulations; or

(2) Where the permittee finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the approved plan, consistent with the requirements of this

chapter, are agreed upon by the Director and the permittee.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)

1220.08 FEES.

A schedule of fees shall apply to applications and certain re-applications submitted or issued pursuant to this chapter. This schedule will be published and updated, as needed, by the Department of Building and Development.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)

1220.09 APPLICATION TO INCORPORATED TOWNS AND STATE AND FEDERAL AGENCIES.

(a) Incorporated Towns. This chapter shall apply to all incorporated towns within Loudoun County. Any town within the County boundaries may adopt and administer an erosion and sediment control program provided the State Water Control Board approves the program. All incorporated towns within the County that do not have Board approved erosion control programs shall be governed by the County Erosion and Sediment Control Program.

(b) State and Federal Agencies. Land-disturbing activity conducted by, or on behalf of, any State or Federal agency shall not come under the purview of this chapter, except as may be mutually agreed upon between the governing body of the County and such State or Federal agency.

(Ord. 90-04. Passed 5-7-90; Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)

1220.10 EFFECT ON PRIOR ACTIVITIES. (REPEALED)

(EDITOR'S NOTE: Section 1220.10 was repealed by Ordinance 90-04, passed May 7, 1990.)

1220.11 EFFECTIVE DATE.

The effective date of this chapter is June 17, 1975.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05.)

1220.12 VIOLATIONS; REMEDIES; CIVIL PENALTY; NOTICE.

(a) Stop Work Order. Upon receipt of a sworn complaint of a substantial violation of this chapter from the Director of the Department of Building and Development, or his designee, a representative of the program authority, the County Administrator, or his designee, may issue an order requiring that all or part of the land-disturbing activities on a site be stopped until the corrective measures specified in the order have been fully satisfied. If land-disturbing activities have commenced without an approved plan as provided in Section 1220.06, the County Administrator, or his designee, shall issue a Stop Work Order and all of the land-disturbing activities must cease until an approved Erosion and Sediment Control plan and any required permits are obtained. Where the alleged violation 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, the Stop Work Order may be issued whether or not the alleged violator has been issued a notice to comply under this chapter. Otherwise, the Stop Work Order may be issued only after the alleged violator has failed to comply with a notice to comply issued under this chapter. The Stop Work Order shall be served in the same manner as a notice to comply and shall remain in effect for up to seven days. Upon the determination that appropriate corrective measures have been undertaken, the Stop Work Order shall be lifted immediately. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the Stop Work Order, the County Administrator, or his designee or the Director of the Department of Building and Development, or his designee, may issue an Administrative 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. The Administrative 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 Loudoun County. Any person violating or failing, neglecting or refusing to obey an Administrative Order issued by the County Administrator, or his designee, or the

Director of the Department of Building and Development, or his designee, may be compelled in a proceeding instituted in the Circuit Court of Loudoun County to obey the 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 Administrative Order shall immediately be lifted. Nothing in this section shall prevent the County Administrator or the Director of the Department of Building and Development from taking any other action specified in this section.

(b) Schedule of Civil Penalties. Any person who violates any provision of this Chapter shall be subject to a civil penalty. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$10,000. Civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor pursuant to 1220.99 . A civil penalty in the amount listed below shall be assessed for each violation of the respective offenses:

(1) Commencement of land disturbing activity without an approved erosion control plan shall be \$500 for the first offense and \$1,000 for each offense thereafter.

(2) Failure to comply with Minimum Standards 1, 2, 3, 5, and 7 (vegetative measures) shall be \$500 for the first offense and \$1,000 for each offense thereafter.

(3) Failure to comply with Minimum Standards 2, 4, 6, 8, 9, 10, 11, 15, and 17 (structural measures) shall be \$500 for the first offense and \$1,000 for each offense thereafter.

(4) Failure to comply with Minimum Standards 12, 13, 14, and 15 (watercourse measures) shall be \$500 for the first offense and \$1,000 for each offense thereafter.

(5) Failure to comply with Minimum Standards 16(a) and/or (c) (underground utility measures) shall be \$500 for the first offense and \$1,000 for each offense thereafter.

(6) Failure to obey a stop work order shall be \$500 for the first offense and \$1,000 for each offense thereafter.

(7) Failure to stop work when permit is revoked shall be \$500 for the first offense and \$1,000 for each offense thereafter.

(8) All other violations not specifically referenced herein shall be \$500 for the first offense and \$1,000 for each offense thereafter.

The County of Loudoun may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the County of Loudoun to show, the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the County of Loudoun.

(c) Civil Damages. In addition to any penalty provided in this chapter, any person who violates this chapter may be liable to the County in a civil action for damages, as appropriate.

(d) Civil Charges. With the consent of any person who has violated or failed, neglected or refused to obey any condition of a permit, the Director of Building and Development may order the payment of civil charges for violations in specific sums, not to exceed two thousand dollars (\$2,000). Such civil charges shall be instead of any appropriate civil penalty which could be imposed.

(e) Injunctions and Other Relief. Notwithstanding any other relief or remedy available under this chapter, the Director of the Department of Building and Development may apply to the Circuit Court of the County for injunctive or such other equitable relief as might be appropriate in the case of a violation or threatened violation of any of the provisions of this chapter, without the necessity of showing that there does not exist an adequate remedy at law. An owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of Loudoun County to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.

(f) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the Director of the Department of Building and Development. Any civil penalties assessed by a court shall be paid into the treasury of the County of Loudoun, except that where the violator is the locality itself, or its agents, the court shall direct the penalty to be paid into the state treasury.

(g) Notice of Violation. In no case shall the Director of Building and Development bring legal action to enforce the

provisions of this chapter unless and until he has first given, or made diligent effort to give, specific notice to the applicant or permittee, as the case may be, of any violation of this chapter for which such legal or equitable relief is to be sought. Such notice shall give the applicant or permittee a reasonable opportunity under the particular circumstances to correct the situation before enforcement action is brought.

(h) Cumulative Remedies. The remedies provided for in this chapter shall be cumulative in the sense that the imposition of, or attempt to impose, one remedy shall not act as a restriction on any right to impose, or attempt to impose, any other remedy authorized by this chapter.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)

1220.13 APPEALS AND JUDICIAL REVIEW.

A final decision of the Director of Building and Development may be appealed to the Loudoun County Circuit Court, provided that the appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

(Ord. 17-12. Passed 12-13-17.)

1220.99 PENALTY.

Whoever violates any of the provisions of this chapter and fails to correct it pursuant to an order of the Director of Building and Development within the specified time frame is guilty of a Class 1 misdemeanor and shall be fined not more than two thousand, five hundred dollars (\$2,500) or imprisoned not more than twelve months, or both, for each violation.

(Ord. 95-08. Passed 9-20-95; Ord. 05-01. Passed 1-11-05; Ord. 17-12. Passed 12-13-17.)