

**[HISTORY: Adopted by the Board of Supervisors of the County of Frederick 6-12-2002, effective 7-1-2002.<sup>1</sup> Amendments noted where applicable.]**

#### GENERAL REFERENCES

Building construction -- See Ch. 52.

Subdivision of land -- See Ch. 144.

Zoning -- See Ch. 165.

#### **§ 79-1. Purpose, title and authority.**

- A. This chapter shall be known as the "Erosion and Sediment Control Ordinance of Frederick County, Virginia." The Frederick County Board of Supervisors desires to prevent the degradation of properties, stream channels, waters and other natural resources of Frederick County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and establish procedures whereby these requirements shall be administered and enforced.
- B. This chapter is authorized by Title 10.1, Chapter 5, Article 4 of the Code of Virginia (§ 10.1-560 et seq.), known as the "Virginia Erosion and Sediment Control Law."
- C. This chapter is amended to include administering the erosion and sediment control program for the Town of Stephens City, Virginia by Resolution of the Stephens City Town Council. **[Added 8-10-2005]**

#### **§ 79-2. Definitions.**

As used in the ordinance, unless the context requires a different meaning, the following terms shall have the meanings indicated:

**AGREEMENT IN LIEU OF A PLAN** -- 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 in lieu of a formal erosion and sediment control plan.

**APPLICANT** -- Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

**BOARD** -- The Virginia Soil and Water Conservation Board.

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<sup>1</sup> Editor's Note: This ordinance also repealed former Ch. 79, Erosion and Sediment Control, adopted 7-8-1992.

BOARD OF SUPERVISORS -- The Frederick County, Virginia, Board of Supervisors.

CERTIFIED INSPECTOR -- An employee or agent of a program authority who:

- A. Holds a certificate of competence from the Board in the area of project inspection; or
- B. Is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

CERTIFIED PLAN REVIEWER -- An employee or agent of a program authority who:

- A. Holds a certificate of competence from the Board in the area of plan review;
- B. Is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment; or
- C. Is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of the Code of Virginia.

CERTIFIED PROGRAM MANAGER -- An employee or agent of a program authority who:

- A. Holds a certificate of competence from the Board in the area of program administration; or
- B. Is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

CLEARING -- Any activity which removes the vegetative ground cover, including, but not limited to, root mat removal or topsoil removal.

COUNTY -- The County of Frederick, Virginia.

DEPARTMENT -- The Virginia Department of Conservation and Recreation.

DEPARTMENT OF PUBLIC WORKS -- The Frederick County, Virginia, Department of Public Works.

DEVELOPMENT -- A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

DIRECTOR -- The Director of the Department of Conservation and Recreation.

DISTRICT or SOIL AND WATER CONSERVATION DISTRICT -- Refers to the Lord Fairfax Soil and Water Conservation District.

EROSION AND SEDIMENT CONTROL PLAN or PLAN -- 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 to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. The plan shall be sealed by a professional engineer, land surveyor or landscape architect as deemed applicable by the State of Virginia. **[Amended 8-10-2005]**

EROSION IMPACT AREA -- An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

EXCAVATING -- Any digging, scooping or other methods of removing or altering the placement of earth materials.

FILLING -- Any depositing or stockpiling of earth materials.

GRADING -- Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

LAND DISTURBANCE PERMIT -- A permit issued by the Department of Public Works for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

LAND-DISTURBING ACTIVITY -- 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:

- A. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- B. Individual service connections;
- C. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is

- hard-surfaced;
- D. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
  - E. Surface or deep mining;
  - F. Exploration or drilling for oil and gas, including the well site, roads, feeder lines, and off-site disposal areas;
  - G. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2 (§ 10.1-604 et seq.), Chapter 6 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of the Code of Virginia;
  - H. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
  - I. Disturbed land areas of less than 10,000 square feet in size;
  - J. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
  - K. Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; and
  - L. 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 plan-approving authority.

**LOCAL EROSION AND SEDIMENT CONTROL PROGRAM or LOCAL CONTROL PROGRAM** -- An outline of the various methods employed by the Department of Public Works 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.

**NOTICE TO COMPLY** -- A written notice sent to the responsible land disturber or appropriate agent specifying the corrective erosion and sediment control measures needed on a land-disturbing project to comply with the approved plan.

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

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

**PERSON** -- Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the commonwealth, any interstate body, or any other legal entity.

**PLAN-APPROVING AUTHORITY** -- The Department of Public Works 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.

**PROGRAM AUTHORITY** -- Frederick County, Virginia, which has adopted a soil erosion and sediment control program approved by the Board.

**RESPONSIBLE LAND DISTURBER** -- An individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who:

- A. Holds a responsible land disturber certificate of competence;
- B. Holds a current certificate of competence from the Board in the areas of combined administration, program administration, inspection, or plan review;
- C. Holds a current contractor certificate of competence for erosion and sediment control; or
- D. Is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Title 54.1, Article 1, Chapter 4 of the Code of Virginia (§ 54.1-400 et seq.).

**SINGLE-FAMILY RESIDENCE** -- A structure designed to be occupied by one household as

defined by the county's Zoning Ordinance.<sup>2</sup> However, for purposes of this regulation, "mobile homes" shall be defined as one-family dwellings.

STATE EROSION AND SEDIMENT CONTROL PROGRAMS or STATE PROGRAMS -- The program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, including regulations designed to minimize erosion and sedimentation.

STATE WATERS -- All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

STOP-WORK ORDER -- A written notice sent to the responsible land disturber or appropriate agent that stops all land-disturbing activity on the project for a specified time period.

TRANSPORTING -- 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.

### § 79-3. Local erosion and sediment control program.

- A. Except as modified below, pursuant to § 10.1-562 of the Code of Virginia, the County hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in, but not limited to, the Virginia Erosion and Sediment Control Regulations and the latest edition of the Virginia Erosion and Sediment Control Handbook, as amended. The following subsections are hereby changed of VAC 50- 30-40 "Minimum Standards" of the Virginia Erosion and Sediment Control Regulations: **[Amended 8-10-2005]**

- (1) Subsection 6.b. The following language is hereby changed: Surface run-off 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 drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a one-hundred-year-storm of twenty-four-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those expected to exist while the sediment basin is utilized.

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<sup>2</sup> Editor's Note: See Ch. 165, Zoning.

- (2) Subsection 14. Regulation of Watercourse Crossing. All applicable federal, state and local regulations pertaining to working in or crossing live watercourses shall be met. Prior to obtaining a land disturbance permit, copies of all applicable environmental permits including, but not limited to, wetland disturbance, stream crossing, stormwater discharge permits shall be submitted with the application.
- (3) Subsection 17. Vehicular Sediment Tracking.
- (a) Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling or sweeping and transported to a sediment 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.
- (b) In subdivisions, the owner/developer of the subdivision shall be responsible for compliance with this minimum standard until the streets are taken into the Virginia Department of Transportation's Secondary Road System for maintenance, and the plan submitted for approval shall include a detailed plan or narrative to ensure transport of sediment onto subdivision streets does not occur during any phase of construction, including, but not limited to, construction of all infrastructure, utilities, and building construction. In addition, if individual lots or sections in a subdivision are being developed by a different owner, such owner shall be jointly and severally responsible with the owner/developer of the subdivision for achieving compliance with this minimum standard, and the erosion and sediment control plan, or "Agreement in Lieu of a Plan", submitted for approval shall include a detailed plan or narrative to ensure transport of sediment onto the applicable roads does not occur during any phase of construction, including, but not limited to, construction of all infrastructure, utilities, and building construction.
- (4) The provision found in Subsection 19b.(1) is deleted
- B. In order to assure proper stormwater drainage and site stabilization, the following policies are hereby adopted concerning subdivisions. [**Added 12-10-2003**]<sup>3</sup>

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<sup>3</sup> Editor's Note: This ordinance also renumbered former Subsections B, C, D, and E as C, D, E and F.

- (1) Prior to release of building permits, the following infrastructure shall be completed and stabilized within the subdivision, subsection or phase as shown on the approved plan:
    - (a) Stormwater conveyance systems, including but not limited to culverts, road surface, curb and gutter, stormwater structures, drainage swales and ditches, channel linings and all cleared areas shall be stabilized, etc.
    - (b) Submittal of a certified as-built plan of the subdivision, subsection or phase, which includes but is not limited to stormwater conveyance systems, curb and gutter, drainage swales and ditches, stormwater/sediment ponds, graded areas, etc. A letter from the engineer-of-record shall be included with the as-built plan which states that the subdivision has been constructed in accordance with the approved plan.
    - (c) A proposed overall lot grading plan is required by Frederick County prior to the release of building permit(s) for subdivisions. This plan shall meet the intent of the original site plan submitted by the developer. It is required that the developer provide the builder/owner a copy of the original engineered site grading plan for the particular subdivision.
    - (d) It will be necessary to submit a certified as-built plan for all lots on which proposed lot grading plans were required. This certified as-built plan shall indicate the following: properly annotated boundary lines; setback lines; proposed house footprint; offsets to house; existing grading; spot shots as necessary to show positive drainage; proposed driveway; proposed floor elevation to include basement, first floor and garage; and erosion and sediment controls, if required. The as-built plan shall be accompanied by a document prepared by a professional engineer or a certified land surveyor certifying that the as-built conditions meet the intent of the approved site grading plan. The proposed lot grading plan and the as-built survey shall be submitted to the Public Works Department prior to release of the final certificate of occupancy.
- C. Before adopting or revising regulations, the County shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the County is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County proposes or revises regulations that are more stringent than the state program.

- D. Pursuant to § 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The erosion control program of the County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- E. The County hereby designates the Department of Public Works as the plan-approving authority.
- F. The program and regulations provided for in this chapter shall be made available for public inspection at the office of the Department of Public Works.

**§ 79-4. Submission and approval of plans; contents of plans.**

- A. Except as provided herein, no person may engage in any land-disturbing activity until he has submitted to the Department of Public Works an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the Department of Public Works. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the Department of Public Works. Frederick County may issue an Agreement in Lieu of a Plan (residential land-disturbing permit) for a single family residence prior to the owner applying for a building permit. However, the applicable land-disturbing activity shall include, but not be limited to, clearing and grading of the site for the future residence, installation of driveway, installation of drainfield, well, etc. **[Amended 8-10-2005]**
- B. The standards contained within the Virginia Erosion and Sediment Control Regulations, this code and the latest edition of the Virginia Erosion and Sediment Control Handbook 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. The Department of Public Works, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence except where the County has adopted more stringent regulations.
- C. The Department of Public Works shall, within 45 days, approve any such plan, if it is determined that the plan meets the requirements of the local control program, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will conform to the

provisions of this chapter. In addition, as a prerequisite to approval of the plan, the person responsible for carrying out the plan shall provide the name of a responsible land disturber, who will be in charge of and responsible for carrying out the land-disturbing activity, in accordance with the approved plan. The review time for single-family agreement in lieu of plans shall comply with the Virginia Uniform Building Code requirements, which is less than 45 days.

- D. The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When the plan is determined to be inadequate, the Department of Public Works shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- E. Change of approved plans; required plans.
- (1) An approved plan may be changed by the Department of Public Works when:
    - (a) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
    - (b) 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 Department of Public Works and the person responsible for carrying out the plans.
  - (2) In order to prevent further erosion, the County may require approval of a plan for any land identified in the local program as an erosion impact area.
  - (3) When 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 and sediment control plan shall be the responsibility of the owner.
  - (4) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
    - (a) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and

- (b) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.
- (5) Individual approval of separate projects within Subsection (1)(a) and (b) of this subsection is not necessary when Board-approved specifications are followed; however, projects included in Subsection (1)(a) and (b) must comply with Board approved specifications. Projects not included in Subsection (1)(a) and (b) of this subsection shall comply with the requirements of the County's erosion and sediment control program.
- (6) State agency projects are exempt from the provisions of this chapter except as provided for in § 10.1-564 of the Code of Virginia.

**§ 79-5. Permits; fees; security for performance.**

- 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 and certification that the plan will be followed.
- B. No person may engage in any land-disturbing activity until he or she has acquired a land disturbance 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 performance bond, cash escrow or letter of credit.
- C. An administrative fee shall be paid to the Department of Public Works at the time of submission of the land disturbance permit. The land disturbance permit fee is separate from all other fees paid to other departments in the County. The following fee is hereby adopted and shall be applied to land disturbance permits: **[Amended 8-10-2005]**
  - 1) Commercial/Industrial Site Development Projects: Base fee of \$500 plus \$100 per disturbed acre or fraction thereof.
  - 2) Construction of Infrastructure for Subdivision (Rural/Residential), Townhouses, Apartments and condominiums: Base fee of \$600 plus \$100 per acre of disturbed area or fraction thereof.
  - 3) Single Family Residence (Agreement in Lieu of a Plan): \$100 per lot/building unit.
  - 4) Townhouse, Apartment and Condominiums: \$20 per unit.
  - 5) Reinspection Fee Shall be Applied after Stop Work Orders have been Issued : \$50 per unit in addition to paying the land disturbance permit reissuance fee (this latter amount is

the original land disturbance permit fee amount).

- D. No land disturbance permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.
- E. Security for performance.
- 1) All applicants for permits shall provide to the Department of Public Works a performance bond, cash escrow or an irrevocable letter of credit acceptable to the program administrator in order to ensure that measures could be taken by the Department of Public Works at the applicant's expense should the applicant fail, after proper notice, and within the time specified, to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity.
  - 2) The amount of the 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 and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25% of the cost of the conservation action. Should it be necessary for the Department of Public Works to take such conservation action, the Department of Public Works shall collect from the applicant any costs in excess of the amount of the surety held. (See Appendix 1, page 11 for estimated amounts <sup>4</sup>).
  - 3) (3)Within 60 days of adequate stabilization, as determined by the Department of Public Works in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. Applicant requests for termination or reduction of bond, cash escrow or letter of credit shall be made in writing to the Department of Public Works. **[Amended 8-10-2005]**
  - 4) Section 79-5E shall not apply to the construction of single-family residences.
- F. 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.

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<sup>4</sup> Editor's Note: Appendix 1 is on file in the County offices.

**§ 79-6. Monitoring, reports and inspections.**

- A. The Department of Public Works shall 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. Inspection; notice to comply.
- (1) The Department of Public Works shall periodically inspect the land-disturbing activity in accordance with Section 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan, shall be given notice of the inspection. The inspection frequency shall comply with Frederick County's approved alternate inspection schedule. (See Appendix 1, pages 12.<sup>5</sup>).
- (2) Notice to comply.
- (a) If the Department of Public Works determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.
- (b) The notice to comply shall specify the corrective measures required to comply with the approved plan and shall specify the time frame within such measures shall be completed. Upon failure to comply with the notice within the specified time, the land disturbance permit may be revoked, and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and shall be subject to the penalties provided by this chapter. If the land disturbance permit has been revoked, the permittee shall reapply for the land disturbance permit and pay all applicable fees including reinspection fees prior to recommencing the project. **[Amended 8-10-05]**

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<sup>5</sup> Editor's Note: Appendix 1 is on file in the County Offices.

## C. Action in case of violation.

- (1) Upon determination of a violation of this chapter, the Department of Public Works shall, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been addressed.
- (2) If land-disturbing activities have commenced without an approved plan, the Department of Public Works shall, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land-disturbing activity be stopped until an approved plan and a land disturbance permit have been obtained. Immediate stabilization may be required until the plan is approved and a land disturbance permit issued.
- (3) 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, a stop-work order shall be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.
- (4) If the alleged violator has not obtained an approved plan or a land disturbance permit within seven days from the date of the stop-work order, the Department of Public Works may issue an 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 a land disturbance permit have been obtained. The stop-work order shall be served upon the owner by registered or certified mail to the address specified in the land disturbance permit or the land records of Frederick County.
- (5) 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 enforcing authority or permit holder for appropriate relief to the Circuit Court of the County. **[Amended 8-10-05]**
- (6) The owner may appeal the issuance of a stop-work order to the Circuit Court of the County.
- (7) Any person violating or failing, neglecting or refusing to obey an order issued by the Department of Public Works may be compelled in a proceeding instituted in the Circuit Court of the County to obey same and to comply therewith by

injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

- (8) Nothing in this section shall prevent the Department of Public Works from taking any other action authorized by this chapter.

**§ 79-7. Penalties, injunctions, and other legal actions.**

- A. Violators of this chapter shall be guilty of a Class I misdemeanor.
- B. Any person who violates any provision of this chapter shall, upon a finding of the District Court of the County, be assessed a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.
- C. The Department of Public Works, or the owner or property which has sustained damage, or which is in imminent danger of being damaged, may apply to the Circuit Court of the 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. However, an owner of property shall not apply for injunctive relief unless:
- (1) 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
  - (2) Neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to 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. 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 Department of Public Works. Any civil penalties assessed by a court shall be paid into the Treasurer 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 Department of Public Works may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection E.
- G. The County Attorney shall, upon request of the Department of Public Works, 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.

**§ 79-8. Appeals and judicial review.**

- A. Any applicant under the provision of this chapter who is aggrieved by any action of the Department of Public Works or its agent in disapproving plans submitted pursuant to this chapter shall have the right to apply for and receive a review of such action by the County Board of Supervisors, provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the County Board of Supervisors shall be heard at the next regularly scheduled meeting, provided that they and other involved parties have at least 30 days' prior notice. In reviewing the agent's actions, the County Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the County Board of Supervisors may affirm, reverse or modify the action. The County Board of Supervisors' decision shall be final, subject only to review by the Circuit Court of the County.
- B. Final decisions of the Department of Public Works under this chapter shall be subject to review by the Circuit Court of the County, provided an 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.

§ 79-9. (Reserved)

§ 79-1

FREDERICK COUNTY CODE

§ 79-2

§ 79-10. (Reserved)

§ 79-11. (Reserved)

§ 79-12. (Reserved)

§ 79-13. (Reserved)

§ 79-14. (Reserved)

§ 79-15. (Reserved)

§ 79-16. (Reserved)

§ 79-17. (Reserved)

§ 79-18. (Reserved)

§ 79-19. (Reserved)

§ 79-20. (Reserved)

§ 79-20. (Reserved)

§ 79-21. (Reserved)

§ 79-22. (Reserved)

§ 79-23. (Reserved)

§ 79-24. (Reserved)

§ 79-25. (Reserved)