

ADOPTED BY THE COUNTY OF GREENE, VIRGINIA BOARD OF SUPERVISORS JANUARY 9,2007,
THIS ARTICLE IS EFFECTIVE JANUARY 10, 2007, AND SUPERSEDES ANY AND ALL PREVIOUS VERSIONS OF
CHAPTER 38, ARTICLE III OF THE CODE OF THE COUNTY OF GREENE, VIRGINIA

ARTICLE III. EROSION & SEDIMENT CONTROL AND STORMWATER MANAGEMENT

Sec. 38-71. Title; Purpose; Authority.

- A. This article shall be known as the "Erosion & Sediment Control and Stormwater Management Ordinance of the County of Greene, Virginia." The purpose of this article is to conserve the land, water, air and other natural resources of the County of Greene, Virginia by establishing requirements for stormwater management and the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.
- B. This article is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law, and Title 10.1, Chapter 6, Article 1.1 (10.1-603.1 et seq.), known as the Virginia Stormwater Management Law.

Sec. 38-72. Definitions. The following definitions are as used in the ordinance, unless the context requires a different meaning:

- A. "**Agreement in lieu of a plan**" means a contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.
- B. "**Applicant**" means any person submitting an erosion & sediment control and stormwater management plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.
- C. "**Board**" means the Virginia Soil and Water Conservation Board.
- D. "**Certified Inspector**" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.
- E. "**Certified Plan Reviewer**" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.
- F. "**Certified Program Administrator**" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.
- G. "**Clearing**" means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

CD38:6

- H. "**Conservation Plan,**" "**Erosion & Sediment Control and/or Stormwater Management Plan**" or "**Plan**" means a

document containing material for the conservation of soil and water resources of a unit or group of units of land, and how existing runoff characteristics will be maintained by a land development project. The plan shall contain all major conservation and management decisions to assure that the entire unit or units of land will be so treated to achieve the conservation and management objectives.

- J. **"County"** means the County of Greene, Virginia.
- K. **"Department"** means the Department of Conservation and Recreation.
- L. **"Development"** means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.
- M. **"Director"** means the director of the Department.
- N. **"District"** or **"Soil and Water Conservation District"** refers to the Culpeper Soil and Water Conservation District within which lies the County of Greene, Virginia.
- O. **"Erosion and Sediment Control Plan"** or **"Plan"** means a document containing material for the conservation and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- P. **"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.
- Q. **"Excavating"** means any digging, scooping or other methods of removing earth materials.
- R. **"Filling"** means any depositing or stockpiling of earth materials.
- S. **"Flooding"** means a volume of water which is too great to be confined within the banks or walls of the stream, water body or conveyance system and which overflows onto adjacent lands, causing or threatening damage.
- T. **"Grading"** means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.
- U. **"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) 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;
 - (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 - (5) Surface or deep mining;

- (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
 - (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Sec. 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of Section 10.1-1163;
 - (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
 - (9) Disturbed land areas of less than 10,000 square feet in size;
 - (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 - (11) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land-disturbing activity would normally have required an approved erosion and sediment control plan, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.
- V. **"Land-disturbing Permit"** means a permit issued by the County of Greene, Virginia for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.
- W. **"Local erosion and sediment control and/or stormwater management program" or "local control program"** means an outline of the various methods employed by the County of Greene, Virginia to regulate land-disturbing activities and thereby minimize harmful runoff, 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.
- X. **"Natural channel design concepts"** means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.
- Y. **"Nonpoint source pollution"** means pollution whose sources cannot be pinpointed, but which is rather carried from the land surface in a diffuse manner by stormwater runoff.
- Z. **"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.
- AA. **"Peak flow rate"** means the maximum instantaneous flow from a given storm condition at a particular location.
- BB. **"Permittee"** means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved plan will be followed.
- CC. **"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.
- DD. **"Plan-approving authority"** means the Program Administrator, who is the person responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.
- EE. **"Program authority"** means the County of Greene, Virginia which has adopted a soil erosion and sediment control and stormwater management program approved by the Board.
- FF. **"Runoff"** means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

- GG. **“Responsible Land Disturber (RLD)”** means an individual from the project or development team to include the owner, applicant, permittee, designer, superintendent, project manager, or contractor, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- HH. **“Runoff volume”** means the volume of water that runs off the land development project from a prescribed storm event.
- II. **“Single-family residence”** means a noncommercial dwelling that is occupied exclusively by one family.
- JJ. **“State Erosion and Sediment Control Program”** or **“State Program”** means the program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code including regulations designed to minimize erosion and sedimentation.
- KK. **“State Waters”** means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.
- LL. **“Town”** means any incorporated town.
- MM. **“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.
- NN. **“Watershed”** means a defined land area drained by a river or stream or system of connecting rivers or streams, such that all surface water within the area flows through a single outlet.
- OO. **“Water Quality Volume”** means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

Sec. 38-73. Local Erosion & Sediment Control and Stormwater Management Program.

- A. Pursuant to section 10.1-562 of the Code of Virginia, the County of Greene, Virginia hereby adopts, as an integral part of this article, the regulations and guidelines of the Virginia Department of Conservation and Recreation for the management of stormwater and the control of soil erosion and sedimentation, as modified herein. Said regulations and guidelines are included in but not limited to the “Virginia Erosion and Sediment Control Regulations”, *Virginia Stormwater Management Handbook*, the *Virginia Erosion and Sediment Control Handbook* and this article, as amended from time to time.
- B. Before adopting or revising regulations, the County of Greene, Virginia 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 of Greene, Virginia is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County of Greene, Virginia proposes or revises regulations that are more stringent than the state program.

In addition, in accordance with §10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

In accordance with §10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall

satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

- C. Pursuant to Section 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion & Sediment Control and Stormwater Management Program of the County of Greene, Virginia shall contain a certified Program Administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- D. The County of Greene, Virginia hereby designates the Program Administrator as the plan-approving authority. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Program Administrator.
- E. This article shall not apply to any town(s) within the County of Greene, Virginia, unless such town(s) specifically indicate the intention to be covered by this article.

Sec. 38-74. Regulated Land-Disturbing Activities; Submission and Approval of Plans; Contents of Plans.

- A. Except as provided herein, no person may engage in any land-disturbing activity until he has submitted to the Program Administrator for the County of Greene, Virginia an erosion & sediment control and stormwater management plan for the land-disturbing activity and such plan has been approved, a bond posted and a permit issued by the plan-approving authority.
- B. 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 & sediment control and stormwater management plan if executed by the plan-approving authority.
- C. The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § [10.1-561](#), of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.
- D. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, a plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned.
- E. The standards contained within the *Virginia Erosion and Sediment Control Handbook* and the *Virginia Stormwater Management Handbook* are to be used by the applicant, except as noted herein, when making a submittal under the provisions of this ordinance and in the preparation of a plan. The plan-approving authority, 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.
- F. The plan shall be acted upon within 45 days from receipt thereof by either approving or disapproving said plan in writing. If disapproved, the plan-approving authority 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 applicant authorized

to proceed with the proposed activity.

- G. An approved plan may be changed by the plan-approving authority when:
1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 2. The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and amendments to the plan in accordance with this ordinance are agreed to by the plan-approving authority and the person responsible for carrying out the plan.
- H. Variances: The plan-approving authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
- (1). At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
 - (2). During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
- I. In order to prevent further erosion, the County of Greene, Virginia may require approval of a plan for any land identified in the local program as an erosion impact area.
- J. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and obtaining approval of an erosion & sediment control and stormwater management plan shall remain the responsibility of the owner.
- K. Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies or railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
1. Construction, installation and maintenance of electric, natural gas and telephone utility lines, and pipelines, and
 2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.
- L. The Board shall have sixty days in which to approve the utility company specifications. If no action is taken by the Board within sixty days, the specifications shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 of paragraph J of this section is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 of paragraph J shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications.
- M. In accordance with the procedure set forth by §10.1-563 (E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Board for review and approval consistent with guidelines established by the Board.
- CD38:11
- N. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Section 10.1-564.
- O. All final plans shall be sealed and signed by the design professional responsible for preparing the plans, and shall contain a

signed owners' certification stating that all measures shown on the approved plan will be installed and maintained in accordance with this ordinance, prior to issuance of a land disturbing permit.

Sec. 38-75. Stormwater Management Plans; Local Standards.

- A. All developments with disturbed areas equal to or greater than one acre (residential development) or 10,000 square feet (non-residential and mixed use development) shall meet the requirements of this section.
- B. All stormwater management plans, submitted for permit review and construction, shall be required and designed in accordance with the current edition of the *Virginia Stormwater Management Handbook*, except as noted in this article.
- C. For the purposes of the water quality requirements, the stormwater management plans shall be deemed adequate, without performing engineering calculations of pollutants removal, if two of the three following measures are indicated on the plans (one facility may perform as two or more measures):
 - 1. Minimal use of paved channels, curb & gutter and underground pipe, along with maximum use of vegetated channels, planting beds, level spreaders and other measures designed to promote on-site infiltration of stormwater into the ground.
 - 2. Conveyance of all impervious surface runoff through either on-site stormwater management pond(s) containing permanent pool(s) of water (whose volume and surface area equals at least two-thirds of the 10-year storage volume and surface area), or approved infiltration trench(es).
 - 3. 24-hour extended detention of the one-year frequency, 24-hour duration, and design storm.
- D. For the purposes of the stream channel erosion requirements, the stormwater management plans shall be deemed adequate, without engineering analyses of downstream channel erosion, if the plans indicate the following measure:
 - 1. 24-hour extended detention of the one-year frequency, 24-hour duration, and design storm.
- E. For the purposes of the flooding requirements, the stormwater management plans shall be prepared in accordance with the *Virginia Stormwater Management Handbook*, which requires managing the post-development peak runoff to be equal to or less than the pre-development peak runoff, for the ten-year frequency, 24-hour duration, design storm.
- F. Notwithstanding the exceptions noted in paragraphs C and D, all drainage facilities shall be designed with complete hydrology and hydraulic analyses, and structural and geotechnical analyses where required, which shall be submitted for review along with the erosion & sediment control and stormwater management plans.
- G. The applicant may elect not to provide measures indicated by paragraphs C and/or D, but instead design water quality measures and/or stream channel erosion protection in accordance with the *Virginia Stormwater Management Handbook*, including minimum standard MS-19 of the Virginia Erosion and Sediment Control Regulations.
- H. An approved inspection and maintenance agreement, per the *Virginia Stormwater Management Handbook*, shall be recorded on all land, to be privately-owned, containing existing and/or proposed drainage and/or stormwater management facilities, which will receive runoff from the permitted development, prior to issuance of a land-disturbing permit.

CD38:12

Sec. 38-76. Permits; Fees; Performance Surety; Etc.

- A. No person may engage in any land-disturbing activity until he has obtained a land-disturbing permit, unless the activity is

specifically exempt from the provisions of this ordinance. The permit shall indicate an expiration date, and shall require renewal if the land-disturbing activity has not been completed and stabilized before that date. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, as provided by Section 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity. However, the plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § [10.1-561](#) of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this ordinance.

- B. No land-disturbing permit shall be issued until required fees have been paid, an erosion & sediment control and stormwater management plan has been approved, and a preconstruction conference held with the Greene County Program Administrator or designee, and the required performance surety has been provided for the land disturbing activity. If the owner is required to obtain approval of a site plan or subdivision plat, the program administrator shall not approve an Erosion and Sediment Control and Stormwater Management plan unless and until the site plan or subdivision plat is approved.
- C. 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 & sediment control plan and certification that the plan will be followed.
- D. Fees: administrative fees, as set by the Board of Supervisors, shall be paid to the County of Greene, Virginia with the first submission of the erosion & sediment control and stormwater management plan for review, and prior to the permit expiration date if renewal is required.
- E. Surety: All applicants for permits shall provide to the County of Greene, Virginia a performance bond, cash escrow, irrevocable letter of credit or other security acceptable to the Program Administrator, with an executed agreement stating that measures may be taken by the County of Greene, Virginia at the applicant's expense, should the applicant fail after proper notice and within the time specified, to initiate or maintain appropriate measures required of him as a result of his land-disturbing activity.
- F. The amount of the bond or other security for performance shall not exceed the total estimated cost to initiate and maintain all conservation and management measures, based on the cost of new construction in the locality, plus an allowance for administrative costs and inflation not to exceed twenty-five percent of the cost of the measures. Should it be necessary for the County of Greene, Virginia to install and/or maintain such measures, the County of Greene, Virginia may use all security funds available as needed, as well as collect from the permittee any costs in excess of the amount of the security available.
- G. Within sixty (60) days of adequate final stabilization as determined by the Program Administrator, in any project or section of a project such bond or other security, held for such project or section of a project, shall be either refunded to the applicant or terminated as appropriate for the surety document.
- H. 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.

Sec. 38-77. Monitoring; Reports; Inspections.

- A. The County of Greene, Virginia may require the person responsible for carrying out the plan to monitor the land-disturbing activity. If required, the person responsible for carrying out the plan, or his agent, will keep records of inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures on the plan are effective, and shall submit copies of these records to the Program Administrator at least monthly.

CD38:13

- B. The Program Administrator shall inspect the land-disturbing activity immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event and at the completion of the project prior to the release of the performance bond.

- C. If the Program Administrator 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.
- D. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.
- E. Upon determination of a violation of this ordinance, the Program Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order, served in the same manner as a notice to comply, requiring that all or part of the activities permitted on the site be stopped until the specified corrective measures have been performed and approved.
- F. Where the alleged violation is causing or is in imminent danger of causing harmful runoff, erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.
- G. The owner may appeal the issuance of an order to the Circuit Court of the County of Greene, Virginia.
- H. Any person violating or failing, neglecting or refusing to obey an order issued by the Program Administrator may be compelled in a proceeding instituted in the Circuit Court of the County of Greene, Virginia to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action, satisfying any penalties imposed and obtaining any required permits, the order shall be lifted immediately.
- J. Nothing in this section shall prevent the Program Administrator from taking any other action authorized by this ordinance.

Sec. 38-78. Penalties; Injunctions; Other Legal Actions.

- A. Any person who violates any provision of this ordinance shall, upon a finding of the District Court of the County of Greene, Virginia, be guilty of a Class I Misdemeanor and/or 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.
- B. 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 Program Administrator, 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 of Greene, Virginia to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.
- D. However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

CD38:14

- 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 County of Greene, Virginia.

- F. Any civil penalties assessed by a court shall be paid into the treasury of the County of Greene, Virginia, 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.
- G. 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 ordinance, the County of Greene, Virginia may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section.
- H. The Commonwealth's Attorney shall, upon request of the County of Greene, Virginia or the permit issuing authority, take legal action to enforce the provisions of this ordinance.
- J. Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by runoff, erosion or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

Sec. 38-79. Appeals; Judicial Review.

- A. Any applicant who is aggrieved by the County of Greene, Virginia or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to a review of such action by the Greene 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 Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing, provided that the Board of Supervisors and other involved parties have at least 30 days prior notice.
- B. In reviewing the agent's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent, and may affirm, reverse or modify the action. The Board of Supervisor's decision shall be final, subject only to review by the Circuit Court of the County of Greene, Virginia.
- C. Final decisions of the County of Greene, Virginia under this ordinance shall be subject to review by the County of Greene, Virginia Circuit Court, 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.

END OF ARTICLE III

CD38:15