

ARTICLE XV: EROSION AND SEDIMENT CONTROL

Section 22-125 TITLE

This Chapter shall be known as the "Erosion and Sediment Control Ordinance of The Town of Tappahannock, Virginia."

Section 22-126 PURPOSE

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Town of Tappahannock." The purpose of this chapter is to conserve the land, water, air, prevent degradation of properties, stream channels, waters and other natural resources of the Town of Tappahannock by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural erosion and sedimentation, runoff and by establishing procedures whereby these requirements shall be administered and enforced.

Section 22-127 AUTHORIZATION

This Ordinance is authorized by the Code of Virginia (1950), as amended, Title 10.1, Chapter 5, Article 4, (Section 10.1-560 et seq.), known as the "Erosion and Sediment Control Law." This article provides for a comprehensive statewide program, with standards and guidelines to control soil erosion and sedimentation, which is to be implemented on the local level.

Section 22-128 DEFINITIONS

As used in this Ordinance, unless the context clearly indicates otherwise.

- A. Administrator: The representative of the Town of Tappahannock who has been appointed to serve as the agent of the Town in administering this Chapter. The Essex County Building official, as per a contractual service agreement between the Town of Tappahannock and Essex County is hereby designated as the administrator of this chapter.
- B. "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.
- C. "Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.
- D. "Board" means the Virginia Soil and Water Conservation Board.
- E. "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.
- F. "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.
- G. "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.
- H. "Clearing," means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.
- I. "Erosion and Sediment Control Plan" or "Plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- J. "County" means the County of Essex.
- 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 Three Rivers Soil and Water Conservation District.
- O. "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. The 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 of the Rappahannock River or Hoskins Creek, where the erosion results from wave action or other coastal processes.

- P. "Excavating," means any digging, scooping or other methods of removing earth materials.
- Q. "Filling," means any depositing or stockpiling of earth materials.
- R. "Grading," means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.
- S. "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-distributing 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 (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;
 8. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- Disturbed land areas of less than the following:
- a. Outside the Chesapeake Bay Preservation Area:
Disturbed land areas of less than 10,000 square feet in size;
 - b. Within the Chesapeake Bay Preservation:
Disturbed land areas of less than 2,500 square foot in size.
10. Installation of fence and sign posts or telephone and electric poles and other kinds of post or poles;
11. Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the U.S. Army Corps of Engineers;
12. Emergency work to protect life, limb or property and emergency repairs; however, if required an approved erosion and sediment control, if 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.
- T. "Land Disturbing Permit:" A permit issued by the County of Essex for clearing, filling, excavating, grading or transporting, or any combination thereof.
- U. "Land Erosion and Sediment Control Program or Local Control Program:" The policies and provisions of the Town of Tappahannock Erosion and Sediment Control Ordinance including the methods and procedures employed by the Town of Tappahannock to regulate land-disturbing activities and thereby implement, administer and enforce such policies and provisions of such ordinance and of the Virginia Erosion and Sediment Control Handbook, which is hereby adopted as an integral part of this Ordinance. Furthermore, all related erosions and sediment control provisions of The Chesapeake Bay Preservation Areas Designation and Management Regulations are hereby adopted as an integral part of this Ordinance.
- V. "Owner." The owner or owners of the freehold of the premises or lesser estate therein, a mortgage or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

- W. "Permit-holder." 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.
- X. "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.
- Y. "Plan Approving Authority:" The Administrator for the Town of Tappahannock is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving such plan if the plans is determined to be adequate.
- Z. "Program Authority" means the Town of Tappahannock which has adapted to a soil erosion and sediment control program approved by the board.
- AA. "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 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.
- BB. "Single-family residence" means a noncommercial dwelling that is occupied exclusively by one family.
- CC. "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.
- DD. "State Waters" means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.
- EE. Town: means the incorporated Town of Tappahannock
- FF. Transporting: Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the build-up of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Section 22-129 LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

22-129.1 Adoption of Provisions

- A. Pursuant to Section 10.1-562 of the Code of Virginia, The Town of Tappahannock hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Solid and Water Conservation Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations: and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.
- B. Before adopting or revising regulations, the Town of Tappahannock 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 Town of Tappahannock is amending its program to conform to revisions in the State Program. However, a Public Hearing shall be held if the Town of Tappahannock proposes or revises regulations that are more stringent than the State Program.
- 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 Control Program of Tappahannock shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- D. The Town of Tappahannock hereby designates the Essex County Building Official as the plan-approving authority.
- E. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Essex County Building Official or the Tappahannock Town Office.

Section 22-129.2 Plan Preparation

Persons submitting plans under this ordinance shall be governed by the criteria, standards and specifications for plan preparation established in The Virginia Erosion and Sediment Control Handbook and all the related erosion and sediment control

provisions of the Chesapeake Bay Preservation Area Designation and Management Regulations. The plan approving authority is 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.

Section 22-129.3 Plan Submission Process

Persons submitting plans under this ordinance shall follow the procedures set forth in a separate document which is attached hereto and made a part hereof entitled, "Procedures for Plan Submission and Review, On-Site Inspection, and Ordinance Enforcement."

Section 22-129.4 Compliance with Chesapeake Bay Preservation Act

Erosion and sediment control plans submitted under this ordinance shall assure compliance with the buffer area requirements of the Chesapeake Bay Preservation Area Designation and Management Regulations.

Section 22-130 REQUIREMENTS FOR APPROVAL OF EROSION AND SEDIMENTATION CONTROL PLAN

22-130.1 Plan Approval Prior to Land-Disturbance

Except as provided herein, no person may engage in any land-disturbing activity until he has submitted to the Essex County Building Official for The Town of Tappahannock as erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. 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.

Section 22-130.2 Single Family Dwellings

1. In the case of a land-disturbing activity for the construction of a single family dwelling in a subdivision, regardless of whether it lies within or outside the Chesapeake Bay Preservation Area, The Administrator may waive the requirement for a full erosion and sedimentation control plan as set forth in this Ordinance. In the case of granting of such a waiver by the Administrator, an Agreement in Lieu of an Erosion and Sediment Control Plan, which is signed by the applicant and approved by the Administrator, shall constitute authorization under this Ordinance to conduct land-disturbing activity allowed by that Agreement. Such Agreement shall set forth all conservation measures to be carried out and maintained, shall grant right-of-entry, be subject to all review, inspection and enforcement provisions of this Ordinance which apply to approved erosion and sedimentation control plans.
2. In the case of a land-disturbing activity for the construction of a single family dwelling which lies outside a subdivision, but within the Chesapeake Bay Preservation Area, and exceeds 2,500 square foot, the Administrator may waive the requirement of a full erosion and sedimentation control plan as set forth in this Ordinance. In the case of granting of such a waiver by the Administrator, an Agreement in Lieu of an Erosion and Sediment Control Plan, which is signed by the applicant and approved by the Administrator, shall constitute authorization under this Ordinance to conduct land-disturbing activity allowed by that Agreement. Such Agreement shall set forth all conservation measures to be carried out and maintained, shall grant right-of-entry, be subject to all review, inspection and enforcement provisions for this Ordinance which apply to approved erosion and sedimentation control plans.

22-130.2 Fees

The Town may charge applicants a reasonable fee to defray the cost of program administration, including costs associated with the issuance of grading or land-disturbing permits, plan review, and periodic inspection for compliance with erosion and sediment control plans if charges for such costs are not made under any other law, ordinance or program. The fee shall not exceed any amount commensurate with the services rendered, taking into consideration the time, skill and administrator's expense involved. Fees shall not exceed \$1,000.00

Section 22-131 ACTION ON EROSION AND SEDIMENT CONTROL PLANS

22-130.1 Time of Approval

The Administrator shall, within 45 days, approve any erosion and sediment control plan submitted to it if it determines that the plan meets the conservation standards of the local control program and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this Ordinance. 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.

22-130.2 Plan Disapproval

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

22-130.3 Change of Approved Plan

An approved plan may be changed by the Administrator in the following cases:

1. Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the ordinance, plan changes can be required without approval of the person responsible for carrying out the plan; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Ordinance, are agreed to by the Administrator and the person responsible for carrying out the plan.

22-130.4 Owner Responsibility

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.

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 with the Board for review and written comments. The specifications shall apply to:

1. Construction, installation or 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.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the Town of Tappahannock erosion and sediment control program.

22-131.6 State Agency Projects

State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Section 10.1-564.

22-131.7 Conservation Plan

In order to prevent further erosion, the Town of Tappahannock may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

Section 22-132 APPROVED PLAN REQUIRED FOR ISSUANCE OF BUILDING AND OTHER DEVELOPMENT PERMITS; CERTIFICATION; BONDING OR PERFORMANCE

22-132.1 Application Necessary Before Permits are Issued

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

No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

No land-disturbing 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.

22-132.2 Performance Bond

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

22-132.3 Forfeiture of Bond

If the Town of Tappahannock takes such measures upon such failure by the person conducting the land-disturbing activity, the Town may collect from such person for the difference should the amount of the cost of such action exceed the amount of security held.

22-132.4 Release of Bond

Within sixty (60) days of the adequate stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be. The Administrator or his designee shall be the authority to determine adequate stabilization.

22-132.5 Other Provisions

These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements of such permits.

Section 22-133 MONITORING, REPORTS, AND INSPECTIONS

22-133.1 Inspections

The Administrator or designee shall periodically inspect the land-disturbing activity in accordance with '4VAC50-30-60 of the Regulations to insure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land-disturbing activity. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

The Administrator may require monitoring and reports from the person responsible for carrying out the plan. 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. The right-of-entry to conduct such inspections shall be expressly reserved in the permit. The person responsible for carrying out the plan, or his duty-designated representative, shall be afforded the opportunity to accompany the inspectors.

22-133.2 Failure to Comply with Plan

If the Administrator determines that the person responsible for carrying out the plan has failed to do so, the Administrator shall immediately serve such person a notice to comply by registered or certified mail to the address specified in his permit application or by delivery at the site of the land-disturbing activity to the agent or employee supervising such activities, with a copy to the Plan approving authority if different from the Administrator. 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 such person fails to comply within the time specified, the permit may be revoked and the permittee or the person responsible for carrying out the plan shall be deemed to be in violation of this Ordinance and upon conviction shall be subject to the penalties provided by Section 22-136 of this Ordinance.

22-133.3 Sworn Complaint

Upon receipt of a sworn complaint of a substantial violation of this Ordinance from the designated enforcement officer, the Program Administrator may in conjunction with or subsequent to a notice to comply as specified in Section 22-133.2 above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Program Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

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, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in Section 22-133.1 above. Otherwise such an order may be issued only after the alleged violator has failed to comply with a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the Circuit Court of the

jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Essex County 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 any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the Town of Tappahannock or Essex County.

The owner may appeal the issuance of an order to the Circuit Court of Essex County.

Any person violating or failing, neglecting or refusing to obey an order issued by Program Administrator may be compelled in a proceeding instituted in the Circuit Court of Essex 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.

Nothing in this section shall prevent the Program Administrator from taking any other specified in Section 22-136 for the Ordinance.

Section 22-134 EROSION IMPACT AREAS

22-134.1 Designation

The Governing Body may designate areas in the Town which shall be classified as Erosion Impact Areas. Any such designation and classification shall be deemed to be a component of the local control program.

22-134.2 Conservation Plan

Consistent with this Ordinance, and in order to prevent further erosion, the Administrator may require the approval of a conservation plan for any Erosion Impact Area. Such plan shall be subject to all review, bonding, inspection and enforcement provisions of this Ordinance which apply to approved land-disturbing permits. The plan must be submitted by the property owner.

Section 22-135 ADMINISTRATIVE APPEAL; JUDICIAL REVIEW

22-135.1 Review by Town Council

Final decision of the Administrator under this Ordinance shall be subject to review by the Town Council provided an appeal if filed within 30 days from the date of any written decision of the Administrator which adversely affect the rights, duties or privileges of the person engaged in or proposing to engage in land-disturbing activities. Any applicant who seeks an appeal hearing before the town council shall be heard at the next regularly scheduled town council public hearing provided that the town council and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the town council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the town council may affirm, reverse or modify the action. The town council's decision shall be final, subject only to review by the Circuit Court of Essex County.

22-135.2 Appeal to Circuit Court

Final decision of the Town Council under this Ordinance shall be subject to review by the Circuit Court of Essex County provided an appeal if filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of the person engaged in or proposing to engage in land-disturbing activities.

Section 22-136 PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

22-136.1 Misdemeanor

A violation of this Ordinance shall be deemed a Class I misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars or thirty days imprisonment for each violation or both.

22-136.2 Injunctive Relief

The Administrator may apply to the Circuit Court of Essex County for injunctive relief to enjoin a violation or a threatened violation of this Ordinance, without the necessity of showing that there does not exist an adequate remedy at law.

22-136.3 Civil Liability

In addition to any criminal penalties provided under this Ordinance, any person who violates any provision of this ordinance may be liable to the Town of Tappahannock in a civil action for damages.

22-136.4 Civil Penalty

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 Ordinance shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation.

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 Essex County 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.

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.

22-136.5 Civil Charges

With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Town Council, or any condition of a permit or any provision of this Ordinance, the Town Council, the Administrator may provide an order issued by the Town Council or plan-approving or permit-issuing authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Section 22-136.4 of this Section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Section 22-136.4.

22-136.6 Town Attorney Actions

The Town Attorney shall, upon request of the Administrator, take legal action to enforce the provision of this Ordinance.

22-136.7 Evidence of Compliance

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

Section 22-137 SEVERABILITY, EFFECTIVE DATE

22-137.1 Severability

If any provision of this Ordinance is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining provisions.

22-137.2 Effective Date

The Ordinance shall be effective on and after _____ . Revised on _____ to meet State requirements.

PROCEDURES FOR PLAN SUBMISSION AND REVIEW ON SITE-INSPECITON AND ORDINANCE ENFORCEMENT

I. Plan submission and preliminary erosion and sediment control plans

- (1) The applicant shall submit five (5) copies of black or blue-line plans with a letter or transmittal. Said letter of transmittal shall contain:
 - (a) The name, address and phone number of the applicant.
 - (b) The name, address and phone number of the landowner of record.
 - (c) The name, address, and phone number of the person responsible for carrying out the plan.
 - (d) Location of the site, including lot number and tax map number.
 - (e) Other information as may be requested by the plan-approving authority.

(2) Final Plan

The final plan shall consist of the narrative and maps as described in Chapter 6 of the Virginia Erosion and Sediment Control Handbook.

- a) The maps shall be prepared at a scale of not less than 1" = 100' and shall incorporate good engineering practices designed according to E & S Control Handbook guidelines.
- b) The map shall contain all information necessary for carrying out the conservation measures and will include a graphic scale, north arrow, date, owners of record, engineers certification (if required), approval signature block, vicinity map at a scale of not less than 1" = 1,000' and contour lines.
- c) The map shall show other information as required by the Administrator.
- d) The plan preparer will be responsible for guiding the contractor toward properly implementing the plan on all land disturbing activities where the E & S Bond is or is expected to exceed \$25,000.00.

II. Preliminary plans

- (1) The applicant may submit a preliminary erosion and sediment control plan for purposes of discussion and advice. The preliminary plan should not be cluttered with detailed control measures and might contain the following information.
 - a) All major soil types.
 - b) Approximate limits of clearing and grading.
 - c) Tentative means of erosion and sediment control.
 - d) Phasing of development to minimize area and duration of exposure.
 - e) Contour lines.

III. Department responsibility for administering program

All correspondence and plans should be directed to:
Town Manager, Town of Tappahannock, Virginia.

IV. Plan review

The Administrator has been designated as the plan-authority for the Town.

The Three River Soil and Water Conservation District may be called on by the Town to conduct a non-binding review of any plan, but will conduct a non-binding review on all plans requiring a bond of \$5,000.00 or more.

In reviewing plans, the Administrator may seek or review recommendations or comments from the Virginia Department of Transportation, the Health Department and such other agencies that are deemed to have some responsibility in this area.

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

- (2) In determining the adequacy of the plan, the Administrator shall be guided by the recommendations contained in the Virginia Erosion and Sediment Control Handbook (VESCR 625.02.000) and The Chesapeake Bay Preservation Area Designation and Management Regulations.
- (3) The plan shall be approved, within forty-five (45) days from the receipt thereof, if such plan meets the requirements of the Town of Tappahannock Erosion and Sediment Control Ordinance, and if the person responsible for carrying out the plan certifies that he will properly perform the control measures included in the plan as required by the ordinance.
- (4) If the plan is disapproved, within forty-five (45) days from receipt thereof, the Administrator shall specify in writing such modification, terms and conditions as will permit approval of the plan and communicate these requirements to the applicant.
- (5) If no action is taken by the Administrator within forty-five (45) days of receipt of the plan, the plan shall be deemed approved. Certification of this fact shall be provided by the Administrator to the permit issuing authority issuing building or other permits for activities involving land-disturbing activities so that such permits may be issued.
- (6) A plan for which land-disturbing activities involve lands under the jurisdiction of the Town of Tappahannock and one or more than other localities may, at the option of the applicant, be submitted to the Virginia Division of Soil and Water Conservation for the review and approval, rather than submission to each jurisdiction concerned. However, if the applicant chooses to submit his plan to the Virginia Division of Soil and Water Conservation rather than the local jurisdiction he shall notify by certified mail, the Administrator of his intention at the same time of submittal.
- (7) An approved plan may be changed.
 - a) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the ordinance, plan changes can be required without approval of the person responsible for carrying out the plan in order to comply with the "Minimum Standards", which are assumed to be an integral part of every plan; or
 - b) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and the proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plan.

V. Issuance of grading, building, or other permits

- (1) The Building Official or any other agency authorized under any other law to issue building or other permits for land-disturbing activities shall not issue such permits unless:
 - a) The applicant submits with his application the approved erosion and sediment control plan; or
 - b) There is certification of such approved plan from the Administrator or certification that a plan was submitted and no action was taken within forty-five (45) days; or
 - c) There is certification from the Virginia Division of Soil and Water Conservation, when applicable, that plan has been approved.
- (2) When the Administrator does not have in hand a certification that the person responsible for carrying out the plan has certified that he will properly perform the control measures included in the plan, the Administrator shall obtain the certification or performance prior to issuance of the permit.

VI. Performance bond, cash escrow, letter of credit, etc.

- (1) Bonding requirements are a necessary element of an effective control program.
 - a) Bond: A surety bond or cash deposit made out to the Governing Body in an amount equal to the full cost of conservation measures which are required by the ordinance, said surety bond or cash deposit being legally sufficient to assure the Governing Body that said conservation measures will be carried out in accordance with the Ordinance.
 - b) Escrow Agreement: A fund delivered to a reputable banking institution by the applicant to be held by the bank until such time that all conservation measures have been performed as required by the ordinance.
- (2) The amount of coverage shall equal the total cost of the conservation measures. The amount will be determined by the Administrator or other acceptable person and shall be reviewed by the district as advisor to the Town of Tappahannock.

- (3) Bonding in some acceptable manner shall be required on each project to ensure that the conservation measures could be taken by the Town, at the applicant's expense should he fail within the time specified to initiate appropriate conservation action which may be required of him as a result of his land-disturbing activities. Such requirement will be a condition for issuance of building or other permits.
 - a) No permit of building or other permits involving land-disturbing activities shall be issued by any department or agency of the Town of Tappahannock, until the requirements of the Erosion and Sediment Control Ordinance and Program have been met with the respect to the performance bonding.
 - b) Certified checks shall be made payable to the Treasurer of the Town of Tappahannock.
 - c) Within 60 days of the adequate stabilization of the land-disturbing activities, such bond, cash escrow or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be.
 - d) These requirements are in addition to all other provisions of law related to the issuance of such permits and are not intended to otherwise effect the requirements for such permits.

VII. Erosion and Sediment Control Agreement

A legal instrument shall be executed by each applicant for an approved erosion and sediment control plan to provide right-of-entry by the appropriate persons for the purpose of inspection, monitoring, and installation, or maintenance of erosion and sediment control measures in the event the applicant fails to install or maintain such measures after notice in writing.

VIII. Appeals

Any appeals made pursuant to Section 11 of the ordinance must be filed within 30 days of the date of any decision.

IX. On-site Inspection and Ordinance Enforcement

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

- (1) Be responsible for developing and implementing a systematic program for on-site inspection to ensure that the erosion and sediment control measures on approved erosion control plans are mutually provided.
- (2) Be responsible for developing and maintaining a file system by land-disturbing projects. The file will contain a record for each inspection, date of inspection, date land-disturbing activities commenced and comments concerning compliance or non-compliance. The Administrator may require monitoring and reports from the person responsible for carrying out the plan. Furthermore, the district may inspect, monitor, and make reports for the Administrator upon request.
- (3) In the cases of non-compliance, the report shall contain statements of the conservation measures needed for compliance and a recommended time in which such measures should be communicated immediately to the proper authority.
- (4) Upon determination that a violation exists, the Administrator shall prepare:
 - a) A notice to Company which shall contain a detailed description of the conservation measures necessary for compliance. When no action is taken within forty-eight (48) hours of delivery of the Notice to Comply, the Administrator or his designated agent shall prepare a letter of intent to utilize the performance bond or cash escrow to apply the conservation measures to correct the deficiency. This letter of intent will be cleared by the Town of Tappahannock, Town Attorney, and sent by registered mail to the person responsible for carrying out the plan. If no action is taken within the time specified in the letter, dependent on the urgency of the action, the Building Official will be requested in writing, with a copy to the person responsible for carrying out the plan, to undertake the corrective measures.
 - b) A stop work order
 - (1) The Administrator may issue a stop work order on all or part of a land-disturbing activity if a permit holder fails to comply with a Notice to Comply.
 - (2) The Administrator may issue a stop work order on all or part of a land-disturbing activity without first issuing a notice to comply if the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth.

- (3) The Administrator shall issue a stop work order on all land disturbing activity which is regulated by the Town of Tappahannock Erosion and Sediment Control Ordinance which has commenced with an approved plan or permit.
- (5) The Administrator shall notify all permit issuing authorities to withhold all future permits to the permit holder until the violation is corrected, and, upon failure to comply within the time specified in the Notice to Comply, the permit for the project in violation may be revoked.
- (6) The Administrator shall be responsible for handling complaints concerning absent or ineffective erosion control measures and will respond to a complaint within 15 days.
- (7) When, upon investigation, it is determined that ineffective erosion control measures are being followed, but such measures comply with the erosion control plan, the Administrator shall be notified and shall act pursuant to Sections 6, 7, and 8 of this Ordinance.

X. Fees

Fees are established by the Town Council and are designated to help defray the cost of administering this program.