

BOTETOURT COUNTY CODE

Chapter 10

EROSION AND SEDIMENT CONTROL; STORMWATER MANAGEMENT

ARTICLE I.

IN GENERAL

Sec. 10-1. Reserved.

Sec. 10-2. Relationship of chapter to chapters 21 and 25.

It is the intent of the county that this chapter be an adjunct to both chapters 21 and 25 of this Code wherein such apply to the development and subdivision of land within the county or such apply to development on previously subdivided land within the county.

Secs. 10-3 – 10.20. Reserved.

ARTICLE II.

EROSION AND SEDIMENT CONTROL

Sec. 10- 21. Definitions.

For the purpose of this article, the following terms and words shall have the following meanings unless the context requires a different meaning. In addition, some terms not defined herein are defined in § 62.1-44.15:51 of the Erosion and Sediment Control Law and 9VAC-840-10 and 9VAC25-850-10 of the Virginia Administrative Code.

Act: The Erosion and Sediment Control Law, Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Adequate channel: A watercourse that will convey the designated frequency storm event without overtopping its banks, or causing erosive damage to the bed, banks, and overbank sections of the same.

Agreement in lieu of a plan: A contract between the plan-approving authority and the owner that 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.

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 State Water Control Board.

Causeway: A temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area or manmade waterway.

Certified inspector: 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 (1) year after enrollment.

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

Certified program administrator or program administrator: 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 (1) year after enrollment.

Channel: A natural stream or manmade waterway.

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

County: The County of Botetourt, Virginia.

Dam: A barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock, or other debris.

Denuded: A term applied to land that has been physically disturbed and no longer supports vegetative cover.

Department: The Department of Environmental Quality.

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 which is to contain three (3) or more residential dwelling units.

Director: The Director of the Department of Environmental Quality.

District or soil and water conservation district: The Mountain Castles 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 ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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 ten thousand (10,000) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

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

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Individual service connections;
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;
6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the

area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
9. Disturbed land areas of less than ten thousand (10,000) square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the program authority.

Land-disturbing permit: A permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

Local erosion and sediment control program, local control program or program: An outline of the various methods employed by the County 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.

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.

Peak flow rate: The maximum instantaneous flow from a given storm condition at a particular location.

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 institution, utility, cooperative, county, city, town or other subdivision of the commonwealth, any interstate body, or any other legal entity.

Program administrator: The County Administrator, or his/her designee, who is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activity on a unit or units of lands and for approving plans.

Responsible Land Disturber (RLD): An individual holding a certificate who is responsible for carrying out land-disturbing activity in accordance with an approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan and permit as a prerequisite for engaging in land disturbance.

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

Sec. 10-22. Enforcement of article generally.

(a) The program administrator shall periodically inspect the land-disturbing activity as required under the state program 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 an inspection.

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. Where the program administrator serves notice, a copy of the notice shall be sent to the issuer of the permit.

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 article and, upon

conviction, shall be subject to the penalties provided by this article.

(b) Upon determination of a violation of this chapter article, the program administrator may, in conjunction with or subsequent to a notice to comply as specified in this chapter article, 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 chapter article, 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, 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 chapter article. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The 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 program authority or permit holder for appropriate relief to the Circuit Court of Botetourt County.

If the alleged violator has not obtained an appropriate plan or any required permits within seven (7) days from the date of service of the order, the program administrator 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 county.

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

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 Botetourt County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or the violator 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 action authorized by this chapter article.

Sec. 10- 23. Enforcement of chapter article by legal action.

The commonwealth's attorney for the county shall, upon request of the program authority, take legal action to enforce the provisions of this chapter article.

Sec. 10- 24. Appeals from decisions under this article.

(a) Any applicant under the provision of this article who is aggrieved by any action of the county or its agent in disapproving plans submitted pursuant to this article shall have the right to apply for and receive a review of such action by the building code board of appeals provided an appeal is filed within thirty (30) days from the date of the action. Any applicant who seeks an appeal hearing before the building code board of appeals shall be heard at the next regularly scheduled meeting of the building code board of appeals, provided that the building code board of appeals and other involved parties have at least thirty (30) days' prior notice. In reviewing the county or its agent's actions, the building code board of appeals shall consider evidence and options presented by the aggrieved applicant and the county. After considering the evidence and opinions, the building code board of appeals may affirm, reverse or modify the action. The building code board of appeals' decision shall be final, subject only to review by the Circuit Court of Botetourt County.

(b) Final decisions of the building code board of appeals under this article shall be subject to review by the Botetourt County Circuit Court, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Sec. 10-25. Violations of article—Penalties.

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

(b) In lieu of any criminal sanctions which may be levied under subsection (a) of this section, the following civil penalties may be assessed for each violation of the respective offenses:

(1) Commencement of land disturbing activity without an approved plan as provided in section 10-31(a) of this article shall be one thousand dollars (\$1,000.00) per violation per day.

(2) Vegetative measures—Failure to comply with items 1, 2 or 3 of the minimum standards established by the Commonwealth of Virginia shall be one hundred dollars (\$100.00) per violation per day.

(3) Structural measures-Failure to comply with items 2, 4, 9, 10, 11, 15 and 17 of the minimum standards shall be one hundred dollars (\$100.00) per violation per day.

(4) Watercourse measures-Failure to comply with items 12, 13 and 15 of the minimum standards shall be one hundred dollars (\$100.00) per violation per day.

(5) Underground utility measures-Failure to comply with either 16(a) or item 16(c) of the minimum standards shall be one hundred dollars (\$100.00) per violation per day.

(6) Failure to obey a stop work order shall be one hundred dollars (\$100.00) per violation per day.

(7) Failure to stop work when a permit is revoked shall be one thousand dollars (\$1,000.00) per violation per day.

(8) Failure to obey any other minimum standard established by the Commonwealth of Virginia shall be one hundred dollars (\$100.00) per violation per day.

Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00), except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00). The assessment of civil penalties according to this schedule shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section.

In any trial for a civil violation, it shall be the burden of the county to show the liability of the violator by a preponderance of the evidence. Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the county itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(c) In addition to any criminal or civil penalties provided under this article, any person who violates any provision of this article may be liable to the county in a civil action for damages.

(d) 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 article shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the county.

Any civil penalties assessed by a court under this subsection shall be paid into the treasury of the county except that where the violator is the county itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(e) 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 article, the county may provide for the payment of civil charges for violations in specific sums, not to exceed the appropriate limits specified in subsection (b) or (d) of this section. Such civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection (b) or (d) of this section.

Sec. 10-26. Same—Injunctive relief.

The program administrator, the Board, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of Botetourt County to enjoin a violation or a threatened violation of this article, 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 this article, and the program authority, that a violation of this article has caused, or creates a probability of causing damage to his property, and (ii) neither the person who has caused the violation nor the program authority has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or which create the probability of causing, damage to the owner's property.

Sec. 10-27. Effect of compliance with article in proceedings for damages.

Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceedings 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.

Sec. 10-28. Land-disturbing permit.

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 article, and he has paid the fees and posted the required bond.

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. 10-29. Bond or other security for land-disturbing activities.

All applicants for permits shall provide to the county a reasonable performance bond with surety, cash escrow, an irrevocable letter of credit, any combination thereof, or such other legal arrangement acceptable to the program administrator, to ensure that measures could be taken by the county at the applicant's expense should the applicant fail, after proper notice, within the time specified, to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five (25) percent of the conservation action. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any reasonable costs in excess of the amount of the surety held.

Within sixty (60) days of adequate stabilization of any land-disturbing activity in any project or section thereof, as determined by the program administrator, such bond, cash escrow, irrevocable letter of credit or other legal obligation, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated based on the percentage of stabilization accomplished in the project or section thereof.

Sec. 10-30. Control measures to be undertaken at owner's expense.

All control measures required by a plan approved pursuant to this article shall be undertaken at the expense of the owner or his agent.

Sec. 10-31. Submission and approval of plan required.

(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 an 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 (1) 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.

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

(c) 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.

(d) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall file general erosion and sediment control specifications annually with the State Water Control Board for review and written comments. The specifications shall apply to:

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 of 1 and 2 of this subsection is not necessary when State Water Control 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 shall comply with the requirements of the Botetourt County Erosion and Sediment Control Program.

(e) State agency projects are exempt from the provisions of this article except as provided for in the Code of Virginia or applicable Virginia Administrative Code.

Sec. 10-31.1. Agreement in lieu of a plan.

An agreement in lieu of a plan may be substituted for an erosion and sediment control plan, at the discretion of the plan administrator, where:

(a) The land-disturbing activity results from the construction of a single-family residence.

Sec. 10-32. Local erosion and sediment control program.

(a) The county hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the State Water Control Board (and any local handbook or publication of the board) or the Department of Environmental Quality for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Such 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 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.

(c) 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.

(d) The program and regulations provided for in this ~~chapter~~ article shall be made available for public inspection at the office of the program administrator.

Sec. 10-33. Contents generally.

The erosion and sediment control plan shall detail those methods and techniques to be utilized in the control of erosion and sedimentation.

Sec. 10-34. Guidelines, criteria, etc., for preparation.

(a) The standards contained within the Virginia Erosion and Sediment Control Regulations, the latest edition of the Virginia Erosion and Sediment Control Handbook, and any local handbook or publication, are to be used by the applicant when making a submittal under the provisions of this article and in the preparation of an erosion and sediment control 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.

(b) Permit application.

(1) Applications for a permit to do work other than single-family residential shall adhere to the requirements as provided in the Virginia Erosion and Sediment Control Handbook.

(2) Applications for a permit to do work on single-family residential dwellings within two hundred (200) linear feet of any natural watercourse shall provide the following upon submittal:

On the application:

- Tax map and parcel number
- Owner and/or applicant:
 - Name
 - Address
 - Telephone number/mobile number
- Responsible land disturber (RLD) certification:
 - Name
 - Address
 - Telephone number/mobile number
 - Certification number
 - Date of expiration
- Erosion and sediment control measures/shoreline protection
- Total acreage disturbed
- Project description
- Directions with site markings
- Signatures

On the plan/sketch:

- Limits and distances of clearing and grading
- Drain field location
- Driveway location
- Home location
- Existing drainage areas/swales/channels
- Location of silt fence and construction entrance
- Areas that will be re-stabilized with seed and mulch.

Sec. 10-35. Review fee.

The board of supervisors may, by ordinance or resolution, establish and from time to time amend a schedule of fees for the administrative review of erosion and sediment control plans and no such review, for which a fee has been so established, shall be issued or amended until such fee has been paid to the treasurer of the county. The board of supervisors may also, by ordinance or resolution, establish and on occasion amend a schedule of fees for the required inspections for the control measures associated with the approved plans and the land-disturbing permit or for any other erosion and sediment control measures required by law or deemed by the board to be important.

Sec. 10-36. Approval or disapproval of plan.

(a) The plan shall be acted upon by the plan-approving authority within forty-five (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.

(b) The plan-approving authority shall, within forty-five (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 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 a responsible land disturber to the program authority, who will be in charge of and responsible for carrying out the land-disturbing activity, in accordance with the approved plan. 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 article.

However, the certificate of competence is not required 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. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this article.

(c) When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan.

(d) If no action is taken within forty-five (45) days, the plan shall be deemed approved and the person authorized to obtain a land-disturbing permit, after submitting the completed permit application, any required performance bond, the name of a certified responsible land disturber.

Sec. 10-37. Monitoring, reports and inspections.

The county may require the person responsible for carrying out the plan to monitor and maintain 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.

Sec. 10-38. Changing approved plan.

An approved plan may be changed by the program administrator when:

(1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or

(2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter article, are agreed to by the plan-approving authority program administrator and the person responsible for carrying out the plan.

Sec. 10-39 – 10-50 Reserved.

ARTICLE III.

STORMWATER MANAGEMENT

Sec. 10-51. Purpose; Authority; and Applicability. (9VAC25-870-20, § 62.1-44.15:27)

(a) The purpose of this article is to ensure the general health, safety, and welfare of the citizens of Botetourt County and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby storm water requirements related to water quality and quantity shall be administered and enforced. This article provides the framework for the administration, implementation, and enforcement of the provisions of the Virginia Stormwater Management Act and delineates the procedures and requirements to be followed in connection with permits issued by the local Virginia Stormwater Management Program “VSMP” authority, Botetourt County.

(b) This article is adopted pursuant to Virginia Code § 62.1-44.15:27, as part of an initiative to integrate Botetourt County’s stormwater management requirements with its erosion and sediment control, flood insurance, and flood plain management requirements into a unified stormwater program. This unified program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities in a more convenient and efficient manner.

(c) This article, or the applicable parts thereof, shall apply to land disturbing activity within the County and any towns located therein that have not adopted a VSMP program.

Sec. 10-52. Definitions. (9VAC25-870-10)

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this article have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"Administrator" means the VSMP authority including the county staff person or department responsible for administering the VSMP on behalf of the locality. The Botetourt County Board of Supervisors hereby designates the county administrator or his or her designee as the Administrator of the Virginia stormwater management program.

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Applicant" means any person submitting an application for a permit or requesting issuance of a permit under this article.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and ground-water systems from the impacts of land-disturbing activities.

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto. *"Common plan of development or sale"* means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Control measure" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"County" means the County of Botetourt.

"Department" means the Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

"General permit" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in section 10-53(b) of this article.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Minor modification" means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Operator" means the owner or operator of any facility or activity subject to regulation under this article.

"Permit" or "VSMP Authority Permit" means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this article, and which may only be issued after evidence of general permit coverage has been provided by the Department.

"Permittee" means the person to whom the VSMP Authority Permit is issued.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Regulations" means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870, as amended.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

"State" means the Commonwealth of Virginia.

"State Board" means the Virginia State Water Control Board.

"State permit" means an approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Regulations.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management plan" means a document(s) containing material describing methods for complying with the requirements of section 10-56 of this article

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this article. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"*Subdivision*" means the same as defined in "Chapter 21, Subdivisions" of the Code of Botetourt County, Virginia.

"*Total maximum daily load*" or "*TMDL*" means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source tradeoffs.

"*Virginia Stormwater Management Act*" or "*Act*" means §§ 62.1-44.15:24 et seq., of Chapter 31 of Title 62.1 of the Code of Virginia.

"*Virginia Stormwater BMP Clearinghouse website*" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"*Virginia Stormwater Management Program*" or "*VSMP*" means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"*Virginia Stormwater Management Program authority*" or "*VSMP authority*" means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

Sec. 10-53. Stormwater Permit Requirement; Exemptions.

(a) Except as provided herein, no person may engage in any land-disturbing activity within the County, including the towns therein, until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this article.

(b) Notwithstanding any other provisions of this article, the following activities are exempt, unless otherwise required by federal law:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;

(2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;

(3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential;

(4) Land disturbing activities that disturb less than one acre of land area except for activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;

(5) Discharges to a sanitary sewer or a combined sewer system;

(6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

(7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

(8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of subsection (a) is required within 30 days of commencing the land-disturbing activity.

Sec. 10-54. Stormwater Management Program Established; Submission and Approval of Plans; Prohibitions.

(a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, Botetourt County hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in section 10-51 of this article. No person shall conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.

(b) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:

(1) A permit application that includes a general permit registration statement; however, a registration statement is not required for detached single-family home construction within or outside of a common plan of development or sale, but such single-family home construction must adhere to the requirements of the general permit.

(2) An erosion and sediment control plan approved in accordance with the Botetourt County Erosion and Sediment Control Ordinance, articles I and II of this Chapter; and

(3) A stormwater management plan that meets the requirements of section 10-56 of this article.

(c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.

(d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to section 10-65, are received, and a reasonable performance bond required pursuant to section 10-66 of this article has been submitted.

(e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.

(f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

Sec. 10-55. Stormwater Pollution Prevention Plan; Contents of Plans.

(a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by section 9VAC25-870-54 and must also comply with the requirements and general information set forth in section 9VAC25-880-70, section II [stormwater pollution prevention plan] of the general permit.

(b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

(c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with section II of the general permit, either electronically or in hard copy.

Sec. 10-56. Stormwater Management Plan; Contents of Plan.

(a) The Stormwater Management Plan, required in section 10-54 of this article, must apply the stormwater management technical criteria set forth in section 10-59 of this article to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land disturbing activities. The stormwater management plan must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:

(1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and postdevelopment drainage areas;

(2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;

(3) A narrative that includes a description of current site conditions and final site conditions;

(4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(5) Information on the proposed stormwater management facilities, including:

- (i) The type of facilities;
- (ii) Location, including geographic coordinates; (iii) Acres treated; and
- (iii) The surface waters or karst features, if present, into which the facility will discharge.

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of section 10-59 of this article.

(8) A map or maps of the site that depicts the topography of the site and includes:

- (i) All contributing drainage areas;
- (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
- (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
- (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
- (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
- (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

(b) If an operator intends to meet the water quality and/or quantity requirements set forth in section 10-59 of this article through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.

(c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

(d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

(e) A stormwater management plan approved by the VSMP authority for residential, commercial, or an industrial subdivision shall remain in effect and govern the development of individual parcels within the plan regardless of changes in ownership.

Sec. 10-57. Pollution Prevention Plan; Contents of Plans.

(a) Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

Sec. 10-58. Review of Stormwater Management Plan.

(a) The Administrator or any duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

(1) The Administrator shall determine the completeness of a plan in accordance with section 10-56 of this article, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

(2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.

(3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.

(4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article.

(5) If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.

(b) Approved stormwater plans may be modified as follows:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

(c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to section 10-60 (b).

Sec. 10-59. Technical Criteria for Regulated Land Disturbing Activities: Grandfathering

For technical criteria, adhere to the technical criteria provisions of the Regulations as shown in subsection (a) below. Such state technical criteria or more stringent local standards may be enforceable through this article as amended.

(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the Locality hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-62 [applicability]; 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydro logic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC-25-870-85 [stormwater management impoundment structures or facilities]; 9VAC25-870-92[comprehensive stormwater management plans]; and as set forth in Part IIC of the Regulations including, 9VAC25-870-93 [definitions]; 9VAC25-870-96 [water quality]; 9VAC25-870-97 [stream channel erosion]; 9VAC25-870-98 [flooding]; 9VAC25-870-99 [regional watershed-wide stormwater management plans]; which shall apply to all land-disturbing activities regulated pursuant to this article, except as expressly set forth in subsection (b) of this section.

(b) Any land-disturbing activity shall be considered grandfathered by the Administrator and subject to the technical criteria of Part II C of the Regulations (but not Part II B), provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the Administrator to be equivalent thereto (i) was approved by the County prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with Part II C technical criteria of the Regulations, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(c) Locality, state, and federal projects shall be considered grandfathered by the Administrator and shall be subject to the technical criteria of Part II C of the Regulations, provided:

(1) There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(d) Land-disturbing activities grandfathered under subsections (b) and (c) above, shall remain subject to the technical criteria of Part II C of the Regulations for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

(e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC of the Regulations.

(f) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this article are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this article.

(1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.

(2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 4VAC50-60-69 have been considered and found not available.

(g) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.

Sec. 10-60. Long-Term maintenance of Permanent Stormwater Facilities

(a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:

(1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;

(2) Be stated to run with the land;

(3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and

(5) Be enforceable by all appropriate governmental parties.

(b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

(c) If a recorded instrument is not required pursuant to subsection 10-60 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator or any duly authorized agent of the Administrator.

Sec. 10-61. Monitoring and Inspections.

(a) The Administrator or any duly authorized agent of the Administrator shall inspect the land-disturbing activity during construction for:

(1) Compliance with the approved erosion and sediment control plan;

(2) Compliance with the approved stormwater management plan;

(3) Development, updating, and implementation of a pollution prevention plan; and

(4) Development and implementation of any additional control measures necessary to address a TMDL.

(b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

(c) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, and subject to provisions therein regarding protection of specified confidential information, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this article, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article.

(e) Post-construction inspections of stormwater management facilities required by the provisions of this article shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the Locality's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in section 10-60.

Sec. 10-62. Hearings.

When holding hearings under this article, the county shall do so in a manner consistent with local hearing procedures. Specifically:

(a) Any permit applicant, permittee, or other person subject to the requirements herein, aggrieved by any action of the county taken without a formal hearing, or by inaction of the county, may demand in writing a formal hearing by the building code of appeals causing such grievance, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.

(b) The hearings held under this section shall be conducted by the building code of appeals at a regular or special meeting of the building code of appeals; or by at least one member of the building code of appeals designated by the building code of appeals to conduct such hearings on behalf of the building code of appeals at any other time and place authorized by the building code of appeals.

(c) A verbatim record of the proceedings of such hearings shall be taken and filed with the building code of appeals. Depositions may be taken and read as in actions at law.

(d) The building code of appeals or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Sec. 10-63. Appeal.

(a) Any applicant under the provision of this chapter who is aggrieved by any action of the county 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 building code board of appeals provided an appeal is filed within thirty (30) days from the date of the action. Any applicant

who seeks an appeal hearing before the building code board of appeals shall be heard at the next regularly scheduled meeting of the building code board of appeals, provided that the building code board of appeals and other involved parties have at least thirty (30) days' prior notice. In reviewing the county or its agent's actions, the building code board of appeals shall consider evidence and options presented by the aggrieved applicant and the county. After considering the evidence and opinions, the building code board of appeals may affirm, reverse or modify the action. The building code board of appeals' decision shall be final, subject only to review by the Circuit Court of Botetourt County.

(b) Final decisions of the building code board of appeals under this chapter shall be subject to review by the Botetourt County Circuit Court, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities. Unless otherwise provided by law, the Circuit Court shall conduct such review in accordance with the standards established in Virginia Code § 2.2-4027, and the decisions of the Circuit Court shall be subject to review by the Court of Appeals.

Sec. 10-64. Enforcement.

(a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection (b) or the permit may be revoked by the Administrator.

(2) If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. Such orders shall be issued in accordance with Botetourt County Stormwater Submittal Policy and Procedure. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency

order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with subsection 10-54 (c).

(b) In addition to any other remedy provided by this article, if the Administrator or his designee determines that there is a failure to comply with the provisions of this article, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with Botetourt County Stormwater Submittal Policy and Procedure.

(c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Circuit Court of Botetourt County by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(d) Any person who violates any provision of this article or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

- (1) Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:
 - (i) No state permit registration;
 - (ii) No SWPPP;
 - (iii) Incomplete SWPPP;
 - (iv) SWPPP not available for review;
 - (v) No approved erosion and sediment control plan;
 - (vi) Failure to install storm water BMPs or erosion and sediment controls;
 - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (viii) Operational deficiencies;
 - (ix) Failure to conduct required inspections;
 - (x) Incomplete, improper, or missed inspections; and
 - (xi) Discharges not in compliance with the requirements of section 9VAC25-880-70 of the general permit.

- (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
- (3) In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
- (4) Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the county to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(e) Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of this article, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

Sec. 10-65. Enforcement of Article by Legal Action.

The Commonwealth's Attorney shall represent Botetourt County in court actions brought against violators for non-compliance with the County's Erosion and Sediment and Stormwater Ordinances. The Commonwealth's Attorney may also seek criminal sanctions against violators in accordance with state and/or local law.

Sec. 10-66. Fees.

(a) The board of supervisors may, by ordinance or resolution, establish and from time to time amend a schedule of fees for the administrative review of erosion and sediment control plans including stormwater management required by this article and no such review for which a fee has been so established, shall be issued or amended until such fee has been paid to the treasurer of the county. The board of supervisors may also, by ordinance or resolution, establish and on occasion amend a schedule of fees for the required inspections for the control measures associated with the approved plans and the land-disturbing permit for the inspection of any stormwater management systems, or for any other erosion and sediment control measures required by law or deemed by the board to be important.

(b) Fees shall be paid at the time of application. All incomplete payment of fees will be deemed non-payments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and will be calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. Botetourt County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

Sec. 10-67. Performance Bond. (9VAC24-870-104.D and Code § 603.8(A))

Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the county takes such action upon such failure by the Applicant, the Locality may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, 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.