

Grayson County, Virginia

# Erosion & Sediment Control Ordinance

Revised May 8, 2014



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## Section 10-1. TITLE, PURPOSE, AND AUTHORITY

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Grayson County." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of Grayson County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced. This Chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4 (Sec. 62.1-44.15:51 et seq.), known as the Virginia Erosion and Sediment Control Law.

## Section 10-2. DEFINITIONS: As used in the ordinance, unless the context requires a different meaning:

- A. "**Agreement in lieu of a plan**" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.
- B. "**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.
- C. "**Board**" means the State Water Control Board.
- D. "**Board of Appeals**" means the Grayson County Building Board of Appeals.
- E. "**Certified inspector**" means an employee or agent of a VESCP 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 VESCP 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, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.
- G. "**Certified program administrator**" means an employee or agent of a VESCP 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 top soil removal.
- I. "**County**" means the County of Grayson.
- J. "**Department**" means the Department of Environmental Quality.
- K. "**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.
- L. "**Director**" means the Director of the Department of Environmental Quality.
- M. "**District**" or "**Soil and Water Conservation District**" refers to the New River Soil and Water Conservation District.

N. "**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 ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

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 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; of the Code of Virginia.

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 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 the Code of Virginia.

7. Repair or rebuilding of the tracks, right-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, Article 2 (§ 10.1-604 et seq.) Chapter 6 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

9. Disturbed land areas of less than 10,000 square feet in size.

10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

11. 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 VESCP authority.

T. "**Land-disturbing Permit**" means a permit issued by VESCP authority for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

U. "**Natural channel design concepts**" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

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

W. "**Peak flow rate**" means the maximum instantaneous flow from a given storm condition at a particular location.

X. "**Permittee**" means 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.

Y. "**Person**" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

Z. "**Responsible Land Disturber**" means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved erosion and sediment control plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

AA. "**Runoff volume**" means the volume of water that runs off the land development project from a prescribed storm event.

BB. "**Single-family residence**" means a noncommercial dwelling that is occupied exclusively by one family.

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

DD. "**Town**" means the incorporated town of Independence, Fries and Troutdale.

EE. "**Transporting**" means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the

buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

FF. "Virginia Erosion and Sediment Control Program," or "VESCP," means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable 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 its associated regulations.

GG. "Virginia Erosion and Sediment Control Program authority," or "VESCP authority," means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. **(As used in this ordinance the VESCP Authority shall refer to the "County of Grayson")**

HH. **"Water Quality Volume"** means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

### **Section 10-3. VIRGINIA EROSION AND SEDIMENT CONTROL PROGRAM (VESCP)**

A. Pursuant to section 62.1-44.15:54 of the Code of Virginia, the VESCP authority hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board [and any local handbook or publication] 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.

B. Before adopting or revising regulations, the VESCP authority 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 VESCP authority is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the VESCP authority proposes or revises regulations that are more stringent than the state program.

C. Pursuant to Sec. 62.1-44.15:52 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 VESCP authority shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

D. The VESCP authority hereby designates Building Official as the program combined administrator.

E. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Grayson County Building Official.

### **Section 10-4. SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS**

A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Building Official /VESCP authority 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 VESCP authority, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended and are to be used by the applicant when making a submittal under the provisions of this ordinance 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. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section, § 62.1-44.15:54, or 62.1-44.15:65 of the Code of Virginia. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to § 62.1-44.15:54 or 62.1-44.15:65 of the Code of Virginia. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 62.1-44.15:24 et seq.) of the Code of Virginia and attendant regulations, unless such land-disturbing activities are in accordance with 9 VAC 25-870-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

C. The VESCP authority shall review conservation plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the VESCP authority, as provided by § 62.1-44.15:52, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

However, the VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 62.1-44.15:52 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this ordinance.

D. The plan shall be acted upon within 60 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, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

E. The VESCP authority may require changes to an approved plan in the following cases:

(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 ordinance, are agreed to by the VESCP authority and the person responsible for carrying out the plans.

F. Variances: The VESCP authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

(1). At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP authority shall be documented in the plan.

(2). During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The VESCP authority shall respond in writing either approving or disapproving such a request. If the VESCP authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

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

H. 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.

I. In accordance with the procedure set forth by §62.1-44.15:55 (E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board.

J. State agency projects shall comply with the provisions of the Code of Virginia, Sec. 62.1-44.15:55.

#### **Section 10-5. PERMITS; FEES; SECURITY FOR PERFORMANCE**

A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities regulated under this article may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed and, upon the development of an online reporting system by the Department but no later than July 1, 2014, evidence of Virginia stormwater management state permit coverage where it is required.

B. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement and, after July 1, 2014, a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.

C. An administrative fee of \$100.00 plus \$15.00 per acre shall be paid to VESCP authority at the time of submission of the erosion and sediment control plan.

D. The VESCP authority may also require an applicant, excluding state and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VSMP authority, to ensure that measures could be taken by the VSMP authority 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 VSMP authority takes such action upon such failure by the applicant, the VSMP authority 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. 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. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

#### **Section 10-6. MONITORING, REPORTS, AND INSPECTIONS**

A. The VESCP authority may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

B. The Grayson County Building Department shall periodically inspect the land-disturbing activity in accordance with Sec 9VAC25-840-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. The Department, the VESCP authority, where authorized to enforce this article, or any duly authorized agent of the Department or such VESCP authority 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. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority 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.

If the Building Official 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. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

C. Upon issuance of an inspection report denoting a violation of this section, from the representative of the VESCP authority in conjunction with or subsequent to a notice to comply as specified in subsection B above, the VESCP authority, where authorized to enforce this article, may 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 Building Official 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, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

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

If the alleged violator has not obtained an approved erosion and sediment control plan or any required permits within seven days from the date of service of the order, the Building Official 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 erosion and sediment control 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 VESCP authority.

The owner may appeal the issuance of an order to the Circuit Court the VESCP authority or other appropriate court.

Any person violating or failing, neglecting or refusing to obey an order issued by Building Official may be compelled in a proceeding instituted in the Circuit Court of the VESCP authority 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 Building Official on behalf of the VESCP authority from taking any other action authorized by this ordinance.

## **Section 10-7. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS**

A. Violators of this ordinance shall be guilty of a Class I misdemeanor.

B. Any person who violates any provision of this ordinance shall, upon a finding of the District Court of the VESCP authority, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.

**Note: The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of this section. Refer to Code of Virginia, Sec. 62.1-44.15:54 K.**

C. The VESCP authority, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation 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 VESCP, and the VESCP authority, that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, nor the VESCP authority has taken corrective action within fifteen 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

D. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to VESCP authority in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority. Any civil penalties assessed by a court shall be paid into the treasury of VESCP authority, except that where the violator is the locality itself, or its agent, or other VESCP authority, or where the penalties are assessed as the result of an enforcement action brought by the Department, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, VESCP authority may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E.

G. Upon request of the attorney for the Commonwealth shall take legal action to enforce the provisions of this ordinance.

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

### **Section 10-8. APPEALS AND JUDICIAL REVIEW**

A. There is hereby established a Board of Appeals which shall be authorized to conduct formal hearings. The Board of Appeals shall consist of five (5) members. Members of the Board of Appeals shall be appointed by the Grayson County Board of Supervisors on the basis of their ability to render fair and competent decisions regarding application of the VESCP and shall to the extent possible, represent different occupational or professional fields relating to the industry. At least one member shall be an experienced builder; at least one member shall be a Registered Design Professional, and at least one member shall be an experienced property manager. Employees or officials of Grayson County shall not serve as members of the Board of Appeals. The Board of Appeals shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. Grayson County or the Chief executive officer of Grayson County shall appoint a secretary to the Board of Appeals to maintain a detailed record of all proceedings.

B. Any permit applicant or permittee, aggrieved by any action of Grayson County taken without a formal hearing, or by inaction of Grayson County, may demand in writing a formal hearing by the Board of Appeals, provided a petition requesting such hearing is filed with the Administrator within 30 days after the notice of such action is given by the Administrator.

C. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board of Appeals. Depositions may be taken and read as in actions at law.

D. The Board of Appeals shall have the 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 Board of Appeals, whose action may include the procurement of an order of enforcement from the circuit court. Witness who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

E. Any applicant or permittee entitled to a hearing before the Board of Appeals shall be heard within 30 calendar days after the date of receipt of the application for appeal, except that a longer time period shall be permitted if agreed to by all parties involved in the appeal. A notice indicating time and place of the public hearing shall be sent to the parties in writing to the address listed in writing to the address listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all parties involved in the appeal. When a quorum of the appeals board is not present at a hearing to hear the appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The appeals board shall reschedule the appeal within 30 calendar days of the postponement. The appeals board shall consider evidence and opinions, the Board of Appeals may affirm, reverse, or modify the action. The Board of Appeals decision shall be final, subject only to review by the Circuit Court of Grayson County, as provided an appeal is filed within 30 days from the date of the decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

