

**ORDINANCE NO 2007- 4
EROSION AND SEDIMENT CONTROL ORDINANCE
OF
WYTHE COUNTY, VIRGINIA**

ARTICLE I - TITLE, AUTHORITY AND JURISDICTION

- 1.1** **Title.** This ordinance shall be known as the “Erosion and Sediment Control Ordinance of the County of Wythe, Virginia”, Ordinance 2007-4.
- 1.2** **Authority.** This ordinance is adopted pursuant to the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sections 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.
- 1.3** **Jurisdiction.** The provisions of this ordinance shall apply to all land within the County of Wythe, Virginia, except the Town of Wytheville. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Virginia Soil and Water Conservation Board for review and approval rather than to each jurisdiction concerned. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, section 10.1-564.

ARTICLE II – PURPOSE

- 2.1** The purpose of this ordinance is to prevent degradation of properties, stream channels, waters and other natural resources of the County of Wythe, Virginia by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby the established requirements shall be administered and enforced.

ARTICLE III – RULES

- 3.1** In the construction of this ordinance, the rules contained in this section shall apply, except where the context clearly indicates otherwise:
1. Words in the present tense shall include the future, and words in the singular shall also include the plural;
 2. The word “lot” also means the word “plot”, “parcel” and “tract”;
 3. The word shall is mandatory, and not discretionary;
 4. The word “may” is permissive;
 5. The word “approve” shall be considered to be followed by the words “or disapproved”;
 6. The masculine gender includes both the feminine and neuter;
 7. Any reference to this ordinance includes all ordinances amending and supplementing the same;
 8. All distances and areas refer to measurements in the horizontal plane.

ARTICLE IV – DEFINITIONS

For the purpose of this ordinance, certain words or terms used herein shall be defined as follows:

- 4.1 **Administrator.** The official(s) designated by the governing body to serve as its agent(s) to administer the ordinance.
- 4.2 **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.
- 4.3 **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.
- 4.4 **Building Official.** The Wythe County Building Official or his representative.
- 4.5 **Board.** The Virginia Soil and Water Conservation Board.
- 4.6 **Certified Inspector.** An employee or agent of a program authority who holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of project inspection or is enrolled in the Virginia Soil and Water Conservation Board's training program for project inspection and successfully completes such program within one year after enrollment.
- 4.7 **Certified Plan Reviewer.** An employee or agent of a program authority who holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, or is enrolled in the Virginia Soil and Water Conservation Board's training program for plan review and successfully completes such program within one year after enrollment, or is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54-400 et seq.) of Chapter 4 of Title 54.1 of the Code Of Virginia.
- 4.8 **Certified Program Administrator.** An employee or agent of a program authority who holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of program administration or is enrolled in the Virginia Soil and Water Conservation Board's training program for program administration and successfully completes such program within one year after enrollment.
- 4.9 **Clearing.** Any activity that removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.
- 4.10 **Conservation District.** A subdivision of the Commonwealth organized in accordance with the provisions of the Soil Conservation Districts Law, Title 10, Section 10.1-506 through 10.1-560 of the Code of Virginia of 1950, as amended. For the purpose of this ordinance, the Conservation District shall mean the Big Walker Soil and Water Conservation District or its successors.
- 4.11 **Conservation District Officials.** The directors of the Big Walker Soil and Water Conservation District, or its staff, or their successors.
- 4.12 **Conservation Plan, Erosion and Sediment Control Plan or Plan.** A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- 4.13 **County.** The County of Wythe.

- 4.14 **Department.** The Department of Conservation and Recreation.
- 4.15 **Development.** A tract of land developed or to be developed as a single unit under single ownership or unified control that is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.
- 4.16 **Director.** The director of the Department of Conservation and Recreation.
- 4.17 **District or Soil and Water Conservation District.** Refers to the Big Walker Soil and Water Conservation District.
- 4.18 **Erosion Control Handbook.** The current edition of the Virginia Erosion and Sediment Control Handbook as adopted by the Virginia Soil and Water Conservation Board.
- 4.19 **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 and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- 4.20 **Excavating.** Any digging of earth materials, scooping, or other methods of removing earth materials.
- 4.21 **Filling.** Any deposition or stock piling of earth materials.
- 4.22 **Grading.** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.
- 4.23 **Governing Body.** The Wythe County Board of Supervisors.
- 4.24 **Harmful Erosion.** That erosion creating a threat to the stability of adjacent land, or that erosion creating a threat of sediment deposition into waterways or onto other property.
- 4.25 **Land Disturber.** A person who engages in or contracts for a land-disturbing activity as defined herein.
- 4.26 **Land-Disturbing Activity.** Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:
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 which is hard surfaced;
 4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 5. Surface or deep mining;

6. Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
 7. Tilling, planting, or harvesting of agricultural, or forest crops, or livestock feedlot operations; 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 irrigation; however, this exception shall 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 (S10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of S10.1-1163;
 8. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities, and other related structures and facilities, of a railroad company;
 9. 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 of Chapter 6 Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
 10. Disturbed land areas of less than 10,000 square feet in size;
 11. Installation of fence and sign posts or telephone and electric poles and other kind of posts or poles;
 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 plan-approving authority.
- 4.27 **Land-Disturbing Permit.** A permit issued by the Wythe County Board of Supervisors for the clearing, filling, excavating, grading, transporting of soils or for any combination thereof. The approved erosion and sediment control plan may serve as the permit.
- 4.28 **Local Erosion and Sediment Control Program or Local Control Program.** An outline of the various methods employed by a program authority 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.
- 4.29 **Natural Channel Design Concepts** 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.
- 4.30 **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 the property.
- 4.31 **Peak Flow Rate.** The maximum instantaneous flow from a given storm condition at a particular location.
- 4.32 **Permit-issuing Authority.** The permit issuing authority shall be the program authority or a department of the program authority.
- 4.33 **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.

- 4.34 **Person**. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.
- 4.35 **Plan Approving Authority**. The program authority, or a department of a program authority, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.
- 4.36 **Program Authority**. The Wythe County Board of Supervisors.
- 4.37 **Responsible Land Disturber (RLD)**. An individual from the project or development team who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or an agreement in lieu of a plan who holds a Responsible Land Disturber certificate of competence, holds a current certificate of competence from the Board, holds a current certificate of Review, holds a current Contractor certificate of competence for erosion and sediment control, or is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Section 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- 4.38 **Runoff Volume**. The volume of water that runs off the land development project from a prescribed storm event.
- 4.39 **Single-family Residence**. A noncommercial dwelling that is occupied exclusively by one family.
- 4.40 **State Erosion and Sediment Control Program or State Program**. The program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code including regulations designed to minimize erosion and sedimentation.
- 4.41 **State Waters**. All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.
- 4.42 **Transporting**. Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials, to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.
- 4.43 **Water Quality Volume**. The volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

ARTICLE V – INTERPRETATION

- 5.1 The provisions of this ordinance shall be interpreted to constitute the minimum requirements adopted for the promotion of the public health, safety, and welfare. Such provisions as are contained herein are intended to protect the public and to serve the following purposes:
1. To provide for the protection of the land and water resources of the County.
 2. To minimize the adverse affect upon economic activity.
- 5.2 It is not the intention of this ordinance to repeal, abrogate, annul, or in any way impair or interfere with existing provision of other laws or ordinances, except those specifically repealed by this ordinance, or with private restrictions placed upon property by covenants running with the land to which the County is a party.

ARTICLE VI – ADMINISTRATION

- 6.1 **Administrator.** The administrator of this ordinance shall be designated by the Wythe County Board of Supervisors.
- 6.2 **Administration.** In the performance of his duties, the Administrator may call for opinions or decisions, either verbal or written, from other departments or agencies in considering details of any proposed soil erosion and sediment control plan.

ARTICLE VII – LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

- 7.1 Pursuant to section 10.1-561 of the Code of Virginia, The County of Wythe hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.
- 7.2 Pursuant to section 10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts that are not man-made channels shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.
- 7.3 Pursuant to section 10.1-561 of the Code of Virginia, any land- disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to detain the water quality volume and to release it over 48 hours; detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and 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 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 good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.
- 7.4 Pursuant to section 10.1-563(E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions and the wetland mitigation banks have been approved and are operated in accordance with applicable federal and state guidance laws or regulations for the establishment, use, and operation of mitigation banks pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Board for review and approval consistent with guidelines established by the Board.
- 7.5 Pursuant to section 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of the County of Wythe shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- 7.6 The County of Wythe hereby designates The Big Walker Soil and Water Conservation District as the plan-approving authority.
- 7.7 The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the County Administrator.

ARTICLE VIII – REGULATED LAND-DISTURBING ACTIVITIES

8.1 Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Wythe County Administration Office (Building Inspection Office) an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan approving authority and a responsible land disturber is named who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the approved plan. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Virginia Soil and Water Conservation 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.

8.2 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 or an agent of the owner.

8.3 Whenever electric and telephone utility companies or railroad companies undertake any of the activities included in subdivisions 1 and 2 below, they shall be considered exempt from the provisions of this ordinance.

1. Construction, installation and maintenance of electric and telephone utility lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the County of Wythe erosion and sediment control program, pursuant to Code of Virginia, Section 10.1-563 D.

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

ARTICLE IX – PROCEDURE FOR PREPARATION, SUBMISSION, AND REVIEW OF CONSERVATION PLANS

9.1 **Standards.** The standards contained within the most recent edition of the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook 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.

9.2 **Preparation of Plan.** The plan shall have a narrative outlining the purpose of the land-disturbing activity, the number of acres that will be disturbed, the temporary measures that will be used to control erosion on the site and prevent sediment from leaving the site, the permanent measures to be taken to stabilize all disturbed areas, the anticipated date that all permanent stabilization measures will be complete, certification by the person responsible to implement the conservation measures included in the plan, and the name and address of the owner of the property. If the applicant for the permit is not the owner of the land, then the applicant shall furnish a statement signed by the owner that the applicant is authorized to serve as the owner's agent. The plan shall

also have a site plan with locations of temporary and permanent erosion and sediment control measures shown on it.

- 9.3 Handbook.** All temporary and permanent erosion and sediment control measures shall be designed and implemented in accordance with the Erosion Control Handbook. The Erosion Control Handbook shall be used to determine the appropriate control measures needed to provide adequate protection of specific areas of disturbance.
- 9.4 Submission of Plan.** Applicants shall submit (5) copies of an erosion sediment control plan to the program authority of this ordinance and pay the applicable fee and post the required security. Plan submission shall be made in a timely manner to allow the plan-approving authority to review the plan for technical adequacy and compliance with this ordinance. No plan will be considered approved until the applicant has secured the necessary entrance permits from VDOT and any land use permits when required.
- 9.5 Review of Plan.** The plan-approving authority shall review conservation plans submitted to the authority and grant written approval within 45 days of the receipt of the plan if the authority determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program authority as provided by section 10.1-561 of the Code of 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.

If the plan is found to be technically inadequate, the plan-approving authority shall notify the applicant in writing of the modifications or conditions necessary to make the plan adequate.

- 9.6 Land-Disturbing Permit.** The approved erosion sediment control plan shall be the land-disturbing permit. One copy of the approved plan shall be kept on file by the plan-approving authority. Two copies shall be returned to the applicant and two copies furnished to the County of Wythe. No building permit shall be issued by the Building Official in connection with a land-disturbing activity until the erosion sediment control plan is approved.
- 9.7 Modifications of Approved Plan.** An approved plan may be changed by the plan-approving authority after initial approval of the plan in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
 2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plan.
- 9.8 Variances.** The plan-approving authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under the following 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 in writing the reasons for requesting variances. Specific variances allowed by the plan-approving authority shall be documented in the plan.

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

ARTICLE X – PERFORMANCE BONDING

- 10.1 **Performance Bond**. The program authority, prior to the issuance of a land-disturbing permit, shall require from the applicant a performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the program authority to insure that measures could be taken by the program authority at the applicant's expense should he fail, after proper notice, to implement the approved plan. If the program authority assumes the responsibility to implement the approved plan upon a failure by the permittee, the program authority may collect from the permittee 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 achievement of adequate stabilization of the land-disturbing activity such bond, cash escrow, letter of credit or other legal arrangement, shall be refunded to the applicant or terminated. Security shall not be required for agreements in lieu of a plan executed by the program authority for single family residences.
- 10.2 **Amount of Coverage**. The minimum value of the security pledged shall be \$5,000 for projects two acres or less. The amount of coverage must be increased by \$2,000 per acre for each acre or fraction of an acre above the two-acre minimum.
- 10.3 **Other Provisions of Law**. The requirements of this section are in addition to all other provisions of law that relate to the issuance of such permits and shall not be construed to otherwise affect the requirements for such permits.

ARTICLE XI – FEES

- 11.1 Fees for the review and approval of the erosion sediment control plans and agreements in lieu of plans shall be established by the Wythe County Board of Supervisors by resolution. The fees shall be collected from the applicant and shall be paid to the County Treasurer at the time of submission of the erosion sediment control plan.

ARTICLE XII – PERMITS

- 12.1 No land-disturbing permit shall be issued until the applicant submits with his application the required performance bond, administration fee, adequate erosion and sediment control plan, and certification that the plan will be followed.
- 12.2 Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.
- 12.3 No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

ARTICLE XIII – INSPECTIONS AND MONITORING

- 13.1 Inspections.** The Wythe County Board of Supervisors shall provide for inspections of each land-disturbing activity at a frequency based upon the alternate inspection program approved by the Virginia Soil and Water Conservation board as follows:

Class 1 - At the beginning and completion of the project and every eight weeks.

Class 1 projects shall have total acres disturbed under two acres; extensive buffer between disturbed area and the property line or any water resources; extensive buffer from a public street; low or minimal slopes.

Class 2 – At the beginning and completion of the project and at least every five weeks.

Class 2 projects shall have total acres disturbed under two acres; disturbed area close to a property line, a water resource, or a public street; low or minimal slopes, and no land disturbance within a 100 year flood plain; no concentrated discharge.

Class 3 – At the beginning and completion of the project, at least every two weeks, and after any significant rainfall.

Class 3 projects shall be any projects that do not fit Class 1 or Class 2 descriptions.

The owner, permittee, or person responsible for the plan shall be given notice of the inspections.

- 13.1 Failure to Comply with Approved Plan.** If the Wythe County Board of Supervisors 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 time specified, the permit shall 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 provides in Article 16.

ARTICLE XIV - ENFORCEMENT

- 14.1 Permit.** No person shall engage in any land-disturbing activity until he has secured a land-disturbing activity permit from the plan-approving authority of this ordinance.
- 14.2 Stop Work Order.** Upon receipt of a sworn complaint of a violation of this ordinance from the administrator of this ordinance, the County Administrator, or his designee, shall, in conjunction with or subsequent to a notice to comply as specified in Section 13.2, 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 or, if land-disturbing activities have commenced without an approved plan as provided in Section 14.1, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged non-compliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the water sheds 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 whether or not the alleged violator has been issued a notice to comply, as specified in Section 13.2. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the County Administrator, or his designee, or the alleged violator for appropriate relief to the Circuit Court of Wythe County. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order the County Administrator, or his designee, shall 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 Wythe County. The owner may appeal the issuance of an order to the Wythe County Circuit Court. Any person violating or failing, neglecting, or refusing to obey an order issued by the County Administrator, or his designee, may be compelled in a proceeding instituted in the Wythe County Circuit Court 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 County Administrator or his designee from taking any other action specified in Article 16.

ARTICLE XV – APPEALS

- 15.1** Any applicant under any provision of this ordinance who is aggrieved by any action of the County of Wythe or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to review by the Circuit Court of the County of Wythe, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

ARTICLE XVI - PENALTIES

- 16.1** Violators of this ordinance shall be guilty of a Class I misdemeanor.
- 16.2** Any person who violates any provision of this ordinance shall upon a finding of the District Court of the County of Wythe be assessed a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense.
- 16.3** In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.
- 16.4** The County of Wythe or a designated agent may apply to the Circuit Court of the County of Wythe to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.
- 16.5** In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to the County of Wythe in a civil action for damages.
- 16.6** Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the County of Wythe.
- 16.7** With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, the County of Wythe may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection 16.6 of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection 16.6.
- 16.8** The Commonwealth's Attorney shall, upon request of the County of Wythe or the permit issuing authority, take legal action to enforce the provisions of this ordinance.

16.9 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.

ARTICLE XVII – LEGAL STATUS PROVISIONS

17.1 **Certified Copies of Ordinances.** Certified copies of this ordinance and all amendments thereto shall be filed in the office of the Planning Commission and in the office of the Clerk or Circuit Court of Wythe County, Virginia.

17.2 **Validity.** Should any article, section, subsection, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this ordinance as a whole or any part thereof other than the part declared invalid or unconstitutional.

17.3 **Conflicting Ordinances.** Ordinance #2005-8 and all other ordinances or portions thereof in conflict with this ordinance are hereby repealed to the extent of their conflict.

17.4 **Effective Date.** This ordinance was duly considered following the required public hearing held on August 14, 2007, and was adopted by the Board of Supervisors of Wythe County, Virginia at its regular meeting held on August 14, 2007. The ordinance shall become effective on 12:01 a.m. on August 15, 2007. The Board of Supervisors voted in the following manner:

<u>NAME</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSENT</u>
Wythe B. Sharitz	X		
James E. Hagee	X		
Charles S. Dix	X		
Martha P. Umberger	X		
Danny C. McDaniel	X		
Susan R. Crigger	X		
Lisa R. Eaton	X		

I certify that this is a true and correct copy taken from the August 14, 2007, minutes of the Wythe County Board of Supervisors meeting.


R. Cellell Dalton
County Administrator/Clerk