AN ORDINANCE AMENDING CHAPTER 8 ENTITLED PLANNING AND DEVELOPMENT OF THE CODE OF THE COUNTY OF MONTGOMERY, VIRGINIA AMENDING ARTICLE III EROSION AND SEDIMENT CONTROL SECTIONS 8-61 THROUGH 8-67 IN ORDER TO COMPLY WITH STATE LAW CHANGES CONCERNING LOCAL EROSION AND SEDIMENT CONTROL PROGRAMS AND SECTION 8-69 IN ORDER TO ESTABLISH A LUMP SUM FEE SCHEDULE

BE IT ORDAINED, By the Board of Supervisors of the County of Montgomery, Virginia that Chapter 8 entitled Planning and Development of the Code of the County of Montgomery, Virginia, Article III Erosion and Sediment Control Sections 8-61 through 8-67 and Section 8-69 shall be amended and re-ordained as follows:

ARTICLE III EROSION AND SEDIMENT CONTROL

Sec. 8-61. - Title, purpose, and authority.

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

This ~~chapter~~ ordinance is authorized by the Code of Virginia, Title ~~10.1~~62.1, Chapter ~~5~~3.1, Article ~~4 (10.1-560 et seq.)~~2.4, known as the Virginia Erosion and Sediment Control Law.

Sec. 8-62. - Definitions.

As used in this article, unless the context requires a different meaning:

Agreement in lieu of plan means a contract between the VESCP plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the VESCP plan-approving authority in lieu of a formal site plan.

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.

Board means the Virginia ~~Soil and Water Conservation~~ State Water Control Board.

Certified inspector means an employee or agent of a ~~program~~ VESCP authority who (1) holds a certificate of competence from the Board in the area of project inspection or (2) 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 means an employee or agent of a ~~program~~ VESCP authority who: (1) holds a certificate of competence from the Board in the area of plan review; (2) is enrolled in the Board's training program for plan review and successfully completes such program within one (1)

year after enrollment; or (3) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, Title 54.1, Chapter 4, Article 1, § 54.1-400 et seq. or a professional soil scientist as defined in Code of Virginia, Sec. 54.1-2200.

Certified program administrator means an employee or agent of a ~~program~~ VESCP authority who: (1) holds a certificate of competence from the Board in the area of program administration or (2) is enrolled in the Boards training program for program administration and successfully completes such program within one (1) year after enrollment.

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

~~Conservation plan~~, *E~~e~~rosion 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 and all information deemed necessary by the VESCP plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

County means the County of Montgomery.

Department means the ~~d~~Department of ~~conservation and recreation~~Environmental Quality.

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 (3) or more residential dwelling units.

Director means the Director of the department of ~~conservation and recreation~~Environmental Quality.

District or soil and water conservation district refers to the skyline soil and water conservation district.

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 ten thousand (10,000) square feet or less used for residential purposes.

Excavating means any digging, scooping or other methods of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

Grading means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land disturbing activity means any ~~land change which~~ 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 repairs of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hardsurfaced;

(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;~~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) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;~~

(~~7~~6) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Code of Virginia, Chapter 6, Article 2 (§ 10-1-604 et seq.), 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 Code of Virginia, Chapter 11 (§ 10.1-1100 et seq.) of ~~this~~ T~~t~~itle 10.1 or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163, subsection B;

(~~8~~7) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(~~9~~8) Disturbed land areas of less than ten thousand (10,000) square feet in size;

(~~10~~9) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(~~11~~10) 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 plan-approving authority.

Land disturbing permit means a permit issued by Montgomery County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any other land disturbing activity or for any purpose set forth herein.

~~Local erosion and sediment control program or local control program means an outline of the various methods employed by Montgomery 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.~~

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.

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.

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

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.

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.

VESCP~~P~~plan-approving authority means the Montgomery County department of engineering and regulatory compliance responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of lands and for approving plans.

~~Program~~ *VESCP authority or program authority* means Montgomery County which has adopted a soil erosion and sediment control program approved by the Board.

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 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~~iii) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, Title 54.1, Chapter 4, Article 1 (§ 54.1-400 et seq.) or a professional soil scientist as defined in Sec. 54.1-2200.

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

Single-family residence means a noncommercial dwelling that is occupied exclusively by one (1) family

State erosion and sediment control program or state program means the program administered by the Virginia soil and water conservation board pursuant to the state code including regulations designed to minimize erosion and sedimentation.

State Permit means an approval to conduct a land disturbing activity issued by the department in the form of a state stormwater individual permit or coverage issued under a state general permit.

State waters means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

Transporting means any moving of earth materials from one (1) 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.

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 non-agricultural 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.

Water quality volume means the volume equal to the first one-half (½) inch of runoff multiplied by the impervious surface of the land development project.

Sec. 8-63. - Local erosion and sediment control program.

(a) Pursuant to Code of Virginia, § ~~10.1-562~~ 62.1-44.15:54, Montgomery County hereby establishes a VESCP program and 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.

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

(c) In addition~~, in accordance with Code of Virginia, § 10.1-561,~~ stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to Code of Virginia §62.1-44..15:52.62.1-44.15:54 or 62.1-44.15:65.

(d) In accordance with Code of Virginia, § ~~10.1-561~~62.1-44.15:52, any ~~land disturbing activity~~ plan approved prior to July 1, 2014 that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over forty-eight (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 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. For plans approved after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels

shall be satisfied by compliance with water quantity requirements specified in the Stormwater Management Act § 62.1-44.15:28 and 9 VAC 25-870-66 of the Virginia Stormwater Management Program (VSMP), unless such land disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

(e) Pursuant to Code of Virginia, § ~~10.1-561.1~~62.1-44.15:53, 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 Montgomery County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(f) Montgomery County hereby designates the ~~county engineer~~ department of engineering and regulatory as the VESCPplan-approving authority.

(g) The program and regulations provided for in this section shall be made available for public inspection at the office of the ~~county engineer~~ department of engineering and regulatory compliance.

Sec. 8-64. - Regulated land disturbing activities; submission and approval of plans; contents of plans.

(a) Except as provided herein, no person may engage in any land disturbing activity until he or she has submitted to the ~~county engineer~~ department of engineering and regulatory compliance for Montgomery County an erosion and sediment control plan for the land disturbing activity and such plan has been reviewed and approved by the VESCP plan-approving authority. No approval to begin a land disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required. 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~~ Department for review and approval rather than to each jurisdiction concerned. Where the land disturbing activity results from the construction of single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.

(b) The standards contained within the Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook as amended are to be used by the applicant when making a submittal under the provisions of this section and in the preparation of an erosion and sediment control plan. The VESCP 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.

(c) The VESCP plan-approving authority shall review ~~conservation~~ erosion and sediment control plans submitted to it and grant written approval within forty-five (45) days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law and the board's regulations 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 section. 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~~ the responsible land disturbing to the program authority, as provided by Code of Virginia, § ~~10.1-561~~62.1-44.15:52, ~~as amended~~, of the Virginia Erosion and Sediment Control Law who will be in charge of and responsible for carrying out the land disturbing activity. ~~The certificate of competence requirement shall be waived 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, to the program authority, as provided by Code of Virginia, § 10.1-561, as amended, 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~~ the responsible land disturber 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 plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of ~~an individual holding a certificate of competence~~ the responsible land disturber as provided by Code of Virginia, § ~~10.1-561~~62.1-44.15:52~~, as amended~~ 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 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.

When a plan is determined to be inadequate, the VESCP plan-approving authority shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken within forty-five (45) days, 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 forty-five (45) days after the Plan has been revised, resubmitted for approval and deemed adequate.

(e) The VESCP plan-approving authority may require changes to ~~A~~an approved plan ~~may be changed by the plan-approving authority~~ when:

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

(2) The person responsible for carrying out the 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 VESCP plan-approving authority and the person responsible for carrying out the plans.

(f) Variances: The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for the 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 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 VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving authority does not approve a variance within ten (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, Montgomery County 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 Code of Virginia, § ~~10.1-563~~62.1-44.15:55(E), any person engaging in the creation and operation of wetland mitigation or stream restoration banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a ~~permit issued~~ 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 the person, file general erosion and sediment control specifications for wetland mitigation and stream restoration banks annually with the board for review and approval consistent with guidelines established by the board.

(j) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas companies and railroad companies shall file general erosion and sediment control specifications annually with the ~~board~~Department for review and approval. These specifications shall apply to:

(1) Construction, installation and maintenance of electric transmission, 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.

Projects not included in subsections (j)(1) and (2) shall comply with the requirements of the Montgomery County erosion and sediment control program, pursuant to Code of Virginia, § ~~10.1-563~~62.1-44.15-:56D of the Virginia Erosion and Sediment Control Law.

(k) State agency projects are exempt from the provisions of this ordinance except as provided for in Code of Virginia, § ~~10.1-564~~62.1-44.15:56 of the Virginia Erosion and Sediment Control Law.

(l) If the grade of a site is more than thirty-three and one-third (33.3) percent, refer to the International Building Code, Chapter 18, as amended, for foundation clearances from slopes.

(m) Cut slopes or fill slopes shall not be greater than 2:1 (horizontal:vertical), unless a geotechnical report is provided for the proposed slopes.

(n) Cut slopes or fill slopes shall not be greater than twenty-five vertical feet in height, unless a geotechnical report is provided for the proposed slopes. Cut slopes or fill slopes less than or equal to 3:1 (horizontal:vertical) may exceed twenty-five (25) vertical feet in height and shall not require a geotechnical report.

(o) For any cut slopes or fill slopes greater than or equal to 2:1 (horizontal:vertical) or greater than or equal to twenty-five (25) vertical feet in height with a slope greater than 3:1 (horizontal:vertical), as-built plans showing that the finished geometry, based on a field survey performed by a licensed surveyor, is in substantial conformity with the design shall be provided to the plan-approving authority.

(p) Fill materials, compaction methods and density specifications shall be indicated on the site development plans. Fill areas intended to support structures shall also be indicated on the site development plans.

(q) Development plans for all new subdivisions shall show proposed lot grades to ensure positive drainage and compatibility with stormwater management plans.

Sec. 8-65. - Permits; fees; bonding; etc.

(a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities ~~may~~shall 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 evidence of state permit coverage where it is required.

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

(c) Fees. An administrative fee for plan review set out by ordinance approved by the Board of Supervisors shall be paid to Montgomery County at the time of submission of a erosion and sediment control plan or agreement in lieu of a plan. ~~A monthly inspection fee shall be paid to Montgomery County in an amount set from time to time, by ordinance of the board of supervisors. Monthly inspection fees shall be paid starting at the time the land disturbing permit is issued until such time the site has achieved adequate stabilization as determined by the county engineer.~~

(d) No land disturbing permit shall be issued until the applicant submits, with his application, an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed and pays all the required fees.

(e) Bond. All applicants for permits shall provide to Montgomery County a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the ~~county engineer~~department of engineering and regulatory compliance, to ensure that measures could be taken by Montgomery 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 by the approved plan as a result of his land disturbing activity. Should it be necessary for Montgomery County to take such conservation action, Montgomery County may collect from the applicant any costs in excess of the amount of the surety held. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain the appropriate conservation action based on unit price for new public or private sector construction in Montgomery County and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five (25) percent of the estimated cost of the conservation action.

Within sixty (60) days of adequate stabilization, as determined by the ~~county engineer~~department of engineering and regulatory compliance in any project or section of a project, such bond, cash escrow or letter of credit, 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. 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. 8-66. - Monitoring, reports, and inspections.

(a) ~~Montgomery County may require that an individual holding a certificate of competence,~~ ~~a~~As provided by Code of Virginia, § ~~10.1-561, 1950~~62.1-44.15:52, ~~as amended~~, the responsible land disturber ~~who will~~ shall be in charge of and responsible for carrying out the land disturbing activity and provide periodic inspections of the land disturbing activity Montgomery County may require a 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.

(b) The ~~county engineer or other certified inspectors~~ department of engineering and regulatory compliance shall periodically inspect the land disturbing activity in accordance with Section ~~4~~-9 VAC ~~50-30-60~~25-840-60 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.

If the ~~county engineer~~ department of engineering and regulatory compliance 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 with 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 shall be subject to the penalties provided by this ordinance.

(c) Upon issuance of an inspection report denoting ~~determination of~~ a violation of this ordinance the ~~county engineer~~ department of engineering and regulatory compliance may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, 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 ~~county engineer~~ department of engineering and regulatory compliance 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 water 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 whether or not the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.

The order shall be served in the same manner as notice to comply and shall remain in effect for a period of seven (7) days from the date of service pending application by ~~the enforcing authority~~ Montgomery County or alleged violator for appropriate relief to the Montgomery County Circuit Court or other appropriate Court. Montgomery County shall serve such order for disturbance without an approved plan or permits upon the Owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring and shall remain in effect until permits and plan approvals are secured except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the ~~county engineer~~ department of engineering and regulatory compliance 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 Montgomery County. The owner may appeal the issuance of an order to the Montgomery County Circuit Court or other appropriate Court.

Any person violating or failing, neglecting or refusing to obey an order issued by the ~~county engineer~~ department of engineering and regulatory compliance may be compelled in a proceeding instituted in the Montgomery County Circuit Court to obey the order 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 engineer~~ department of engineering and regulatory compliance from taking any other action authorized by this ordinance.

Sec. 8-67. - Penalties, injunctions, and other legal actions.

(a) Violators of this ~~section~~ Ordinance shall be guilty of a Class 1 misdemeanor.

(b) Any person who violates any provision of this ordinance shall, upon a finding of the Montgomery County General District Court, be assessed a civil penalty in accordance with this ordinance. The civil penalty ~~of~~ for any one (1) violation shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), except that the civil penalty for commencement of land disturbing activities without an approved plan shall be one thousand dollars ($1,000.00). 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 ten thousand dollars ($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 ten thousand dollars ($10,000.00). Any assessment of civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violations as a Class 1 misdemeanor.

(c) The ~~county engineer~~ department of engineering and regulatory compliance, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Montgomery County Circuit Court to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he or she has notified in writing the person who has violated the local program, and ~~the program authority~~ Montgomery County, that a violation of the local program has caused, or creates a probability of causing, damage to his or her property, and (ii) neither the person who has violated the local program nor the ~~program authority~~ Montgomery County has taken corrective action within fifteen (15) days to eliminate the conditions which has caused, or create the probability of causing, damage to his or her property.

(d) In addition to any criminal penalties provided under this article, any person who violates any provision of this ~~section~~ ordinance may be liable to Montgomery County 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 two thousand dollars ($2,000.00) for each violation. A civil action for such violation or failure may be brought by Montgomery County. Any civil penalties assessed by a court shall be paid into the Montgomery County treasury, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(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 article, or order of the VESCP authority, Montgomery County may provide, ~~in an order issued by Montgomery County~~

~~against such person~~ for the payment of civil charges by such person 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) The commonwealth's attorney shall, upon request of Montgomery County or the permit issuing authority, take legal action to enforce the provisions of this article.

(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.

Sec. 8-68. - Appeals and judicial review.

Final decisions of Montgomery County under this article shall be subject to review by the Montgomery 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. 8-69. - Fee schedule.

(a) *Residential*.

Agreement in lieu of a plan $260.00

(includes all processing charges and required inspections but does not include technology fee)

~~Agreements in lieu of a plan existing prior to July 1, 2007, that have not been completed shall continue to be charged a monthly fee of thirty-five dollars ($35.00) until such time that the permit holder for that specific agreement in lieu of plan has been charged a maximum of two hundred sixty dollars ($260.00) in inspection fees at which time no additional inspection fees will be charged. Agreements in lieu of a plan in existence as of July 1, 2007, shall be assessed a technology fee in addition to the monthly inspection fees.~~

(b) *Non-residential*.

(1) For projects that disturb less than one (1) acre and are not within a common plan of development…….$290.00~~Plan review fee:~~

~~a. For first acre of disturbed area or any part there of .....$50.00~~

~~b. Each additional acre of disturbed area or part thereof .....35.00~~

~~not to exceed a maximum plan review fee of one thousand dollars ($1,000.00).~~

(2) For projects that disturb more than one (1) acre or are within a common plan of development, the fee shall be as given in section 8-84 of the Montgomery County Stormwater Management Ordinance ~~Monthly inspection fee pursuant to plan review:~~

~~a. For first acre of disturbed area or part thereof .....50.00~~

~~b. Each additional acre of disturbed area or part thereof .....6.00~~

~~not to exceed a maximum monthly inspection fee of two hundred fifty dollars ($250.00).~~

(c) *Technology fee*. There shall be a ~~two (2) percent~~ ten dollar ($10.00) technology fee ~~with a minimum of ten dollars ($10.00) per assessment of the fee charged~~ assessed on all residential and non-residential fees charged above ~~including all monthly inspections fees~~.

State Law reference— similar provisions, Code of Virginia, Title ~~10.1~~62.1.