

ADOPTED

ORDINANCE NO. 85A-8

MAY 1 1989

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 5A, EROSION AND SEDIMENTATION CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 5A-3, DEFINITIONS, SECTION 5A-5, PROCEDURES FOR PLAN SUBMISSION AND REVIEW, INSPECTION AND ENFORCEMENT; SECTION 5A-6, PLANS GENERALLY; CERTAIN PROCEDURES ADOPTED BY REFERENCE; AND SECTION 5A-11, PENALTY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 5A, Erosion and Sedimentation Control, is hereby amended and reordained by amending Section 5A-3, Definitions; Section 5A-5, Procedures for plan submission and review, inspection and enforcement; Section 5A-6, Plans generally; certain procedures adopted by reference; and Section 5A-11, Penalty.

Chapter 5A. Erosion and Sedimentation Control

Section 5A-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Administrator. The official designated by the governing body to serve as its agent to administer this chapter.

Applicant. Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board. The Virginia Soil and Water Conservation Board.

Clearing. Any activity which removes the vegetative ground cover, including, but not limited to, the removal of root mat and-or topsoil.

District or soil and water conservation district. A governmental subdivision of the state organized in accordance with the provisions of the Soil Conservation Districts Law, Title 10.1, Chapter 5, Code of Virginia, 1950, as amended.

Erosion impact area. An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land one acre or less used for residential purposes or to shorelines where the erosion results from wave action or coastal process.

Erosion and sedimentation control plan, conservation plan, or plan. A document containing material for the conservation of soil and water resources of a unit or a 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 of land will be so treated to achieve the conservation objectives.

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

Filling. Any depositing or stockpiling of earth materials.

Governing body. The board of supervisors of the county.

Grading. Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Land-disturbing activity. Any land change which may result in soil erosion from water and-or wind and the movement of sediments into waters or into lands, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

Land-disturbing permit. A permit issued by the county for clearing, filling, excavating, grading or transporting, or any combination thereof.

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

Permittee. The person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of this state, any interstate body, or any other legal entity.

Plan approving authority or permit issuing authority. The division of code compliance.

State waters. All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

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. (3-10-75; Ord. No. 85A-4, 12-2-85; Ord. No. 85A-5, 7-7-86; Ord. No. 85A-6, 1-4-88; Ord. No. 85A-7, 8-1-88)

Section 5A-5. Procedures for plan submission and review, inspection and enforcement.

(a) Those procedures for plan submission and review, inspection and enforcement are set forth in a separate document which is made a part hereof entitled, "Administrative Guidelines," Chapter 7, adopted from the Virginia Erosion and Sedimentation Control Handbook, Second Edition, 1980. These procedures are controlling unless they are in conflict with a local ordinance or state law.

(b) The plan approving authority or, if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit issuing authority:

- (1) Shall provide for periodic inspections of the land-disturbing activity; and
- (2) May require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, occupier or operator shall be given notice of the inspection and an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. Where the plan-approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. The notice shall specify the measures needed to comply

with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, 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 chapter and upon conviction shall be subject to the penalties provided by this chapter.

(c) In order to prevent further erosion the administrator may require approval of a conservation plan for any land identified by the administrator as an erosion impact area.

(d) The county may charge applicants a reasonable fee to defray the cost of program administration, including costs associated with the issuance of grading or land disturbing permits, plan review, and periodic inspection for compliance with erosion and sediment control plans if charges for such costs are not made under any other law, ordinance or program. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrator's expense involved, or \$1,000, whichever is less. (3-10-75; Ord. No. 85A-3, 5-11-81; Ord. No. 85A-4, 12-2-85; Ord. No. 85A-5, 7-7-86; Ord. No. 85A-7, 8-1-88).

Section 5A-6. Plans generally; certain procedures adopted by reference.

(a) An erosion and sedimentation control plan is required under this chapter. The erosion and sedimentation control plan shall detail those methods and techniques to be utilized in the control of erosion and sedimentation.

(b) At a minimum, the erosion and sedimentation control plan shall follow the format detailed in Chapter 2, Chapter 4, Chapter 5, and Chapter 6 of the Virginia Erosion and Sediment Control Handbook, Second Edition 1980, and as may be amended from time to time, which is adopted by reference as fully as if set forth herein in its entirety, as part of this chapter.

(c) Approved regulations for control techniques to be utilized in preparing this plan are set forth in Chapter 3 of the Virginia Erosion and Sediment Control Handbook, Second Edition 1980, and as may be amended from time to time, which is adopted by reference, as fully as if set forth herein in its entirety as part of this chapter. (3-10-75; Ord. No. 85A-6, 1-4-88; Ord. No. 85A-7, 8-1-88)

Editor's note--Such procedures may be found on file in the office of the administrator.

Section 5A-11. Penalty.

(a) A violation of this chapter shall be deemed a misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) or thirty (30) days' imprisonment, or both, for each violation.

- (b) The county or the Board may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation under Section 5A-5 or Section 5A-9 of this chapter, without the necessity of showing that an adequate remedy at law does not exist.
- (c) In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the County, or to the Board, as appropriate, in a civil action for damages.
- (d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this 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.
- (e) With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, the Director, or plan-approving or permit-issuing authority, any condition of a permit, or any provision of this chapter, the Board, or plan-approving or permit-issuing authority may provide, in an order issued by the Board or plan-approving or permit-issuing authority against such person for the payment of civil charges for past violations in specific sums, not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d).
- (f) Upon receipt of a sworn complaint of a substantial violation of either Section 5A-5 or Section 5A-9 of this chapter from the division of code compliance, the chief administrative officer of the county or the Board may, in conjunction with or subsequent to a notice to comply, 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. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, such an order may be issued without regard to whether the permittee has been issued a notice to comply. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply and shall remain in effect for a period of seven (7) days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this subsection shall prevent the chief administrative officer from taking any other action specified in this section. (3-10-75; Ord. No. 85A-4, 12-2-85; Ord. No. 85A-5, 7-7-86; Ord. No. 85A-6, 1-4-88; Ord. No. 85A-7, 8-1-88.)

Thomas D. Mahone

Thomas D. Mahone, Chairman
Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NORMENT	AYE
TAYLOR	AYE
EDWARDS	AYE
DEPUE	AYE
MAHONE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 1st day of May, 1989.

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