

ADOPTED

MAR 4 1991

ORDINANCE NO. 85A-9

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-1. PURPOSE, SECTION 5A-3. DEFINITIONS, SECTION 5A-4, NONCONTROLLED ACTIVITIES, SECTION 5A-5. PROCEDURES FOR PLAN SUBMISSION AND REVIEW, INSPECTION AND ENFORCEMENT, SECTION 5A-8. RESPONSIBILITY OF OWNER FOR EXPENSE OF CONTROL MEASURES; PERFORMANCE BONDS, SECTION 5A-9. LAND-DISTURBING PERMIT GENERALLY; TERM OF PLAN, 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-1. Purpose, Section 5A-3. Definitions, Section 5A-4. Noncontrolled activities, Section 5A-5. Procedures for plan submission and review, inspection and enforcement, Section 5A-8. Responsibility of owner for expense of control measures; performance bonds, Section 5A-9. Land-disturbing permit generally; term of plan, and Section 5A-11. Penalty.

Chapter 5A. Erosion and Sedimentation Control

Section 5A-1. Purpose.

In order to ensure the proper development of the county and in order to promote and ensure the health, safety, morals and general welfare of the inhabitants of such county, and pursuant to the authority granted in Section 10.1-560, et. seq., of the Code of Virginia, 1950, as amended, the board of supervisors deems it necessary to adopt these provisions providing, during and following construction, for the control of erosion and sedimentation, and for the establishment of procedures for the administration and enforcement of such controls.

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.

Subdivision. The division of property into two or more parcels for any purpose, including but not limited to transfer of ownership, development, or the creation of a new street. The term includes resubdivisions and, where appropriate to the context, shall relate to the process of subdividing or the land subdivided.

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.

Section 5A-4. Noncontrolled activities.

In no instance shall the provisions of this chapter be construed to apply to the following:

- (a) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;
- (b) Individual service connections;
- (c) Installation, maintenance or repair 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 hard-surfaced;
- (d) 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;
- (e) Surface or deep mining; exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas;
- (f) Tilling, planting or harvesting of agricultural, horticultural 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 land irrigation;
- (g) Agricultural engineering operations including, but not limited to, 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 (Section 10.1-604 et seq.) of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- (h) Repair or rebuilding of the tracks, right-of-ways, bridges, communication facilities and other related structures and facilities of a railroad company;
- (i) Preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development;
- (j) Disturbed land areas of less than twenty-five hundred (2,500) square feet in size; provided, that the permit-issuing authority can determine a land disturbing permit shall be required if, in its discretion, it is deemed necessary to adequately safeguard the control of erosion and sedimentation;

- (k) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (l) Shore erosion control projects on tidal waters when the projects are approved by the James City County Wetlands Board, the Marine Resources Commission or the United States Army Corps of Engineers;
- (m) Emergency work to protect life, limb or property, and emergency repairs; provided, that if the land-disturbing activity would have required an approved erosion and sedimentation 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.

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 sedimentation. 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 an approved erosion and sedimentation control plan for any land identified and designated as an erosion impact area. Any property owner whose land is designated as an erosion impact area, provided the erosion is not the result of activities specified in Section 5A-4, shall:
- (1) submit an erosion and sedimentation control plan for approval within 30 days of receipt of the notice designating the property as an erosion impact area;
 - (2) obtain a land disturbing permit with sufficient surety posted pursuant to Section 5A-8;
 - (3) install all control measures as approved on the plan; and
 - (4) comply with all other provisions of this chapter.
- (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 sedimentation 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.

Section 5A-8. Responsibility of owner for expense of control measures; performance bonds.

- (a) All control measures required by the provision of this chapter shall be undertaken at the expense of the owner or his agent. Pending such actual provision thereof, the owner or his agent shall execute and file with the administrator, prior to issuance of the land-disturbing permit, a performance bond with surety, cash escrow, letter of credit, any combination thereof, or other legal arrangement as is acceptable to the county attorney. This shall be in an amount determined by the administrator, equal to the approximate total cost of providing erosion and sedimentation control improvements. These documents shall be approved by the county and are to ensure that measures could be taken by the county, at the applicant's expense, should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by his approved plan as a result of his land-disturbing activity. If the agency takes such conservation action upon

such failure by the permittee, the agency 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.

- (b) Within sixty (60) days of the achievement of adequate stabilization and completion of the land-disturbing activity as determined by a final inspection, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or his agent, or terminated, as the case may be.
- (c) These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

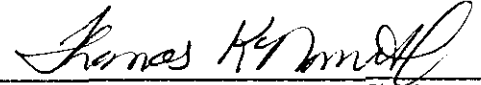
Section 5A-9. Land-disturbing permit generally; term of plan.

- (a) Except as provided in Section 5A-4 of this chapter, no person shall engage in any land-disturbing activity as defined in Section 5A-3 of this chapter within the county until he has acquired a land-disturbing permit.
- (b) Issuance of a land-disturbing permit is conditioned on an approved erosion and sedimentation control plan or certification of such which shall be presented at the time of application for such a permit; and in addition, the requirements of Section 5A-8 of this chapter concerning a performance bond, cash escrow, or a letter of credit or such other legal arrangement, as is acceptable under the provisions of Section 5A-8, must be complied with.
- (c) Any land-disturbing permit shall contain a right of entry to allow the administrator or his designees access to the property until a final inspection determines that the land is adequately stabilized.
- (d) Any approved erosion and sedimentation control plan shall become null and void one hundred and eighty (180) days after the date of approval, and no further work subject to this chapter shall be allowed unless and until an additional or updated erosion and sedimentation control plan has been submitted and approved in accordance with the provisions of this chapter or unless all requirements of the approved control plan have been completed in less than one hundred and eighty (180) days in accord with such plan and verified by the on-site inspection by the director of code compliance or his designee.

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 administrator, 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.



Thomas K. Norment, Jr., Chairman
Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

SUPERVISOR VOTE

DEPUE	AYE
TAYLOR	NAY
EDWARDS	AYE
KNUDSON	AYE
NORMENT	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 4th day of March, 1991.

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