

ADOPTED

JUN 11 1996

ORDINANCE NO. 85A-12

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-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; CIVIL OR CRIMINAL.

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-4, Noncontrolled activities; Section 5A-5, Procedures for plan subdivision 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; civil or criminal.

Chapter 5A. Erosion and Sedimentation Control

Sec. 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,

Agreement in Lieu of a Plan. A contract between the 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 plan approving authority in lieu of a formal site plan.

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 (1) acre~~ 10,000 square feet 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 plans. 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, or corporation in control of a property.

Permittee. The person to whom the permit authorizing landing 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.

~~*Single-family residence.* A noncommercial dwelling that is occupied exclusively by one family.~~

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 (2) 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.

Sec. 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; *however, this exception shall*

not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Section 10.1 - 1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture as described in Subsection B of Section 10.1-1163;

- (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.

Sec. 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 Sediment Control Handbook*, Third Edition, 1992. 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 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 thirty (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 one thousand dollars (\$1,000.00), whichever is less. Fees shall be charged to offset the cost of reviewing erosion control plans, making inspections, and other expenses incident to the administration of this chapter. The following fees shall be charged and collected at the time of plan submission.~~

- (1) ~~Residential subdivisions shall pay \$25 per lot; and~~
- (2) ~~All other land disturbing activities shall pay three hundred dollars (\$300) per acre of disturbance for the first 15 acres plus \$200 per acre for each additional acre over 15 acres, except for:~~

Sec. 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*, Third Edition, 1992, 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 standards and specifications for control techniques to be utilized in preparing this plan are set forth in Chapter 3 of the *Virginia Erosion and Sediment Control Handbook*, Third Edition, 1992, 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.

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

(a) All control measures required by the provision of this chapter 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. *The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation actions based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the estimated cost of the conservation action.* 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 days of the achievement of adequate stabilization and completion of the land-disturbing activity, *in any project or section thereof*, 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, *based on the percentage of stabilization accomplished in the project or section thereof*.

(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.

Sec. 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.

Where the land disturbing activity results from construction of a single-family residence, an agreement in lieu of a plan may be substituted for an Erosion and Sedimentation Control Plan.

(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 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 eighty (180) days in accord with such plan and verified by the on-site inspection by the director of code compliance or his designee.

Sec. 5A-11. Penalty; civil or criminal.

(a) *Violation deemed misdemeanor.* A ~~violation~~ ~~violation~~ ~~of~~ this chapter shall be ~~deemed a guilty~~ ~~of a Class I~~ misdemeanor and upon conviction a person 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) *Civil penalties:*

(1) A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offense:

a. Land-disturbing activity when no permit has been issued:

1. Disturbing an area ~~of less than one acre~~ ~~greater than 2,500 square feet~~ \$ ~~50.00~~ ~~1,000.00~~
- ~~2. Disturbing an area of more than one acre or more 100.00~~
- ~~3. Failing to respond to a notice of violation 100.00~~

b. Land disturbing when a permit has been issued:

1. Failing to fully satisfy to a notice to comply 100.00
2. Failing to obey a stop work order 100.00
3. Failing to stop work when the permit has been revoked 100.00

- (2) Each day during which the violation is found to have existed shall constitute a separate offense.

However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten-day period, and 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 three thousand dollars (\$3,000.00), ~~except that a series of violations arising from the commencement of land-disturbing activities 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.~~

- (3) A civil action for such violation may be brought by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality or its agent, the court shall direct the penalty to be paid into the state treasury.

- (4) Designation of a particular violation for a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a).

(c) *Application to circuit court.* The administrator, the county, ~~or the board, or the owner of property which has sustained damage or which is in imminent danger of being damaged,~~ may apply to the circuit court in any jurisdiction wherein the land lies 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;

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

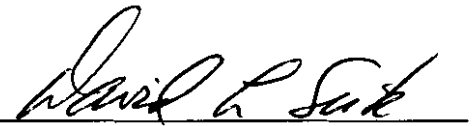
(d) *Liability of person to county.* In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county, or to the board, as appropriate, in a civil action for damages.

(e) *Civil penalty enumerated.* 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 two thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, 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) *Payment of civil charges for past violations.* 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 (e) of this section. Such civil charges shall be imposed instead of any appropriate civil penalty which could be imposed under subsection (b) or (e).

(g) *Stop work order.* 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 county administrator or his designee may, in conjunction with or subsequent to a notice to comply, issue an order requiring that all or part of the land-disturbing activities 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 person or permittee has been issued a notice to comply. Otherwise, such an order may be issued only after the person or 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 county administrator from taking any other action specified in this section.



David L. Sisk, Chairman
Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
TAYLOR	NAY
MAGOON	AYE
DEPUE	AYE
EDWARDS	AYE
SISK	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of June, 1996.