

ARTICLE II. EROSION AND SEDIMENT CONTROL

DIVISION 1. GENERALLY

Sec. 38-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agreement in lieu of a plan means 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.

Certified inspector means an employee or agent of a program 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 year after enrollment.

Certified plan reviewer means an employee or agent of a program 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 year after enrollment; or
- (3) Is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 of chapter 4 of title 54.1 of the Code of Virginia (Code of Virginia, § 54.1-400 et seq.).

Certified program administrator means an employee or agent of a program authority who:

- (1) Holds a certificate of competence from the board in the area of program administration; or
- (2) Is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

Clearing means any activity which removes the vegetative ground cover, including but not limited to tree removal, root mat removal and/or topsoil removal.

Conservation board, board and *state soil and water conservation board* mean the agency continued in Code of Virginia, § 10.1-502.

Conservation plan, erosion and sediment control plan and *plan* mean a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives.

Conservation standards and *standards* mean the criteria, guidelines, techniques and methods for the control of erosion and sedimentation.

County erosion and sediment control program and *county control program* mean an outline or explanation of the various elements or methods employed by the county to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as a local ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.

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 or more residential dwelling units.

District and *soil and water conservation district* mean a governmental subdivision of the state, and a public body corporate and politic, organized in accordance with the provisions of the Soil and Water Conservation Districts Law, Code of Virginia, § 10.1-506 et seq.

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 materials or any combination thereof, including the land in its excavated or filled condition.

Land disturbing activity means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including but not limited to clearing, grading, excavating, transporting and filling of land, except that the term shall not include the following:

- (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas, including the well site, roads, feeder lines and offsite disposal areas;
- (7) 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 Code of Virginia, § 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);
- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- (10) Disturbed land areas of less than 10,000 square feet in size; however, the board of supervisors may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
- (11) Installation of fence posts and signposts or telephone and electric poles and other kinds of posts or poles;
- (12) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the marine resources commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and

(13) 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, the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

Nothing in this definition shall exclude from the requirements of this article any disturbance of an area encompassing 2,500 square feet or more for whatever reason located within the James River watershed.

Land disturbing permit means a permit issued by the county for clearing, filling, excavating, grading or transporting, or any combination thereof, on all lands except as otherwise provided in this article.

Local erosion and sediment control program and *local control program* mean an outline of the various methods employed by a program authority to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Owner means the owner 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 in control of a property.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, 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 means the plan administrator or his designated representative, who shall be responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit of land and who shall approve such plan if the plan is determined to be adequate.

State erosion and sediment control program and *state program* mean the program adopted by the conservation board consisting of conservation standards, guidelines and criteria to minimize erosion and sedimentation.

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 place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or by 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.

(Ord. No. O-01-003, § 10-87, 8-22-2001)

Cross references: Definitions generally, § 1-2.

State law references: Similar provisions, Code of Virginia, § 10.1-560.

Sec. 38-32. Penalties; enforcement.

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

(b) The plan administrator may apply to the county circuit court for injunctive relief to enjoin a violation or a threatened violation of this article, without the necessity of showing that there does not exist an adequate remedy at law.

(c) The commonwealth's attorney shall, upon request of the plan administrator, take legal action to enforce the provisions of this article.

(d) Compliance with the provisions of this article 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.

(Ord. No. O-01-003, § 10-88, 8-22-2001)

State law references: Similar provisions, Code of Virginia, § 10.1-569.

Sec. 38-33. Purpose.

The purpose of this article is to conserve the land, water, air and other natural resources of the county and promote the public health and welfare of the people in the county by establishing requirements for the control of erosion and sedimentation and by establishing procedures whereby these requirements shall be administered and enforced.

(Ord. No. O-01-003, § 10-89, 8-22-2001)

Sec. 38-34. Authorization.

This article is authorized by Code of Virginia, § 10.1-560 et seq., known as the Erosion and Sediment Control Law. This article provides for a comprehensive statewide program with standards and guidelines to control soil erosion and sedimentation, which is implemented on the local level.

(Ord. No. O-01-003, § 10-90, 8-22-2001)

Sec. 38-35. County program.

Pursuant to Code of Virginia, § 10.1-562, the board of supervisors hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the state soil and water conservation board and any local handbook or publication for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Such regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.

(Ord. No. O-01-003, § 10-91, 8-22-2001)

Sec. 38-36. Conservation standards.

(a) To carry out the local control program pursuant to this article, conservation standards shall be established. Such standards shall include criteria, guidelines, techniques and methods for the control of erosion and sedimentation. The effective date of the adoption of such standards shall be the effective date for the implementation of the local control program. The conservation standards shall be those contained in the Virginia Erosion and Sediment Control Handbook, as amended.

(b) In addition, within the Chesapeake Bay resource protection areas (RPA) and resource management areas (RMA) the following shall apply:

(1) A stormwater management program will be designed to ensure that postdevelopment non-point-source pollution runoff shall not exceed the predevelopment land based upon average land cover conditions. Appendix C of the Local Assistance Manual of the Chesapeake Local Assistance Department (November 1989) shall be the standard utilized in this determination.

(2) Best management practices are required in all RPA and RMA areas and the methods detailed in Best Management Practices--Urban, as published by the state department of conservation and recreation, division of soil and water conservation. Should regular or periodic maintenance be required in conjunction with a best management practice, a performance bond in an amount sufficient to ensure such maintenance shall be required. In conjunction with any land disturbing activity of land in a wetland, a permit from the U.S. Army Corps of Engineers must be obtained, as well as any required state permits relative to wetlands.

(3) Redevelopment of any site developed prior to November 1, 1991, which is not currently served by water quality best management practices shall achieve a ten-percent reduction of non-point-source pollution in the runoff compared to the existing runoff load from the site. The methodologies detailed in chapter C of the Local Assistance Manual of the Chesapeake Bay Local Assistance Department shall be utilized in making calculations.

(Ord. No. O-01-003, § 10-92, 8-22-2001)

Sec. 38-37. Approval of plan required.

(a) Except as provided in section 38-38, no person shall engage in any land disturbing activity until he has submitted to the plan administrator an erosion and sediment control plan for such land disturbing activity and until that plan has been reviewed and approved by the plan administrator.

(b) Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

(c) Pursuant to Code of Virginia, § 10.1-561.1, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land disturbing activities shall be conducted by a certified inspector. The erosion control program of the county shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(Ord. No. O-01-003, § 10-93, 8-22-2001)

Sec. 38-38. Exceptions.

(a) Any person who owns, occupies or operates private agricultural, horticultural or forest lands shall not be deemed to be in violation of this article for land disturbing activities which result from the following:

(1) The tilling, planting or harvesting of agricultural, horticultural or forest crops or products or engineering operations such as the construction of terraces, terrace outlets, check dams,

desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like;

- (2) The utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing;
- (3) Land drainage;
- (4) Land irrigation;
- (5) Seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses;
- (6) Forestation and reforestation;
- (7) Rotation of crops;
- (8) Soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops;
- (9) Retardation of runoff by increasing absorption of rainfall; and
- (10) Retirement from cultivation of steep, highly erosive areas and areas badly gullied or otherwise eroded.

(b) Any state agency that undertakes a project involving a land disturbing activity shall be exempted from the provisions of this article; however, such activities shall be regulated by the state program.

(c) Any person whose land disturbing activities involve lands which extend into the jurisdiction of another local erosion and sediment control program shall be exempted from the provisions of this article, provided such person has a plan approved by the conservation board. Such person shall comply with the requirements of this article concerning a performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the plan administrator.

(d) Any person whose land disturbing activities are confined wholly by federal lands shall be exempted from the provisions of this article.

(Ord. No. O-01-003, § 10-94, 8-22-2001)

Secs. 38-39--38-60. Reserved.

DIVISION 2. PROCEDURES

Sec. 38-61. Submittal of plan.

The guidelines to be used for submitting an erosion and sediment plan as required by this article shall be those contained in chapter VI of the latest edition of the Virginia Erosion and Sediment Control Handbook. The plan administrator, in considering the adequacy of such submitted plan, shall be guided by the same guidelines and standards.

(Ord. No. O-01-003, § 10-106, 8-22-2001)

Sec. 38-62. Action on plan.

(a) *Responsibility of plan administrator.* The plan administrator shall act on all plans submitted to him pursuant to this article within 45 days of receipt thereof by either approving the plan in writing or by disapproving the plan in writing and giving the reasons for this disapproval.

(b) *Approval.* The plan administrator shall, within 45 days, approve any erosion and sediment control plan submitted to him if he determines that the plan meets the conservation standards of the county control program and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this article. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program authority, as provided by Code of Virginia, § 10.1-561, who will be in charge of and responsible for carrying out the land disturbing activity. However, the 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, 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, as provided by Code of Virginia, § 10.1-561. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approval of the plan, and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

(c) *Disapproval.* When a plan submitted for approval under this article is found to be inadequate upon review by the plan administrator, he shall specify such modifications, terms and conditions as will permit approval of the plan and shall communicate these requirements to the applicant.

(d) *Changes to approved plans.* An approved plan may be changed by the plan administrator for the following:

(1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are agreed to by the plan administrator and the person responsible for carrying out the plan; or

(2) Where the person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan administrator and the person responsible for carrying out the plan.

(e) *Failure to act.* If no action is taken by the plan administrator within the time specified in this section, the plan shall be deemed approved, and the person shall be authorized to proceed with the proposed activity.

(Ord. No. O-01-003, § 10-107, 8-22-2001)

State law references: Similar provisions, Code of Virginia, § 10.1-563.

Sec. 38-63. Land disturbing permit.

(a) *Required.* Except as provided in subsection (b) of this section, no person shall engage in any land disturbing activity until he has acquired a land disturbing permit from the plan administrator.

(b) *Exceptions.* Exceptions are as follows:

(1) If any person's land disturbing activities require the issuance of a building or other permit and such issuance is conditioned on an approved erosion and sediment control plan, such person shall comply with the requirements of this article concerning a performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the plan administrator and the fees levied in this section for land disturbing activities. A separate land disturbing permit shall not be required.

(2) Any person grading, filling or excavating on privately owned, occupied or operated agricultural, horticultural or forest lands shall not be required to obtain a land disturbing permit; however, such person shall be required to comply with the other provisions of this article.

(c) *Fees.* A plan review and inspection fee of \$175.00 plus \$17.50 per disturbed acre of land shall be paid to the county at the time of filing erosion and sediment control plans. These fees shall be payable for all nonexempt operations whether or not a land disturbing permit is required.

(d) *Approved plan required.* The plan administrator, zoning administrator, building official or other permit-issuing authority shall not issue any land disturbing, building or other permit for activities which involve land disturbing activities unless the applicant therefor submits with his application the approved erosion and sediment control plan or certification of such approved plan from the plan administrator and certification that such plan will be followed.

(e) *Performance bond, cash escrow, letter of credit or other legal arrangement required.* The plan administrator, prior to the issuance of any land disturbing, building or other permit, shall require from any applicant a reasonable performance bond, cash escrow, letter of credit, any combination thereof or such other legal arrangement as is acceptable to the county, to ensure that emergency measures could be taken by the county at the applicant's expense should he fail within the time specified to initiate appropriate conservation action which may be required of him as a result of his land disturbing activity. Within 60 days of the completion of the land disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be. The requirements of this subsection are in addition to all other provisions of law which relate to the issuance of such permits and shall not be construed to otherwise affect the requirements for such permits.

(Ord. No. O-01-003, § 10-108, 8-22-2001)

Sec. 38-64. Monitoring, reports and inspections.

(a) With respect to approved plans for erosion and sediment control in connection with land disturbing activities which involve the issuance of a grading, building, or other permit, the plan administrator shall periodically inspect the land disturbing activity to ensure compliance with the approved plan and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land disturbing activities. Notice of such right of inspection shall be included in the permit. The owner, occupier or operator shall be given an opportunity to accompany the inspectors. An individual holding a certificate of competence, as provided by Code of Virginia, § 10.1-561, will be in charge of and responsible for carrying out the land disturbing activity.

(b) If the plan administrator determines that the permit holder has failed to comply with the plan, he shall immediately serve a notice to comply upon the permit holder, by registered or certified mail to the address specified by the permit holder in his permit application or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities. A copy of each notice shall also be sent to the issuer of the permit. Such notice shall set forth specifically the measures

needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit; furthermore, he shall be deemed to be in violation of this article and, upon conviction, shall be subject to the penalties provided by this article.

(c) With respect to approved plans for erosion and sediment control in connection with all other regulated land disturbing activities, the plan administrator may require of the person responsible for carrying out the plan such monitoring and reports and may make such on-site inspections, after notice to the resident owner, occupier or operator, as are deemed necessary to determine whether the soil erosion and sediment control measures required by the approved plan are being properly performed and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. Such resident owner, occupier or operator shall be given an opportunity to accompany the inspector.

(d) If it is determined that there is a failure to comply with the approved plan, the plan administrator shall serve notice upon the person who is responsible for carrying out the plan at the address specified by him in his certification at the time of obtaining his approved plan or by delivery at the site of the permitted activities to the agent or employee of the permit holder supervising such activities. Such notice shall set forth the measures needed for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of this article.

(Ord. No. O-01-003, § 10-109, 8-22-2001)

State law references: Similar provisions, Code of Virginia, § 10.1-566.

Sec. 38-65. Administrative appeal; judicial review.

(a) Final decisions of the plan administrator under this article shall be subject to review by the planning commission, provided an appeal is filed within 30 days from the date of any written decision by the plan administrator which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

(b) Final decisions of the planning commission under this article shall be subject to review by the county circuit court, provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

(Ord. No. O-01-003, § 10-110, 8-22-2001)