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**HOUSE BILL NO. 129**

Offered January 13, 2010

Prefiled January 5, 2010

*A BILL to amend and reenact § 10.1-560 of the Code of Virginia, relating to the definition of land-disturbing activity.*

\_\_\_\_\_  
Patron—Pollard

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

**1. That § 10.1-560 of the Code of Virginia is amended and reenacted as follows:**

§ 10.1-560. Definitions.

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

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner that specifies conservation measures that 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" 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.

"Certified inspector" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) 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 (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

"Certified program administrator" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Conservation plan," "erosion 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 to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of this chapter.

"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 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity" means any land change 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 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 that 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 activities authorized under a permit issued by the Department of Mines,

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59 Minerals and Energy;

60 6. Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site  
61 disposal areas;

62 7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot  
63 operations; including engineering operations as follows: construction of terraces, terrace outlets, check  
64 dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour  
65 furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of  
66 forest crops unless the area on which harvesting occurs is reforested artificially or naturally in  
67 accordance with the provisions of Chapter 11 (~~§ 10.1-1100 et seq.~~) of this title *a forest management*  
68 *plan developed by a professional forester or is converted to bona fide agricultural or improved pasture*  
69 *use as described in subsection B of § 10.1-1163 per a conservation plan approved by a soil and water*  
70 *conservation district;*

71 8. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related  
72 structures and facilities of a railroad company;

73 9. Agricultural engineering operations including but not limited to the construction of terraces, terrace  
74 outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the  
75 Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of this title, ditches, strip cropping, lister  
76 furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

77 10. Disturbed land areas of less than 10,000 square feet in size; however, the governing body of the  
78 program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions  
79 under which this exception shall apply;

80 11. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or  
81 poles;

82 12. Shoreline erosion control projects on tidal waters when all of the ~~land disturbing~~ *land-disturbing*  
83 activities are within the regulatory authority of and approved by local wetlands boards, the Marine  
84 Resources Commission or the United States Army Corps of Engineers; however, any associated land that  
85 is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted  
86 pursuant thereto; and

87 13. Emergency work to protect life, limb or property, and emergency repairs; however, if the  
88 land-disturbing activity would have required an approved erosion and sediment control plan, if the  
89 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in  
90 accordance with the requirements of the plan-approving authority.

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

95 "Natural channel design concepts" means the utilization of engineering analysis and fluvial  
96 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the  
97 purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and  
98 allows larger flows to access its bankfull bench and its floodplain.

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

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

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

106 "Person" means any individual, partnership, firm, association, joint venture, public or private  
107 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,  
108 city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal  
109 entity.

110 "Plan-approving authority" means the Board, the program authority, or a department of a program  
111 authority, responsible for determining the adequacy of a conservation plan submitted for land-disturbing  
112 activities on a unit or units of lands and for approving plans.

113 "Program authority" means a district, county, city, or town that has adopted a soil erosion and  
114 sediment control program that has been approved by the Board.

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

117 "State erosion and sediment control program" or "state program" means the program administered by  
118 the Board pursuant to this article, including regulations designed to minimize erosion and sedimentation.

119 "State waters" means all waters on the surface and under the ground wholly or partially within or  
120 bordering the Commonwealth or within its jurisdiction.

**121** "Town" means an incorporated town.

**122** "Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the  
**123** impervious surface of the land development project.