

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 10.1-560 and 10.1-561 of the Code of Virginia, relating to stream restoration and relocation projects.

[H 2464]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-560 and 10.1-561 of the Code of Virginia are 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, certified 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 ~~this~~ 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, Minerals and Energy;

6. Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site

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58 disposal areas;

59 7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot
60 operations; including engineering operations as follows: construction of terraces, terrace outlets, check
61 dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour
62 furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of
63 forest crops unless the area on which harvesting occurs is reforested artificially or naturally in
64 accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of this title or is converted to bona
65 fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

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

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

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

75 11. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
76 poles;

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

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

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

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

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

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

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

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

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

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

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

112 "Town" means an incorporated town.

113 § 10.1-561. State erosion and sediment control program.

114 A. The Board shall develop a program and promulgate regulations for the effective control of soil
115 erosion, sediment deposition, and nonagricultural runoff that must be met in any control program to
116 prevent the unreasonable degradation of properties, stream channels, waters and other natural resources
117 in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). *Stream restoration and*
118 *relocation projects that incorporate natural channel design concepts are not man-made channels and*

shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section, § 10.1-562, or 10.1-570.

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for, districts and localities that have adopted local control programs.

C. The program and regulations shall be available for public inspection at the Department.

D. The Board shall promulgate regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of erosion and sediment control programs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A of this section are based.

E. The Board shall periodically conduct a comprehensive review and evaluation to ensure that all erosion and sediment control programs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition and nonagricultural runoff. The Board shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of erosion and sediment control programs.

F. The Board shall issue certificates of competence concerning the content, application and intent of specified subject areas of this chapter and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this chapter and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs.

G. As of December 31, 2004, any Department personnel conducting inspections pursuant to this chapter shall hold a certificate of competence as provided in subsection F.