

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-12-03

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 3rd day of November, 2003:

Present:	Vote:
Rebecca M. Ringley	Aye
James H. Burrell	Aye
Dean E. Raynes	Aye
W. R. "Ray" Davis, Jr.	Aye
Julian T. Lipscomb, Sr.	Aye

Motion was made by Mr. Davis, which carried 5:0, to adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 82,
ENVIRONMENT, ARTICLE II, EROSION AND SEDIMENT
CONTROL, SECTIONS 82-31 AND 82-36 OF THE NEW
KENT COUNTY CODE

WHEREAS, the 2003 General Assembly amended the state statutes on Erosion and Sediment Control and accordingly sections 82-31 and 82-36 of the Code of New Kent County were no longer in conformity with state law after July 1, 2003. Accordingly, the sections 82-31 and 82-36 shall be amended as follows:

WHEREAS, this ordinance amendment has been advertised for public hearing before the Board in full accord with applicable provisions of the Code of Virginia; and

NOW THEREFORE BE IT ORDAINED this, the 8th day of December 2003, by the New Kent County Board of Supervisors that that the following amendments to Sections 82-31 and 82-36 of Chapter 82, Environment, New Kent County Code be, and they are hereby, adopted:

Sec. 82-31. 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.

Administrator means the County Director of Planning, or his designee.

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.

Best Management practices or *BMPs* means a practice, or a combination of practices, that is determined by a state or designated areawide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

Board means the Virginia Soil and Water Conservation Board.

Certified inspector means an employee or agent of the 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 of enrollment; or
- (3) Is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, §54.1-400 et. seq.

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

Chesapeake Bay Preservation Area or *CBPA* means any land designated by the Board of Supervisors of the County pursuant to Part III of the Chesapeake Bay Preservation Area designation and Management Regulations, VR 179-02-01, and Code of Virginia §10.1-2109. A Chesapeake Bay Preservation Area shall consist of a resource protection area and a resource management area.

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

County means New Kent County, Virginia.

Department means the Virginia Department of Conservation and Recreation.

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.

Director means the Director of the Virginia Department of Conservation and Recreation.

District or *Soil and Water Conservation District* means the Colonial Soil and Water Conservation District.

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.

Erosion and sediment control plan, conservation plan or *plan* means 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 or units of land will be so treated as to achieve the conservation objectives.

Excavating means any digging, scooping or other method 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 it 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, the clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Disturbed land areas of less than 2,500 square feet in size.
- (2) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance.
- (3) Individual service connections.
- (4) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided that such land disturbing activity is confined to the area of the road, street, or sidewalk which is hard-surfaced.
- (5) 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.
- (6) Surface or deep mining.
- (7) Exploration or drilling for oil and gas, including the well site; roads, feeder lines and off-site disposal areas.
- (8) Tilling, planting or harvesting of agricultural, horticultural or forest crops, or livestock feedlot operations, including engineering operations and agricultural engineering options as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with 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. 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).

- (9) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
- (10) Installation of fenceposts and signposts or telephone and electric poles and other kinds of posts or poles.
- (11)** ~~Shoreline erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission, or the United States Army Corps of Engineers.~~ ***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 Chapter and the regulations set forth herein; and***
- (12) 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, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Plan Approving Authority.

Land disturbing permit means a permit issued by the Program Authority for the clearing, filling, excavating, grading, transporting of land or for any combination thereof for any purpose set forth in this article.

Local Erosion and Sediment Control Program or Program means an outline of the various methods employed by the 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 a freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receive, executor, trustee, lessee or other person, firm or corporation in control of a property.

Permittee means 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 means 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 shall mean the Planning Department of New Kent County.

Program authority means New Kent County which has adopted a soil erosion and sediment control program approved by the Board.

Responsible Land Disturber means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.

Resource management area or *RMA* means that component of the Chesapeake Bay Preservation Area that is not classified as a resource protection area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

Resource protection area or *RPA* means that component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

Single-family residence means a noncommercial dwelling that is occupied exclusively by one family.

State erosion and sediment control program or *state program* means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, § 10.1-560 et seq., including regulations designed 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.

Wetlands means those areas that are inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

(Code 1999, § 9-1(a) - (a), (a) - hh))

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

Sec. 82-36. Plan submission; requirements and approval; bonding.

(a) Erosion and Sediment Control Plans shall be prepared and certified by a Virginia licensed professional engineer, architect, certified landscape architect or land surveyor.

(b) Five copies of the Erosion and Sediment Control Plan shall be submitted to the Administrator, and be accompanied by the following information:

- (1) Name, address and phone number of Applicant.
- (2) Name, address and phone number of landowner of record.
- ~~(3) Name, address and phone number of person that holds a certificate of competence, as provided for by Code of Virginia §10.1-563, who will be in charge of and responsible for carrying out the Land Disturbing activity.~~
- (3)** Name, address and phone number of the person preparing the Plan.
- (4) Location of the site including, but not limited to, road number, tax map reference and lot number.
- (5) Other information as determined by the Administrator, which may include, but is not limited to, units of clearing and grading, wood lines, tree size, topography, soils, boundaries of areas designated as RPAs

and/or RMAs pursuant to Chapter 94, of the Code of New Kent County, Virginia.

(c) Upon submission of an Erosion and Sediment Control Plan to the Administrator:

- (1) The Plan Approving Authority shall, within 45 days, approve any such Plan if it determines the Plan meets the conservation standards adopted by this article 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 conform to the provisions of this article. ~~In addition, as a prerequisite to approval of the plan, the person responsible for carrying out the plan shall provide the name of a Responsible Land Disturber to the program authority as provided for by §10.1-561 of the Code of Virginia, who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the Approved Plan.~~
- (2) The Plan Approving Authority shall act on all plans submitted within 45 days from their receipt by either approving such Plan in writing or by disapproving such plan in writing and giving the specific reasons for its disapproval. When a Plan submitted for approval under this article is found, upon review, to be inadequate, the Plan Approving Authority shall specify such modifications, terms and condition as will permit approval of the Plan and communicate those requirements to the applicant within 45 days.
- (3) If no action is taken by the Plan Approving Authority within the time specified in this section, the Plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d) Surety.

All control measures required by this article shall be undertaken at the expense of the Owner or his agent; and pending actual compliance with the terms of this article, the Owner or his agent shall execute and file with the Administrator prior to the issuance of the Land Disturbing Permit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to pay the approximate total cost of providing the erosion and sediment control improvements and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent (25%) of the estimated cost of the conservation action. The surety required by this section must be in a form approved by the county attorney, guaranteeing that the required control measures will be properly and satisfactory undertaken and maintained. Should it be necessary for

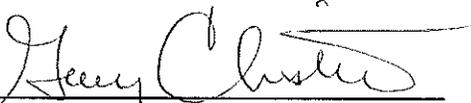
the County to take such conservation action and call upon the Surety to pay for the control measures undertaken, due to the Owner's failure, after proper notice, within the time specified in Sec. 82-39, to initiate or maintain appropriate conservation action, the County may also collect from the applicant any cost in excess of the amount of the surety held. The minimum performance bond with surety, cash escrow, letter of credit, or any combination thereof required under this section shall be \$500.00. Within 60 days of the adequate stabilization of the land disturbing activity such performance bond with surety, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, shall be released or refunded to the owner or his agent or terminated as the case may be. Adequate stabilization will consist of at least 85% vegetative cover. The Administrator shall have the sole authority to determine whether adequate vegetation exists.

(Code 1999, § 9-5)

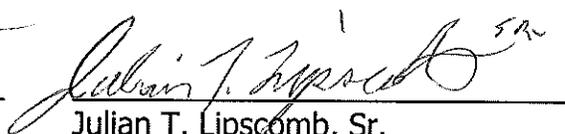
Sec. 82-37. Name of Responsible Land Disturber

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 Responsible Land Disturber to the program authority as provided by §10.1-561 of the Code of Virginia, who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the Approved Plan. Failure to provide the name of the Responsible Land Disturber may result in revocation of the approval of the plan and the person responsible for carrying out the plan and/or the Responsible Land Disturber shall be subject to penalties as provided in this Chapter.

Sec. 82-38. Amendment of plan.



Gary F. Christie
County Administrator



Julian T. Lipscomb, Sr.
Chairman