

EROSION AND SEDIMENT CONTROL ORDINANCE

Of

The County of Shenandoah, Virginia

WHEREAS, for the purpose of alleviating harmful and/or damaging effects of on-site erosion and siltation of neighboring downstream properties during and after development;

WHEREAS, the General Assembly of the Commonwealth of Virginia, under Title 21, Chapter 1, Article 6.1., Sec. 21-89.1 et seq., of the Code of Virginia authorized localities to adopt an erosion and sedimentation control program prior to July 1, 1975;

NOW, THEREFORE, The County of Shenandoah, Virginia does hereby adopt the following Erosion and Sedimentation Control Ordinance.

This Ordinance shall not apply to any land disturbing activity in any incorporated town within the boundaries of Shenandoah County unless and until the governing body of any such town shall by appropriate action indicate the intention to have the land disturbing activities within its boundaries covered by the terms and provisions of this Ordinance and enter into an agreement with Shenandoah County regarding the operation of an erosion and sediment control program within such town. Upon the taking of such action by the governing body of any incorporated town(s) the terms and provisions of this Ordinance shall apply to any land disturbing activity in said incorporated town(s) in accordance with such agreement.

SECTION 1: Purpose

An ordinance providing for, both during and following development, the control of erosion and sedimentation; and establishing procedures for the administration and enforcement of such controls.

SECTION 2: Application

Except as provided for in Section 4 of this ordinance, no person may engage in any land disturbing activity, until such person has submitted to, has had reviewed by and has had approved by Shenandoah County an erosion and sediment control plan for such land disturbing activity.

The Shenandoah County Erosion and Sediment Control Handbook is hereby adopted as part of this ordinance by reference.

SECTION 3: Definitions

For the purpose of this ordinance, certain terms and words used herein shall be interpreted as follows:

1. "Governing Body" shall mean the Board of Supervisors of Shenandoah County.
2. "Administrator" shall mean the official designated by the Governing Body to serve as its agent to administer this ordinance.
3. "District or Soil and Water Conservation District" shall mean a governmental subdivision of the State organized in accordance with the provisions of the Soil Conservation Districts Law, Title 21, Chapter 1, Code of Virginia, as amended.
4. "Plan Approving Authority" shall mean the Department of Shenandoah County responsible for determining the adequacy of an erosion and sediment control plan.
5. "Clearing" shall mean any activity which removes the vegetative ground cover including but not limited to the removal, root mat removal and/or topsoil removal.
6. "Grading" shall mean any ~~excavating~~ or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.
7. "Excavating" shall mean any digging, scooping or other methods of removing earth materials.
8. "Filling" shall mean any depositing or stockpiling of earth materials
9. "Transporting" shall mean 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.

PROPOSED AMENDMENT

EROSION AND SEDIMENT CONTROL ORDINANCE

Be It Ordained by the Board of Supervisors, County of Shenandoah, that the Erosion and Sediment Control Ordinance is amended as follows:

Section 3: Definition

4: "Plan Approving Authority" shall mean the Department of Shenandoah County Lord Fairfax Soil and Water Conservation District which shall be responsible for determining the adequacy of an erosion and sediment control plan.

Amendment approved at a regular meeting of the Board of Supervisors on November 8, 1988, following a motion duly made and seconded by Supervisors Ortts and Cindy Dellinger, and a recorded vote as follows:

Supervisor Neese aye Supervisor M. Dellinger aye
Supervisor C. Dellinger aye Supervisor Morris aye
Supervisor Ortts aye Supervisor Stover aye

Teste:

John A. Cully

10. "Land Disturbing Activity" shall mean any land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands, including, but not limited to, clearing, grading, excavating, transporting and filling of land.
11. "Land Disturbing Permit" shall mean a permit issued by Shenandoah County for clearing, filling, excavating, grading or transporting, or any combination thereof.
12. "Erosion and Sedimentation Control Plan" or "Plan" shall mean a document containing planning, material, and methods 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 to achieve the conservation objectives.
13. "Person" shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, or other legal entity.

SECTION 4: Non-Controlled Activities

In no instance shall the provisions of this Ordinance be construed to apply to the following:

1. such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;
2. individual service connections and construction or installation of public utility lines;
3. 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;
4. surface or deep mining, tilling, planting or harvesting of agricultural, horticultural, or forest crops; or clearing and transporting on privately owned, occupied or operated agricultural, horticultural, or forest land;
5. construction, repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
6. preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development;
7. disturbed areas for commercial or noncommercial uses of less than ten thousand square feet in size; provided, however, that the governing body may qualify the conditions under which this exception shall apply;

8. installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
9. 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 sediment control plan, if the activity were not an emergency; then the land area disturbed shall be shaped and stabilized in accordance with the requirement of the local plan approving authority;
10. engineering operations on privately owned, occupied or operated agricultural, horticultural or forest lands such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation, rotation of crops, soil stabilization with trees, grasses, legumes, and other thick growing, soil holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas not badly gullied or otherwise eroded.

SECTION 5: Regulated Land Disturbing Activities

5-1. Except as provided in section 4 and subsections 5-2 and 5-3, no person shall engage in any disturbing activity after the adoption of this ordinance until he has submitted to the Plan Approving Authority an erosion and sediment control plan for such land disturbing activity and until that plan has been reviewed and approved by the Plan Approving Authority.

5-2. Any State agency that undertakes a project involving a land disturbing activity will file specifications or a conservation plan with the Virginia Soil and Water Conservation Commission for review.

5-3. Any person whose land disturbing activities involve lands which extend into the jurisdiction of another local erosion and sediment control program is required to submit a local plan; provided, such person has a plan approved by the Virginia Soil and Water Conservation Commission. Such persons shall comply with the requirements of this ordinance concerning a performance bond, cash escrow, letter of credit, or such other legal arrangement as is acceptable to the Plan Approving Authority or Administrator.

5-4. 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.

5-5. Nothing in this ordinance shall affect any project commenced prior to the adoption of this ordinance.

SECTION 6: Plan Submission

Three (3) copies of the erosion and sediment control plan shall be submitted to the Administrator.

SECTION 7: Inspection and Enforcement

Inspection and enforcement of this ordinance shall rest with the Administrator or with such other official as may be designated under any agreement between the Governing Body and any incorporated town in the County regarding the operation of an Erosion and Sediment Control Program within any such town, who shall perform his functions in accordance with pages 11 and 12 of Part I of The Shenandoah County Erosion and Sediment Control Handbook, dated December, 1975, as amended from time to time, which is adopted by reference as part of this ordinance.

SECTION 8: Erosion and Sedimentation Control Plan

An erosion and sedimentation control plan is required under this ordinance.

The erosion and sedimentation control plan shall detail those methods and techniques to be utilized in the control of erosion and sedimentation.

As a minimum, the erosion and sedimentation control plan shall follow the guidelines detailed on Pages 7 through 12, inclusive, of Part II of the Shenandoah County Erosion and Sediment Control Handbook, dated December, 1975, and as amended from time to time, which by reference is adopted as part of this ordinance.

SECTION 9: Approval

Any erosion and sedimentation control plan submitted under the provisions

of this ordinance will be acted on by the plan approving authority within forty-five (45) days from receipt by the Administrator by either approving or disapproving in writing and giving specific reasons for disapproval. If no formal action has been taken by the plan approving authority in forty-five (45) days after receipt of plan, the plan shall be deemed approved.

SECTION 10: Bonding of Performance

Prior to the issuance of any permit, the permit issuing authority may 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 permit issuing authority, to insure that emergency measures could be taken by the governing body 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 satisfactory 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.

Any applicant aggrieved by a decision of the permit issuing authority with respect to the terms or requirements of such performance bond, or surety, if required, may cause that decision to be reviewed by the Board of Supervisors provided a notice of appeal is filed with the permit issuing authority within ten days after such decision. The appeal shall be considered by the Board of Supervisors at its next regular meeting which occurs no less than twenty-five days after receipt of the notice of appeal by the permit issuing authority.

SECTION 11: Issuance of Land Disturbing Permit; Fees

Except as provided in Section 4 and Subsection 5-2 and 5-3 of this Ordinance, no person shall engage in any land disturbing activity as defined in Section 3 of this Ordinance within the County of Shenandoah or within an incorporated town which

adopts jointly with the County or authorized the county to adopt an Erosion and Sediment Control program within such town until he has acquired a land disturbing permit.

Issuance of a land disturbing permit is conditioned on an approved erosion and sediment control plan, which, or certification of which shall be presented at the time of application for such a permit, and in addition, the requirements of Section 10 of this Ordinance concerning a performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable under the provisions of Section 10 and to the fees herein levied for land disturbing activities.

A plan review and inspection fee of \$10.00 for projects involving one (1) acre or less plus \$1.00 per acre of land or part thereof in excess of one (1) acre shall be paid at the time of filing erosion and sediment control plans.

SECTION 12: Agreement with Towns

The Governing Body is authorized to enter into agreements with incorporated towns in the county regarding the operation of an erosion and sediment control program within such towns.

SECTION 13: Amendment

An approved erosion and sedimentation plan may be amended by the plan approving authority if on-site inspection indicates that the approved control measures are not effective in controlling erosion and sedimentation or because of changed circumstances the approved plan cannot be carried out; provided such amendments are agreed to by the persons responsible for carrying out the plan.

SECTION 14: Administrative Appeal: Judicial Review

Final decisions of the Administrator or the plan approving authority under this ordinance shall be subject to review by the Governing Body, provided an appeal is filed within 30 days from the date of any written decision by the Administrator. Final decisions of the Governing Body under this ordinance shall be subject to review by the court of record of the county, provided an appeal is filed

within 30 days from the date of the final written decision.

SECTION 15: Penalties, Injunctions, and Other Legal Actions

A violation of this ordinance shall be deemed a misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars or thirty days imprisonment, or both, for each violation and each day shall be considered a separate offense.

SECTION 16: Liability

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.

SECTION 17: Severability

Should any provision of this ordinance be held to be unconstitutional or invalid, such declaration shall not affect or impare the remainder of this ordinance.

SECTION 18: Effective Date

This ordinance shall be in force and effect from January 1, 1976.

Phillip L. Stickley, Chairman

Teste: John D. Cully, Clerk