

**COUNTY ADMINISTRATOR'S OFFICE
P. O. BOX 111
ORANGE, VIRGINIA 22960**

At a regular meeting of the Orange County Board of Supervisors held on February 24, 2015, the following action was taken:

150224 – PH2

RE: PUBLIC HEARING #2: AMENDMENTS TO EROSION AND SEDIMENT CONTROL ORDINANCE

On the motion of Mr. Goodwin, seconded by Mr. White, which carried by a vote of 5-0, the Board adopted the following ordinance as presented:

ORDINANCE APPROVING AMENDMENTS TO CHAPTER 26, SECTIONS 31 THROUGH 41 OF THE ORANGE COUNTY EROSION AND SEDIMENT CONTROL ORDINANCE CONCERNING THE APPLICATION OF THRESHOLDS THROUGHOUT THE COUNTY

WHEREAS, the Board of Supervisors previously initiated action on text amendments to Chapter 26 of the Orange County Code of Ordinances concerning Erosion and Sediment Control and the application of thresholds throughout the County; and

WHEREAS, the Acting Planning and Zoning Director and County Attorney drafted recommended language for the text amendments, which were presented to the Board of Supervisors for discussion and consideration; and

WHEREAS, Planning Commission action was not required on said text amendment; and

WHEREAS, the Board of Supervisors has conducted a duly advertised Public Hearing on February 24, 2015, concerning the proposed text amendments, and hereby supports the proposed text amendments; and

WHEREAS, public necessity, convenience, general welfare, and/or good practice also support approval of the proposed text amendments;

NOW, THEREFORE, BE IT ORDAINED, on this 24th day of February, 2015, that the Orange County Board of Supervisors hereby approves the proposed amendments to Chapter 26, Sections 31 through 41 of the Orange County Erosion and Sediment Control Ordinance concerning the application of thresholds throughout the County, as presented and attached.

Ayes: Johnson, White, Goodwin, Crozier, Frame. Nays: None.

MOTION APPROVED



R. Bryan David
County Administrator

cc: Glenda Bradley, Finance Director
Connie Clark, Accountant
Thomas Lacheney, County Attorney
Josh Frederick, Acting Planning and Zoning Director
File: Board Actions 2015

Attachment: Adopted Amendments to the Orange County Erosion and Sediment Control Ordinance

Adopted Amendments to the Orange County Erosion and Sediment Control Ordinance

**As adopted in Ord. No. 150224 - PH2
by the Orange County Board of Supervisors
on February 24, 2015**

[...]

Sec. 26-31. - Purpose.

This article provides for the ~~effective control of erosion and sedimentation both during and following development, and establishes procedures for the administration and enforcement of such controls.~~ soil erosion, sediment deposition, and nonagricultural runoff within the county in order to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and to protect the health, safety and general welfare of the public. Furthermore, this article establishes procedures whereby these requirements shall be administered and enforced.

Sec. 26-32. - Authority.

This article is authorized by the Code of Virginia, ~~Title 62.1, § 40.1-560~~ 62.1-44.15:54 *et seq.*

Sec. 26-33. - 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:

[...]

~~*Development* means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain one or more residential dwelling units.~~

~~*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 or agreement in lieu of a 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, landscape architect or land surveyor pursuant to Code of Virginia, Article 1 (§ 54.1-400 *et seq.*) holds a certificate of competence pursuant to the Code of Virginia, § 62.1-44.15:52.~~

~~*Subdivision* means the subdivision definition adopted by the county pursuant to Code of Virginia, §15.2-2241 as set forth within Chapter 54 of this Code.~~

[...]

Sec. 26-34. - Application.

(a) Except as exempted in Sec. 26-35, it shall be unlawful for any person to engage in any land disturbing activity until such person has submitted to the administrator an erosion and sediment control plan for such land disturbing activity and the plan has been reviewed and approved by the administrator. Where the land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the administrator. ~~This agreement shall control and be binding on the owner, as if it were an approved control plan, and shall be enforceable under this chapter as would a control plan.~~

(b) It shall also be unlawful for any person performing any land disturbing activity to willfully fail to conform to the requirements of the erosion and sediment control plan approved for such activity.

(c) From time to time the board of supervisors shall, by resolution, establish a schedule of fees for the applications, approvals, permits and inspections required by this article.

(d) In accordance with § ~~40.1-564~~ 62.1-44.15:52 of the Code of Virginia, stream restoration and 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 ordinance. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site, assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, 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 ordinance. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ ~~40.1-603.2~~ 62.1-44.15:24 et seq. of the Code of Virginia) and attendant regulations, unless such land-disturbing activities are in accordance ~~with 4 VAC 50-60-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations;~~ the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

Sec. 26-35. - Exempt activities.

In no instance shall the provisions of this article 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.
- (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 such 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 related 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 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 subsection B of Code of Virginia, § 10.1-1163.
- (8) ~~Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines, and~~ repair or rebuilding of the tracks, rights-of-way, bridges, communications facilities and other related structures and facilities of a railroad company, ~~provided general erosion and sediment control standards for such activities are filed with the Virginia Department of Environmental Quality annually for review and approval in accordance with the Code of Virginia, § 62.1-44.15:55.~~
- (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 ~~or less than 2,500 square feet within the Town of Orange, the Town of Gordonsville or on any property with a residential zoning classification; however,~~ ~~the~~ 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 and sign posts or telephone and electric poles and other kinds of posts or poles.
- (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, the land area disturbed shall be shaped and stabilized in accordance with the requirement of the plan approving authority.

The administrator shall be responsible for determining whether or not a particular activity falls within one of the exemptions listed above.

Sec. 26-36. - Erosion and sediment control plan.

(a) An approved erosion and sediment control plan is required under this article, for any land disturbing activity other than that specified within Sec. 26-35 **or as permitted pursuant to an approved agreement in lieu of a plan.** The plan shall detail those methods and techniques to be utilized in the control of erosion and sedimentation; and as a minimum requirement, the plan shall follow the minimum standards established by state erosion and sediment control regulations and presented in chapter 8 of the Orange County Erosion and Sediment Control Handbook, as defined in Sec. 26-33. Approved standards and specifications for control techniques to be utilized in preparing the plan are set forth in chapter 3 of the handbook.

(b) County officers, departments and agencies authorized under any other laws to issue building or other permits for activities which involve any land-disturbing activity shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and a copy of the permit issued pursuant to Sec. 26-40.

(c) Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 of the Code of Virginia may, file general erosion and sediment control standards and specifications annually with the Virginia Department of Environmental Quality for review and approval in accordance with the Code of Virginia, § 62.1-44.15:55. If land disturbance activities caused by these organizations is not otherwise exempted under Sec. 26-35(8), such disturbance shall only be conducted in accordance with the requirements of this article.

Sec. 26-37. - Plan submission.

(a) Four copies of a proposed erosion and sediment control plan as required by this article shall be submitted to the administrator, along with (i) the required application fee(s) and application form(s), and (ii) a written certification by the person responsible for carrying out the plan that he will properly perform the conservation measures included in the plan and will conform to the provisions of state law and of this article. The administrator shall transmit two copies of the plan to the certified plan reviewer within seven calendar days of receipt.

(b) The certified plan reviewer shall be required to return his findings and comments to the administrator, in sufficient time to allow the administrator to meet the response time required by Sec. 26-39.

(c) Upon request of the certified plan reviewer or the administrator, an applicant shall provide such additional information as may be necessary to determine whether a proposed plan meets the requirements of the Board's regulations and of this article.

(d) An erosion and sediment control plan shall be required for a development and the buildings constructed within the development, regardless of the phasing of construction.

(e) If individual lots or sections in a residential development are being developed by different property owners, all land disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an agreement in lieu of a plan signed by the property owner and submitted for approval under this article.

(f) Land disturbing activity of less than **10,000 square feet the thresholds prescribed in Sec. 26-35(10)** on individual lots **in a residential development** shall not be considered exempt from the provisions of the state law and this article if the total land disturbing activity in the development is equal to or greater than **10,000 square feet the respective thresholds.** Whenever land disturbing activity involves activity at a separate location (including but not limited to borrow and disposal areas), the administrator may either consider the off-site activity as being part of the proposed land disturbing activity or, if the off-site activity is already covered by an approved erosion and sediment control plan, require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with the requirements of state law and this article.

(g) At the time of plan submission, an applicant may request a modification of applicable requirements. The applicant shall explain the reasons for the requested modifications in writing. Specific modifications which are approved by the administrator shall be documented in the approved plan.

Sec. 26-38. - Certification; bonding of performance.

(a) Prior to issuance of any permit under this article, the permit issuing authority shall require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or other such legal arrangement acceptable to the board of supervisors, to ensure that measures could be taken at the applicant's expense should he fail, after proper notice, within the time specified, to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land disturbing activity. The amount of the bond or other security for performance shall be determined by the administrator, and shall not exceed the approximate total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the county, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost of the conservation action. ~~For sureties other than cash escrow, proof of the issuer's license to conduct business in Virginia shall be provided as part of the acceptance of the surety.~~ If the administrator takes such conservation action upon such failure by the permittee the administrator may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

(b) Within 60 days of the achievement of adequate stabilization of the land disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall, ~~upon his/her request,~~ be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section. The administrator shall determine whether there has been adequate stabilization, and the applicable percentage of stabilization, based on an inspection and verification that the plan requirements have been satisfied and permanent vegetation has been established. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive, and will inhibit erosion. Surety refund may be partial if the administrator or his designee deems the plan has not been 100 percent adhered to after 60 days from stated completion.

(c) Prior to engaging in the land disturbing activities shown on an approved plan, the person responsible for carrying out the plan shall obtain the permit required by Sec. 26-40 and shall notify the administrator, in writing, of the name of the responsible land disturber for such activities. Failure to designate a responsible land disturber prior to engaging in land disturbing activities shall constitute grounds for the administrator to revoke an approved plan, and the person responsible for carrying out the plan shall be subject to the penalties provided in this article. The administrator may waive the certificate of competence requirement for an agreement in lieu of a plan. The land disturbing permit shall be kept at the site of the authorize land disturbing activity at all times during which such activity is being performed.

Sec. 26-39. - Approval.

(a) The administrator shall promptly review plans submitted under this article. If the administrator determines that a plan meets the requirements of the Board's regulations and this article, and if the person responsible for carrying out the plan has certified that he will properly perform the conservation measures included in the plan and will conform to the provisions of the Board's regulations and this article, then the administrator shall grant approval, in the form of a written permit, within 45 days of receipt of the plan. ~~No plan shall be approved without written permission for authorized persons to enter the construction site for inspection purposes.~~ Further, the approval of a plan shall be conditioned upon compliance with the bonding requirements set forth within Sec. 26-38.

When a proposed plan is determined by the administrator to be inadequate, written notice of disapproval, stating the specific reasons for disapproval, shall be communicated to the applicant within 45 days of receipt of the plan. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the administrator within the time specified in this paragraph, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(b) Should a land disturbing activity not begin during the 180-day period following plan approval or cease for more than 180 days, the administrator may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the administrator finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land disturbing activity.

(c) The administrator shall report to the ~~Virginia~~ Department of ~~Conservation and Recreation~~ Environmental Quality, in a method and on a time schedule established by the Department, a listing of each land disturbing activity in the locality for which a plan has been approved under this article.

Sec. 26-40. - Issuance of land disturbing permit.

(a) Following approval of an erosion and sediment control plan, and receipt of the bond or other security required by section 26-38, and upon the request of the applicant, the permit issuing authority shall issue a permit for the land disturbing activities that are the subject of the approved plan. Each permit authorizing any land disturbing activity shall be conditioned upon the agreement of the person carrying out the plan (i) to allow for periodic inspections of the land disturbing activity, and (ii) to provide a responsible land disturber on site during all land disturbing activity. The permit issuing authority may require, as a condition of permit issuance, that the person responsible for carrying out the plan must provide monitoring, and must make reports thereof to the administrator, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment.

(b) Applicants for any land disturbance permit or agreement in lieu of a plan shall be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required, prior to the administrator providing approval to begin land disturbance.

Sec. 26-41. - Inspection and enforcement.

(a) *Inspections.* The administrator shall provide for periodic inspections of the land disturbing activity for which a permit has been issued. The owner, permittee, or person responsible for carrying out the plan shall be given notice of inspection. These inspections shall be conducted by a certified inspector.

(b) *Notice to comply.* Responsibility for inspections, administration and enforcement of this article shall rest with the administrator. The administrator shall develop application forms and materials, and written procedural guidelines to be followed in the inspections, administration and enforcement of this article. All such forms, materials and guidelines shall be maintained on file in the office of the administrator. If the administrator determines that there is a failure to comply with an approved plan, or a condition of a permit, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan or permit and shall specify the time within which such measures shall be completed. Upon a failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided by Sec. 26-44.

(c) *Stop work order.*

(1) Upon receipt of a ~~sworn~~ complaint ~~from~~ to the administrator, ~~or upon investigation by the administrator or a certified inspector for the county,~~ alleging a violation of this chapter or of the Code of Virginia, ~~§ 10.1-563 or § 10.1-564 Title 62.1, § 62.1-44.15:54 et seq., the County administrator or his designee, or the Board administrator or a certified inspector for the county~~ may, in conjunction with or subsequent to a notice to comply as specified in subsection (b) of this section, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or if land disturbing activities have commenced without an approved plan, requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained.

(2) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply. Otherwise, such a stop work order may be issued only after the alleged violator has failed to comply with a notice to comply.

(3) The stop work order shall be served in the same manner as a notice to comply and shall remain in effect for seven days from the date of service pending application by the administrator or alleged violator for appropriate relief to the county circuit court. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the stop work order, the ~~County administrator or a certified inspector for the county~~ may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the county. Upon completion and approval of corrective action, or upon obtaining an approved plan or any required permits, the order shall be immediately lifted.

(4) The owner may appeal the issuance of a stop work order to the county circuit court. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

(5) Any person violating or failing, neglecting or refusing to obey a stop work order issued pursuant to this section may be compelled in a proceeding instituted in the circuit court to obey the same and to comply therewith by injunction, mandamus or other appropriate remedy. Nothing in this section shall prevent the County from taking any other action specified in **Sec. 26-44 or in Virginia Code ~~§10.1-569~~ § 62.1-44.15:63.**

(d) Right of entry. The administrator or a certified inspector for the county may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement required pursuant to Sec. 26-38, the administrator may also enter any establishment or upon any property or cause for entry onto such property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

[...]