

## PART II

### LAND DEVELOPMENT CODE

#### Chapter 46

#### EROSION AND SEDIMENT CONTROL\*

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\***Cross references**—Environment, ch. 22; erosion and sedimentation control, § 22-26 et seq.; floods, ch. 50; subdivisions, ch. 54; zoning, ch. 58.

**State law reference**—Erosion and sedimentation control, Code of Virginia, § 10.1-560 et seq.



**Sec. 46-1. Title, purpose, and authority.**

(a) This chapter shall be known as the Erosion and Sediment Control Ordinance of Craig County. The purpose of this chapter is to conserve the land, water, air, and other natural resources of the county by establishing requirements for the control of erosion and sedimentation and by establishing procedures whereby these requirements shall be administered and enforced.

(b) This chapter is authorized by Code of Virginia, § 10.1-560 et seq., known as the Erosion and Sediment Control Law.  
(Ord. No. 096-04, 10-15-1996)

**Sec. 46-2. Definitions.**

The following words, terms and phrases, when used in this chapter, 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 county 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 county 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.

*Board* means the state soil and water conservation board.

*Certified inspector* means an employee or agent of a program authority who holds a certificate or competence from the board in the area of project inspection or 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 hold a certificate of competence from the board in the area of plan review, is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment, or 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.

*Clearing* means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

*Conservation plan, erosion and sediment control plan and plan* mean 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 ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

*County* means the County of Craig, Virginia.

*Department* means the state 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 department.

*District* and *soil and water conservation district* mean the Mountain Castles 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. The term "erosion impact area" shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

*Excavating* means any digging, scooping, or other methods of removing earth materials.

*Filling* means any depositing or stockpiling of earth materials.

*Grading* means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

*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, clearing, grading, excavating, transporting, and filling of land, except that the term "land disturbing activity" 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 such land disturbing activity is confined to the area of the road, street, sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included the well site, roads, feeder lines, and off-site disposal areas;
- (5) Surface or deep mining;
- (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, desalting 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 Code of Virginia, § 10.1-1163 B;
- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
- (9) Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desalting 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;
- (10) Disturbed land areas of less than 10,000 square feet in size;
- (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; and
- (12) 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 requirements of the plan-approving authority.

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

*Local erosion and sediment control program and program* mean an outline of the various methods employed by the county 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 or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, 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 the commonwealth, any interstate body, or any other legal entity.

*Plan-approving authority* means the county's certified plan reviewer responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of lands and for approving plans.

*Program authority* means the county, which has adopted a soil and erosion and sediment control program approved by the board.

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

*State erosion and sediment control program* and *state program* mean the program administered by the state soil and water conservation board pursuant to the state code 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 material from one place to another place 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.

(Ord. No. 096-04, 10-15-1996)

**Cross reference**—Definitions generally, § 1-2.

### **Sec. 46-3. Penalties, injunctions and other legal actions.**

(a) *Class 1 misdemeanor.* Violators of this chapter shall be guilty of a class 1 misdemeanor punishable as provided in section 1-15.

(b) *Assessment of civil penalty.* Any person who violates any provision of this chapter shall, upon a finding of the county's general district court, be assessed a civil penalty. The civil penalty for any one violation shall be \$100.00, except that the civil penalty for commencement of land disturbing activities without an approved plan shall be \$1,000.00. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000.00, except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00. Note: The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section. Refer to Code of Virginia, § 10.1-562J.

(c) *Application for enjoinder.* The appropriate permit-issuing authority, the program authority, the board, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of this chapter without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief, unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property; and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

(d) *Civil liability for damages.* In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the county in a civil action for damages.

(e) *Refusing to obey injunctions, mandamus, or other remedy.* Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the county. Any civil penalties assessed by a court shall be paid into the treasury of the county, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(f) *Civil charges.* With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or condition of a permit or any provision of this chapter, the county may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (e) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (e) of this section.

(g) *Action by commonwealth attorney.* The commonwealth's attorney shall, upon request of the county or the permit-issuing authority, take legal action to enforce the provisions of this chapter.

(h) *Showing of negligence.* Compliance with the provisions of this chapter 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.

(Ord. No. 096-04, 10-15-1996)

**State law reference**—Similar provisions, Code of Virginia, § 10.1-569.

#### **Sec. 46-4. Local erosion and sediment control program.**

(a) *Adoption of state erosion and sedimentation control handbook.* Pursuant to Code of Virginia, § 10.1-562, the county hereby adopts the regulations, references, guidelines, standards, and specifications promulgated by the state soil and water conservation board for

the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Such regulations, references, guidelines, standards, and specifications for erosion and sediment control are included in, but not limited to, the "Virginia Erosion and Sediment Control Regulations" and the "Virginia Erosion and Sediment Control Handbook," as amended from time to time.

(b) *Notice and public hearing.* Before adopting or revising regulations, the county shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall be held if the county proposes or revises regulations that are more stringent than the state program.

(c) *Review of erosion control plan.* Pursuant to Code of Virginia, § 10.1-561.1, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land disturbing activities shall be conducted by a certified inspector. The erosion control program of the county shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(d) *Designation of plan-approving authority.* The county hereby designates the county administrator or designee as the plan-approving authority.

(e) *Public inspection.* The program and regulations provided for in this chapter shall be made available for public inspection at the office of the commissioner of the revenue and the office of the county administrator.

(Ord. No. 096-04, 10-15-1996)

**Sec. 46-5. Regulated land disturbing activities submission and approval of plans; contents of plans.**

(a) *Submission and approval of plan required.* Except as provided in this section, no person may engage in any land disturbing activity until he has submitted to the certified program administrator for the county an erosion and sediment control plan for the land disturbing activity and such plan has been approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the board for review and approval rather than to each jurisdiction concerned. 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.

(b) *Standards to be used.* The standards contained within the "Virginia Erosion and Sediment Control Regulations," and the "Virginia Erosion and Sediment Control Handbook," are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations, and guidelines. When the standards vary between the publications, the state regulations shall take precedence.

(c) *Conditions for approval.* The plan-approving authority shall, within 45 days, approve any such plan if it is determined that the plan meets the requirements of the local control program, 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 chapter.

(d) *Time limitation for approval or disapproval.* The plan shall be acted upon within 45 days from receipt thereof by either approving the plan in writing or by disapproving the plan in writing and giving specific reasons for its disapproval. When the plan is determined to be inadequate, the written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The plan-approving authority's notice shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the plan-approving authority within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(e) *Changes to approved plan.* An approved plan may be changed by the plan-approving authority when:

- (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- (2) The person responsible for carrying out the plan finds that, because of changed circumstances or for other reasons, an approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.

(f) *Conservation plan.* In order to prevent further erosion, the county may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

(g) *Responsibility of owner.* When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

(h) *Utility, gas pipeline, and railroad companies.* Whenever electric and telephone utility companies, interstate or intrastate natural gas pipeline companies, or railroad companies undertake any of the activities included in subsections (1) and (2) of this subsection, they shall be considered exempt from the provisions of this chapter.

- (1) Construction, installation, and maintenance of electric transmission, natural gas and telephone utility lines; and
- (2) Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of the railroad company.

Projects not included in subsections (1) and (2) of this subsection shall comply with the requirements of the county's erosion and sediment control program, pursuant to the Code of Virginia, § 10.1-563D.

(i) *Exemption for state agencies.* State agency projects are exempt from the provisions of this chapter except as provided for in the Code of Virginia, § 10.1-564.

(j) *Technical review authority designated.* The Mountain Castles Soil and Water Conservation District will serve as the technical review authority. At request of the county, the district will assist with plan review and other technical support as needed.

(Ord. No. 096-04, 10-15-1996)

**Sec. 46-6. Permits, fees, bonding, etc.**

(a) *Approved plan and certification of execution required prior to issuance of permit.* Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(b) *Permit, fees, and bonds required.* No person may engage in any land disturbing activity until he has acquired a land disturbing permit, unless the proposed land disturbing activity is specifically exempt from the provisions of this chapter and has paid the fees and posted the required bond.

(c) *Fees.* An administrative fee of \$25.00 for the first acre and \$10.00 for each additional acre or partial acre, not to exceed a maximum fee of \$500.00, shall be paid to the county at the time of submission of the erosion and sediment control plan.

(d) *Plan and certification.* The land disturbing permit shall not be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(e) *Bond.* All applicants for permits shall provide to the county a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the certified program administrator to ensure that measures could be taken by the county at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land disturbing conservation measures required of him as a result of his land disturbing activity. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held. Within 60 days of adequate stabilization, as determined by the certified inspector, such bond, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated.

(f) *Scope of provisions.* These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

(Ord. No. 096-04, 10-15-1996)

**Sec. 46-7. Monitoring, reports, and inspections.**

(a) The county may require the person responsible for carrying out the plan to monitor and maintain the land disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(b) The certified inspector shall periodically inspect the land disturbing activity as required under the state program to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the certified inspector determines that there is a failure to comply with the plan, 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 and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, 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 chapter and, upon conviction, shall be subject to the penalties provided by this chapter.

(c) Upon determination of a violation of this chapter, the certified inspector may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land disturbing activities be stopped until an approved plan or any required permits are obtained. If land disturbing activities have commenced without an approved plan, the certified inspector may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within 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 without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of the county. The owner may appeal the issuance of an order to the circuit court of the county. Any person violating or failing, neglecting, or refusing to obey an order issued by certified inspector may be compelled in a proceeding instituted in the circuit court of the county to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an

approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the certified inspector from taking any other action authorized by this chapter.

(Ord. No. 096-04, 10-15-1996)

**State law reference**—Similar provisions, Code of Virginia, § 10.1-566.

**Sec. 46-8. Appeals and judicial review.**

(a) Any applicant under the provision of this chapter who is aggrieved by any action of the county or its agent in disapproving plans submitted pursuant to this chapter shall have the right to apply for and receive a review of such action by the county board of supervisors, provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the board of supervisors shall be heard at the next regularly scheduled board of supervisors public hearing; provided, that the board of supervisors and other involved parties have at least 30 days' prior notice. In reviewing the agent's actions, the board of supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the board of supervisors may affirm, reverse, or modify the action. The board of supervisors' decision shall be final, subject only to review by the circuit court of the county.

(b) Final decisions of the county under this chapter shall be subject to review by the county circuit court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.

(c) Final decisions of the county shall be subject to an administrative review by the state soil and water conservation board, provided that an appeal is filed within 30 days from the date of the written decision.

(Ord. No. 096-04, 10-15-1996)

**State law reference**—Similar provisions, Code of Virginia, § 10.1-5.

Chapters 47—49

**RESERVED**

