

COUNTY OF ACCOMACK
EROSION AND SEDIMENT CONTROL ORDINANCE
Adopted June 20, 2007

Sec. 38-66. TITLE, PURPOSE, AND AUTHORITY (Effective June 20, 2007; previous sections repealed June 20, 2007)

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the County of Accomack." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the County of Accomack by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by VA Code Ann., Title 10.1, Chapter 5, Article 4 (§§10.1-560 *et seq.*) known as the Virginia Erosion and Sediment Control Law.

Sec. 38-67. DEFINITIONS: As used in the ordinance, unless the context requires a different meaning:

- A. "Agreement in lieu of a plan" means a contract between the Director of Planning and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the Director of Planning in lieu of a formal site plan.
- B. "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.
- C. "Certified inspector" means the Director of Planning or the Director's designee who (i) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.
- D. "Certified plan reviewer" means the Director of Planning or the Director's designee who (i) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to VA Code Ann., §§54.1-400 *et seq.*
- E. "Certified program administrator" means the Director of Planning or the Director's designee who (i) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.
- F. "Clearing" means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.
- G. "County" means the County of Accomack.
- H. "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 (3) or more residential dwelling units.
- I. "Director of Planning" means the Director of Planning of the County of Accomack or the Director's designee.

- J. "District" or "Soil and Water Conservation District" refers to the Eastern Shore Soil and Water Conservation District.
- K. "Erosion and Sediment Control Plan" or "Plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- L. "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.
- M. "Excavating" means any digging, scooping or other methods of removing earth materials.
- N. "Filling" means any depositing or stockpiling of earth materials.
- O. "Grading" means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.
- P. "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 shall not include:
- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
 - (2) Individual service connections;
 - (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
 - (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 - (5) Surface or deep mining;
 - (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 and agricultural engineering operations, even if such operations are not required to comply with the Dam Safety Act, VA Code Ann., §§10.1-604 *et seq.*, 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 VA Code Ann., §§10.1-1100 *et seq.* or is converted to *bona fide* agricultural or improved pasture use as described in VA Code Ann., §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) Disturbed land areas of less than 10,000 square feet in size;
 - (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 - (11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission or the U. S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; 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 Director of Planning.
- Q. "Land-disturbing Permit" means a permit issued by the County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.
- R. "Local erosion and sediment control program" or "local control program" means 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.
- S. "Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.
- T. "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.
- U. "Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.
- V. "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.
- W. "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.
- X. "Plan-approving authority" means the Director of Planning or the Director's designee who is responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of land and for approving plans.
- Y. "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 Virginia Soil and Water Conservation 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 VA Code Ann., §§54.1-400 *et seq.*

- Z. "Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.
- AA. "Single-family residence" means a noncommercial dwelling that is occupied exclusively by one family.
- BB. "State erosion and sediment Control program" or "state program" means the program administered by the Virginia Soil and Water Conservation Board including regulations designed to minimize erosion and sedimentation.
- CC. "State waters" means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.
- DD. "Transporting" means any moving of earth materials 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.
- EE. "Water Quality Volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

(VA Code Ann., §10.1-560, 4 VAC50-30-10)

Sec. 38-68. LOCAL EROSION AND SEDIMENT CONTROL PROGRAM:

- A. Pursuant to VA Code Ann., §10.1-562, the County hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia 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. Said 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.
- B. 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 not be required when the County is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County proposes or revises regulations that are more stringent than the state program.
 - 1. In addition, in accordance with VA Code Ann., §10.1-561 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.
 - 2. In accordance with VA Code Ann., §10.1-561, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade 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 manmade channels.

- C. Pursuant to VA Code Ann., §10.1-561.1, an erosion control plan shall not be approved until it is reviewed by the Director of Planning or the Director's designee. Inspections of land-disturbing activities shall be conducted by the Director of Planning or the Director's designee.
- D. The County hereby designates the Director of Planning or the Director's designee as the certified program administrator, certified plan reviewer and certified inspector.
- E. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Department of Planning.

(VA Code Ann., §§10.1-561, 10.1-562)

Section 38-69. SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS:

- A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Director of Planning an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the Director of Planning. Such approval shall be documented by the Director of Planning's issuance of a Land-disturbing Permit.
 - 1. Where land-disturbing activities involve lands under the jurisdiction of more than just the County's local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Virginia Soil and Water Conservation Board for review and approval rather than to the County and each jurisdiction concerned.
 - 2. 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 Director of Planning.
- B. The standards contained within the "Virginia Erosion and Sediment Control Regulations," the *Virginia Erosion and Sediment Control Handbook*, as amended, are to be used by the applicant when making a submittal under this ordinance and in the preparation of an erosion and sediment control plan. The Director of Planning, 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. The Director of Planning shall review erosion and sediment control plans submitted to the County and grant written approval, in the form of a Land-disturbing Permit, within 45 days of the receipt of the plan if he determines that the plan meets the requirements and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article.
- D. In addition, 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 a Responsible Land Disturber, to the Director of Planning, as provided by VA Code Ann., §[10.1-561](#), who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of a Responsible Land Disturber prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

However, the Director of Planning may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of a Responsible Land Disturber, as provided by VA Code Ann., §[10.1-561](#), who then will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of a Responsible Land Disturber may result in revocation of the approval of the agreement in lieu of a plan and the person responsible for carrying out the agreement shall be subject to the penalties provided in this ordinance.

- E. The erosion and sediment control plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing by the issuance of the Land-disturbing Permit, or by disapproving said plan in writing and giving specific reasons for its disapproval.
- If said plan is determined to be inadequate, the Director of Planning shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, said plan shall be deemed approved, the applicant shall be authorized to proceed with the proposed activity, and a Land-disturbing Permit shall be issued to the applicant upon their written request.
- F. An approved plan may be changed by the Director of Planning 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 the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the Director of Planning and the person responsible for carrying out the plans.
- G. Variances: The Director of Planning may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
- (1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the Director of Planning shall be documented in the plan.
 - (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the Director of Planning. The Director of Planning shall respond in writing either approving or disapproving such a request. If the Director of Planning does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
- H. In order to prevent further erosion, the County may require approval of an erosion and sediment control plan for any land identified in the local program as an erosion impact area.
- I. 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.
- J. In accordance with the procedure set forth by VA Code Ann., §10.1-563 (E), any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Virginia Department of Conservation and Recreation of Environmental Quality, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Virginia Soil and Water Conservation Board for review and approval consistent with guidelines established by that Board.
- K. State agency projects are exempt from the provisions of this ordinance except as provided by VA Code Ann., §10.1-564.

Sec. 38-70. PERMITS; FEES; SECURITY FOR PERFORMANCE:

- A. No person may engage in any land-disturbing activity until he has acquired a Land-disturbing Permit from the Director of Planning and has paid the fees and posted the required bond, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance. (VA Code Ann., §§10.1-563, 10.1-570)
- B. Agencies authorized under law to issue grading, building, or any other permit that could result in a land-disturbing activity may not issue such a permit unless the applicant submits with his application an approved erosion and sediment control plan, that may be documented by a photocopy of the Land-disturbing Permit, and certification that the plan will be followed.
- C. An administrative fee corresponding to the current fee schedule as approved by the Board of Supervisors shall be paid to the County at the time of submission of the erosion and sediment control plan.
- D. All applicants for permits shall provide to the County a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Director of Planning, 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 by the approved plan as a result of his land-disturbing activity.
 - 1. The amount of the bond or other security for performance shall not exceed the 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 locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent (25%) of the cost of the conservation action. 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.
 - 2. Within 60 days of adequate stabilization, as determined by the Director of Planning, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. 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.

(VA Code Ann., §§10.1-562, 10.1-565, 10.1-570)

Sec. 38-71. MONITORING, REPORTS, AND INSPECTIONS:

- A. The County may require the person responsible for carrying out the plan to monitor 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 Director of Planning shall periodically inspect the land-disturbing activity in accordance with 4 VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations 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.
 - 1. If the Director of Planning 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 addresses specified in the erosion and sediment control plan, or other respective permit, application, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

2. 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 ordinance and shall be subject to the penalties provided by this ordinance.
- C. Upon determination of a violation of this ordinance, the Director of Planning 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. Such an order shall become effective only after the permittee has failed, by determination of the Director of Planning, to bring its activities into conformity with the notice to comply.
1. If land-disturbing activities have commenced without the issuance of a Land-disturbing Permit, and are not permitted under the exception in subsection Section 4.E., or 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, the Director of Planning may issue an order requiring that all of the land-disturbing activities be stopped until a Land-disturbing permit is obtained. Such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in subsection B of this section.
 2. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) 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.
 3. If the alleged violator has not obtained a Land-disturbing Permit, within seven (7) days from the date of service of the order, the Director of Planning 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 erosion and sediment control plan approval application or the land records of the County.
 4. The owner may appeal the issuance of an order to the Circuit Court of the County of Accomack.
 5. Any person violating or failing, neglecting or refusing to obey an order issued by the Director of Planning 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.
 6. Nothing in this section shall prevent the Director of Planning from taking any other action authorized by this ordinance.

(VA Code Ann., §10.1-566)

Sec. 38-72. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS:

- A. Any person who violates any provision of this ordinance shall, upon a finding of the Circuit Court of the County, be assessed a civil penalty. The civil penalty for any one violation shall be \$100 [effective July 1, 2007, “not less than \$100 nor more than \$1000”], except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. 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 [effective July 1, 2007, “\$10,000”], 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.
- B. The Director of Planning, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of the County to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.
- C. 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. In addition to the civil penalty provided under this ordinance, any person who violates any provision of this ordinance may be liable to the County in a civil action for damages.
- E. 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 issued by the Circuit Court of the County obtained pursuant to a violation of this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the County.
- F. 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.
- G. 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 ordinance, the Director of Planning 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.
- H. The Commonwealth's Attorney shall, upon request of the County or the permit issuing authority, take legal action to enforce the provisions of this ordinance.
- I. Compliance with the provisions of this ordinance 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.

(VA Code Ann., §§10.1-562, 10.1-569)

Sec. 38-73. APPEALS AND JUDICIAL REVIEW:

- A. Any applicant under the provisions of this chapter who is aggrieved by any action of the Director of Planning in disapproving an erosion and sediment control plan submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Board of Supervisors,

provided an appeal is filed within 30 days from the date of the disapproval. Any applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board meeting 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, 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 Board of Supervisors under this ordinance shall be subject to review by the Circuit Court of the County, 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. Nothing in this section shall stay the enforcement of any violation of the provisions of this chapter.

(VA Code Ann., §10.1-568)