

Agricultural and Forestry Exemptions

Recently, a representative of the Department of Conservation and Recreation shared information concerning exemptions to the state erosion and sediment control law with personnel from Fauquier County and John Marshall SWCD. Land disturbing activities over 10,000 sq. ft. require an approved E&S plan and a Land Disturbing Permit from the County. The following is information concerning state law and what is exempt from the E&S law.

Virginia delegates powers to localities through the Virginia Constitution. Localities can only exercise powers and authority granted to them by state law. Localities must carry out duties and responsibilities mandated to them. This procedure is known as “Dillon’s Rule”. The Virginia E&S Law is a good example of Dillon’s Rule.

The agricultural exemption to the definition of a land-disturbing activity applies to tilling, planting, and harvesting of crops, livestock feedlot operations and agricultural engineering operations. *The construction of agricultural buildings is not included in the list of exemptions.* Therefore, the agricultural exemption does not apply to the construction of roads, farm buildings, such as barns, livestock houses, etc. *The reference to ponds applies to ponds that are constructed, maintained or operated primarily for agricultural purposes such as irrigating crops, watering livestock, etc.* (see Code of VA 10.1-604). However, a pond built purely for aesthetic purposes is not exempt.

The forestry exemption applies to land that will be harvested and reforested artificially or naturally in accordance with the provisions of § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use. Evidence of intent of bona fide agricultural or improved pasture use shall require, at a minimum, that the land intended for such use be cleared of all trees, snags, brush, tree tops, and debris by piling and burning or otherwise disposing of it, or by enclosing the area with a well-constructed fence and planting grass seed, to make a bona fide improved pasture. This has to be accomplished twelve months from the date of completion of commercial cutting.

You may contact the Department of Forestry, John Marshall SWCD or Fauquier County Community Development for more information.