

CONSERVATION: FOREST RESOURCES AND THE DEPARTMENT OF FORESTRY.

Locality may regulate, by ordinance, silvicultural activities but must observe clear and unambiguous statutorily imposed duties and limitations.

The Honorable Clarence E. Phillips
Member, House of Delegates
July 2, 1999

You ask whether § 10.1-1126.1(B) of the Code of Virginia permits localities to regulate, by ordinance, silvicultural activities within the locality.

Section 10.1-1126.1(B) provides:

Notwithstanding any other provision of law, silvicultural activity, as defined in § 10.1-1181.1,^[1] that (i) is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 and (ii) is located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, shall not be prohibited or unreasonably limited by a local government's use of its police, planning and zoning powers. Local ordinances and regulations shall not require a permit or impose a fee for such silvicultural activity. Local ordinances and regulations pertaining to such silvicultural activity shall be reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality, and shall not be in conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources. Prior to the adoption of any ordinance or regulation pertaining to silvicultural activity, a locality may consult with, and request a determination from, the State Forester as to whether the ordinance or regulation conflicts with the purposes of this section. Nothing in this section shall preclude a locality from requiring a review by the zoning administrator, which shall not exceed ten working days, to determine whether a proposed silvicultural activity complies with applicable local zoning requirements.

Several principles of statutory construction apply to this statute. When a statute begins with the phrase "notwithstanding any other provision of law," it is presumed that the General Assembly intended to override any potential conflicts with earlier legislation.² In addition, "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."³ It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.⁴ In those situations, the statute's plain meaning and intent govern. Use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.⁵ Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.⁶

The primary purpose of statutory construction is to ascertain and give effect to the intent of the legislature.⁷ It is clear from the language in § 10.1-1126.1(B) that local ordinances pertaining to silvicultural activity must be "reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality," and must not "conflict with the purposes of promoting the

growth, continuation and beneficial use of the Commonwealth's privately owned forest resources." In addition, before any ordinance regulating such activity is adopted, a locality is permitted to "consult with, and request a determination from, the State Forester as to whether" a proposed ordinance is in conflict with § 10.1-1126.1. Finally, § 10.1-1126.1(B) clearly restricts localities from prohibiting or unreasonably limiting by use of the local government's "police, planning and zoning powers" silvicultural activity that is conducted "in accordance with the silvicultural best management practices developed and enforced by the State Forester" and is "located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2."

Based on the clear language of § 10.1-1126.1(B), therefore, it is my opinion that a locality may regulate by ordinance silvicultural activities but must observe the duties and limitations that are clearly and unambiguously set forth in the statute.

¹"*Silvicultural activity*" means any forest management activity, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation." Section 10.1-1181.1.

²Op. Va. Att'y Gen.: 1996 at 197, 198; 1987-1988 at 1, 2.

³Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); see also 1993 Op. Va. Att'y Gen. 256, 257.

⁴See Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); see also 1993 Op. Va. Att'y Gen. 99, 100.

⁵See Andrews v. Shepherd, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1998 at 56, 58; 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

⁶See 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5th ed. 1992 & Supp. 1999); 1992 Op. Va. Att'y Gen. 145, 146, and opinions cited therein.

⁷See Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).