

Section 5.3 Sedimentation Control Regulations

Erosion and

Section 5.3.1 Purpose and Intent

- (a) This purpose of this section is to regulate certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution and degradation of water and other damage to lakes, watercourses, and other public and private property by sedimentation.

Section 5.3.2 Applicability

- (a) This section shall apply to all land disturbing activities, as defined, within the territorial jurisdiction of the County and to the municipalities including extraterritorial jurisdiction of the municipalities as allowed by the agreement between the local governments or other appropriate legal instrument or law.

Section 5.3.3 Exemptions

- (a) This section shall not apply to the following land disturbing activities:
- (a) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
- 1) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - 2) Dairy animals and dairy products.
 - 3) Poultry and poultry products.
 - 4) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
 - 5) Bees and apiary products.
 - 6) Fur-producing animal.
 - 7) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances. Trout production and other aquaculture activities.
- (ii) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department Agriculture and Consumer Services. If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this section shall apply to such activity and any related land disturbing activity on the tract.
- (iii) Activities for which a permit is required under the Mining Act of 1971, NCGS 74, Article VII;
- (iv) Land disturbing activity over which the State has exclusive regulatory jurisdiction as provided in NCGS 113A-56(a).
- (v) For the duration of an emergency, activities essential to protect human life.
- (vi) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- (vii) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5.3.4 Permits and Procedures

- (a)** The Permitting and Code Enforcement Director shall administer this section per the Table 3.1 Development Review Procedures, and in doing so shall incorporate all necessary steps to ensure that development and other land disturbing activities comply with the terms of this section. See also Section 3.7.5 for procedures to obtain Erosion and Sedimentation Control permit procedures.
- (b) Plan required.**
- (i)* No person shall initiate any land disturbing activity which uncovers one-half or greater acres or more than 21,780 square feet without having an erosion and sedimentation control plan approved by the county.
 - (ii)* An erosion and sedimentation control plan shall be prepared for all land disturbing activities subject to this article whenever the proposed activity is to be undertaken on a tract comprising of one-half or greater acres acre or more, if one-half or greater acres acre or more is to be uncovered. The plan shall be filed with the Permitting and Code Enforcement Department and a copy shall be simultaneously submitted to the County Soil and Water Conservation District at least 30 calendar days prior to the commencement of the proposed activity.
 - (iii)* Persons conducting land disturbing activity on a tract which covers one-half or greater acres or more shall file three copies of the erosion control plan with the County at least 30 calendar days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the County, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the County will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.
 - (iv)* The County will review each complete plan submitted to them and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Incomplete plans shall be returned for completion. The 30-day review period will not begin until all required items are submitted. The erosion control officer shall have five business days to check the plans for completeness. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control plan within 30 calendar days of receipt shall be deemed an approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The County must approve, approve with modifications, or disapprove a revised plan within 15 calendar days of receipt, or it is deemed to be approved. If, following commencement of a land disturbing activity pursuant to an approved plan, the County determines that the plan is inadequate to meet the requirements of this article, the County may require any revision of the plan that is necessary to comply with this article. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 calendar days of receipt shall be deemed approval of the plan. The County shall establish an expiration date of three years for erosion control plans approved under this article.
 - (v)* The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the County. A professional is not required

to design plans for ground disturbance of three or less acres. For ground disturbance exceeding three acres a professional drawing by an appropriately licensed or certified design professional is required, and if that same permit disturbs five or more acres an appropriately licensed or design professional shall conduct monthly inspections, a schedule of which is to be filed with the planning office.

(c) Financial responsibility statement.

- (i) Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article.

(d) Soil and Water Conservation District review.

- (i) The County Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the County within 20 calendar days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the Soil and Water Conservation District and the County. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 calendar days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(e) Coordination with the North Carolina Environmental Policy Act.

- (i) Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The County shall promptly notify the person submitting the plan that the 30-calendar day time limit for review of the plan pursuant to Section 5.3.4 (b)(3) shall not begin until a complete environmental document is available for review.

(f) Plan disapproval.

- (i) An erosion and sediment control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:
- 1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;
 - 2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
 - 3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 - 4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act. For purposes of this section an applicant's record may be considered for only the two years prior to the application date.

(g) Plan amendment.

- (i) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the County, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(h) Failure to file a plan.

(i) Any person engaged in land disturbing activity who fails to file a plan in accordance with this article, or who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this article.

(i) Compliance with water quality laws.

(i) The approval of an erosion control plan is conditioned on the applicant's compliance with federal and state water quality laws, regulations, and rules.

(j) Plans involving ditches to lower the water table.

(i) A copy of the erosion control plan for any land disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the director of the division of water quality and the Army Corps of Engineers.

(k) Plan approval.

(i) If the submitted plan is approved by the erosion control officer, a permit to conduct land disturbing activities shall be issued in the name of the applicant.

(l) Notification procedures for land disturbing activity not meeting the erosion control plan requirements.

(i) In cases where less than one-half acre will be disturbed, applicants will be asked to complete a form that explains how erosion control will be managed during construction. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form.

(ii) Should the applicant fail to fill out the notification form in advance of clearing land, give false or misleading information on the form or fail to install the procedures as called for on the form, a penalty will be assessed as outlined in Article X.

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(m) Protection of property

Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

Section 5.3.5 General Requirements

(a) Responsibilities of Persons Conducting Land Disturbing Activities

(i) Persons conducting land disturbing activities shall be held responsible for understanding the requirements:

- 1) Persons conducting land disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities.
- 2) Persons conducting land disturbing activities shall apply to the Permitting and Code Enforcement Department for any permit required and receive said permit contingent upon

an approved erosion and sediment control plan, before beginning any land disturbing activity which uncovers one or greater acres.

3) If any land disturbing activity requires a permit as defined in this section, a building permit shall not be issued until a plan has been approved by the Permitting and Code Enforcement Director.

(b) More Restrictive Rules Apply

(i) Whenever conflicts exist between Federal, State, or local laws, ordinance, or rules, the more restrictive provision shall apply.

(c) Access and Haul Roads

(i) Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.

(d) Operations in Lakes or Natural Watercourses

(i) Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel.

(ii) The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

(iii) The applicant shall consult with the Army Corps of Engineers and the North Carolina Department of Environment and Natural Resources to determine if a permit is required before undertaking any land disturbing activity in or near a watercourse, wetlands or swamp.

(iv) Said permits or approvals shall be submitted as part of the erosion and sediment control application.

(e) Borrow and Waste Areas

(i) When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials, other than landfills regulated by the County solid waste management, shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated.

(ii) When the person conducting the land disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land disturbing activity.

(f) Additional Measures

(i) Whenever the County determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action.

(g) Restoration of Areas Affected by Failure to Comply

(i) The County may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation.

(ii) This includes damage to properties adjacent to, nearby or downstream of the permitted property that are not owned by the person engaging in the land disturbing activity.

(iii) This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section.

Section 5.3.6 Basic Control Objectives

- (a) An erosion and sedimentation control plan may be disapproved pursuant to Article III, Permits and Procedures, if the plan fails to address the following control objectives:
- (i) Identify Critical Areas
 - 1) On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
 - (ii) Limit Time of Exposure
 - 1) All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
 - (iii) Limit Exposed Areas
 - 1) All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
 - (iv) Control Surface Water
 - 1) Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
 - (v) Control Sedimentation
 - 1) All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
 - (vi) Manage Stormwater Runoff
 - 1) When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

Section 5.3.7 Mandatory Standards for Land Disturbing Activity

- (a) No land disturbing activity subject to the control of this section shall be undertaken except in accordance with the following mandatory standards:
- (i) Buffer zone
 - 1) No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. This provision shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - 2) Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity, whichever is greater; provided, however, that the County may approve plans which include land disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This provision shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

- 3) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land disturbing activity containing natural or artificial means of confining visible siltation.
 - 4) The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
 - 5) Where a temporary and minimal disturbance is permitted as an exception by subsection (a) (i)(1) of this section, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Permitting and Code Enforcement Director.
 - 6) No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in these waters, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards".
- (ii) Graded slopes and fills
- 1) The angle for graded slopes and fills shall be no greater than ~~the angle which can be retained by vegetative cover or other adequate erosion control devices or structures.~~ a maximum 1 ½ :1 on cut slopes and a maximum 2 :1 on fill slopes.
 - 2) In any event, slopes left exposed will, within ~~ten-seven~~ ten-seven calendar days of ~~completion of any phase of grading~~ ground disturbing activity, be ~~planted or otherwise~~ provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.
- (iii) Ground cover
- 1) Whenever land disturbing activity that will disturb more than one-half acre is undertaken on a tract, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development.
 - 2) Except as provided in Section 5.3.8 (c)(v), provisions for a ground cover sufficient to restrain erosion must be accomplished within ~~ten-seven~~ ten-seven calendar days following ~~completion of~~ ground disturbing activity, excluding building structure footprint areas.
- (iv) Prior plan approval
- 1) No person shall initiate any land disturbing activity on a tract if more than one-half acre or greater is to be uncovered unless, 30 or more calendar days prior to initiating the activity, an Erosion and Sedimentation Control Plan for such activity is filed with and approved by the Permitting and Code Enforcement Director.

Section 5.3.8 Design Performance Standards

- (a) Except as provided in subsection (c)(ii) of this section, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten-year storm.
- (b) Runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices." or other acceptable calculation procedures.
- (c) In high quality water (HQW) zones the following design standards shall apply:

- (i) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Permitting and Code Enforcement Director.
- (ii) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the run off of the 25-year storm which produces the maximum peak rate of run off as calculated according to procedures in the United States department of Agriculture Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (iii) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (iv) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 1 vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
- (v) Ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a HQW zone immediately, not to exceed ten calendar days maximum, after ground disturbance activity.

Section 5.3.9 Stormwater Provisions

(a) Stormwater Outlet Protection; Velocity Limitation

- (i) Persons shall conduct land disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - 1) The velocity established by Table 5.1
 - 2) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.
 - 3) If conditions 1) or 2) of this subsection cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the velocity prior to development by ten percent.
- (ii) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The North Carolina Sedimentation Control Commission recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:
 - 1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;

- 2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
 - 3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures;
 - 4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.
- (iii) This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.
- (iv) Table 5.1 represents maximum permissible velocity for stormwater discharge:

TABLE 5.1: Maximum Permissible Velocity for Stormwater Discharge

| Material | Maximum Permissible Velocities | |
|---|--------------------------------|--------|
| | F.P.S. | M.P.S. |
| Fine sand (non-colloidal) | 2.5 | 0.8 |
| Sandy loam (non-colloidal) | 2.5 | 0.8 |
| Silt loam (non-colloidal) | 3.0 | 0.9 |
| Ordinary firm loam | 3.5 | 1.1 |
| Fine gravel | 5.0 | 1.5 |
| Stiff clay (very colloidal) | 5.0 | 1.5 |
| Graded, loam to cobbles (non-colloidal) | 5.0 | 1.5 |
| Graded, silt to cobbles (colloidal) | 5.5 | 1.7 |
| Alluvial silts (noncolloidal) | 3.5 | 1.1 |
| Alluvial silts (colloidal) | 5.0 | 1.5 |
| Coarse gravel (noncolloidal) | 6.0 | 1.8 |
| Cobbles and shingles | 5.5 | 1.7 |
| Shales and hard pans | 6.0 | 1.8 |

Source: Adapted from recommendations by the Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

Section 5.3.10 Maintenance of Temporary and Permanent Measures

(a) Responsibility for Maintenance

- (i) During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this section, the Act, or any order adopted pursuant to this section or the Act.

- (ii) ~~After site development, T~~the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.
- 1) Exposed areas shall be planted or otherwise provided with permanent ground cover, devices, or structures sufficient to restrain erosion, within ~~21-7~~ calendar days of ~~completion of any phase of grading or construction ground disturbing activity.~~
 - 2) The Permitting and Code Enforcement Director shall perform a final inspection verifying that all disturbed areas have been stabilized, that all permanent erosion control measures and stormwater management BMPs, facilities and improvements have been installed per the approved plan(s) and all requirements set forth in this section. A certificate of occupancy shall not be issued until there is a final inspection verifying compliance with these requirements.

Section 5.3.11 Surety

Application for a permit to disturb five or more acres shall require the posting of a performance bond with the county. Such performance bond shall be in the form of a surety bond guaranteed by an established surety company, irrevocable letter of credit, or a certified cashiers check. The bond shall be in the amount of the anticipated cost necessary for the installation of sufficient erosion and sediment control measures and devices on the site in accordance with this article, but in an amount not less than \$500.00 nor more than \$5,000.00 per acre of disturbed area as set forth in the approved sediment control plan. Such bond shall be valid until the land disturbing activity is completed in accordance with the approved sediment control plan and released by the erosion control officer as discussed in the following sections.

- (1) Land disturbing activities not in compliance with this article or an approved sediment control plan for 90 working days after notice of violation is received through registered or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable surety.
- (2) Forfeiture of applicable surety shall in no way relieves responsible parties of penalties, fines or other requirements of this article.
- (3) Forfeited surety shall be used to establish erosion control structures or ground cover in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land disturbing activity.
- (4) Upon completion of improvements as required by this article, written notice shall be given by the applicant, through registered or certified mail, to the erosion control officer who shall perform an inspection of the improvements. If the conditions of this article are met, within 30 calendar days of the date of notification of completion the county shall authorize in writing the release of applicable surety.

Section 5.3.11~~12~~ Appeals

- (a) Unless otherwise noted, appeals shall be governed by the provisions found in Section 3.7.2, Administrative Appeals.

Section 10.1 General Provisions

Section 10.1.1 Purpose and Intent

This Article establishes procedures through which the County seeks to ensure compliance with the provisions of this Ordinance and to obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this Article are intended to encourage the voluntary correction of violations, where possible.

Section 10.1.2 Jurisdiction

Enforcement of this Ordinance shall be limited to the area within the planning jurisdiction of the County which may be modified from time to time depending on the planning activities of municipalities and regulated districts in accordance with NCGS 160A-360.

Section 10.1.3 Enforcement Authority

- (a) This section shall be enforceable in accordance with the provisions of NCGS 153A-123 and any other applicable North Carolina General Statutes.
- (b) It shall be the duty of the Planning Director or the Permitting and Code Enforcement Director to enforce this Ordinance and, when necessary, bring to the attention of the County Attorney certain violations or lack of compliance. The Planning Director or Permitting or Code Enforcement Director is authorized to deny, withhold or revoke permits or inspections permissions on any new or existing projects or applications pursuant to this Ordinance or other regulations of the County where the applicant, applicant business or agent has failed or refused to comply with this Ordinance.

Section 10.1.4 Liability

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this Ordinance is jointly and severally liable for the violation and subject to all available penalties and remedies.

Section 10.2 Violation Types

- (a) All buildings and land used, and all buildings and structures erected, converted, enlarged, reconstructed, moved or structurally altered, must comply with all applicable provisions of this Ordinance. Failure to comply with applicable provisions constitutes a violation of this Ordinance. Express violations include but are not limited to the following:
 - (i) Using land or buildings in a way not consistent with the requirements of this Ordinance.
 - (ii) Erecting a building or other structure in any way not consistent with the requirements of this Ordinance.
 - (iii) Engaging in the development of land in any way not consistent with the requirements of this Ordinance.
 - (iv) Developing or subdividing land inconsistent with the standards and procedures of this Ordinance.
 - (v) Subdividing, transferring, or selling land unless the subdivision has been approved and recorded, as provided in this Ordinance.

- (vi) Installing or using a sign in any way not consistent with the requirements of this Ordinance;
- (vii) Failing to maintain any structure, landscape feature, or natural resource required to be maintained by this Ordinance.
- (viii) Engaging in the use of a building or land, the use or installation of a sign, or any other activity requiring one or more permits or approvals under this Ordinance without obtaining all such permits and approvals.
- (ix) Failing to comply with any condition imposed on a permit approval, specifically including conditions of approval of a special use permit, site plan, administrative adjustment, or variance.
- (x) Adult Business. Any person violating any provision of Section 6.5 shall, upon conviction, be guilty of a Class 3 misdemeanor and be punishable by a fine not to exceed \$500.00 or imprisoned for not more than 30 days. Each day such violation shall continue shall constitute a separate offense.
- (xi) Flood Damage Prevention.
- (xii) Subdivisions.
- (xiii) Erosion Control (see Section 10.4).
- (xiv) Otherwise undertaking any development or establishing any use in a manner than does not comply with this Ordinance.

Section 10.3 Procedures

(a) Notice of Violation

- (i) When the Planning Director or Permitting and Code Enforcement Director receives a written, signed complaint alleging a violation of this Ordinance, the Planning Director or Permitting and Code Enforcement Director shall investigate the complaint.
- (ii) Upon determination that a violation exists, written notice must be provided to the property owner and/or lessee. Written notice shall be served in any manner permitted by NCGS Section 1A-1, rule 4(j). If notice cannot with due diligence be achieved by personal delivery, certified mail, registered mail, USPS signature confirmation, or by a designated delivery service pursuant to 26 U.S.C. Section 7502(f)(2), notice may be given by publication consistent with NCGS Section 1A-1, rule 4(j)1. Such notice must include:
 - 1) A description of the property involved.
 - 2) Applicable sections of the Unified Development Ordinance upon which the violation is based.
 - 3) A statement of the nature of the violation.
 - 4) An opportunity to correct the violation within 10 days of receipt of such notice before any civil penalties are incurred. Dependent upon the nature/scale of the violation, the Planning Director or Permitting and Code Enforcement Director may grant an extension.

(b) Appeal

- (i) Any owner and/or lessee who has received a notice of violation may appeal in writing the decision of the Planning Director or Permitting and Code Enforcement Director to appropriate decision making body within 15 days following the date of the notice of violation per Table 3.1: Development Review Procedures. In the absence of an appeal, the decision of the Planning Director or Permitting and Code Enforcement Director shall be final.

(c) Remedies Cumulative

- (i) The remedies and enforcement powers established in this Ordinance are cumulative. All remedies and penalties are in addition to all other provisions, and not in lieu or exclusive thereof.

- (ii) The violation of any section or provision of this Ordinance shall not constitute a criminal violation, unless otherwise indicated, but shall be enforceable through civil procedures.
- (iii) The County shall issue civil citations and penalties for any violation of this Ordinance.
- (iv) Equitable Relief. The County may apply to any court of competent jurisdiction for an appropriate equitable remedy. It shall not be a defense to the County's application for equitable relief that there is an adequate remedy at law.
- (v) Combination of Remedies. The County may choose to enforce this section by any one, all, or a combination of civil remedies or equitable relief.

(d) Withhold Permit

- (i) In accordance with NCGS 153A-362, the Planning Director or Permitting and Code Enforcement Director is authorized to deny, withhold or revoke permits or inspections permissions on any new or existing projects or applications pursuant to this Ordinance or other regulations of the County where the applicant, applicant business or agent has failed or refused to comply with this Ordinance.
- (ii) The Planning Director or Code Enforcement Director is authorized to deny, withhold, or revoke County issued permits and inspections permissions on any new or existing project or applications where the applicant or applicant business or agent is not in compliance with federal or state issued permits as determined by the permitting agencies.

(e) Forfeiture and Confiscation of Signs

- (i) Any sign installed or placed on public property, except with the regulations of this Ordinance, will be subject to forfeiture to the public and confiscation. In addition to other remedies and penalties of this section, the County has the right to recover from the sign owner, or person who has placed the sign, the full costs of sign removal and disposal.

(f) Stop Work Order

- (i) When the violation is in relation to the construction and/or modification of a structure, a stop work order may be issued in accordance with NCGS 153A-361. Individuals may appeal stop work orders with the Planning Director or Permitting and Code Enforcement Director within 15 business days of receiving the order.
- (ii) When the violation is in relation to erosion and sedimentation control, a stop work order may be issued in accordance the following process:
 - 1) Per G.S. 160A-421, the erosion control officer may issue a stop work order if he finds that a land disturbing activity is being conducted in violation of this article or of any rule adopted or order issued pursuant to this article, that the violation is knowing and willful, and that either:
 - a) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
 - b) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.
 - c) The land disturbing activity is being conducted without an approved plan.
 - 2) The stop work order shall be in writing and shall state what work is be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the erosion control officer pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop work order is in effect. A copy of this section shall be attached to the order.

- 3) The stop work order shall be served by the county sheriff or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person who is in operational control of the land disturbing activity; the erosion control officer shall forward a copy of the order to the person financially responsible. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop work order in a conspicuous place at the site of the land disturbing activity. The erosion control officer shall also deliver a copy of the stop work order to any person that the erosion control officer has reason to believe may be responsible for the violation.
- 4) The directives of a stop work order become effective upon service of the order. Thereafter, any person notified of the stop work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in section 10.4.2. A stop work order issued pursuant to this section may be issued for a period not to exceed three working days.
- 5) The Permit and Code Enforcement Director or his agent shall monitor compliance with the stop work order. The Permit and Code Enforcement Director or his agent shall rescind the stop work order if all the violations for which the stop work order is issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Permit and Code Enforcement Director or his agent shall rescind a stop work order that is issued in error.
- 6) The issuance of a stop work order shall be a final agency decision subject to judicial review in the same manner as an appeal of a penalty in accordance with section 10.4.2. The petition for judicial review shall be filed in the superior court of the county.
- 7) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6. Except as otherwise provided, the board of county commissioners may delegate any power or duty under this section to the Permit and Code Enforcement Director or to any person who has supervisory authority over the erosion control officer. The erosion control officer may delegate any power or duty so delegated only to a person who is designated as acting erosion control officer.

(g) Schedule for Civil Penalties

- (i) Unless otherwise provided in the Ordinance, the penalty fee schedule for civil penalties shall be set forth in the fee schedule established by the Board of Commissioners and available through the office of the County Manager.

Section 10.4 Soil and Erosion Control Enforcement Procedures

Section 10.4.1 Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the County, will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.
 - (i) An initial erosion control permit site inspection is required, must be scheduled by the permit holder and approved, prior to scheduling the first building inspection.

(b) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(c) Notice of Violation. If the County determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance.

(d) Investigation. The County, shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

(e) Statements and Reports. The County, shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

SECTION 10.4.2 Penalties

(a) Civil Penalties

- (i) **Civil Penalty for a Violation.** Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the County may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

- (ii) Civil Penalty Assessment Factors. The governing body of the County shall determine the amount of the civil penalty based upon the following factors:
 - (1) the degree and extent of harm caused by the violation,
 - (2) the cost of rectifying the damage,
 - (3) the amount of money the violator saved by noncompliance,
 - (4) whether the violation was committed willfully, and
 - (5) the prior record of the violator in complying of failing to comply with this ordinance.

- (iii) Notice of Civil Penalty Assessment. The governing body of the County shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the County shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the County (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.

- (iv) Final Decision: The final decision on contested assessments shall be made by the governing body of the County in accordance with (the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.)

- (v) Appeal of Final Decision. Appeal from the final decision of the governing body of the County shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the governing body of the County.

- (vi) Collection. If payment is not received within 60 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation

occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

- (i) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each County for the prior fiscal year.

[In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

- (b) Criminal Penalties. Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may included a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

SECTION 10.4.3 Injunctive Relief

- (a) Violation of Local Program. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the County, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.
- (b) Abatement of Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section

shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

10.4.4 Restoration After Non-Compliance

The County, may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.