

**ORDINANCE #2012-21 : AN ORDINANCE AMENDING CHAPTER 152 OF
THE CODE OF ORDINANCES REGARDING SOIL EROSION AND
SEDIMENTATION CONTROL**

THAT WHEREAS, the Board of Commissioners previously has adopted an ordinance dealing with soil erosion and sedimentation control; and

WHEREAS, the Environmental Review Board has recommended some changes to this ordinance; and

WHEREAS, the Board of Commissioners have reviewed the proposed changes and wish to adopt the proposed Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Lincoln County Board of Commissioners as follows:

Section 1. That Chapter 152 of the Lincoln County, NC Code of Ordinances is hereby amended as follows:

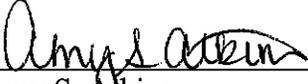
- a) In Section 152.05 (B) change the current (2) to (3).
- b) Insert in Section 152.05 (B) as new (2) "Any non-residential land disturbance of 20,000 square feet or greater requiring a building permit."
- c) In Section 152.07 (B) change the last sentence to read: "Minimum width of the buffer zone is 50 feet measured from the top of stream bank."
- d) Change Section 152.07 (C) by deleting the phrase "...21 calendar days..." and inserting in its place the phrase "...the required stabilization timeframes,..."; and then adding a second sentence that reads: "See Appendix C, New Stabilization Timeframes."
- e) Change Section 152.07 (D) in both the second sentence and the third sentence by deleting the phrase "...15 working days or 21 calendar days..." and inserting in its place the phrase "...the required stabilization timeframes..."; and adding a fourth sentence that reads: "See Appendix C, New Stabilization Timeframes."
- f) Change Section 152.08 (I) (5) by deleting the phrase "...15 working days or 21 calendar days..." and inserting in its place the phrase "...the required stabilization timeframes..."; and then adding the sentence: "See Appendix C, New Stabilization Timeframes."
- g) Add Appendices B and C, which are attached hereto and incorporated by reference.

Section 2. The provisions of this ordinance shall become effective immediately upon its adoption.

Adopted this 1st day of October, 2012.

By: 
Alex E. Patton, Chairman
Lincoln County Board of Commissioners

ATTEST:


Amy S. Atkins
Clerk to the Board

APPENDIX B.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.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 (noncolloidal)	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 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.

APPENDIX C.

NEW STABILIZATION TIMEFRAMES		
Site Area Description	Stabilization	Timeframe Exceptions
 Perimeter dikes, swales, ditches and slopes	7 days	None
 High Quality Water (HQW) Zones	7 days	None
 Slopes steeper than 3:1	7 days	If slopes are 10' or less in length and are not steeper than 2:1, 14 days are allowed.
 Slopes 3:1 or flatter	14 days	7 days for slopes greater than 50' in length.
 All other areas with slopes flatter than 4:1	14 days	None, except for perimeters and HQW Zones.

This Ordinance shall not apply to the following land-disturbing activities:

- a. Activities including the breeding and grazing of livestock, 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 apiary products.
 - 3. Poultry and poultry products.
 - 4. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 - 5. Bees and dairy products.
 - 6. Fur producing animals.
- b. Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines related to Water Quality, as adopted by the Department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of emergency, activities essential to protect human life.
- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

Section 5. General Requirements

- a. Erosion and Sedimentation Control Measures – All land-disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with this Ordinance.
- b. Plan Required – No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site.
 - 1. Uncovers one acre or more,
 - 2. Any non-residential land disturbance of 20,000 square feet or greater requiring a building permit,
 - 3. Any land disturbance less than one acre requiring a building permit must complete Erosion and Sediment Control Application. *See Appendix A, Erosion and Sediment Control Application.*
- c. Compliance – Persons who submit a plan to the Erosion Control Specialist shall comply with the provisions of Sections 9 and 10 of this Ordinance.

- d. 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 and associated sedimentation.
- e. More Restrictive Rules Shall Apply – Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 6. Basic Control Objectives

A plan may be disapproved pursuant to Section 9 of this Ordinance if the plan fails to include adequate erosion control measures, structures, or devices to address the following control objectives:

- a. Identify Critical Areas – On-site areas that are subject to severe erosion and off-site areas that are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.
- b. Limit Time of Exposure – All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- c. Limit Exposed Areas – All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- d. Control Surface Water – Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- e. Control Sedimentation – All land-disturbing activity is to be planned and conducted so as to prevent sedimentation damage.
- f. Manage Storm Water Runoff – When the increase in the velocity of storm water 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 at the discharge point so as to minimize accelerated erosion of the site and to decrease sedimentation to any lake or watercourse.

Section 7. Mandatory Standards for Land-disturbing Activity

No land-disturbing activity subject to the control of this ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Buffer Zone
 - (1) Standard Buffer: 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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Minimum width of the buffer zone is ~~fifteen (15)~~ fifty (50) feet measured from the top of stream bank.
 - (i) Projects on, Over or Under Water. This subdivision 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.

- (ii) Buffer measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the undisturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- b. Graded Slopes and Fills – 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 measures, structures, or devices. In any event, slopes left exposed will, within 21 calendar days the required stabilization timeframes, after completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. See Appendix C, New Stabilization Timeframes.
- c. Ground Cover – Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that 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. Provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 15 working days or 21 calendar days the required stabilization timeframes following completion of construction or development whichever period is shorter. When construction activity has ceased in a particular area of the Tract, permanent ground cover must be accomplished within 15 working days or 21 calendar days the required stabilization timeframes from the date of last land-disturbing activity, whichever period is shorter. See Appendix C, New Stabilization Timeframes.
- d. Prior Plan Approval – No Person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, thirty (30) or more days prior to initiating the activity, a plan for the activity is filed with and approved by the county. An Erosion and Sedimentation Control Plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The county shall forward to the Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.
- e. The land –disturbing activity shall be conducted in accordance with the approved Erosion and Sedimentation Control Plan.
- f. Pre-construction Conference – If more than an acre is to be uncovered, the Person(s) conducting land-disturbing activity or an agent of that party shall contact the Erosion Control Specialist at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Erosion Control Specialist or duly authorized representative to review and discuss the approved plan and the proposed land-disturbing activity.
- g. Monitoring – The Person(s) conducting land-disturbing activity or an agent of that party shall inspect all erosion and sedimentation control measures at least once a week and within 24 hours after any storm event greater than 0.5 inches of rain per 24 hour period.
1. If more than an acre is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until six months

- f. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the borrow or waste disposal activity, the following areas are considered as part of the land-disturbing activity.
1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
 2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.
- g. Access and Haul Roads - 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.
- h. Operations in Lakes or Watercourses - Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall minimize the extent and duration of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.
- i. HQW Zones - In High Quality Water (HWQ) zones the following design standards shall apply.
1. Limit on Uncovered Area. Uncovered areas in HW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. 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 Director.
 2. Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm that 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.
 3. Settling Efficiency. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40-micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two 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.
 4. Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one 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.
 5. Ground Cover. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 21 calendar days the required stabilization timeframes following completion

of construction or development, whichever period is shorter. See Appendix C, New Stabilization Timeframes.

Section 9. Erosion and Sedimentation Control Plans

- a. **Plan Requirements** – A plan shall be prepared for all land-disturbing activities subject to this Ordinance. Three (3) copies of the plan shall be filed with the County, a copy shall be simultaneously submitted to the Lincoln Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity. All plans required for land-disturbing activities as identified in Section 5.b of this Ordinance shall meet the following requirements:
1. Plans 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 Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the Erosion Control Specialist on request.
 2. **Financial Responsibility and Ownership.** 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 (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this ordinance. If the applicant is not the owner of the land to be disturbed, the draft Erosion and Sedimentation Control Plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan to conduct the anticipated land-disturbing activity.
 3. The County shall only approve a plan upon determining that it complies with all state and local regulations for erosion and sedimentation control. The land-disturbing activity described in the plan shall comply with Federal and State water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Erosion Control Specialist may require supporting documentation.
 4. The land-disturbing activity described in the plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
 5. The land-disturbing activity described in the plan shall not result in a violation of any local Ordinance, law, rule or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
 6. If the plan is submitted for land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et. seq.), such as required on Tracts involving public money or public land, a complete environmental document must be presented for review. The

📖 CHAPTER 152: SOIL EROSION AND SEDIMENTATION CONTROL

Section

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§ 152.01 TITLE.

This chapter may be cited as the "Lincoln County Soil Erosion and Sedimentation Control Ordinance."

(Ord. passed 1-22-2007)

§ 152.02 PURPOSE.

This chapter is adopted for the purposes of:

(A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

(B) Establishing procedures through which these purposes can be fulfilled.

(Ord. passed 1-22-2007)

§ 152.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCELERATED EROSION. Any increase over the rate of natural erosion as a result of land-disturbing activity.

ACT. The North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

ADEQUATE EROSION CONTROL MEASURES, STRUCTURES, or DEVICES. One that controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

AFFILIATE. A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

BEING CONDUCTED. A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

BEST MANAGEMENT PRACTICES (BMP'S). Effective, practical, structural, or nonstructural methods which prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants from the land surface to surface or ground water.

BOARD. The Environmental Review Board as established by the joint resolution of the Lincolnton Mayor, Lincolnton City Council, and the Lincoln County Board of Commissioners, together with any amendments thereto.

BORROW. Fill material that is required for on-site construction and is obtained from other off-site locations.

BUFFER ZONE. The strip of land adjacent to a lake or natural watercourse.

BUILDING AND LAND DEVELOPMENT DEPARTMENT. The Building and Land Development Department.

CERTIFICATE OF OCCUPANCY. The document required by the State Building Code certifying that new building shall not be occupied or a change made in occupancy, nature, or use of a building until after all required building and services systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the Code Enforcement Department.

COMMISSION. The State Sedimentation Control Commission.

COMPLETION OF CONSTRUCTION or DEVELOPMENT. No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

CONTRACTOR CONDUCTING THE LAND-DISTURBING ACTIVITY. Any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the Tract for the changing of the natural cover or topography of the Tract, or any part thereof.

DAYS. Calendar days, unless otherwise specified.

DEPARTMENT. The State Department of Environment and Natural Resources.

DIRECTOR. The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

DISCHARGE POINT. The point at which concentrated flow runoff leaves a Tract of land.

DISTRICT. The Lincoln Soil and Water Conservation District created pursuant to G.S. Chapter 139.

ENERGY DISSIPATER. A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

EROSION. The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

EROSION CONTROL SPECIALIST. The county representative for the Soil Erosion and Sedimentation Control Ordinance or other duly authorized representatives.

FOREST PRACTICE GUIDELINES. The Department rules in 15A NCAC 011.0101-.0209.

GROUND COVER. Any native or non-invasive vegetative growth or other material that renders the soil surface stable against accelerated erosion.

HIGH QUALITY WATER (HQW) ZONES. Areas within one mile and draining to HQW's.

HIGH QUALITY WATERS. Those classified as such in 15A NCAC 2B.0101(e)(5), General Procedures, which is incorporated herein by reference to include further amendments.

JURISDICTIONAL WATERS. Waters of the United States defined as wetlands, lakes, intermittent streams, and other waters the degradation and destruction of which could affect interstate commerce.

LAKE OR WATERCOURSE. Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake, or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

LAND-DISTURBING ACTIVITY. Any use of the land by any person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

LOCAL GOVERNMENT. Any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

NATURAL EROSION. The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by humans.

PARENT. An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

PERFORMANCE EVALUATION. The evaluation that proposed measures may or may not be adequate to meet the design standard.

PERMIT. The permit to conduct land-disturbing activities (grading permit) issued by the Erosion Control Specialist after a plan is approved.

PERSON(S). Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

PERSON CONDUCTING LAND-DISTURBING ACTIVITY. Any person who may be held responsible for violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

PERSON RESPONSIBLE FOR THE VIOLATION. As used in this chapter means:

(1) The developer or other person who has or holds himself or herself out as having financial or operational control over the land-disturbing activity; or

(2) The landowner or person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

PHASE OF GRADING. One of two types of grading, rough or fine.

PLAN(S). An erosion and sedimentation control plan.

SEDIMENT. Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, or gravity from its site or origin.

SEDIMENTATION. The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a wetland, lake, or watercourse.

SILTATION. Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

STORM DRAINAGE FACILITIES. The system of inlets, conduits, channels, ditches, and appurtenances that serve to collect and convey storm water through and from a given drainage area.

STORM WATER RUNOFF. The direct runoff of water resulting from precipitation in any form.

SUBSIDIARY. An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

TEN-YEAR STORM. A rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

TRACT. All land and bodies of water being disturbed, developed, or to be disturbed or developed as a unit, regardless of ownership.

TWENTY-FIVE YEAR STORM. A rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

UNCOVERED. The removal of ground cover from, on, or above the soil surface.

UNDERTAKEN. The initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a Tract of land.

VELOCITY. The average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross-section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

WASTE. Surplus materials resulting from on-site construction and disposed of at other locations.

WATER SUPPLY WATERSHED. Any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the county.

WETLAND(S). Land having the vegetative, soil and hydrologic characteristics to be regulated by §§ 401 and 404 of the Federal Clean Water Act, as defined by the United States Army Corp of Engineers and the State Division of Water Quality.

WORKING DAYS. Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

(Ord. passed 1-22-2007)

 **§ 152.04 SCOPE AND EXCLUSIONS.**

(A) This chapter shall regulate land-disturbing activity within the unincorporated areas of the county and within the jurisdiction of those municipalities that adopt a resolution that authorizes the county to enforce this chapter in their jurisdictions.

(B) This chapter shall not apply to the following land-disturbing activities:

(1) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to humans, including, but not limited to:

- (a) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts;
- (b) Dairy animals and apiary products;
- (c) Poultry and poultry products;
- (d) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats;
- (e) Bees and dairy products; and
- (f) Fur producing animals.

(2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in *Forest Practice Guidelines Related to Water Quality*, as adopted by the Department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with *Forest Practice Guidelines Related to Water Quality*, the provisions of this chapter shall apply to the activity and any related land-disturbing activity on the Tract;

(3) Activities for which a permit is required under the Mining Act of 1971, G.S. Chapter 74, Article 7;

(4) For the duration of emergency, activities essential to protect human life; and

(5) Land-disturbing activity over which the state has exclusive regulatory jurisdiction, as provided in G.S. § 113A-56(a).

(Ord. passed 1-22-2007)

§ 152.05 GENERAL REQUIREMENTS.

(A) *Erosion and sedimentation control measures.* All land-disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with this chapter.

(B) *Plan required.* No person shall initiate, direct, allow, or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved erosion and sedimentation control plan on the job site:

(1) Uncovers one acre or more; and/or

(2) Any non-residential land disturbance of 20,000 square feet or greater requiring a building permit,

(3) Any land disturbance less than one acre requiring a building permit must complete an erosion and sediment control application. See Appendix A of the ordinance codified in this chapter.

(C) *Compliance.* Persons who submit a plan to the Erosion Control Specialist shall comply with the provisions of §§ [152.09](#) and [152.10](#).

(D) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by the activity and associated sedimentation.

(E) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

(Ord. passed 1-22-2007)

§ 152.06 BASIC CONTROL OBJECTIVES.

(A) *Generally.* A plan may be disapproved pursuant to § [152.09](#) if the plan fails to include adequate erosion control measures, structures, or devices to address the following control objectives.

(B) *Specifically.*

(1) *Identify critical areas.* On-site areas that are subject to severe erosion and off-site areas that are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.

(2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent sedimentation damage.

(6) *Manage storm water runoff.* When the increase in the velocity of storm water 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 at the discharge point so as to minimize accelerated erosion of the site and to decrease sedimentation to any lake or watercourse.

(Ord. passed 1-22-2007)

§ 152.07 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY.

(A) *Generally.* No land-disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards.

(B) *Buffer zone.* 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% of the buffer zone nearest the land-disturbing activity. Minimum width of the buffer zone is ~~15 feet~~ **50 feet** measured from the top of stream bank.

(1) *Projects on, over, or under water.* This division (B) 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) *Buffer measurement.* Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the undisturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(C) *Graded slopes and fills.* 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 measures, structures, or devices. In any event, slopes left exposed will, within ~~24 calendar days~~ **the required stabilization timeframes**, after completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. **See Appendix C, New Stabilization Timeframes.**

(D) *Ground cover.* Whenever land-disturbing activity that will disturb more than one acre is undertaken on a Tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment

generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within ~~15 working days or 21 calendar days~~ **the required stabilization timeframes** following completion of construction or development, whichever period is shorter. When construction activity has ceased in a particular area of the Tract, permanent ground cover must be accomplished within ~~15 working days or 21 calendar days~~ **the required stabilization timeframes** from the date of last land-disturbing activity, whichever period is shorter. **See Appendix C, New Stabilization Timeframes.**

(E) *Prior plan approval.* No person shall initiate any land-disturbing activity that will disturb more than one acre on a Tract unless, 30 or more days prior to initiating the activity, a plan for the activity is filed with and approved by the county. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The county shall forward to the Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.

(F) *Erosion and sedimentation control plan.* The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(G) *Pre-construction conference.* If more than an acre is to be uncovered, the person(s) conducting land-disturbing activity or an agent of that party shall contact the Erosion Control Specialist at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Erosion Control Specialist or duly authorized representative to review and discuss the approved plan and the proposed land-disturbing activity.

(H) *Monitoring.* The person(s) conducting land-disturbing activity or an agent of that party shall inspect all erosion and sedimentation control measures at least once a week and within 24 hours after any storm event greater than one-half inch of rain per 24-hour period.

(1) If more than an acre is to be disturbed, a record of inspections shall be kept by the person conducting the land-disturbing activity or an agent until six months after construction is completed and approved by the Erosion Control Specialist. The record shall include the date and time of inspection, weather conditions, any repair or maintenance needed and the initials or signature of the person who performed the inspection. Corrective action on the repairs and maintenance indicated on the record should begin immediately and be completed as soon as possible after these inspections and the date of the completion of the repairs noted. The records of inspection shall be made available to the Erosion Control Specialist upon request.

(2) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground

cover in accordance with G.S. § 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this division (H) shall be in addition to inspections required by G.S. § 113A-61.1.

(Ord. passed 1-22-2007)

§ 152.08 DESIGN AND PERFORMANCE STANDARDS.

(A) *Design storm.* Adequate erosion and sedimentation control measures, structures, and devices shall be planned, designed, constructed, and maintained so as to provide protection from the calculated maximum peak of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service (formerly Soil Conservation Service) *National Engineering Field Manual for Conservation Practices*, or other acceptable calculation procedures.

(B) *Innovative measures.* Erosion and sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Erosion Control Specialist if it can be demonstrated that the techniques and ideas are likely to produce successful results.

(C) *Responsibility for maintenance.* 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 chapter, the Act, or any order adopted pursuant to this chapter or the Act. After development, the landowner or person in possession or control of the land shall install and maintain all necessary permanent erosion and sediment control measures.

(D) *Additional measures.* Whenever the Erosion Control Specialist, determines that erosion and sedimentation will likely continue, despite installation and maintenance or protective practices, the person conducting the land-disturbing activity will be required to take additional protective action.

(E) *Storm drainage facilities protection.* Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity. Persons shall design the plan and conduct land-disturbing activity so that the post construction velocity of the ten-year storm does not exceed the maximum non-erosive velocity tolerated by the soil of the receiving

watercourse or the soil of the receiving land. See Appendix B of the ordinance codified in this chapter.

(F) *Borrow and waste areas.* When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, the following areas are considered as part of the land-disturbing activity.

(1) Areas from which borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments; or

(2) Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

(G) *Access and haul roads.* 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 the activity.

(H) *Operations in lakes or watercourses.* Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

(I) *HQW zones.* In High Quality Water (HWQ) zones, the following design standards shall apply.

(1) *Limit on uncovered area.* Uncovered areas in HW zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the Tract. 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 Director.

(2) *Maximum peak rate of runoff protection.* Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that 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.

(3) *Settling efficiency.* Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40-micron (four-hundredths millimeter) size soil particle transported into the basin by the runoff of that two-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.

(4) *Grade.* Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one 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.

(5) *Ground cover.* Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within ~~15 working days or 21 calendar days~~ **the required stabilization timeframes** following completion of construction or development, whichever period is shorter. **See Appendix C, New Stabilization Timeframes.**

(Ord. passed 1-22-2007)

§ 152.09 EROSION AND SEDIMENTATION CONTROL PLANS.

(A) *Plan requirements.* A plan shall be prepared for all land-disturbing activities subject to this chapter. Three copies of the plan shall be filed with the county, a copy shall be simultaneously submitted to the Lincoln Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity. All plans required for land-disturbing activities as identified in § [152.05\(B\)](#) shall meet the following requirements.

(1) Plans 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 chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the Erosion Control Specialist on request.

(2) 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 or her attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible, the owner of the land, and any 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 chapter, or rules or orders adopted or issued pursuant to this chapter. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan to conduct the anticipated land-disturbing activity.

(3) The county shall only approve a plan upon determining that it complies with all state and local regulations for erosion and sedimentation control. The land-disturbing activity

described in the plan shall comply with federal and state water quality laws, rules, and regulations, including, but not limited to, the Federal Clean Water Act. The Erosion Control Specialist may require supporting documentation.

(4) The land-disturbing activity described in the plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.

(5) The land-disturbing activity described in the plan shall not result in a violation of any local ordinance, law, rule, or regulation, including, but not limited to, zoning, tree protection, stream, lake and watershed buffers, and floodplain regulations.

(6) If the plan is submitted for land-disturbing activity for which an environmental document is required by the State Environmental Policy Act (G.S. §§ 113A-1 *et seq.*), such as required on Tracts involving public money or public land, a complete environmental document must be presented for review. The Erosion Control Specialist's time for reviewing the plan will not commence until a complete environmental document is available for review.

(7) Three copies of the plan shall be filed with the Erosion Control Specialist. A copy of the approved plan shall be maintained on the job site. A plan approval issued under this chapter shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

(8) Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the plan shall contain the following:

(a) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this chapter;

(b) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed;

(c) Construction sequence and construction phasing to justify the time and amount of exposure;

(d) Techniques to be used to prevent sedimentation associated with larger disturbed areas; and

(e) Additional erosion control measures, structures, and devices to prevent sedimentation.

(B) *Plan review process.*

(1) The Erosion Control Specialist will review each complete plan submitted and within 30 days of receipt thereof will notify the person submitting the plan (hereinafter "the applicant")

that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. The Erosion Control Specialist will review each revised plan submitted and within 15 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. Failure to approve, approve with modification, or disapprove a revised plan within 15 days of receipt shall be deemed approval.

(2) The county shall disapprove a plan or draft plan based on its content. A disapproval based upon a plan's content must specifically state, in writing, the reasons for disapproval.

(3) Plans for which land-disturbing activity has not commenced within two years from the initial plan approval are void.

(C) *Soil and Water Conservation District comments.* The District shall review the plan and submit any comments and recommendations to the county within 20 days after the District received the plan, or within any shorter period of time as may be agreed upon by the District and the county. Failure of the District to submit its comments and recommendations within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.

(D) *Amendments to plans.*

(1) If the Erosion Control Specialist, either upon review of the plan or upon inspection of the job site, determines that the plan is inadequate to meet the requirements of this chapter or that a significant risk of accelerated erosion or off-site sedimentation exists, then the Erosion Control Specialist may require a revised plan. Pending the preparation of the revised plan, work on affected area may cease or may continue only under conditions outlined by the Erosion Control Specialist.

(2) Amendments or revisions to a plan must be made in written and/or graphic form and may be submitted at any time under the same requirements for submission of original plans. Until the time as the Erosion Control Specialist approves any amendments or revisions, the land-disturbing activity shall not proceed, except in accordance with the plan as originally approved.

(3) The Erosion Control Specialist must approve, approve with modifications, approve with performance reservations, or deny a revised plan within 15 days of receipt, or it is deemed to be approved as submitted, unless the approval conflicts with other federal, state, or local regulations.

(E) *Grounds for disapproval of plans.*

(1) Any plan that is not in accordance with the requirements set forth in division (A) above shall be disapproved. In addition, a plan may be disapproved upon a finding that the financially responsible person, or any parent or subsidiary thereof:

(a) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation or is not in compliance with the provisions of the notice;

(b) 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;

(c) 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

(d) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

(2) In the event the plan is disapproved pursuant to this division (E), the Erosion Control Specialist shall notify the applicant and, if required, the Director of the disapproval within ten days thereof. The Erosion Control Specialist shall advise the applicant and the Director in writing as to the specific reasons that the plan be disapproved. The applicant shall have the right to appeal the Erosion Control Specialist's decision as provided in § [152.15](#).

(F) *Violations.* Any person engaged in land-disturbing activity that fails to file a required plan in accordance with this chapter should be deemed in willful violation of this chapter. Any person who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

(Ord. passed 1-22-2007)

§ 152.10 PERMITS.

(A) No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit from the Erosion Control Specialist. Notwithstanding the general requirement to obtain a plan approval prior to undertaking land-disturbing activity, a plan approval shall not be required for land-disturbing activity that does not exceed one acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated. Although a plan and a permit may not be required for activity comprising less than one acre, the activity is subject to all other requirements of this chapter.

(B) The county may establish a fee schedule for the review and approval of plans.

(C) In establishing the fee schedule, the county shall consider the administrative and personnel costs incurred for reviewing the plans and for related compliance activities.

(Ord. passed 1-22-2007)

 **§ 152.11 INSPECTIONS AND INVESTIGATIONS.**

(A) The Erosion Control Specialist is authorized to inspect the sites of land-disturbing activity to determine compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the activity is being conducted in accordance with this chapter and the approved plan and whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each plan approval or issuance of the permit.

(B) No person shall willfully resist, delay, or obstruct the Erosion Control Specialist while the Erosion Control Specialist is inspecting or attempting to inspect a land-disturbing activity under this chapter.

(C) Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis thereof shall be filed with the Erosion Control Specialist who shall properly record the complaint, investigate and take action as provided by this chapter.

(D) If the county determines that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this chapter, or rules or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules, or orders adopted pursuant to this chapter. 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 chapter.

(E) Local rainfall data approved by the Erosion Control Specialist shall be used to determine whether the design storm identified in § [152.08](#)(A) has been exceeded.

(F) The Erosion Control Specialist shall have authority to conduct the investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, 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. No person shall refuse entry or access to the Erosion Control Specialist who request entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with the Erosion Control Specialist while in the process of carrying out official duties.

(G) The Erosion Control Specialist shall also have authority to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.

(H) With regard to the development of any Tract that is subject to this chapter, the Building and Land Development Department shall not issue a certificate of occupancy where any of the following conditions exist:

(1) There is a violation of this chapter with respect to the Tract;

(2) If there remains due and payable to the county civil penalties that have been levied against the person conducting the land-disturbing activity for violation(s) of this chapter. If a penalty is under appeal, the Erosion Control Specialist may require the amount of the fine, and any other amount that the person would be required to pay under this chapter if the person loses the appeal, be placed in a refundable account or surety prior to issuing the certificate of occupancy;

(3) The requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the only building then under construction on the Tract;

(4) On the Tract, which includes multiple buildings on a single parcel, the requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the last building then under construction on the Tract; and/or

(5) On a Tract, which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the plan have not been completed with respect to the parcel for which the certificate of occupancy is requested.

(I) Notwithstanding the provisions of division (H) above, the Building and Land Development Department may issue a temporary certificate of occupancy where divisions (H)(3), (H)(4), or (H)(5) above apply and where the person conducting the land-disturbing activity is making substantial progress towards completing the requirements of the plan.

(J) The county may issue a stop-work order and /or suspension of building permits if a land-disturbing activity is being conducted in violation of this chapter or of any rule adopted or order issued pursuant to this chapter.

(Ord. passed 1-22-2007)

§ 152.12 INJUNCTIVE RELIEF.

(A) Whenever the Erosion Control Specialist has reasonable cause to believe that any person is violating or threatening to violate this chapter or any term, condition, or provision of an approved plan, the Erosion Control Specialist may, either before or after the institution of any other action or proceeding authorized by this chapter, authorize the County Attorney to institute a civil action in the name of the county, for injunctive relief to restrain the violation or threatened violation.

(B) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter the orders or judgements as are necessary to abate the violation 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 chapter.

(Ord. passed 1-22-2007)

§ 152.13 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The Erosion Control Specialist may require a person who engaged in any land-disturbing activity and failed to retain sediment generated by the activity 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 penalty or injunctive relief authorized under this chapter.

(Ord. passed 1-22-2007)

§ 152.14 ENVIRONMENTAL REVIEW BOARD.

(A) *Creation.* There is hereby created in the county the Environmental Review Board that is charged with the duties as provided for in this chapter. The Environmental Review Board shall consist of the following members:

- (1) One person appointed by a participating municipality;
- (2) President of the County Home Builders Association, or his or her designee;
- (3) Chairperson of the County Soil and Water Conservation District, or his or her designee;
- (4) Chairperson of the County Natural Resource Committee, or his or her designee;
- (5) Two persons appointed by the Board of Commissioners, with one being a professional environmental biologist; and
- (6) A professional engineer registered under the provision of G.S. Chapter 89C, appointed by the Board of Commissioners.

(B) *Appointments.* The Environmental Review Board members appointed by the Board of Commissioners shall serve a term of three years and until their successors are appointed and duly qualified. A member may be reappointed for up to two consecutive three-year terms.

(C) *Fees.* The Environmental Review Board shall make fee recommendations to the Board of Commissioners.

(D) *Other duties and responsibilities.* The Environmental Review Board shall hear and decide appeals from any decision or determination made by the Erosion Control Specialist in the enforcement of this chapter and other duties as directed by the Board of Commissioners.

(Ord. passed 1-22-2007)

§ 152.15 APPEALS.

(A) *Disapproval or modification of proposed plan.*

(1) The disapproval or modification of any proposed plan by the Erosion Control Specialist shall entitle the person submitting the plan ("petitioner") to a hearing before the Environmental Review Board if the person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.

(2) The Environmental Review Board shall conduct hearings held pursuant to this section within 30 days after the date of the appeal or request for a hearing.

(3) The Environmental Review Board will render its final decision on any erosion and sedimentation control plan following completion of the hearings.

(4) If the Environmental Review Board upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the local government's decision to the State Sedimentation Control Commission, as provided in G.S. § 113A-61(c) and 15A NCAC 4B.0018(d).

(B) *Appeal.* In the event that an erosion and sedimentation control plan is disapproved pursuant to § [152.09\(E\)](#), the applicant may appeal the Environmental Review Board's disapproval of the plan pursuant to § [152.09\(E\)](#) directly to the State Sediment Control Commission.

(Ord. passed 1-22-2007)

§ 152.16 REVISIONS.

The county shall incorporate revisions required by the Commission within eight months following receipt of the required revisions.

(Ord. passed 1-22-2007)

§ 152.99 PENALTY.

(A) Any person who violates any of the provisions of this chapter, or rules or orders adopted or issued pursuant to this chapter, 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. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation, except as provided in § [152.11](#)(F). Refusal to accept the notice or failure to notify the Erosion Control Specialist of a change of address shall not relieve the violator's obligation to comply with this chapter or to pay such a penalty.

(B) The maximum civil penalty for each violation of this chapter is \$5,000. Each day of continuing violation shall constitute a separate violation.

(C) In determining the amount of the civil penalty, the Erosion Control Specialist shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this chapter; whether the violation was committed willfully; whether the violator reported the violation to the Erosion Control Specialist; and the prior record of the violator in complying or failing to comply with this chapter or any other erosion and sedimentation control ordinance or law.

(D) Repeat violators may be charged by a multiple of the base penalty determined in division (B) above. The penalty for a repeat violator may be doubled for each previous time the person responsible for the violation was notified of a violation of this or any other soil erosion and sediment control ordinance or the Act. In no case may the penalty exceed the maximum allowed by division (B) above. The record of the person responsible for the violation may be considered for only the two years prior to the current violation.

(E) The Erosion Control Specialist shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. § 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment as specified in § [152.15](#). If a violator does not pay a civil penalty assessed by the

Erosion Control Specialist within 30 days after it is due, or does not request a hearing as provided in § [152.15](#), the county may recover the penalty in a civil action in the nature of a debt.

(F) A civil action must be filed within three 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.

(G) Civil penalties collected pursuant to this chapter shall be credited to the Civil Penalty and Forfeiture Fund.

(H) Any person who knowingly or willfully violates any provision of this chapter 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 and may be subject to a fine not to exceed \$5,000. This is in addition to any civil penalties that may be charged. Each day of continuing violation shall constitute a separate violation.

(I) A violation of this chapter that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under G.S. § 14-4, but instead shall be subject to the civil penalties provided in this chapter.

(Ord. passed 1-22-2007)

APPENDIX B.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.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 (noncolloidal)	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 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.

APPENDIX C.

NEW STABILIZATION TIMEFRAMES		
Site Area Description	Stabilization	Timeframe Exceptions
 Perimeter dikes, swales, ditches and slopes	7 days	None
 High Quality Water (HCW) Zones	7 days	None
 Slopes steeper than 3:1	7 days	If slopes are 10' or less in length and are not steeper than 2:1, 14 days are allowed.
 Slopes 3:1 or flatter	14 days	7 days for slopes greater than 50' in length.
 All other areas with slopes flatter than 4:1	14 days	None, except for perimeters and HQW Zones.