

MODEL LOCAL ORDINANCE

SOIL EROSION and SEDIMENTATION CONTROL

Revised ~~November 2018~~ August 2020

SEDIMENTATION CONTROL COMMISSION

RALEIGH, NORTH CAROLINA

11/15/2018

TABLE OF CONTENTS

Page Num **Commented [CJ1]:** Check page numbers on final version.

SECTION 1:.....	TITLE	3
SECTION 2:.....	PURPOSE	3
SECTION 3:.....	DEFINITIONS	3
SECTION 4:.....	SCOPE and EXCLUSIONS	7
SECTION 5:.....	MANDATORY STANDARDS FOR LAND-DISTRUBING ACTIVITIES	9
SECTION 6:.....	EROSION AND SEDIMENTATION CONTROL PLANS	12
SECTION 7:.....	BASIC CONTROL OBJECTIVES	18
SECTION 8:.....	DESIGN and PERFORMANCE STANDARDS	19
SECTION 9:.....	STORM WATER OUTLET PROTECTION	20
SECTION 10:.....	BORROW AND WASTE AREAS	22
SECTION 11:.....	ACCESS AND HAUL ROADS	22
SECTION 12:.....	OPERATIONS IN LAKES OR NATURAL WATERCOURSES	22
SECTION 13:.....	RESPONSIBILITY FOR MAINTENANCE	23
SECTION 14:.....	ADDITIONAL MEASURES	23
SECTION 15:.....	EXISTING UNCOVERED AREAS	23
SECTION 16:.....	FEES	24
SECTION 17:.....	PLAN APPEALS	24
SECTION 18:.....	INSPECTIONS AND INVESTIGATIONS	25
SECTION 19:.....	PENALTIES	26
SECTION 20:.....	INJUNCTIVE RELIEF	28
SECTION 21:.....	RESTORATION AFTER NON-COMPLIANCE	28
SECTION 22:.....	SEVERABILITY	28
SECTION 23:.....	EFFECTIVE DATE	28

ORDINANCE NO. _____

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION.

NOW, THEREFORE, BE IT ORDAINED by the (Governing Body) of the (City), (Town), (County) hereby adopts the following ordinance.

SECTION 1 Title

This ordinance may be cited as the (city), (town), (county) Soil Erosion and Sedimentation Control Ordinance.

SECTION 2 Purpose

This ordinance 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.

SECTION 3 Definitions

As used in this ordinance, unless the context clearly indicates otherwise, the following definitions apply:

- (a) Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- (b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- (c) Adequate Erosion Control Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.
- (d) Affiliate – means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(e) Approving Authority – means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.

Formatted: Underline

(e) Being Conducted - means a land-disturbing activity has been initiated and ~~permanent stabilization of the site has not been~~ not deemed complete ~~by the approving authority~~.

(f) Borrow - means fill material ~~which that~~ is required for on-site construction ~~and that~~ is obtained from other locations.

(g) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.

(h) Coastal Counties - means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

(i) Commission - means the North Carolina Sedimentation Control Commission.

(j) Completion of Construction or Development - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

(k) Department - means the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality.

(l) Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of ~~Environment and Natural Resources~~ Environmental Quality.

(m) Discharge Point or Point of Discharge - means that point ~~at which storm water~~ where runoff leaves a tract of land ~~where a land-disturbing activity has occurred~~ or enters a lake or natural watercourse.

Formatted: Underline

(n) District - means the _____ Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

(o) Energy Dissipator - means 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.

(p) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

- (q) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (r) High Quality Waters - means those classified as such in 15A NCAC ~~02B.0101(e)~~ .0224, which is herein incorporated by reference including subsequent amendments and additions.
- ~~(5) General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(e).~~
- (s) High Quality Water (HOW) Zones –means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW’s.
- (t) Lake or Natural Watercourse – means 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.~~
- (u) Land-disturbing Activity - means any use of the land by any person in residential, 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.
- (v) Local Government - means 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.
- (w) Natural Erosion - means the wearing away of the earth’s surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- (x) Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (y) Person - means 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.
- (z) Person Conducting the Land-Disturbing Activity - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ~~(aa) Person Responsible for the Violation means:~~
- ~~——— (1) ——— the developer or other person who has or holds himself out as having financial or operation control over the land disturbing activity; or~~

~~(2) the landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.~~

(aa) Person Who Violates or Violator, as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order or local ordinance adopted pursuant to the Act as it imposes a duty upon that person.

Formatted: Underline

(bb) Phase of Grading means ~~one of two types of grading: rough or fine.~~

(cc) Plan - means an erosion and sedimentation control plan.

(dd) Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

(ee) Sedimentation - means the process by which sediment resulting from accelerated erosion has been or is being transported off the sit of the land-disturbing activity or into a lake or natural watercourse.

(ff) Siltation - means 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.

(gg) Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

(hh) Stormw-Water Runoff - means the surface flow runoff of water resulting from precipitation in any form, ~~and occurring immediately after rainfall or melting.~~

(ii) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

(jj) Ten-Year Storm - means ~~the storm water runoff resulting from precipitation a rainfall~~ of an intensity ~~expected that, based on historical data, is predicted by a method acceptable to the approving authority~~ to be equaled or exceeded, on the average, once in ten years, and of a duration ~~which that~~ will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

- (kk) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (ll) Twenty-five Year Storm - means ~~the storm water runoff resulting from precipitation a rainfall~~ of an intensity ~~expected that, based on historical data, is predicted by a method acceptable to the approving authority~~ to be equaled or exceeded, on the average, once in 25 years, and of a duration ~~which that~~ will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (mm) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (nn) Undertaken - means 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.
- (oo) Velocity - means the ~~average velocity speed~~ of flow through ~~the a~~ cross section ~~of the main channel at the peak flow of the storm of interest perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.~~
~~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.~~
- (pp) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.
- (qq) Working Days - means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

[NOTE: IT IS SUGGESTED FOR LOCAL PROGRAMS TO ALSO EXCLUDE FEDERAL AND STATE HOLIDAYS, UNLESS WORK IS BEING CONDUCTED ON THESE HOLIDAYS.]

SECTION 4 Scope and Exclusions

- (a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the territorial jurisdiction of the (city), (town), (county) and to the extraterritorial jurisdiction of the (city), (town), (county) as allowed by agreement between local governments, the extent of

annexation or other appropriate legal instrument or law.

(b) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:

- (1) 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:
 - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - (ii) dairy animals and dairy products.
 - (iii) poultry and poultry products.
 - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - (v) bees and apiary products.
 - (vi) fur producing animals.

- (vii) 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.
- (2) An Activity 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 of 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 ordinance shall apply to such activity and any related land-disturbing activity on the tract.
- (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- (5) An activity which is essential to protect human life during an emergency.
- (6) 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.
- (7) 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
- (c) Plan Approval Requirement for Land-Disturbing Activity. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval therefor from the (city)(town)(county).
- (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.
- (e) More Restrictive Rules Shall Apply - Whenever conflicts exists between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.

- (f) Plan Approval Exceptions. 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 _____ square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

SECTION 5 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.
- (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 disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (2) Trout Buffer. 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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Commission 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.
- (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) Trout Buffer Measurement. 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 to the nearest edge of the disturbed area.
 - (iii) Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
 - (iv) Limit on Temperature Fluctuations. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 “Fresh surface Water Classification and Standards.”
- (b) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- (c) Fill Material. Unless a permit from the Department’s Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
- (d) Ground Cover. Whenever land-disturbing activity that will disturb more than ~~one~~ 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. Except as provided in Section 8~~(b)(5)(g)(4)~~, provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within ~~15 working days~~ or 90 calendar days following completion of construction or development, whichever period is shorter.

Commented [CJ2]: Where did this come from? Not in statutes or rules.

- (e) Prior Plan Approval. No person shall initiate any land-disturbing activity that will disturb more than ~~one acre~~ square feet 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 (city)(town)(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.~~ The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved.

Commented [CJ3]: or if one acre must remain as in G.S. 113A-57.4., then does this mean that plans are not required to be submitted 30 days prior to LPs with thresholds less than 1 acre?

Commented [CJ4]: Remove?

[NOTE: LOCAL PROGRAMS MAY HAVE PERMITS WHICH ALLOW FOR LAND DISTURBING ACTIVITIES TO BE INITIATED SUBSEQUENT TO BOTH A PLAN APPROVAL AND THE LOCAL PERMIT BEING ISSUED. IN THIS CASE, THE ABOVE SENTENCE WILL NEED TO BE REVISED OR EXPANDED.]

Formatted: Indent: Left: 1"

The (city)(town)(county) shall forward to the Director of the Division of Water Resources 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) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(g) Design Standards for The Upper Neuse River Basin (Falls Lake Watershed)

In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3. (a), shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices 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 set out in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States.

- (3) Newly constructed open channels shall be planned, 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 steeper side slopes or where the side slopes are stabilized by using mechanical devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion, as determined by the Division, based on soil conditions.
- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven calendar days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
 - (a) For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 calendar days.
 - (b) For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 calendar days. For purposes of this Item, "moderate slope" means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance.
 - (c) For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven calendar days. For purposes of this Item, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

SECTION 6 Erosion and Sedimentation Control Plans

- (a) Plan Submission. A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than ~~one acre~~ _____ square feet on a tract. ~~Three (3) copies of the~~ The Plan shall be filed with the (city)(town)(county); a copy shall be simultaneously submitted to the _____ Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

[NOTE: THE LAST SENTENCE IN PARAGRAPH (a) DEALING WITH PLAN SUBMISSIONS MAY BE DELETED IF SUBMISSIONS TO THE SOIL AND WATER CONSERVATION DISTRICTS ARE NOT REQUIRED UNDER PARAGRAPH (c).]

- (b) 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. Except as provided in subsections (b1) or (j) of this section, 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 and to conduct the anticipated land-disturbing activity.
- (b1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.
- (c) Environmental Policy Act Document. Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The (city)(town)(county) shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.
- (d) Content. The Plan required by this section shall contain architectural or 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 (city)(town)(county) on request.
- (e) Soil and Water Conservation District Comments. The District shall review the Plan and submit any comments and recommendations to the (city)(town)(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 (city)(town)(county). Failure of the District to submit its comments and recommendations within 20 days or

Commented [CJ5]: Why include if this does not apply to LPs?
Can these be privately-funded utility projects?

Commented [CJ6]: Does this not apply to public projects only?
Local governments may be required to complete an environmental document for their publicly-funded projects, but they are not to review publicly-funded projects, whether their own or another program's project, or the State's projects.

Section (c) is required under NCAC for Approval of Plans, pertaining to Commission approvals, but not under the paragraph pertaining to Local Government approvals.

(SEPA-related documents)

within any agreed-upon shorter period of time shall not delay final action on the Plan.

~~[PARAGRAPH (e) MAY BE DELETED WITH CONSENT FROM THE SEDIMENTATION CONTROL COMMISSION.]~~

Formatted: Indent: First line: 0"

- (f) Timeline for Decisions on Plans. The (city)(town)(county) will review each complete Plan submitted to them and within 30 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 modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The (city)(town)(county) will review each revised Plan submitted to them 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 modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.

Commented [CJ7]: This is not in GS 113A-61 regarding local approvals. Automatic approval is not granted upon expiration of the 30 days. The MOA says that the person must be notified in writing within 30 and 15 days, yet there is no automatic approval granted.

- (g) Approval. The (city)(town)(county) shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The (city)(town)(county) shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The (city), (town), (county) may establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance ~~whereby no land-disturbing activity has been undertaken.~~

- (h) Disapproval for Content. The (city)(town)(county) may 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.

- (i) Other Disapprovals. The (city)(town)(county) shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The (city)(town)(county) may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (j) of this section upon 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 this

Article 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 this Article or a local ordinance adopted pursuant to this Article 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 this Article.
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the (city)(town)(county) pursuant to subsection (i) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The (city)(town)(county) shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 17(a), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

(j) Transfer of Plans. The (city)(town)(county) administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

- (1) The (city)(town)(county) may transfer a plan if all of the following conditions are met:
 - a. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 - b. The (city)(town)(county) finds all of the following:
 1. The plan holder is one of the following:
 - I. A natural person who is deceased.
 - II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - IV. A person who has sold the property on which the permitted activity is occurring or will occur.
 2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

Commented [CJ8]: Is this REQUIRED to be included within the MO? I think we want to encourage appeals to go through the local process instead of the Commission at least the first time around, and it is allowed by statute.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 4. There will be no substantial change in the permitted activity.
- (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 - (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
 - (4) Notwithstanding changes to law made after the original issuance of the plan, the (city)(town)(county) may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the (city)(town)(county) from requiring a revised plan pursuant to G.S. 113A-54.1(b).
- (k) Notice of Activity Initiation. No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that land-disturbing activity will begin.
- (l) Preconstruction Conference. When deemed necessary by the approving authority a preconstruction conference may be required.
- (m) Display of Plan Approval. A Plan approval issued under this ~~Article~~ 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.
- (n) Required Revisions. After approving a Plan, if the (city)(town)(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 (city), (town), (county) shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved Plan, the (city)(town)(county) determines that the Plan is inadequate to meet the requirements of this ordinance, the (city, (town), (county) may require any revision of the Plan that is necessary to comply with this ordinance.
- (o) Amendment to a Plan. Applications for amendment of a 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 (city)(town)(county), the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.
- (p) Failure to File a Plan. Any person engaged in land-disturbing activity who fails to

Commented [CJ9]: replace with "have been removed" ?

file a Plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this ordinance.

- (q) Self-Inspections. 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). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. 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 subsection shall be in addition to inspections required by G.S. 113A-61.1.

Formatted: Font: Times New Roman

Where inspections are required by Section 6 (pg) of this Ordinance ~~and~~ G.S. 113A-54.1(e), the following apply:

~~(i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:~~

- ~~(a) all of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub item (1)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;~~

- ~~(b) the completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;~~
- ~~(c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in Sub-item (1)(e) of this Rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;~~
- ~~(d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and~~
- ~~(e) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.~~
- ~~(ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.~~
- ~~(iii) The inspection shall be performed during or after each of the following phases of a plan:
 - ~~(a) installation of perimeter erosion and sediment control measures;~~
 - ~~(b) clearing and grubbing of existing ground cover;~~
 - ~~(c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);~~
 - ~~(d) completion of storm drainage facilities;~~
 - ~~(e) completion of construction or development; and~~~~

~~(f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.~~

(i) The inspection shall be performed during or after each of the following phases of the plan:

- (a) initial installation of erosion and sediment control measures;
- (b) clearing and grubbing of existing ground cover;
- (c) completion of any grading that requires ground cover;
- (d) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
- (e) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (c) of this Item.

ii) Documentation of self-inspections performed under Item (1) of this Rule shall include:

- (a) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
- (b) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
- (c) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.
- (d) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required

to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

SECTION 7 Basic Control Objectives

An erosion and sedimentation control Plan may be disapproved if the Plan fails to address the following control objectives:

- (a) Identify Critical Areas - 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.
- (b) Limit Time of Exposure - All land-disturbing activities are to be planned and conducted to limit exposure to the shortest ~~feasible~~ time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority.
- (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 upgrate 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 off-site 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, a Plan is 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. Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.~~

SECTION 8 Design and Performance Standards

- (a) Except as provided in Section 8(b)(2) and Section 5(g)(1) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be

planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

(b) HQW Zones. In High Quality Water (HQW) zones the following design standards shall apply:

- (1) Limit on Uncovered Area. Uncovered areas in HQW 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 upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the 25-year storm.
- (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 which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil 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 Soil 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 according to the following criteria:~~
 - (i) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
 - (ii) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
 - (iii) have a minimum surface area of 325 square feet per cfs of Q25 peak flow;

Formatted: Indent: Left: 2"

- (iv) have a minimum dewatering time of 48 hours;
- (v) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(ii) through (3)(v) of this sub-section if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

Formatted: Indent: Left: 1.5", Tab stops: 1.55", Left

- (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 forms of~~ ditch liners proven as being effective in restraining accelerated erosion. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

Formatted: Tab stops: 1.55", Left

- ~~(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 60 calendar days following completion of construction or development, whichever period is shorter.~~

SECTION 9 Storm Water Outlet Protection

- (a) Intent. 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.
- (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph 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 “prior to development” velocity by 10%.

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	<u>0.8</u>
Sandy loam (noncolloidal)	2.5	<u>0.8</u>
Silt loam (noncolloidal)	3.0	<u>0.9</u>
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.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The (city)(town)(county) recognizes that the management of storm water 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, while not exhaustive, 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 storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
 - (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) **Exceptions** - This rule shall not apply where it can be demonstrated to the (city), (town), (county) that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

SECTION 10 **Borrow and Waste Areas**

~~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 Department's Division of 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. 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.~~

If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered by the approving authority as separate land-disturbing activities.

SECTION 11 **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.

Commented [CJ10]: This whole section needs to be re-written. Refer to 15A NCAC 04B.0110 for meaning. The borrow/waste must be related or meant for the particular land-disturbing activity, not just any land-disturbing activity! Delivered to or taken off-site.

Commented [CJ11R10]: Copied & pasted rule as re-adopted on April 1, 2020.

SECTION 12 Operations in Lakes or Natural 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 disruption 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.

SECTION 13 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 Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, 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.

SECTION 14 Additional Measures

Whenever the (city)(town)(county), determines that ~~significant erosion and 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.~~ accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

~~SECTION 15 Existing Uncovered Areas~~

- ~~(a) All uncovered areas existing on the effective date of this ordinance which resulted from land disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.~~
- ~~(b) The (city)(town)(county), shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the Commission or by the (city)(town)(county). The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided~~

~~in GS 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.~~

~~(c) The (city)(town)(county), reserves the right to require preparation and approval of a Plan in any instance where extensive control measures are required.~~

~~(d) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.~~

Commented [CJ12]: This entire Section (a-d) is from 15A NCAC 04B .0116, which EXPIRED effective 3/1/16. Propose to remove.

SECTION 16 Fees

(a) The (city)(town)(county), may establish a fee schedule for the review and approval of Plans.

~~(b) In establishing the fee schedule, the _____ shall consider the administrative and personnel costs incurred for reviewing the Plans and for related compliance activities.~~

Formatted: Indent: Left: 1", No bullets or numbering

~~[NOTE: THE LOCAL PROGRAM SHALL CONSIDER THE ADMINISTRATIVE AND PERSONNEL COSTS INCURRED FOR REVIEWING THE PLANS AND FOR COMPLIANCE RELATED ACTIVITES.]~~

SECTION 17 Plan Appeals

(a) Except as provided in Section 17(b) of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall governed by the following provisions:

(1) The disapproval or modification of any proposed Plan by the (city)(town)(county), shall entitle the person submitting the Plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.

(2) A hearing held pursuant to this section shall be conducted by the (city)(town)(county), (appropriate local agency), within _____ days after the date of the appeal or request for a hearing.

(3) The agency conducting the hearings shall make recommendations to the governing body of the (city)(town)(county), within ____ days after the

date of the hearing on any Plan.

- (4) The Governing Body of the (city)(town)(county), will render its final decision on any Plan within ____ days of receipt of the recommendations from the agency conducting the hearing.
- (5) If the (city)(town)(county) upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the (city)(town)(county)'s decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

[NOTE: THE APPEALS PROCEDURES ABOVE ARE INCLUDED ONLY TO ENSURE THAT EACH LOCAL ORDINANCE CONTAINS PROCEDURES FOR APPEALS. THE PROCEDURE SHOULD BE WRITTEN TO CONFORM TO APPLICABLE EXISTING PROCEDURES, OR AS CREATED FOR THE ADMINISTRATION OF THE ORDINANCE.]

- (b) In the event that a Plan is disapproved pursuant to Section 6(i) of this ordinance, the applicant may appeal the (city)(town)(county)'s disapproval of the Plan directly to the Commission.

SECTION 18 Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the (city), (town), (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.
- (b) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the (city), (town), (county), while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) Notice of Violation. If the (city)(town)(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. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the (city)(town)(county) shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the (city)(town)(county) is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

- (d) Investigation. The (city)(town)(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 and who presents appropriate credentials-
- (e) Statements and Reports. The (city)(town)(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 19 Penalties

(a) Civil Penalties

- (1) 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 (city)(town)(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).

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

- (3) Notice of Civil Penalty Assessment. The governing body of the (city)(town)(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 (city)(town)(county) shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the (city)(town)(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 of assessment. 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.

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

- (5) Appeal of Final Decision. Appeal ~~from~~ of the final decision of the governing body of the (city)(town)(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 (city)(town)(county).

(6) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the (city, town, county commission/board) within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes

and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:

(i) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.

(ii) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.

(iii) Whether the violation was inadvertent or a result of an accident.

(iv) Whether the petitioner had been assessed civil penalties for any previous violations.

(v) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.

(vi) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

[NOTE: THE PETITIONER HAS THE BURDEN OF PROVIDING INFORMATION CONCERNING THE FINANCIAL IMPACT OF A CIVIL PENALTY ON THE PETITIONER AND THE BURDEN OF SHOWING THE PETITIONER'S FINANCIAL HARDSHIP. THE CITY/TOWN/COUNTY COMMISSION/BOARD MAY REMIT THE ENTIRE AMOUNT OF THE PENALTY ONLY WHEN THE PETITIONER HAS NOT BEEN ASSESSED CIVIL PENALTIES FOR PREVIOUS VIOLATIONS AND PAYMENT OF THE CIVIL PENALTY WILL PREVENT PAYMENT FOR NECESSARY REMEDIAL ACTIONS. THE CITY/TOWN/COUNTY COMMISSION/BOARD MAY NOT IMPOSE A PENALTY UNDER THIS SECTION THAT IS IN EXCESS OF THE CIVIL PENALTY IMPOSED BY THE LOCAL PROGRAM.]

[NOTE: THE FOREGOING PROCEDURES ARE OFFERED AS GUIDANCE TO LOCAL GOVERNMENTS TO ENSURE THAT CIVIL PENALTIES ARE ACCOMPANIED BY REMISSION REQUESTS AND APPEAL PROCEDURES, INCLUDING HEARING OPPORTUNITIES.]

- (6) Collection. If payment is not received within 60 days after it is due, the (city)(town)(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 and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the

Formatted: Indent: Left: 1.5", No bullets or numbering, Tab stops: Not at 1"

Commented [CJ13]: At the request of Counsel

administrative and judicial review of the assessment.

- (7) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the (city)(town)(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 (city)(town)(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 the~~ (city)(town)(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~~ by the Commission or a local government, 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.

Commented [CJ14]: Matches G.S. § 113A-64(b) more closely.

SECTION 20 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 (city)(town)(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 (city)(town)(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.

SECTION 21 Restoration After Non-Compliance

The (city)(town)(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.

SECTION 22 Severability

If any section or section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

SECTION 23 Effective Date

This ordinance becomes effective on _____. [IN ESTABLISHING AN EFFECTIVE DATE, THE LOCAL GOVERNMENT SHOULD CONSIDER THE NEED FOR LEAD-TIME TO ORIENT AND EDUCATE THOSE AFFECTED BY FULL IMPLEMENTATION OF THE ORDINANCE.]