

~~\*FORMERLY\* CHAPTER 17 ARTICLE I & II – IN GENERAL, EROSION CONTROL REQUIREMENTS~~

~~Chapter 17~~Article 28 - SOIL EROSION & SEDIMENTATION CONTROL

28.1 PURPOSE

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28.1 PURPOSE

This article is adopted for the purposes of:

- A. Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent pollution of water and other damage to lakes, wetlands, watercourses, and other public and private property by sedimentation.
- B. Permitting development of the City with the least detrimental effects from pollution by erosion and sedimentation.
- C. Establishing procedures through which these purposes can be fulfilled.

**Commented [JW1]:** Statement of Purpose edited for brevity and clarity

28.2 APPLICABILITY

A. This chapter~~The requirements of this article apply to all land-disturbing activity within the corporate limits of the City and the extraterritorial jurisdiction (ETJ). shall regulate land-disturbing activity within the city and unincorporated areas of the county, the city's extraterritorial jurisdiction (ETJ) and sphere.~~

B. This chapter article shall not apply to the following land-disturbing activities:

- (1) Activities including production and activities relating or incidental to the production of crops, grains, fruits, ornamental and flowering plants, dairy, livestock, poultry, and other forms of agriculture 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:
  - a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
  - b. Dairy animals and dairy products.
  - c. Poultry and poultry products.
  - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
  - e. Bees and apiary products.
  - f. Fur-producing animals.
  - g. Mulch, ornamental plants, and other horticultural products.
- (2) An activity~~Activities~~ undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices 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 article shall apply to such activity and any related land-disturbing activity on the tract, set out in forest practice guidelines.~~

- (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the North Carolina General Statutes, G.S. 74-46 et seq.
- (4) For the duration of an emergency, activities essential to protect human life.
- (5) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in N.C.G.S. § 113A-56(a).
- (6) Activities undertaken to restore the wetlands functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Federal Clean Water Act.
- (7) Activities undertaken pursuant to Federal 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. The definitions of Section 28.7 only apply to this article. Unless specifically defined Section 28.7, other words or phrases used in this article are as defined in Article 2 for general definitions or Article 15 for use definitions. In the case of a conflict between a term defined in Article 2 or Article 15 and this article, the definition in Section 28.7 controls.

### 28.3 REQUIREMENTS, OBJECTIVES, AND STANDARDS

#### A. General requirements.

1. 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~~ article 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.
2. 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 (hereinafter referred to as "plan") on the job site ~~or a plan approved by the City engineer with performance reservations on the job site:~~
  - (1a) Uncovers one acre or more. In determining the size of the disturbed area, lands being developed as a unit shall be aggregated regardless of ownership.
  - (2b) In borrow and waste areas covered by section 17-34(f), item D.6 below, with a disturbed area greater than one acre or greater.
- (c)3. Compliance. ~~Persons who submit a plan~~Plans submitted to the Stormwater Administrator to the city engineer shall comply with this sections 17-35 and 17-36 of this chapter and Section 28.4 of this article.
- (d)4. 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)5. Conflicts: Applicability of more ~~More restrictive~~ Restrictive rulesRules. Whenever conflicts exist between the regulations in this article and federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Sec. 17-32B. -- Basic control ~~Control objectives~~ Objectives.

A plan ~~shall include~~ may be disapproved pursuant to section 17-35 of this chapter if the plan fails to include adequate erosion control measures, structures, or devices to address the following control objectives:

- (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 on time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) *Limit on 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 of 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 of sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent sedimentation damage.
- (6) *Management of stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the discharge point so as to minimize accelerated erosion of the site and to decrease sedimentation to any lake or watercourse.

C. Mandatory standards ~~Standards for land-disturbing~~ Land-Disturbing activity Activity.

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

- (1) *Lake, watercourse and wetland protection.* Additional erosion control measures, structures, or devices as specified in City and Mecklenburg County Soil Erosion and Sedimentation Control Policies and Procedures statement issued by the Stormwater Administrator ~~the policies and procedures statement issued by the city engineer~~ shall be required to provide a higher level of protection to lakes, watercourses, and wetlands from sedimentation as specified in the policies and procedures statement issued by the city engineer.
- (2) *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 shall. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 21 calendar days after completion of any phase of grading, be planted or otherwise provided with temporary or permanent groundcover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills shall be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- (3) *Fill Material.* Materials being used as fill shall be consistent with those described in the North Carolina Administrative Code (NCAC) per 15A NCAC 13B .0562 unless the site is permitted by the North Carolina Department of Environmental Quality (hereinafter referred to as NCDEQ) Division of Waste Management to operate as a landfill. Not all materials described in 15A NCAC 13B .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.

(43) *Ground cover.* Whenever land-disturbing activity 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. ~~p~~Provisions for a permanent ground cover sufficient to restrain erosion ~~must shall~~ be accomplished within 21 calendar days following completion of construction or development. For an area of a site that is inactive for a period of 21 calendar days or longer, temporary ground cover ~~is shall be~~ required.

(54) *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract if one acre or more is to be disturbed unless a plan for that activity has been submitted and approved in accordance with ~~sub~~Section ~~17-35(b)-28.4.~~

(65) *Pre-construction conference.* If one acre or more is to be uncovered, the person conducting land-disturbing activity, or an agent of that person, shall contact the ~~city engineer~~Stormwater Administrator at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the ~~city engineer~~Stormwater Administrator or duly authorized representative to review and discuss the approved plan and the proposed land-disturbing activity.

(76) *Monitoring.* The ~~landowner, financially responsible party,~~ person conducting land-disturbing activity, or an agent of ~~that those persons~~ shall inspect all erosion and sedimentation control measures at least once a week and within 24 hours after any storm event of greater than one-half inch of rain per 24 hour period, or more frequently if required by ~~state or federal or state~~ law. The person performing this monitoring shall have certification ~~or commensurate training and experience~~ approved by the ~~city engineer~~Stormwater Administrator.

a. If one acre or more 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 ~~grading permit termination is~~ approved by the ~~city engineer~~Stormwater Administrator. The record shall include ~~the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection~~all monitoring and inspection elements as required by the North Carolina General Permit, NCG01 (NCG01). Additional record keeping may be required by ~~state or federal or state~~ law and as stated on the approved plans.

b. Corrective action ~~on the for~~ repairs and maintenance indicated on the record ~~should shall~~ be initiated within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the ~~city engineer~~Stormwater Administrator. The date of the completion of such repairs shall be noted. The records of inspection shall be made available to the ~~city engineer~~Stormwater Administrator upon request.

cb. Persons who have had a notice of violation or repeated warning about off-site sedimentation or non-maintenance of adequate erosion control measures, structures, or devices may be required to provide the ~~city engineer~~Stormwater Administrator with a self-inspection record for the particular tract.

(8) *Sedimentation Control Buffer.* No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or watercourse unless a sedimentation control buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the sedimentation control buffer zone nearest the land-disturbing activity.

a. Projects On, Over, or Under Water

This sedimentation control buffer requirement 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 watercourse.

**Commented [PG2]:** Requirement for certification to perform self-inspections. City/County conducts training and certification course.

**Commented [PG3]:** Self-inspection section from model and NCAC has been replaced. The items required in the NCG01 would satisfy all of the items required in the Sediment rules.

b. Sedimentation Control Buffer Measurement

Unless otherwise provided, the width of a sedimentation control buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(9) *Adherence to Approved Plans.* The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

Sec. 17-34. ~~D.~~ Design and ~~performance~~ Performance standardsStandards.

~~(a)~~1. *Design storm.* Adequate erosion 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~~10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Service's (formerly Soil Conservation Service's) National Engineering Field Manual for Conservation Practices, or other acceptable calculation procedures including but not limited to the Charlotte-Mecklenburg Storm Water ~~Services~~ Design Manual.

~~(b)~~2. *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 city engineerStormwater Administrator if it can be demonstrated that such techniques and ideas are likely to produce successful results.

~~(c)~~3. *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 section of this ~~chapter~~ Article, the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and order adopted pursuant to it (hereinafter referred to as "Act" within this article)~~act~~, or any order adopted pursuant to this ~~chapter~~ article or the ~~a~~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)~~4. *Additional measures.* Whenever the city engineerStormwater Administrator determines that accelerated erosion and sedimentation will likely continuecontinues or shall likely continue, despite installation and maintenance of protective practices, the person conducting the land disturbing activity will be required to take additional protective action necessary to achieve compliance with the conditions specified in this article.

~~(e)~~5. *Storm drainage facilities protection.* Persons shall design the plan and conduct land-disturbing activity so that the post-construction velocity of the ~~ten~~10-year storm does not exceed the maximum nonerosive velocity tolerated by the soil of the receiving watercourse or the soil of the receiving land.

~~(f)~~6. *Borrow and waste areas.* When-If the same person conductsing the land-disturbing activity and any related is also the person conducting the borrow or waste disposal-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, N.C.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.

~~(g)~~7. *Temporary Access and ~~H~~haul ~~R~~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)~~8. *Operations in lakes or watercourses.* Land-disturbing activity in connection with construction in, on, over, or under a lake or watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disruptiondisturbance of the lake-or-watercoursestream channel. The

**Commented [PG4]:** HQW zone section not included. No HQW within the City limits/ET. Enhanced design standards are included in the ESC Policies and Procedures which is a joint developed document with Meck County and surrounding municipalities. Referenced above in 28.3 C(1),

**Commented [PG5]:** Expand, unless otherwise defined somewhere.

**Commented [PG6]:** Section 9 of the model ordinance. Table and additional paragraphs in model ordinance not included are incorporated into the Charlotte Meck storm water design manual. Need to incorporate by reference?

relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics.

#### 28.4 Plans and Permits.

##### A. Erosion and Sedimentation Control Plans

1. Plan requirements. All plans required for land-disturbing activities as identified in section ~~47-34(b)~~28.3.A.2 of this chapter shall meet the following requirements:

- a. Plans shall contain architectural ~~and 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 ~~chapter~~Article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the ~~city engineer~~Stormwater Administrator on request.
- b. Plans ~~must shall~~ contain an authorized statement of financial responsibility and ownership signed by the person financially responsible for the land-disturbing activity or that person's attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agent(s). If the person financially responsible is not a resident of ~~the state~~North Carolina, an agent in the state ~~must shall~~ be designated in the statement for the purpose of receiving service of process and notice of compliance or noncompliance with the plan, the ~~a~~Act, this ~~chapter~~article, or rules or orders adopted or issued pursuant to this ~~chapter~~article.
- c. ~~Except as provided in item 4 below, if the applicant~~person submitting the plan (hereinafter referred to as "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.
- d. The land-disturbing activity described in the plan shall comply with all federal, state, and local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The ~~city engineer~~Stormwater Administrator may require supporting documentation.
- e. The land-disturbing activity described in the plan shall not result in a violation of rules adopted by the ~~North Carolina~~e~~Environmental m~~Management e~~Commission~~ to protect riparian buffers along surface waters.
- f. 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.~~
- g. If the plan is submitted for land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (N.C. 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 ~~city engineer's~~Stormwater Administrator's time for reviewing the plan ~~will shall~~ not commence until a complete environmental document is available for review.
- h. ~~Copies of the~~The plan shall be filed digitally with the ~~city engineer~~Stormwater Administrator. A copy of the ~~stamped~~ approved plan shall be maintained on the job site.
- i. 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:
  - i. The method of limiting the time of exposure and amount of exposed area to achieve the objectives of this ~~chapter~~article.

- ii. A cut/fill analysis that shows where soil will be moved from one area of the tract to another as ground elevation is changed.
- iii. Construction sequence and construction phasing to justify the time and amount of exposure.
- iv. Techniques to be used to prevent sedimentation associated with larger disturbed areas.
- v. Additional erosion control measures, structures, and devices to prevent sedimentation.

## 2. Plan review-Review processProcess.

### (a) Timeline for Decisions on Plans

- (i) The city engineerStormwater Administrator shall will review each complete plan submitted and within 30 days of receipt thereof will shall notify the person submitting the plan, referred to as "the applicant," that it has been approved, approved with modifications, approved with performance reservations, or disapproved.
- (ii) Should the plan be filed and not reviewed within the specified timeframe, the land-disturbing activity may commence subject to sSection 47-33(5)28.3.C.6 and item A.1.e, above, and the Stormwater Administrator shall subsection (a)(5) of this section, and the city engineer will endeavor to review the plan on an expedited schedule.
- (iii) If the plan is disapproved, the city engineerStormwater Administrator shall notify the applicant and, if required, the dDirector of the Division of Energy, Mineral, and Land Resources (NCDEMLR) within the NCDEQ of such disapproval within ten days thereof. The city engineerStormwater Administrator shall advise the applicant and the Ddirector of NCDEMLR in writing as to the specific reasons that the plan was disapproved. The applicant shall have the right to appeal the city engineer'sStormwater Administrator decision as provided in sSection 47-7037.8.B of this chapter.
- (iv) The Stormwater Administrator will review each revised Plan submitted and within 15 days shall notify the applicant that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.

(b) Approval. The Stormwater Administrator 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 Stormwater Administrator shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations, and rules. Plans for which land-disturbing activity has not commenced within three years from the initial plan approval date are void.

## 3. Amendments to plans.

- (a) City-Required Revisions. If the city engineerStormwater Administrator, either upon review of such plan or upon inspection of the job site, determines that the plan is inadequate to meet the requirements of this chapter article or that a significant risk of accelerated erosion or off-site sedimentation exists, the city engineer may require a revised plan may be required. Pending the preparation of the revised plan, work on the affected area may shall cease or may unless approved to continue only under conditions outlined by the city engineerStormwater Administrator.
- (b) Submission of Revisions or Amendments. Amendments or revisions to a plan must shall 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 such time as the city engineerStormwater Administrator approves any amendments or revisions, the land-disturbing activity shall not proceed, except in accordance with the plan as originally approved or under conditions outlined by the Stormwater Administrator per item (a) above. The city engineer must approve, approve with modifications, approve with performance reservations, or deny a revised plan within 30 days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

(dc) ~~Grounds for dDisapproval of pPlans.~~

i. Disapproval for Content. The Stormwater Administrator may disapprove a plan based on its content. A disapproval based upon a plan's content shall specifically state in writing the reasons for disapproval.

i-ii. Other Disapprovals. Any plan that is not in accordance with the requirements set forth in ~~subSection 28.4.A.1 above (a) of this section~~ shall be disapproved. ~~In addition~~Additionally, a plan may be disapproved upon a finding that the financially responsible person or any parent or subsidiary thereof:

(1A) 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; or

(2B) Has failed to pay a civil penalty assessed pursuant to the aAct, or a local ordinance adopted pursuant to the aAct, by the time the payment is due; or

(3C) Has been convicted of a misdemeanor pursuant to N.C.G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the act; or

(4D) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the aAct.

For the 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.

4. Transfer of Plans

The Stormwater Administrator may transfer an erosion and sedimentation control plan approved pursuant to this article without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or shall occur as provided in this subsection.

(a) The Stormwater Administrator may transfer a plan if the following conditions are met:

i. The successor-owner of the property submits to the City a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.

ii. The Stormwater Administrator finds the following:

(A) The plan holder is one of the following:

(1) A natural person who is deceased.

(2) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

(3) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or shall occur.

(4) A person who has sold the property on which the permitted activity is occurring or shall occur.

(B) The successor-owner holds title to the property on which the permitted activity is occurring or shall occur.

(C) The successor-owner is the sole claimant of the right to engage in the permitted activity.

(D) There shall be no substantial change in the permitted activity.

(b) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.

(c) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

**Commented [PG7]:** G.S. 113A-61(b1) includes "parent, or subsidiary, or OTHER AFFILIATE of the applicant"



(d) Notwithstanding changes to law made after the original issuance of the plan, the Stormwater Administrator 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 Stormwater Administrator from requiring a revised plan pursuant to N.C.G.S. §113A-54.1(b) or item A.3 above.

5. Display of Plan Approval. A plan approval issued under this section shall be prominently displayed on the site until all construction is complete, all temporary sedimentation and erosion control measures are removed, the site has been stabilized, and the grading permit has been terminated and approved by the Stormwater Administrator. A copy of the stamped plan may serve to satisfy this requirement.

6. Failure to File or Follow a Plan. Any person engaged in land-disturbing activity who fails to file a plan required by and in accordance with this article shall be deemed in willful violation of this article. Any person who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in willful violation of this article

(e) Violations. Any person engaged in land-disturbing activity who fails to file a required plan in accordance with this chapter shall 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 and shall, upon conviction, be punished in accordance with section 2-24.

#### B. Permits.

1. No person shall undertake any land-disturbing activity on a tract that disturbs one or more acres without obtaining the following:
  - a. An NCG01 permit by completing and submitting an electronic notice of intent (E-NOI) form requesting a certificate of coverage (COC) and obtaining the coverage certificate under the NCG01 Construction Site Stormwater General Permit. The letter of approval from the City shall contain a notice of the NCG01 permit requirement and the acreage approved for disturbance.
  - b. A stamped and approved soil erosion and sedimentation control plan subject to Section 28.4.A.
  - c. A land disturbance ~~subject to this chapter without first obtaining a permit from the city engineer~~ Stormwater Administrator. The only exception to ~~this the~~ requirement for a land disturbance permit ~~is area~~ land-disturbing activities that:
    - (1) ~~Has~~ been preapproved by the ~~city engineer~~ Stormwater Administrator at a preconstruction conference ~~for the purpose of installing erosion and sedimentation control measures indicated on the approved plan; or~~
    - (2) ~~Is~~ Are for the purpose of fighting fires; ~~or~~
    - (3) ~~Is~~ Are for the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures are utilized to protect against off-site damage; ~~or~~
    - (4) ~~Does~~ not ~~equal or~~ exceed one acre of disturbed area. In determining the size of the disturbed area, lands being developed as a unit will be aggregated regardless of ownership. Although a plan and a permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this ~~chapter~~ Article.]

**Commented [PG8]:** Section not specifically covered by the SPCA

#### 28.5 Administration

A. Appeals and variances of this article shall be subject to Article 37

B. Inspections and Enforcement actions of this article shall be subject to Article 39

#### 28.6 Stormwater Administrator

A. Designation. The Director of the City of Charlotte department responsible for management of the City's NPDES MS4 Stormwater permit has been designated as the Stormwater Administrator. The Stormwater Administrator is authorized to administer and enforce Article 28.

B. Powers and Duties. In addition to the powers and duties that may be conferred by other provisions of this Ordinance and other laws, the Stormwater Administrator shall have the following powers and duties under this article:

- a. To review and approve or disapprove applications submitted pursuant to Article 28
- b. To make determinations and render interpretations of Article 28
- c. To establish application requirements and schedules for submittal and review of applications and appeals.
- d. To enforce Article 28 in accordance with its enforcement provisions in Article 39
- e. To maintain records, maps, and official materials as they related to the adoption, amendment, enforcement or administration of Article 28
- f. To provide expertise and technical assistance upon request to the City Council and the UDO Board of Adjustment.
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator
- h. To provide information and recommendations relative to variances and information as requested by the UDO Board of Adjustment in response to appeals.
- i. To prepare and make available to the public a Stormwater Regulations Administrative Manual.
- j. To take any other actions necessary to administer the provisions of Article 28.

#### 28.7 DEFINITIONS

The definitions of this section apply only to this article. Unless specifically defined in this section, other words or phrases used in this article are as defined in Article 2 for general definitions or Article 15 for use definitions. In the case of a conflict between a term defined in Article 2 or Article 15 and this article, the definition in this section controls.

**Sedimentation Control Buffer.** The strip of land adjacent to a lake or watercourse.

**Day, Working.** Days exclusive of Saturday, Sunday, and City government holidays during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

**Groundcover.** Any vegetative growth or other material that renders the soil surface stable against accelerated erosion.

**Commented [PG9]:** This definition differs from the definition in Article 2 of the UDO. Did not find any use of working day in the ESC specific sections, is this necessary? Working days are not utilized in the GS or NCAC.

~~\*FORMERLY\*~~ ARTICLE III. - ADMINISTRATION, ENFORCEMENT AND APPEALS

Article 39 Inspections and Enforcement-

39.1 -Inspections and investigations.

D. Soil Erosion and Sedimentation Control Inspection – Additional Regulations (Article 28)

This section supplements Section 39.1.A.

- (a)1. The city-engineerStormwater Administrator may, in accordance with Section 39.1.A.1, upon presentation of proper credentials, or an appropriate inspection warrant if necessary, is authorized to inspect the sites of land disturbing activity at all reasonable hours to determine ensure 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 chapterArticle 28, and the approved plan. The Stormwater Administrator may also inspect 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, hamper, or interfere with the city-engineerStormwater Administrator while they city-engineer isare inspecting or attempting to inspect a land-disturbing activity under this chapterfor compliance with Article 28.
2. The Stormwater Administrator may conduct such investigation as is reasonably deemed necessary to carry out their duties as prescribed in Article 28 and enter at all reasonable hours upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
3. No person shall refuse entry or access to the Stormwater Administrator who requests entry for purpose of inspection or investigation
4. The Stormwater Administrator shall also have the power to require written statements or the filing of reports under oath as a part of investigating land-disturbing activity

39.2 Enforcement

F. Soil Erosion and Sedimentation Control Violations and Enforcement – Additional Regulations (Article 28) This section supplements Section 39.2.A

1. Notice of Violation

- (c)a. If, through inspection, it is determined that a person engaged in land-disturbing activity has failed to comply with the North Carolina Sedimentation Pollution Control aAct, this the soil erosion and sedimentation control regulations in Article 28, chapter, or rules or orders adopted or issued pursuant to this chapter, or has failed to comply with an approved plan, the city-engineerStormwater Administrator shall issue a written notice of violation to the property owner, the property owner's agent, or other person in possession or control of the land, in accordance with N.C.G.S. § 113A-61.1, will serve upon the landowner, the landowner's agent, or other person in possession or control of the land a written notice of violation.
- (b) Notices of violations shall be provided to the property owner, the property owner's agent, or other person in possession or control of the land. The notice shall, if required, specify a date by which the person must comply with this chapterArticle 28 and shall advise that the person is may be subject to civil penalty penalties, or that failure to correctand if the violation is not corrected within the time specified, willmay be subject to additional civil penalties, that person to the civil penalties, including those provided in section 17-67 of this chapter or any other authorized enforcement action.

**Commented [PG1]:** Financially Responsible Party?

**Commented [PG2]:** Financially responsible party?

**Commented [PG3]:** Are there instances where an NOV would not specify a date of compliance.

**Commented [PG4]:** Must also include the required corrective actions.

- (c) If the person engaged in the land-disturbing activity has not received a previous notice of violation, under Article 28 or its predecessor, the City shall offer assistance in developing corrective measures. Information on how to obtain assistance in developing corrective measures shall be included in the notice of violation. Assistance may be provided by referral to a technical assistance program on behalf of the approving authority, referral to a cooperative extension program, or by the provision of written materials such as NCDEQ guidance documents.
- (d) The notice of violation may be served by any means authorized under N.C.G.S. Chapter 1A-1, Rule 4
- (e) In determining the measures required and the time for achieving compliance, the ~~city engineer~~Stormwater Administrator shall take into consideration the technology and quantity of work required and shall set reasonable and attainable time limits.
- (f) The ~~city engineer~~Stormwater Administrator shall use local rainfall data approved by the ~~city engineer~~Stormwater Administrator to determine whether the design storm identified in ~~section 17-34(a)~~Article 28 has been exceeded.

## 2. Penalties.

- (a) Any person who violates ~~any of the sections of this chapter~~Article 28, or rules or orders adopted or issued pursuant to ~~this chapter~~Article 28, 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 ~~through a notice of violation that complies with the notice requirements in Section 39.3.A.1, unless the penalty is assessed concurrently with the notice of violation.~~except as provided in ~~section 17-66(f) of this chapter.~~ Refusal to accept the notice or failure to notify the ~~city engineer~~Stormwater Administrator of a change of address shall not relieve the violator's obligation to comply with ~~this chapter~~Article 28 or to pay such a penalty.
- (b) The maximum civil penalty for each violation of ~~this chapter~~Article 28 is \$5,000.00. Each day of 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 section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.~~
- (c) Civil penalties may be assessed concurrently with a notice of violation for any of the following:
- i. Failure to submit a plan.
  - ii. Performing land-disturbing activities without an approved plan and preconstruction conference, or permit.
  - iii. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
  - iv. A repeated violation for which a notice was previously given on the same tract or to the person responsible for the violation. For the purposes of this section (Section 39.2.F), person responsible shall mean:
    - (A) The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity.
    - (B) 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 section of this Article, the North Carolina Sedimentation Pollution Control Act, or any order adopted pursuant to this Article or the North Carolina Sedimentation Pollution Control Act.

(C) The contractor with control over the tract or the contractor conducting the land-disturbing activity.

v. Willful violation of Article 28.

vi. Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per Section 28.3.D.4 such that it results in sedimentation in a wetland, lake or watercourse, or other designated protected areas.

vii. Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per Section 28.3.D.4 such that it results in off-site sedimentation.

**Commented [PG5]:** Is this necessary, as mentioned above, penalty may be assessed from the date the violation first occurs. Counsel may have comments.

(d) The amount of the civil penalty shall be assessed pursuant to the following:

(1) *Violations involving conducting a land-disturbing activity without an approved plan.* Any person engaged in a land-disturbing activity without a required approved plan and preconstruction conference or permit in accordance with this ~~chapter~~ Article 28 or who initiates, directs or allows a land-disturbing activity without a required, approved plan and preconstruction conference or permit shall be subject to a civil penalty of \$5,000.00 per day, per violation. The penalty may be decreased based on mitigating circumstances located in Section 39.2.F.2.e..

(2) *Violations resulting in sediment entering a wetland, lake or watercourse.* Violations resulting in sediment entering a wetland, lake or watercourse subjects the violator to a civil penalty of \$3,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased, based on mitigating circumstances located in Section 39.2.F.2.e..

(3) *Violations resulting in off-site sedimentation.* Violations of this chapter that result in off-site sedimentation subject the violator to a civil penalty of \$1,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased, based on mitigating circumstances located in Section 39.2.F.2.e.. Violations of this type may include, but are not limited to, the following:

- a. Conducting land-disturbing activities beyond the limits of an existing permit without approval of an amended plan and permit that results in off-site sedimentation.
- b. Failure to properly install or maintain erosion control measures in accordance with the approved plan or the Charlotte Land Development Standards Manual that results in off-site sedimentation.
- c. Failure to retain sediment from leaving a land-disturbing activity as required by this chapter.
- d. Failure to restore off-site areas affected by sedimentation during the time limitation established in a notice of violation and as prescribed in the [City of Charlotte and Mecklenburg County Soil Erosion and Sedimentation Control Policies and Procedures statement](#).
- e. Any other violation of this ~~chapter~~ Article 28 that results in off-site sedimentation.

(4) *Violations of this chapter not resulting in off-site sedimentation.* Violations of this chapter that do not result in off-site sedimentation subject the violator to a civil penalty of \$500.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased, based on mitigating circumstances located in Section 39.2.F.2.e.. Violations of this type may include, but are not limited to, the following:

- a. Failure to comply with the mandatory standards for land-disturbing activity as specified in ~~s~~Section 17-3328.3.C, except Sections 28.3.C.4 and 28.3.C.5. subsections 17-33(d) and 17-33(e).
- b. Failure to submit to the ~~city engineer~~ Stormwater Administrator for approval an acceptable revised erosion and sedimentation control plan after being notified by the ~~city engineer~~ Stormwater Administrator of the need to do so.

- c. Failure to maintain adequate erosion control measures, structures, or devices to confine sediment.
- d. Failure to follow the provisions on the approved plan.
- e. Any other action or inaction that constitutes a violation of ~~this chapter~~Article 28 that did not result in off-site sedimentation.

(5) The Stormwater Administrator is authorized to vary the amount of the per diem penalty set out in Section 39.2.F.2 to take into account any relevant mitigating and aggravating factors.

- (de) In determining the amount of the civil penalty, the ~~city engineer~~Stormwater Administrator shall consider any relevant mitigating and aggravating factors, including, but not limited to:

- (1)i. The effect, if any, of the violation.;
- (2)ii. The degree and extent of harm caused by the violation.;
- (3)iii. The cost of rectifying the damage.;
- (4)iv. Whether the violator saved money through noncompliance.;
- (5)v. Whether the violator took reasonable measures to comply with ~~this chapter~~Article 28.
- (6)vi. Whether the violation was committed willfully.;
- (7)vii. Whether the violator reported the violation to the ~~city engineer~~Stormwater Administrator.;
- and
- (8)viii. 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.

- (f) Repeat violators may be charged by a multiple of the base penalty determined in ~~subsection (c) Section 39.2.F.2~~. 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 chapter~~Article 28 or any other soil erosion and sediment control ordinance regulation or the North Carolina Sedimentation Pollution Control Act. In no case may the penalty exceed the maximum allowed in ~~Section 39.2.F.2.b~~subsection (b).

- (g) The ~~city engineer~~Stormwater Administrator shall determine the amount of the civil penalty and shall notify the person ~~responsible who is assessed of the amount of the civil penalty of the amount of the penalty and the reason for assessing the penalty~~. The notice of assessment shall be ~~served provided in accordance with 39.2.A.1 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 through an appeal as specified in Section 37.8.B, or file with the North Carolina Sedimentation Control Commission for remission as specified in section 17-70. A remission request shall be accompanied by a waiver of the right to a contested case appeal hearing pursuant to N.C.G.S. Chapter 150B and stipulation of the facts on which the assessment was based.~~ If a violator does not pay a civil penalty assessed by the ~~city engineer~~Stormwater Administrator within 30 days after it is due, or does not request a hearing ~~as an appeal hearing as provided in sSection 17-70~~37.8.B, the ~~city engineer~~Stormwater Administrator, with authorization from the City Manager, shall request the ~~eCity a~~Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in the ~~Mecklenburg eCounty sSuperior eCourt, or in any other court of competent jurisdiction.~~

- (h) A civil action must be filed within three years of the date the assessment was due. An assessment that is not ~~contested~~ appealed is due when the violator is served with a notice of assessment. An assessment that is ~~contested~~ appealed is due at the conclusion of the administrative and judicial review of the assessment.

- (i) ~~(h) Civil penalties collected pursuant to this chapter shall be credited to the city's general fund as nontax revenue. The clear proceeds of civil penalties collected by the City under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with N.C.G.S. § 115C-457.2. Clear~~

**Commented [PG6]:** Penalties should be assessed on the 5 factors below specific to each case. Counsel may have comments.

**Commented [PG7]:** Remissions have been delegated to the Local Programs to hear requests initially. Following, the violator would have the option to request remission from the Commission.

proceeds include the full amount of all civil penalties and fines collected, diminished only by the actual costs of the collection, not to exceed 20% of the amount collected. 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.

### 3. Criminal Misdemeanors

- (†) Any person who knowingly or willfully violates any ~~section of this chapter~~ provision of Article 28, or rule or order adopted or issued by the City of the County, 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 \$5,000.00. This is in addition to any civil penalties that may be charged. Each day of continuing violation shall constitute a separate violation.

### 4. Injunctive relief.

- (a) Whenever the ~~city engineer~~ Stormwater Administrator has reasonable cause to believe that any person is violating or threatening to violate ~~this chapter~~ Article 28 or any term, condition, or provision of an approved plan, the ~~city engineer~~ Stormwater Administrator, with the written authorization of the City Manager, may, either before or after the institution of any other action or proceeding authorized by ~~this chapter~~ Article 39.2.D, authorize the ~~eCity a~~ Attorney to institute a civil action in the name of ~~the eCity~~ for injunctive relief to restrain the violation or threatened violation. See Section 39.2.A.5 on injunctions. The action shall be brought pursuant ~~to N.C.G.S. § 160A-175 into G.S. 153A-123 in the Mecklenburg eCounty e~~ Superior eCourt.
- (b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. See Section 39.2.A.5 for injunctions and orders of abatement. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of ~~this chapter~~ Article 28.

### 5. ~ Other Remedies Restoration of areas affected by failure to comply:

- (a) Restoration of Areas Affected by Failure to Comply. The ~~city engineer~~ Stormwater Administrator 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 Sections 39.2.F.2 and 39.2.F.4 this chapter.
- (b) Withholding Approval of a Certificate of Occupancy – With regard to the development of any tract that is subject to Article 28, no certificate of occupancy shall be issued where any of the following conditions exist:
  - (i) There is a violation of Article 28 with respect to the tract.
  - (ii) If there remains due and payable to the City, civil penalties that have been levied against the person conducting the land-disturbing activity for violations of Article 28. If a penalty is under appeal, the Stormwater Administrator may require that the amount of the fine, and any other amount that the person would be required to pay under Article 28 if the person loses the appeal, be placed in a refundable account or surety prior to issuing the certificate of occupancy.
  - (iii) 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.

(iv) In the instance of 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.

(v) 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.

**Commented [PG8]:** Additional tools that can be used to bring sites into compliance.

#### 37.8.B.6.b. - Soil Erosion and Sedimentation Control Plan Appeals (Article 28).

(a) ~~Generally. The stormwater advisory committee (SWAC or committee), as established by the city, as shall hear and decide appeals from the requirements of this chapter.~~

(bi) *Disapproval or modification of proposed plan.* Procedures for an appeal of the disapproval or modification of the proposed plan are as follows:

(1A) The disapproval or modification of any proposed plan by the ~~city engineer~~ Stormwater Administrator shall entitle the person submitting the plan (petitioner) to ~~file a public hearing before the committee if such person submits a written demand request for an appeal hearing to with the clerk of the UDO Board of Adjustment of the committee (clerk)~~ file a public hearing before the UDO Board of Adjustment within 30 days after receipt of ~~written the~~ written notice of the disapproval or modification. Notice of the disapproval or modification sent by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The ~~demand request~~ notice for a hearing filed with the clerk shall be accompanied by a filing fee as established by the ~~committee~~ UDO Board of Adjustment. ~~The committee may order the refund of all or any part of the filing fee if it rules in favor of the petitioner.~~ Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under ~~this chapter~~ Article 28, and the ~~committee~~ UDO Board of Adjustment shall have no jurisdiction to hear the appeal.

(2B) Within five days of receiving the ~~demand request~~ notice for an ~~hearing~~ appeal, the clerk of the ~~UDO Board of Adjustment~~ UDO Board of Adjustment shall notify the ~~chairman of the committee~~ Stormwater Administrator ~~of the demand for a hearing.~~ As soon as possible after the receipt of the notice, the ~~chairman clerk of the UDO Board of Adjustment~~ UDO Board of Adjustment shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. As per N.C.G.S. § 160D- 406, notices of hearings shall be mailed to: 1) the person or entity whose appeal, is the subject of the hearing; 2) to the owner of the property that is the subject of the hearing, if the owner did not initiate the hearing; and 3) to the owners of all parcels of land adjacent to the parcel of land that is the subject of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the ~~committee~~ UDO Board of Adjustment ~~from the submission of the notice, or as soon thereafter as practical, or at a special meeting.~~ The hearing shall be conducted by the ~~committee~~ UDO Board of Adjustment in accordance with Sections 37.8.B.9 through 37.8.B.14 subsection (e) of this section.

(3C) If the ~~committee~~ UDO Board of Adjustment upholds the disapproval or modification of a proposed plan following the public hearing, the petitioner shall have ~~30-15~~ 15 days from the receipt of the decision to appeal the decision to the North Carolina State Sedimentation Control Commission ~~state sedimentation control commission~~ pursuant to title 15, chapter ~~Article 4B,~~ Article 4B, ~~sSection .0018(b) of the North Carolina Administrative Code and N.C.G.S. §G-S-113A-61(c).~~ Section 15-4B.0018(b) of the North Carolina Administrative Code and N.C.G.S. § 113A-61(c). Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(eii) Notice of Violation with Penalty Appeal - Issuance of notice of violation with assessment of civil penalty. Procedures for an appeal of the issuance of a notice of violation with an assessment of a civil penalty are as follows:

(4A) If the UDO Board of Adjustment finds that the violation has occurred, but that in setting the amount of the penalty, the Stormwater Administrator has not considered or given appropriate weight to either mitigating or aggravating factors, the UDO Board of Adjustment shall either decrease or



increase the per day civil penalty within the range allowed by Section 39.2.F.2.d. Any decision of the UDO Board of Adjustment which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the Stormwater Administrator in setting the amount of the civil penalty levied against the petitioner.

- (B) Any person issued a notice of violation with penalty may file a request with the Sedimentation Control Commission for remission of the assessment within 30 days of receipt of the notice. A remission request shall be accompanied by a waiver of the right to a contested case hearing pursuant to N.C.G.S. § 150B-22 of the North Carolina General Statutes and stipulation of the facts on which the assessment was based.