

EROSION AND SEDIMENTATION CONTROL ORDINANCE

ARTICLE I. GENERAL

Sec. 27-1. - Title

This ordinance may be cited as the Town of Mooresville Soil Erosion and Sedimentation Control Ordinance.

Sec 27-2. - Purpose

This ordinance is adopted for the purposes of:

1. 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
2. establishing procedures through which these purposes can be fulfilled.

Sec. 27-3. - Definitions

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

1. Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
2. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
3. 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.
4. 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.
5. Being Conducted - means a land-disturbing activity has been initiated and not deemed complete by the Town.
6. Borrow - means fill material that is required for on-site construction that is obtained from other locations.
7. Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
8. 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.

9. Commission - means the North Carolina Sedimentation Control Commission.
10. 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.
11. Department - means the North Carolina Department of Environmental Quality.
12. Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
13. Discharge Point or Point of Discharge - means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
14. 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.
15. Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
16. Fifty Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Town to be equaled or exceeded, on the average, once in 50 years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
17. Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
18. High Quality Waters - means those classified as such in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and additions.
19. High Quality Water (HQW) Zones –means areas within one mile and draining to HQW's.
20. Lake or Natural Watercourse – means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.
21. 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.
22. 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.

23. 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.
24. Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
25. 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.
26. 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.
27. 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.
28. Plan - means an erosion and sedimentation control plan.
29. 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.
30. Sedimentation - means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.
31. 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.
32. 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.
33. Stormwater Runoff - means the runoff of water resulting from precipitation in any form.
34. Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
35. Ten-Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Town to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
36. Town – means the Town of Mooresville.

37. Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
38. Twenty-five Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Town to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
39. Uncovered - means the removal of ground cover from, on, or above the soil surface.
40. 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.
41. Velocity - means the speed of flow through a cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
42. Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.
43. Watershed Protection Overlay (WPO) District – an overlay district within the Town as set out in the Town’s Unified Development Ordinance, the boundaries of which coincide with the water supply watersheds which have been established by the North Carolina Division of Water Resources.

Sec. 27-4. – Scope and Exclusions

1. Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the corporate limits and extraterritorial jurisdiction of the Town of Mooresville.
2. 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:
 - a) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - (i) forages and sod crops, grains 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. This includes the rearing, feeding, training, caring, boarding, and managing of horses.

- (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.
- b) 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.
 - c) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
 - d) A land-disturbing activity over which the Commission has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
 - e) An activity which is essential to protect human life during an emergency.
 - f) 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.
 - g) 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
3. 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 from the Town.
 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.
 5. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
 6. 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 one half (1/2) acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

Sec. 27-5. - 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:

1. Buffer zone

a) **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 in accordance with the Watershed Protection Overlay (WPO) District standards as outlined in the UDO or twenty-five (25) feet minimum in all areas outside of the WPO District from edge of lake or natural watercourse.

(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 as defined in the WPO standards in the UDO. For rivers, measurement starts “at the most landward limit of the top of the bank.” For lakes, measurement starts at the “most landward limit of the full-pond level.”

2. **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.

3. **Fill Material.** Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department’s Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.

4. **Ground Cover.** Whenever land-disturbing activity that will disturb more than one-half (1/2) 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 27-8(3)(d), provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or

development.

5. Prior Plan Approval. No person shall initiate any land-disturbing activity that will disturb more than one-half (1/2) acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the Town. 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.

The Town 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.

6. The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

Sec. 27-6. - Erosion and Sedimentation Control Plans

1. 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-half (1/2) acre on a tract. The Plan shall be filed with the Town. No plan shall be considered complete unless accompanied by the required plan review fee and a performance bond in the form of a certified check, cash or irrevocable letter of credit, in an amount deemed sufficient by the Town to cover all costs of protection or other improvements as required to establish protective cover on the site in conformity with this ordinance. The performance bond shall remain effective until work has been completed, inspected and approved by the Town.
2. Financial Responsibility and Ownership. Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his/her 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 (3) or (11) 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.
3. Transfer of Financial Responsibility. For land-disturbing activities on a single-family residential lot involving new construction with land disturbance of less than one acre where the builder or developer is the owner of the lot being developed and the person financially responsible for the land-disturbing activity, the financial responsibility for land-disturbing activity on that lot transfers to the new owner upon the builder's or developer's conveyance of the lot to the new owner, recording of the deed in the office of the register of deeds, and notification to the Town.

Commented [A1]: Bond required as a part of the complete plan application? Would mean that a bond is required prior to review clock starting and the plan being approved.

4. Owner Consent. 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.
5. 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 Town 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.
6. 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 Town on request.
7. Timeline for Decisions on Plans. The Town will review each complete submitted Plan within 30 days of receipt thereof and will notify the person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The Town 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, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.
8. Approval. The Town 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 Town shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The Town 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.
9. Disapproval for Content. The Town 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.
10. Other Disapprovals. The Town 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 Town may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (11) of this section

upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- a) 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.
- b) 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.
- c) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
- d) 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 Town pursuant to subsection (10) of this section, the Town shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The Town 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 27-16, 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.

11. Transfer of Plans. The Town 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.

- a) The Town may transfer a plan if all of the following conditions are met:
 - (i) 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 documentation of property ownership.
 - (ii) The Town finds all of 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 will occur.

4. A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will 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.
 - d) Notwithstanding changes to law made after the original issuance of the plan, the Town 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 Town from requiring a revised plan pursuant to G.S. 113A-54.1(b).
12. 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.
13. Preconstruction Conference. When deemed necessary by the Town, a preconstruction conference may be required and noted on the approved plan.
14. Display of Plan Approval. A Plan approval issued under this Article shall be prominently displayed until all construction is complete, all temporary measures have been removed, 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.
15. Required Revisions. After approving a Plan, if the Town, 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 Town 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 Town determines that the Plan is inadequate to meet the requirements of this ordinance, the Town may require any revision of the Plan that is necessary to comply with this ordinance.
16. 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 Town, the land-disturbing activity shall not proceed except in accordance with the Plan as originally

approved.

17. **Failure to File a Plan.** Any person engaged in land-disturbing activity who fails to 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.
18. **Common Plan of Development.** When a development project contains an approved erosion control plan for the entire development, the Town shall not require a separate erosion control plan for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the following information shall be submitted to the Town:
 - a) Name, address, telephone number, and email of the owner of the lot being developed;
 - b) Street address of the lot being developed;
 - c) Subdivision name;
 - d) Lot number;
 - e) Tax parcel number of lot being developed;
 - f) Total acreage of the lot being developed;
 - g) Total acreage disturbed;
 - h) Anticipated start and completion date;
 - i) Person financially responsible;
 - j) A signature of the person financially responsible;
 - k) Existing platted survey of the lot;
 - l) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.

Except as may be required by federal law, rule or regulation, for any land disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under this subsection (19) the erosion control measures for each individual lot.

19. **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.

Commented [A2]: Appears to be pulled from G.S. Note that projects within a CPD are required to develop a SWPPP to obtain coverage under the NCG01. A plan approved under these requirements would not satisfy these requirements. Approval will need to note this so that the NCG01 review knows to require additional information and items. This may lead to the applicant submitting a revised plan to incorporate the missing items into the plan.

The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by Section 24-6(18) of this Ordinance or G.S. 113A-54.1(e), the following apply:

- a) The inspection shall be performed during or after each of the following phases of the plan:
 - (i) initial installation of erosion and sediment control measures;
 - (ii) clearing and grubbing of existing ground cover;
 - (iii) completion of any grading that requires ground cover;
 - (iv) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - (v) 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 Subsection (18)(a)(iii) of this Section.
- b) Documentation of self-inspections performed under Subsection (18)(a) of this Section shall include:
 - (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - (iii) 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.
 - (iv) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this subsection, 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.

Except as may be required under federal law, rule or regulation, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.

Sec. 27-7. - Basic Control Objectives

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

1. 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.
2. Limit Time of Exposure - All land-disturbing activities are to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of the aforementioned Chapter, or as directed by the Town.
3. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time. Uncovered areas shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Town 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 design storm.
4. 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.
5. Control Sedimentation - All land-disturbing activity is to be planned and conducted to prevent off-site sedimentation damage.
6. Manage Stormwater Runoff - 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.

Sec. 27-8. - Design and Performance Standards

1. Except as provided in Section 27-8(2)(b) 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 twenty-five year storm. Runoff rates shall be calculated using the procedures in the

latest edition of the United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering Field Handbook", or other acceptable calculation procedures.

2. HQW Zones and WPO District. In High Quality Water (HQW) zones and within the Watershed Protection Overlay (WPO) district the following design standards shall apply:

- a) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones or the WPO district shall be planned, designed and constructed to provide protection from the runoff of the fifty year storm which produces the maximum peak rate of runoff as calculated according to procedures in the latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Handbook" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

- b) Sediment Basin Design. Sediment basins within HQW zones or the WPO district shall be designed and constructed 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 3600 cubic feet of storage area per acre of disturbed area;
- (iii) have a minimum surface area of 425 square feet per cfs of the Fifty Year Storm (Q50) peak flow;
- (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 (c)(ii) through (c)(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.

- c) Grade. Newly constructed open channels in HQW zones or the WPO district 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 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.

Sec. 27-9. - Storm Water Outlet Protection

1. 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.
2. Performance standard. A person shall conduct land-disturbing activity so that the post construction velocity of the 25-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - a) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - b) the velocity of the twenty-five year storm runoff in the receiving watercourse prior to development.

If condition (a) or (b) 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>	<u>F.P.S.</u>	<u>M.P.S.</u>
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (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.

3. 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 Town 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:
 - a) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - b) 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;
 - c) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - d) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - e) 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.
4. Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

Sec. 27-10. - Borrow and Waste Areas

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 Town as separate land-disturbing activities.

Sec. 27-11. - 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.

Sec. 27-12. - 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 changes in the stream flow characteristics.

Sec. 27-13. - 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.

Sec. 27-14. - Additional Measures

Whenever the Town determines that accelerated erosion and sedimentation continues despite the installation of protective practices, the Town 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.

Sec. 27-15. - Fees

The Town may establish a fee schedule for the review and approval of Plans in accordance with G.S. 113A-60.

Sec. 27-16. - Plan Appeals

1. Except as provided in Section 27-16(2) of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:
 - a) Any person aggrieved by the disapproval or modification of any proposed Plan by the Town may file an appeal to the Town Board of Adjustment within thirty (30) days after receipt of written notice of disapproval or modification. Failure to file an appeal within this time period shall constitute a waiver of the right to contest the decision. In the absence of evidence to the contrary, notice provided 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.
 - b) Appeals of a disapproval or modification of any proposed Plan shall be taken by filing a notice of appeal and specifying the grounds for appeal with the clerk to the Board of Adjustment. The Town will transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken. The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact support by competent, material evidence.
 - c) If the Board of Adjustment upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall have 15 days from receipt of the decision to appeal the Board of Adjustment's decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d). Notice provided 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.

2. In the event that a Plan is disapproved pursuant to Section 27-6(10) of this ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.

Sec. 27-17. - Inspections and Investigations

1. Inspection. Agents, officials, or other qualified persons authorized by the Town 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.
2. Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Town while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
3. Notice of Violation.
 - a) If the Town 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 G.S. 1A-1, Rule 4.
 - b) 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, 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, and advise whether the person is subject to civil penalties. 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.
 - c) If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Town shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Town, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. 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) In determining the measures required and the time for achieving compliance, the Town shall take into consideration the technology and quantity of work required and shall set reasonable and attainable time limits.
4. Investigation. The Town 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

who presents appropriate credentials for this purpose to enter at reasonable times, any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

5. Statements and Reports. The Town 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.

Sec. 27-18. – Remedies and Penalties

The Town shall have the following remedies and enforcement powers to prevent, correct, stop, abate, or penalize a violation of this Ordinance. The remedies provided for violations of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

1. Civil Penalties

- a) 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. 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 through a notice of violation in accordance with Section 27-17(3), unless the penalty is assessed concurrently with the notice of violation. Refusal to accept the notice or failure to notify the Town of a change of address shall not relieve the violator's obligation to comply with this ordinance or to pay such a penalty.
- b) The maximum civil penalty amount that the Town may assess per violation is five thousand dollars (\$5,000.00). 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).
- 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 pre-construction 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 notice was previously given on the

same tract or to the person responsible for the violation;

- (v) Willful violation of this ordinance;
 - (vi) Failure to install or properly maintain an erosion control measure, structure, or device per the approved plan and additional measures under 27-14, such that it results in sedimentation in a wetland, lake, or watercourse, or other designated protected area;
 - (vii) Failure to install or properly maintain an erosion control measure, structure, or device per the approved plan and additional measures under 27-14, such that it results in off-site sedimentation.
- d) A civil penalty shall not be assessed for the damage or destruction of a silt fence occurring during land disturbing activities or construction on a development project, provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.
- e) The amount of the civil penalty shall be assessed pursuant to the following:
- (i) Violations Involving Conducting a Land-Disturbing Activity Without an Approved Plan
 - a. Any person engaged in a land-disturbing activity without a required approved plan and preconstruction conference or permit in accordance with this ordinance 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 per day, per violation. The penalty may be decreased based on mitigating circumstances provided in Section 27-18(f).
 - (ii) Violations Resulting in Sediment Entering a Wetland, Lake, or Watercourse
 - a. Violations resulting in sediment entering a wetland, lake, or watercourse subject the violator to a civil penalty of \$3,000 per day, per violation. The penalty may be increased up to \$5,000 per day or decreased, based on mitigating circumstances in Section 27-18(f).
 - (iii) Violations Resulting in Off-Site Sedimentation.
 - a. Violations that result in off-site sedimentation subject the violator to a civil penalty of \$1,000 per day, per violation. The penalty may be increased up to \$5,000 per day or decreased, based on mitigating circumstances in Section 27-18(f). Violations of this type may include, but are not limited to, the following:
 - 1. Conducting land-disturbing activities beyond the limits of

an existing permit without approval of an amended plan and permit that result in off-site sedimentation.

2. Failure to properly install or maintain erosion control measures in accordance with the approved plan or the Town of Mooresville Land Development Standards Manual that results in off-site sedimentation.
3. Failure to retain sediment from leaving a land-disturbing activity as required by this ordinance.
4. 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.
5. Any other violation of this ordinance that results in off-site sedimentation.

Commented [A3]: Penalties should be assessed on the 5 factors below specific to each case. Counsel may have comments.

(iv) Violations Not Resulting in Off-Site Sedimentation

- a. Violations of this ordinance that do not result in off-site sedimentation subject the violator to a civil penalty of \$500 per day, per violation. The penalty may be increased up to \$5,000 per day or decreased, based on the factors outlined in Section 27-18(f). Violations of this type may include, but are not limited to, the following:
 1. Failure to comply with the mandatory standards for land-disturbing activity as specified in Section 27-5, except Section 27-5(4) and 27-5(5).
 2. Failure to submit to the Town for approval an acceptable revised erosion and sedimentation control plan after being notified by the Town of the need to do so.
 3. Failure to maintain adequate erosion control measures, structures, or devices to confine sediment.
 4. Failure to follow the provisions on the approved plan.
 5. Any other action or inaction that constitutes a violation of this ordinance that did not result in off-site sedimentation.

- (v) The Town is authorized to vary the amount of the per diem penalty set out in Section 27-18(1) to take into account any relevant mitigating and aggravating factors.

Commented [A4]: Same as above, potentially limiting assessment amounts as well.

f) Civil Penalty Assessment Factors. In determining the amount of the civil

penalty, the Town shall consider any relevant mitigating and aggravating factors, including, but not limited to:

- (i) The effect, if any, of the violation;
- (ii) The degree and extent of harm caused by the violation;
- (iii) The cost of rectifying the damage,
- (iv) Whether the violator saved money through noncompliance;
- (v) Whether the violation was committed willfully;
- (vi) Whether the violator reported the violation to the Town; and
- (vii) The prior record of the violator in complying or failing to comply with this ordinance.

g) Notice of Civil Penalty Assessment. The Town shall determine the amount of the civil penalty and notify the person responsible of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be provided in accordance with Section 27-17(3) and shall direct the violator to either pay the assessment, contest the assessment through an appeal in accordance with the process as outlined in Section 27-16, or file with the North Carolina Sedimentation Control Commission for remission. 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.

h) Final Decision. The final decision on contested assessments shall be made by the Board of Adjustment in accordance with the process outlined in Section 27-16.

i) Appeal of Final Decision. Appeal of the final decision of the Board of Adjustment 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 Board of Adjustment.

j) Collection. If a violator does not pay a civil penalty assessed by the Town within 30 days after it is due or does not request an appeal hearing in accordance with the process outlined in Section 27-16, the Town may institute a civil action in the name of the Town to recover the amount of the assessment. The civil action shall be brought in the Iredell County Superior Court. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not appealed is due when the violator is served with a notice of assessment. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

k) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the Town 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 Town may

Commented [A5]: Section specific to appealing plan disapprovals

Commented [A6]: Remissions have been delegated to the LP for the first request.

Commented [A7]: Include deadline for doing one of these options.

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 the Town for the prior fiscal year.

2. Criminal Penalties. Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued 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 include a fine not to exceed \$5,000 as provided in G.S. 113A-64.
3. Injunctive Relief
 - a) Violation of Local Program. Whenever the Town 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 Town, 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 Town, 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.
4. Restoration After Non-Compliance
 - a) The Town 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 27-19. 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 27-20. Effective Date

This ordinance becomes effective on October 6, 2025.