

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY PLANNING BOARD**

**MEETING DATE:** December 19, 2019

**SUBJECT:** 2019 Annual Land Development Code Text Amendments (Soil Erosion and Sedimentation Control)

**PRESENTER:** Natalie Berry, Project Engineer

**ATTACHMENTS:** 1. Draft Amendments

### **SUMMARY OF REQUEST:**

Recent changes in the state's model ordinance requires Henderson County to amend its soil erosion and sedimentation control regulations. The attached amendments include the necessary revisions required.

### **BOARD ACTION:**

Recommendation by the Planning Board is required prior to the Board of Commissioners adopting any text amendments to the Land Development Code.

### **Suggested Motion:**

I move that the Planning Board forward the following text amendments as discussed to the Board of Commissioners for adoption and that these amendments are consistent with the County's Comprehensive Plan.

## 2019 Annual LDC Text Amendments – Water Quality Amendments

Recommended changes are highlighted in red.

### Text Amendment A: Soil Erosion and Sedimentation Control

#### §42-254. Scope and Exclusions

- A. Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this subpart to all *land-disturbing activity*, this subpart shall not apply to the following types of *land-disturbing activity*:
- (1) ~~An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:~~ **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:**
    - a. forage and sod crops, grain and feed crops, tobacco, cotton, orchards and fruit crops, and peanuts.
    - b. dairy animals and dairy products.
    - c. poultry and poultry products.
    - d. livestock, including beef cattle, **llamas**, sheep swine, horses, ponies, mules, and goats.
    - e. bees and apiary products.
    - f. fur producing animals.
    - g. mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.**
  - (2) An activity *undertaken* on forestland for the production and harvesting of timber and timber products and conducted in accordance with **standards defined by the best management practices set out in** Forest Practice Guidelines Related to Water Quality (**Best Management Practices**), as adopted by *NCDENR*. 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 subpart shall apply to such activity and any related *land-disturbing activity* on the *tract*.
  - (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the *NCGS*.
  - (4) A *land-disturbing activity* over which the State has exclusive regulatory jurisdiction as provided in *NCGS* §113A-56(a).
  - (5) An activity which is essential to protect human life during an emergency.
  - (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.**

- (7) Activities undertaken pursuant to Natural Resources Conservation Services standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations §12.2.

## §42-269. Penalties

### A. Civil Penalties

- (1) Civil Penalty for a Violation. Any *person* who violates any of the provisions of this subpart, or rule or order adopted or issued pursuant to this subpart, or who initiates or continues a *land-disturbing activity* for which an Erosion and Sedimentation Control Plan is required except in accordance with the terms, conditions, and provisions of an approved Erosion and Sedimentation Control Plan or Permit, is subject to a civil penalty. The maximum civil penalty amount that the *Soil Erosion and Sedimentation Control Administrator* may assess per *violation* is 5,000 dollars. A civil penalty may be assessed from the date of the *violation*. Each day of a continuing *violation* shall constitute a separate *violation*. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).]
- (2) Civil Penalty Assessment Factors. The *Soil Erosion and Sedimentation Control Administrator* shall determine the amount of the civil penalty based upon the following factors:
- a. the degree and extent of harm caused by the *violation*,
  - b. the cost of rectifying the damage,
  - c. the amount of money the violator saved by noncompliance,
  - d. whether the *violation* was committed willfully, and
  - e. the prior record of the violator in complying or failing to comply with this subpart.

Notice of Civil Penalty Assessment. The *Soil Erosion and Sedimentation Control Administrator* shall provide notice of the civil penalty amount and basis for assessment to the *person* assessed. The notice of assessment shall be served by any means authorized under *NCGS* 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the

**North Carolina General Statutes and a stipulation of the facts on which the assessment was based.**

- (3) Hearing. A hearing on a civil penalty shall be conducted by the *ZBA* within 30 days after the date of the written demand for the hearing.
- (4) Final Decision. The *Board of Adjustment* shall render its final decision **on contested assessments** on the civil penalty within 45 days of the receipt of the *appeal*.
- (5) Appeal of Final Decision. Appeal from the final decision of the *Board of Adjustment* shall be to the Competent Court of Jurisdiction.
- (6) Collection. If payment is not received within ~~30~~ **60** days after it is due, Henderson County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the *violation* occurred, or the violator's residence or where the violator's principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (7) Credit of Civil Penalties. Civil penalties collected pursuant to this subpart shall be credited to the Civil Penalty and Forfeiture Fund. **Penalties collected by Henderson County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each county for the prior fiscal year. [In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]**