



JUNE 6, 2022

TO: AUTUMN RADCLIFF; MATT CHAMPION

FROM: NATALIE J BERRY, PE

SUBJECT: SOIL EROSION AND SEDIMENTATION CONTROL REVISIONS

CC: DEB JOHNSTON, PE

Enclosed you will find the entire LDC marked up in red with required changes.

Most redlines came from Henderson County Soil Erosion and Sediment Control State Audit of our local program in July of 2021. Henderson County received a letter requesting that we update our local soil erosion and sedimentation control ordinance to reflect the changes to the North Carolina State Model Ordinance that the NC Sediment Control Commission approved during their meetings.

Summary of Session Law Changes:

On August 30, 2021, Governor Cooper signed S.L. 2021-121 into law.

SECTION 3.(b) amends the General Statutes pertaining to Local Planning and Development Regulation to require that local government erosion and sedimentation control program (“Local Program”) fees not exceed those authorized under the Sediment Act. Fee limitations that apply to a certain type of development have now been defined under G.S. 113A-60(a) of the Sediment Act and discussed in SECTION 5.(c) as reiterated below. **This change is reflected in section 42-265.C. S.L. 2021-121 became effective October 1, 2021.**

SECTION 5.(c) amends the Sediment Act under G.S. 113A-60(a) to say that the fee for any single-family lot which is less than one (1) acre in disturbance within a subdivision or common plan of development cannot exceed \$100.00. Please check and adjust your fee schedules as necessary. **This change is reflected in section 42-265.C.**

Currently, erosion and sedimentation control plans submitted to the Site Development Department are required to be sealed. Note that item (12) eliminates the requirement by local governments for a sealed E&SC plan for those lots disturbing less than one (1) acre of land as defined in subsection (b1). The subsection includes an exception for design features that are required to be sealed under federal or State law or regulation. **This change is reflected in the ordinance under Section 42-253.C.(1) by striking through b and c. We will no longer have the steep slope permit requirement in our ordinance. No need to have this requirement if a Design Professional is not creating the development plan.**

Finally, SECTION 5.(d) amends the Sediment Act under G.S. 113A-61.1 by adding subsection (d) to eliminate the possibility of a civil penalty being issued for silt fence damage without advance notice of the violation and being given the opportunity to repair the damage. This does not apply to any damage from off-site sediment that occurs due to the silt fence not being in place, merely the damage to the silt fence itself. **This change is reflected in the ordinance under Section 42-268.A.(2) addition.**

SECTION 5.(a) amends the Sediment Act under G.S. 113A-64.2(a) to require requests for the remission of civil penalties to be filed within 30 days of receipt of the notice of assessment. This change is reflected in the ordinance under Section 42-268.A.(7) addition.

SECTION 10.(a) amends the Sediment Act under G.S. 113A-61.1(c) to eliminate the requirement for hand-delivery of notices of violation to first-time offenders. Assistance in developing corrective measures to first-time offenders is still required. This change is reflected in the ordinance under Section 42-267.C revisions.

S.L. 2021-158 became effective on October 1, 2021.

Subpart E. Soil Erosion and Sedimentation Control

§42-252 Purpose

This subpart 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*; (2) protecting economic and ecological integrity of the County; and (3) establishing procedures through which these purposes can be fulfilled.

§42-253. Scope and Exclusions

- A. Geographical Scope of Regulated Land-Disturbing Activity. This subpart shall apply to *land-disturbing activity* within the unincorporated areas of Henderson County and its municipalities as allowed by agreement between *local governments*, the extent of annexation or other appropriate legal instrument or law.
- B. Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this subpart to all *land-disturbing activity*, this subpart shall not apply to the following types of *land-disturbing activity*:
 - (1) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - 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 Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by North Carolina Department of Agriculture and Consumer Services. ~~NC DENR~~. 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 ~~NC GS~~ General Statutes.

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- (4) A *land-disturbing activity* over which the State has exclusive regulatory jurisdiction as provided in ACGS, G.S. §113A-56(a).
 - (5) An activity which is essential to protect human life during an emergency.
 - (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
 - (7) Activities undertaken pursuant to Natural Resources Conservation Services standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations §12.2.
- C. Plan Approval Requirement for Land-Disturbing Activity. No ~~Person~~ shall undertake any *land-disturbing activity* subject to this subpart without first obtaining ~~a an Erosion and Sedimentation Control~~ Plan approval from the *Soil Erosion and Sedimentation Control Administrator*.
- (1) For the purpose of the subpart, an erosion control plan shall be required for:
 - a. Any *land-disturbing activity* which uncovers one or more acres (43,560 square feet) of land.
 - ~~b. Any *land-disturbing activity* which uncovers one-half (1/2) acre or more (21,780 square feet) of land with an *average slope* of 16 percent (7.2 degrees) to 25 percent (11.25 degrees) in its natural state. The *average slope* shall be calculated only for the disturbed area.~~
 - ~~c. Any *land-disturbing activity* which uncovers one-quarter (1/4) acre or more (10,890 square feet) of land with an *average slope* over 25 percent (11.25 degrees in its natural state). The *average slope* shall be calculated only for the disturbed area.~~
- D. Protection of Property. *Persons* conducting *land-disturbing activity* shall take all reasonable measures to protect all public and private property from damage caused by such activity.
- E. More Restrictive Rules Shall Apply. Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.
- F. Plan Approval Exceptions. Notwithstanding the general requirement to obtain an Erosion and Sedimentation Control Plan approval prior to undertaking *land-disturbing activity*, ~~an Erosion and Sedimentation Control~~ Plan approval shall not be required for *land-disturbing activity* that does not exceed ~~the provisions as specified in §42-253 (Scope and Exclusions) C (Plan Approval Requirement for Land Disturbing Activity)~~. No Erosion and Sedimentation Control Plan approval is required if a building permit has been obtained prior to the effective date of this subpart (October 1, 2007) and Erosion and Sedimentation Control Plan approval was not required under State rules. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

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§42-254. Mandatory Standards for Land Disturbing Activity

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

A. Buffer Zone

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

- a. Projects On, Over or Under Water. This subsection 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*.
- b. Buffer Measurement. Unless otherwise provided, the width of a *buffer zone* is measured horizontally from the edge of the ~~bankfull elevation~~ to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the *land-disturbing activity* containing natural or artificial means of confining visible *siltation*.

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(2) Trout Buffer. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed *buffer zone* 25 feet wide or of sufficient width to confine visible *siltation* within the 25 percent of the *buffer zone* nearest the *land-disturbing activity*, whichever is greater. Provided, however, that the ~~North Carolina Sedimentation Control~~ Commission may approve plans which include *land-disturbing activity* along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal.

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- a. Projects On, Over or Under Water. This subsection 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*.
- b. Trout Buffer Measurement. The 25 foot minimum width for an undisturbed *buffer zone* adjacent to designated trout waters shall be measured horizontally from the top of the bank to the nearest edge of the disturbed area.
- c. Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, *land-disturbing activities* in the *buffer zone* adjacent to designated trout waters shall be limited to a maximum of ten (10) percent of the total length of the *buffer zone* within the *tract* to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of *buffer zone*. Larger areas may be disturbed with the written approval of the Director ~~of the Division of Land Resources of NC DENR~~.
- d. Limit on Temperature Fluctuations. No *land-disturbing activity* shall be *undertaken* within a *buffer zone* adjacent to designated trout waters that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards."

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B. Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate *erosion* control devices or *structures*. In any event, slopes left exposed will, within 21 calendar days of completion of any *phase of grading*, be planted or otherwise provided with temporary or permanent *ground cover*, devices, or *structures* sufficient to restrain *erosion*. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

C. Fill Material. ~~Unless a permit from NC DENR's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding 12 inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina. Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is a permitted by the Department's from NC DENR'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.~~ is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding 12 inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

D. Ground Cover. Whenever land-disturbing activity that will disturb more than one 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 §42-257 (Design and Performance Standards) B(5) of this subpart, provisions for a *ground cover* sufficient to restrain *erosion* must be accomplished within 21 90 calendar days following *completion of construction or development*.

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

~~E.F.~~ The land disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

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§42-255. Erosion and Sedimentation Control Plans

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- A. Pre-Submittal Conference. A pre-submittal conference can be requested by a *person* or an agent of that party conducting *land-disturbing activity*. At the pre-submittal, the *Soil Erosion and Sedimentation Control Administrator* shall inform the *applicant* of the processes involved with Erosion and Sedimentation Control Plan review and approval, issuance of an Erosion and Sedimentation Control Plan Certificate and Letter of Approval, and the relationship of said Erosion and Sedimentation Control Plan and Letter of Approval with zoning, building code, and other land-use regulations in effect in Henderson County. At the time of application submission, the *Soil Erosion and Sedimentation Control Administrator* also shall notify the *applicant* of the *appeal* process as provided in the subpart.
- B. Plan Submission. An Erosion and Sedimentation Control Plan shall be prepared for all *land-disturbing activities* subject to this subpart. An Erosion and Sedimentation Control Plan shall be prepared by a *design professional*. Three (3) copies of the Erosion and Sedimentation Control Plan shall be filed with the *Soil Erosion and Sedimentation Control Administrator* at least 30 days prior to the commencement of the proposed activity.
- C. Financial Responsibility and Ownership. Erosion and Sedimentation Control Plans may be disapproved when not accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the *person* financially responsible for the *land-disturbing activity* or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the *person* financially responsible, (2) the *owner* of the land, and (3) any registered agents. If the *person* financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Erosion and Sedimentation Control Plan, the North Carolina Sedimentation Pollution Control Act of 1973, this subpart, or rules or orders adopted or issued pursuant to this subpart. 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*.
- D. Environmental Policy Act Document. Any Erosion and Sedimentation Control Plan submitted for a *land-disturbing activity* for which an environmental document is required by the North Carolina Environment Policy Act (*NCGS* §113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The *Soil Erosion and Sedimentation Control Administrator* shall promptly notify the *person* submitting the Erosion and Sedimentation Control Plan that the 30 day time limit for review of the Erosion and Sedimentation Control Plan pursuant to this subpart shall not begin until a complete environmental document is available for review.
- E. Content. The Erosion and Sedimentation Control Plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the *tract* and the measures planned to comply with the requirements of this subpart. Erosion and Sedimentation Control Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Erosion and Sedimentation Control Plan

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preparation may be obtained from the *Soil Erosion and Sedimentation Control Administrator* on request.

- F. Erosion and Sedimentation Control Design Manual. Appropriate *erosion* and *sedimentation* practices and measures shall be in accordance to the *Erosion and Sedimentation Control Design Manual* developed by the State or any Erosion and Sedimentation Control Design Manual adopted by Henderson County or any supplemental materials.
- G. Soil and Water Conservation District Comments. The Henderson County Soil and Water Conservation District, created pursuant to *NCGS* Chapter 139, and hereafter “the District” shall review the Erosion and Sedimentation Control Plan and submit any comments and recommendations to the *Soil Erosion and Sedimentation Control Administrator* within 20 days after the District received the Erosion and Sedimentation Control Plan or within any shorter period of time as may be agreed upon by the District and Henderson County. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the Erosion and Sedimentation Control Plan.
- H. Timeline for Decisions on Plans. The *Soil Erosion and Sedimentation Control Administrator*, will review each complete Erosion and Sedimentation Control Plan submitted to them and within 30 days of receipt thereof will notify the *person* submitting the Erosion and Sedimentation Control Plan that it has been approved, approved with modifications, ~~approved with performance reservations~~, or disapproved. Failure to approve, approve with modifications, or disapprove a complete Erosion and Sedimentation Control Plan within 30 days of receipt shall be deemed approval. The *Soil Erosion and Sedimentation Control Administrator* will review each revised Erosion and Sedimentation Control Plan submitted to them and within 15 days of receipt thereof will notify the *person* submitting the Erosion and Sedimentation Control Plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Erosion and Sedimentation Control Plan within 15 days of receipt shall be deemed approval.
- I. Approval. The *Soil Erosion and Sedimentation Control Administrator* shall only approve an Erosion and Sedimentation Control 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 *Soil Erosion and Sedimentation Control Administrator* shall condition approval of Erosion and Sedimentation Control Plans upon the *applicant’s* compliance with federal and state water quality laws, regulations and rules. The *Soil Erosion and Sedimentation Control Administrator* may establish an expiration date, not to exceed three (3) years, for Erosion and Sedimentation Control Plans approved under this subpart.
- J. Disapproval for Content. The *Soil Erosion and Sedimentation Control Administrator* may disapprove an Erosion and Sedimentation Control Plan or draft Erosion and Sedimentation Control Plan based on its content. A disapproval based upon an Erosion

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and Sedimentation Control Plan's content must specifically state in writing the reasons for disapproval.

- K. Other Disapprovals. The *Soil Erosion and Sedimentation Control Administrator* may disapprove an Erosion and Sedimentation Control Plan or draft Erosion and Sedimentation Control Plans if implementation of the Erosion and Sedimentation Control Plan would result in a *violation* of the rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A *local government* may disapprove an Erosion and Sedimentation Control Plan upon finding that an *applicant*, or a *parent, subsidiary*, or other *affiliate* of the *applicant*:
- (1) Is conducting or has conducted *land-disturbing activity* without an approved Erosion and Sedimentation Control Plan, or has received notice of *violation* of an Erosion and Sedimentation Control Plan previously approved by the North Carolina Sedimentation Control Commission or a *local government* pursuant to the North Carolina Sedimentation Pollution Control Act of 1973 and has not complied with the notice within the time specified in the notice;
 - (2) Has failed to pay a civil penalty assessed pursuant to the North Carolina Sedimentation Pollution Control Act of 1973 or a local ordinance adopted pursuant to the North Carolina Sedimentation Pollution Control Act of 1973 by the time the payment is due;
 - (3) Has been convicted of a misdemeanor pursuant to *NCG S §113A-64(b)* or any criminal provision of a local ordinance adopted pursuant to the North Carolina Sedimentation Pollution Control Act of 1973; or
 - (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the North Carolina Sedimentation Pollution Control Act of 1973.

For purposes of this subsection, an *applicant's* record may be considered for only the two (2) years prior to the application date.

In the event that an Erosion and Sedimentation Control Plan is disapproved pursuant to this subsection, the *Soil Erosion and Sedimentation Control Administrator* shall notify the Director of the Division of Land Resources of *NCDENR* of such disapproval within ten (10) days. The *Soil Erosion and Sedimentation Control Administrator* shall advise the *applicant* and the Director of the Division of Land Resources of *NCDENR* in writing as to the specific reasons that the Erosion and Sedimentation Control Plan was disapproved.

- L. Notice of Activity Initiation. No *person* may initiate a *land-disturbing activity* before notifying the agency that issued the Erosion and Sedimentation Control Plan approval of the date that *land-disturbing activity* will begin.
- M. Preconstruction Conference. When deemed necessary by the approving authority a preconstruction conference may be required.
- N. Display of Plan Approval. An Erosion and Sedimentation Control Plan approval issued under this subpart shall be prominently displayed until all construction is complete, all permanent *sedimentation* and *erosion* control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

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- O. Required Revisions. After approving an Erosion and Sedimentation Control Plan, if the *Soil Erosion and Sedimentation Control Administrator* either upon review of such Erosion and Sedimentation Control Plan or on inspection of the job site, determines that a significant risk of *accelerated erosion* or off-site *sedimentation* exists, the *Soil Erosion and Sedimentation Control Administrator* shall require a revised Erosion and Sedimentation Control Plan. Pending the preparation of the revised Erosion and Sedimentation Control 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 Erosion and Sedimentation Control Plan, the *Soil Erosion and Sedimentation Control Administrator* determines that the Erosion and Sedimentation Control Plan is inadequate to meet the requirements of this subpart, the *Soil Erosion and Sedimentation Control Administrator* may require any revision of the Erosion and Sedimentation Control Plan that is necessary to comply with this subpart.
- P. Amendment to a Plan. Applications for amendment of an Erosion and Sedimentation Control 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 *Soil Erosion and Sedimentation Control Administrator* the *land-disturbing activity* shall not proceed except in accordance with the Erosion and Sedimentation Control Plan as originally approved.
- Q. Failure to File a Plan. Any *person* engaged in *land-disturbing activity* who fails to file an Erosion and Sedimentation Control Plan in accordance with this subpart, or who conducts a *land-disturbing activity* except in accordance with provisions of an approved Erosion and Sedimentation Control Plan shall be deemed in *violation* of this Chapter.

§42-256. Basic Control Objectives

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

- A. Identify Critical Areas. On-site areas which are subject to severe *erosion*, and off-site areas which are especially vulnerable to damage from *erosion* and/or *sedimentation*, are to be identified and receive special attention.
- B. Limit Time of Exposure. All *land-disturbing activities* are to be planned and conducted to limit exposure to the shortest feasible time.
- C. Limit Exposed Areas. All *land-disturbing activity* is to be planned and conducted to minimize the size of the area to be exposed at any one (1) time.
- D. Control Surface Water. Surface water runoff originating upgrate of exposed areas should be controlled to reduce *erosion* and *sediment* loss during the period of exposure.
- E. Control Sedimentation. All *land-disturbing activity* is to be planned and conducted so as to prevent off-site *sedimentation* damage.
- F. Manage *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, an Erosion and Sedimentation Control Plan is to include measures

to control the *velocity* to the point of discharge so as to minimize *accelerated erosion* of the site and increased *sedimentation* of the stream.

§42-257. Design and Performance Standards

A. Except as provided in §42-257 (Design and Performance Standards) B(2) of this subpart, *erosion* and *sedimentation* control measures, *structures*, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten (10) year storm. Runoff rates shall be calculated using the procedures in the ~~USDA, United States Department of Agriculture (USDA), Soil Natural Resource Conservation Service’s “National Engineering Field Handbook”, Manual for Conservation Practices”~~, or other acceptable calculation procedures.

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

(1) Limit on Uncovered Area. *Uncovered* areas in *HQW zones* shall be limited at any time to a maximum total area of 20 acres within the boundaries of the *tract*. Only the portion of the *land-disturbing activity* within a *HQW zone* shall be governed by this section. Larger areas may be *uncovered* within the boundaries of the *tract* with the written approval of the Director ~~of the Division of Land Resources of NC DENR upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design that the Twenty-Five Year Storm.~~

(2) Maximum Peak Rate of Runoff Protection. *Erosion* and *sedimentation* control measures, *structures*, and devices within *HQW zones* shall be planned, designed and constructed to provide protection from the runoff of the *25-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 Soil 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.

~~(3) Settling Efficiency. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two (2) year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service’s “National Engineering Field Manual for Conservation Practices” or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.~~

Sediment Basin Design. Sediment basins within HQW zones shall be designed and constructed according to the following or association.

(i) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;

(ii) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;

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(iii) have a minimum surface area of 325 square feet per cfs of the Twenty-Five Year Storm (Q25) 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.

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

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(4) Grade. Newly constructed open channels in *HQW zones* shall be designed and constructed with side slopes no steeper than two (2) horizontal to one (1) vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other ~~acceptable forms 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*.

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~~(5) Ground Cover. Ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.~~

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§42-258. Stormwater Outlet Protection

- A. Intent. Stream banks and channels downstream from any *land-disturbing activity* shall be protected from increased degradation by *accelerated erosion* caused by increased *velocity* of runoff from the *land-disturbing activity*.
- B. Performance Standard. *Persons* shall conduct *land-disturbing activity* so that the post construction *velocity* of the ten (10) year storm runoff in the receiving watercourse to the *discharge point* does not exceed the greater of:
 - (1) the *velocity* established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the *velocity* of the *ten-year storm* runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the *discharge point* shall be designed and constructed to withstand the expected *velocity* anywhere the *velocity* exceeds the "prior to development" *velocity* by 10 percent.

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.):

Table 8.1. Maximum Permissible Velocities		
Material	Feet Per Second (F.P.S.)	Meters Per Second (M.P.S.)
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.

C. Acceptable Management Measures. Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Henderson County Soil Erosion and Sedimentation Control Administrator recognizes that the management of *stormwater runoff* to minimize or control downstream channel and bank *erosion* is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and *velocity* by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in *stormwater* discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high *velocity* paved sections;
- (3) Provide *energy dissipators* at outlets of *storm drainage facilities* to reduce flow velocities to the point of discharge;
- (4) Protect watercourses subject to *accelerated erosion* by improving cross sections and/or providing *erosion-resistant* lining; and

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(5) Upgrade or replace the receiving device *structure* or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased *velocity*.

D. Exceptions. This rule shall not apply where it can be demonstrated to the Henderson County Soil Erosion and Sedimentation Control Administrator that *stormwater* discharge velocities will not create an *erosion* problem in the receiving watercourse.

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§42-259. Borrow and Waste Areas

~~When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by NCDENR's Division of Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.~~

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

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§42-260. 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. ~~Whenever an access or haul road adjoins a dedicated public or private road, sufficient depth, width, and type of stone, properly compacted, shall be installed as a mud matt to prevent the accumulation of soil and mud on existing roads.~~

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§42-261. Operations in Lakes or Natural Watercourses

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

§42-262. 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 subpart, the ~~North Carolina Sedimentation Pollution Control Act of 1973, or any order adopted pursuant to this subpart or the North Carolina Sedimentation Pollution Control Act of 1973.~~ 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 right-of-way* or *easement* accepted for maintenance by a governmental agency.

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§42-263. Additional Measures

Whenever the Henderson County Soil Erosion and Sedimentation Control Administrator determines that ~~significant accelerated erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.~~ continues despite the installation of protective practices, they shall direct the Person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

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§42-264. Existing Uncovered Areas

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- A. ~~All uncovered areas existing on the effective date of this subpart which resulted from land-disturbing activity, exceed one (1) acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.~~
- B. ~~The Soil Erosion and Sedimentation Control Administrator shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the North Carolina Sedimentation Pollution Control Act of 1973, this subpart, a rule or order adopted or issued pursuant to the North Carolina Sedimentation Pollution Control Act of 1973 by the North Carolina Sedimentation Control Commission or by the Soil Erosion and Sedimentation Control Administrator. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in GS 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.~~
- C. ~~The Soil Erosion and Sedimentation Control Administrator reserves the right to require preparation and approval of an Erosion and Sedimentation Control Plan in any instance where extensive control measures are required.~~
- D. ~~This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.~~

§42-265. Fees

- A. Henderson County may establish a fee schedule for the review and approval of ~~Erosion and Sedimentation Control~~ Plans.
- B. In establishing the fee schedule, the County shall consider the administrative and personnel costs incurred for reviewing the Erosion and Sedimentation Control Plans and for related compliance activities.
- ~~B.C. Under G.S. §113A-60(a), the fee for a single-family lot in a residential, or common plan of development that is less than one acre cannot exceed \$100.00/lot.~~

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§42-266. Plan Appeals

- A. Except as provided in §42-266 (Plan Appeals) B of this subpart, the *appeal* of a disapproval or approval with modifications of ~~an Erosion and Sedimentation Control Plan~~ shall governed by the following provisions:

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- (1) The disapproval or modification of any proposed ~~Erosion and Sedimentation Control~~ Plan by the Henderson County Soil Erosion and Sedimentation Control Administrator shall entitle the person submitting the ~~Erosion and Sedimentation Control~~ Plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
- (2) A hearing held pursuant to this section shall be conducted by the Henderson County Zoning Board of Adjustment (ZBA) within 60 days after the date of the *appeal* or request for a hearing.
- (3) The ZBA will render its final decision on any *appeal* within 45 days of the completion of the hearing.
- (4) If the ZBA upholds the disapproval or modification of a proposed ~~Erosion and Sedimentation Control~~ Plan following the hearing, the person submitting the ~~Erosion and Sedimentation Control~~ Plan shall then be entitled to *appeal* the County's decision to the ~~Competent Court of Jurisdiction~~. Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B.0118(d).

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- B. In the event that an ~~Erosion and Sedimentation Control~~ Plan is disapproved pursuant to §42-255 (Erosion and Sedimentation Control Plans) J of this subpart, the *applicant* may *appeal* the Henderson County Board of Adjustment's disapproval of the ~~Erosion and Sedimentation Control~~ Plan directly to the North Carolina Sediment Control Commission.

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§42-267. Inspections and Investigations

- A. Inspection. Agents, officials, or other qualified *persons* authorized by the Henderson County Soil Erosion and Sedimentation Control Administrator will periodically inspect *land-disturbing activities* to ensure compliance with the ~~North Carolina Sedimentation Pollution Control Act of 1973~~, this subpart, or rules or orders adopted or issued pursuant to this subpart, and to determine whether the measures required in the ~~Erosion and Sedimentation Control~~ Plan ~~or Permit~~ 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 ~~Erosion and Sedimentation Control~~ Plan.
- B. Willful Resistance, Delay or Obstruction. No *person* shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County, while that *person* is inspecting or attempting to inspect a *land-disturbing activity* under this section.
- C. Notice of Violation. If the Henderson County Soil Erosion and Sedimentation Control Administrator determines that a person engaged in *land-disturbing activity* has failed to comply with the ~~North Carolina Sedimentation Pollution Control Act of 1973~~, this subpart, or rules, or orders adopted or issued pursuant to this subpart, a notice of *violation* shall be served upon that person. The notice may be served by any means authorized under NCGS 1A-1, Rule 4 upon the *person* conducting the *land-disturbing activity* and, if different from that party, the property *owner*. The notice shall specify a date, by which the *person* must comply with the ~~North Carolina Sedimentation Pollution Control Act of 1973~~, or this subpart, or rules, or orders adopted pursuant to this subpart, and inform the

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~~Person~~ of the actions that need to be taken to comply with the ~~North Carolina Sedimentation Pollution Control Act of 1973~~, this subpart, or rules or orders adopted pursuant to this subpart. 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 NCGS §113A-64 and this subpart. ~~If the Person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the (city)(town)(county) shall offer assistance in developing corrective measures. 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 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.~~

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~~D. Revocation of Permits. The notice shall set forth the actions necessary to achieve compliance with the plan or this section, specify a reasonable time period within which such measures must be completed, and warn that failure to correct the violation within the time period will result in one or more of the following:~~

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- ~~(1) Revocation of the land-disturbing permit, all building permits, and any other permits issued by the County;~~
- ~~(2) The issuance of a stop work order;~~
- ~~(3) The assessment of civil penalties; or~~
- ~~(4) Other enforcement action.~~

~~If work has not begun within six (6) months following the issuance date, the land-disturbing permit shall be deemed expired. Renewal of the land-disturbing permit will require submittal of a new application and associated plan review fees. No grading work is to be performed until the new permit is issued.~~

E. Investigation. The ~~Henderson County Soil Erosion and Sedimentation Control Administrator~~ shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this subpart, and ~~who presents appropriate credentials~~ for this purpose to enter at reasonable times ~~upon~~ any property, public or private, for the purpose of investigating and inspecting the sites of any ~~land-disturbing activity~~.

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F. Statements and Reports. The ~~Henderson County Soil Erosion and Sedimentation Control Administrator~~ 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~~.

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§42-268. 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

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that the Henderson County 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).]

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~~(1) Damage or Destruction of a silt fence occurring during land-disturbance activities or construction on a development project shall not be assessed a civil penalty provided that the silt fence is repaired or replaced within the compliance period/deadline noted in the inspection report or notice of violation. This will ensure violators have an opportunity to correct these violations. G.S. §113A-61.1(d) does not apply to off-site sediment that occurs due to the silt fence not being in place, but merely damage to the silt fence itself.~~

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(2) ~~(3)~~ Civil Penalty Assessment Factors. The Henderson County Soil Erosion and Sedimentation Control Administrator shall determine the amount of the civil penalty based upon the following factors:

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- 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 Henderson County 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 G.S. 1A-1, Rule 4, and A notice of assessment by the Henderson County Soil Erosion and Sedimentation Control Administrator shall direct the violator to either pay the assessment, ~~or~~ contest the assessment, within 30 days by filing a petition for hearing with the Henderson County Zoning Board of Adjustment, or file a request with the Henderson County Board of Commissioners for remission of the assessment within 30 days of ~~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.

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~~(3)(4) 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.~~

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~~(4)(5)~~ 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.~~ The final decision on contested assessments shall be made by the Henderson County Zoning Board of Adjustment within 45 days of receipt of the assessment.

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(6) Appeal of Final Decision. Appeal from the final decision of the Henderson County Board of Adjustment shall be to the ~~Competent Court of Jurisdiction~~ Superior Court of the county, where the violation occurred. Such appeals must be made within 30 days of the final decision of the Henderson County Zoning Board of Adjustment.

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(7) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Henderson County Board of Commissioners within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:

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

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

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

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

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

~~(5)(vi)~~ The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

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~~(6)(8)~~ Collection. If payment is not received within ~~60~~ 30 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.

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~~(7)(9)~~ 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 by Henderson County for the prior fiscal year. ~~each county for the prior fiscal year.~~ [In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

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B. Criminal Penalties. Any person who knowingly or willfully violates any provision of this subpart, or rule or order adopted or issued by the Commission or a local government, ~~pursuant to this subpart,~~ or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed 5,000 dollars as provided in NCGS §113A-64.

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§42-269. Injunctive Relief

A. Violation of Local Program. Whenever Henderson County has reasonable cause to believe that any *person* is violating or threatening to violate any subpart, rule, regulation or order adopted or issued by Henderson County, or any term, condition, or provision of an approved Erosion and Sedimentation Control Plan, it may, either before or after the institution of any other action or proceeding authorized by this subpart, institute a civil action in the name of the County, for injunctive relief to restrain the *violation* or threatened *violation*. The action shall be brought in the superior court of the county in which the *violation* is occurring or is threatened.

B. Abatement of Violation. Upon *determination* by a court that an alleged *violation* is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the *violation*, to ensure that restoration is performed, or to prevent the threatened *violation*. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for *violations* of this subpart.

§42-270. Restoration After Non-Compliance

The Henderson County Soil Erosion and Sedimentation Control Administrator may require a person who engaged in a *land-disturbing activity* and failed to retain *sediment* generated by the activity, as required by NCGS 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 subpart.

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§42-271. Severability

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

§42-272. Effective Date

May 18, 2022

This subpart becomes effective on October 1, 2007.

§42-273. Reserved

§42-274. Reserved

§42-275. Reserved

§42-276. Reserved

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§42-289. Reserved

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§42-291. Reserved

§42-292. Reserved

**ARTICLE XIV
DEFINITIONS**

§42-391. Definitions

The following definitions shall apply to this Chapter.

ABC. Aggregate Base Course.

Accelerated Erosion. Any increase over the rate of *natural erosion* as a result of *land-disturbing activity*.

Access Control Device. Equipment and/or machinery that opens and closes an *entry gate* (See Chapter 47 of the Henderson County Code, *Entry Gates*).

Accommodation. A portion of a *building* providing complete and permanent living facilities for one (1) family.

Act. (Soil Erosion and Sedimentation Control) the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate Erosion Control Measure, Structure, or Device. One which controls the soil material within the land area under responsible control of the *Person* conducting the *land-disturbing activity*.

Adequate Lighting. (See *Lighting, Adequate*).

Addition. An extension or increase in the *floor area* or height of an existing *structure*.

Administrative Amendment. (See *Amendment, Administrative*).

Administrator, Communication Facilities. The individual (*Zoning Administrator* or his/her designee) appointed and authorized to administer and enforce the communication facilities regulations under the terms and conditions of this Chapter.

Administrator, Floodplain. The individual (*Zoning Administrator* or his/her designee) appointed and authorized to administer and enforce the *floodplain management regulations* under the terms and conditions of this Chapter.

Administrator, Manufactured Home Park. The individual (*Zoning Administrator* or his/her designee) appointed and authorized to administer and enforce the *manufactured home park* regulations under the terms and conditions of this Chapter.

Administrator, Soil Erosion and Sedimentation Control. The Henderson County authorized *person* or his/her designee responsible for the County's Erosion and Sediment Control Program.

Administrator, Subdivision. The individual (*Planning Director* or his/her designee) appointed and authorized to administer and enforce the *subdivision* regulations under the terms and conditions of this Chapter.

Administrator, Zoning. The individual appointed and authorized to administer and enforce various regulations under the terms and conditions of this Chapter.

Administrator, Water Quality . The individual (Administrator or his/her designee) appointed and authorized to administer and enforce those regulations related to *water supply watershed* protection and *stormwater* management under the terms and conditions of this Chapter.

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Appeal. A request for a review of: (1) the *Zoning Administrator's* interpretation of any provision of this Chapter; (2) any official written *determination* by the *Zoning Administrator*; (3) the *Subdivision Administrator's* interpretation of any *subdivision* regulations/provisions of this Chapter; (4) any official written *determination* by the *Subdivision Administrator*; (5) the *Soil Erosion and Sedimentation Control Administrator's* interpretation of any soil erosion and sedimentation regulations/provisions of this Chapter; (6) any official written *determination* by the *Soil Erosion and Sedimentation Control Administrator*; (7) the *Floodplain Administrator's* interpretation of any flood damage prevention regulations/provisions of this Chapter ; or (8) any decision made by a planning agency or governing body. An appeal must be made within 30 days of an official written *determination* by the *Zoning/Subdivision/Soil Erosion and Sedimentation Control Administrator* or an official decision made by a planning agency or governing body.

Applicant. The party submitting an application, petition or seeking other approval required by this Chapter. An applicant includes a firm, association, organization, partnership, corporation, company, trust, individual or governmental unit or any other entity usually defined in legal usage as a *person*.

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

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Area of Shallow Flooding. A designated AO Zone on a community's *Flood Insurance Rate Map (FIRM)* with *base flood* depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard. (See *Special Flood Hazard Area (SFHA)*).

Asphalt Plant. An establishment (portable or nonportable) engaged in petroleum refining; manufacturing involving various compositions of asphalt and tar with other materials (asphalt-type roofing materials, asphalt/tar paving mixtures, asphalt paving block and various other compositions of asphalt or tar with other materials); and the recycling of old asphalt into asphalt-type material.

Assisted Living Residence. A group housing and services program for seven (7) or more unrelated persons, by whatever name it is called, that makes available, at a minimum, one (1) meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department of Health and Human Services may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from *nursing homes* subject to provisions of *NCGS §131E-102 (NCGS §131D-2(1d))*. *Extended care facilities* with seven (7) or more residents (excluding *hospice residential care facilities* and *nursing homes*) shall, for the purposes of this Chapter, be included with and permitted in the same fashion as an assisted living residence.

Automobile and Equipment Service. An establishment primarily engaged in providing service to automobiles and equipment. An automobile and equipment service may include auto inspection stations and/or tire recapping as *accessory uses* provided each is conducted within an enclosed *structure* and that neither is the principal business.

Bankfull. The flow stage of a river in which the stream completely fills its channel and the elevation of the water surface coincides with the bank margins.

Base Flood. The flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE). A determination of the water surface elevations of the base flood as published in the *Flood Insurance Study*. When the BFE has not been provided in a *Special Flood Hazard Area*, it may be obtained from engineering studies available from a Federal, State or other source using FEMA approved engineering methodologies. This elevation, when combined with *freeboard*, established the *Regulatory Flood Protection Elevation*.

Basement. That portion of a *structure* which is partly or completely below grade.

Basement (Flood Damage Prevention). Any area of the *structure* having its *floor* sub-grade (below ground level) on all sides.

Bathroom (Bed and Breakfast Inn). A room with at least one (1) shower or tub, water closet and lavatory (lavatories may be located within *bedrooms*) (NCAC 15A, 18A .3001).

Bed and Breakfast Inn. A business of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine (9) but not more than 23 persons per night for a period of less than one (1) week, and that: does not serve food or drink to the general public for pay; serves only the breakfast meal to overnight guests of the business; includes the price of breakfast in the room rate; and is the permanent residence of the *owner/manager* of the business (NCGS §131A-247(6)).

Bedroom. A bedroom as that term is defined in the North Carolina Building Code as amended.

Being Conducted. A *land-disturbing activity* has been initiated and ~~permanent stabilization of the site has not been completed not deemed complete by the Approving Authority.~~

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Berm. An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise or fulfill other such purposes.

Best Management Practices (BMP), Stormwater. A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Best Management Practices (BMP), Structural Stormwater. A physical device designed to achieve any combination of the following:

- (1) Trap, settle out, or filter pollutants from *stormwater runoff*;
- (2) Alter or reduce *stormwater runoff* velocity, amount, timing, or other characteristics; or
- (3) Approximate the pre-development hydrology on a developed site.

These include physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. Synonyms include: structural practice, *stormwater* control facility, *stormwater* control practice, *stormwater* treatment practice, *stormwater* management practice, *stormwater* control measures, structural *stormwater* treatment systems, etc.

BFE. *Base flood elevation* (See *Base Flood Elevation*).

Billboard. An *outdoor advertising sign* that exceeds 380 square feet in area.

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BMP Manual, Stormwater. The manual approved for use in Phase II jurisdictions by *NCDENR* for the proper implementation of the requirements of the federal Water Quality program. All references herein to the *Stormwater BMP Manual* are to the latest published edition or revision. The County adopted manual that provides comprehensive guidelines and practices for controlling *stormwater*. Unless a manual is adopted by the County, the State manual shall serve as the *Stormwater BMP Manual*

Boathouse, Private. A residential accessory *water dependent structure* whose principal purpose is waterfront mooring/storage of boats.

Bond. (See *Improvement Guarantee*).

Borrow. Fill material which is required for on-site construction ~~and that~~ is obtained from other locations.

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Boulevard. Boulevards generally consist of moderate mobility and low to moderate accessibility. The relationship between mobility and accessibility is more balanced than that of *freeways* and *expressways*. Access control points may not be permitted and if allowed, are limited. Typically, roadways in this category have a median, but may have as few as two (2) lanes. They generally have posted speed limits of 30 to 55 miles per hour. Traffic signals are allowed and recommended at one-half (½) mile intervals.

Broadcasting and Communications Facilities. An establishment providing point-to-point communications and the services related to that activity. This may include radio and television broadcasting, cable networks and program distribution, and their directly related telecommunications. Examples include: radio/television broadcasting, radio/cable networks, radio stations and cable/other program distribution among others. Communications facilities not related to broadcasting are excluded from this definition.

BST. Bituminous Surface Treatment (asphalt, tar and gravel).

Buffer. An area of natural or planted vegetation that serves as a separation and screen between two (2) properties and/or dissimilar land *uses*.

Buffer (Watershed). An area of natural or planted vegetation through which *stormwater runoff* flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded *structures* and from the top of the bank of each side of streams or rivers.

Buffer Zone (Soil Erosion and Sedimentation Control). The strip of land adjacent to a *lake or natural watercourse*.

Building. A building as defined in the North Carolina State Building Code, Chapter 2, Section 202.

Building, Enclosed. A building which has a roof supported by “imperforated” walls extending from ground to roof on all sides. The presence of doors (not doorways having no door) or windows shall not cause a wall to be considered “perforated.”

Building, Occupied. A building that is inhabited by one or more persons. Such buildings include, but are not limited to: residences, *schools*, *religious institutions*, buildings for public assembly, hospitals, clinics and other commercial and industrial entities.

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category will have neither a center left turn lane nor a median. Speed limits are generally regulated at 25 to 55 miles per hour.

Collocation. The placement of an additional *antenna* on an existing communication facility, including required support equipment and *structures* at the base of the tower and any necessary modification to the *structure* of the existing facility.

Commission. (Soil Erosion and Sedimentation Control) The North Carolina Sediment Control Commission.

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Commissioners. The Board of Commissioners of Henderson County, North Carolina.

Common Area. Area set aside, dedicated or reserved for the *use* and enjoyment of residents of a complex, development, *manufactured home park* or *subdivision*. Common area may include space for community buildings, ponds, gardens, walking paths, outdoor play areas, swimming pools, ball fields, basketball courts, racquet courts, gazebos, picnic shelters, etc. Where damage to subsurface *sewage disposal systems* or wells would not result as a *use* of property for common area, such areas over *sewage disposal systems*/wells may be used as common area. Those areas which shall not be considered common areas include: land within *setbacks/separation areas*, *internal/external roads/rights-of-way*, *driveways*, parking spaces, *common area recreation and service facilities*, *sale/model homes*, solid waste disposal areas and areas needed for aboveground utility facilities including water supply or *sewage disposal systems*.

Common Area Recreation and Service Facilities. Recreational (swimming pools, hot tubs, etc.) and service (laundry, mail delivery area, etc.) facilities built to serve complexes, developments, *manufactured home parks* and *subdivisions*.

Communication Facility, Category 1. A Category One (1) Communication Facility shall be a:

- (1) Tower and/or *antenna* constructed or permitted prior to March 2, 1998;
- (2) Tower used for residential, *amateur radio* or governmental purposes which is less than 90 feet in height;
- (3) Tower less than 50 feet in height; or
- (4) *Collocation* of an *antenna* on an existing communication facility.

Communication Facility, Category 2. A Category Two (2) Communication Facility shall be a/an:

- (1) Tower intended to replace an existing tower where such new tower is sited as close to the existing tower as is reasonably feasible, but in no event more than 100 feet from the base of the existing tower, and no higher than the height of the existing tower;
- (2) *Antenna* located on an *alternative structure*;
- (3) Tower used for residential, *amateur radio* or governmental purposes which is 90 feet or greater in height;
- (4) Tower (all others) 50 to less than 200 feet in height.

Communication Facility, Category 3. A Category Three (3) Communication Facility shall include all towers 200 feet or greater in height.

Communication Facility, Stealth. A *stealth communication facility* is a communication facility which is designed and constructed so as to blend into its surroundings. A communication facility may be stealth were such facility is a monopole or appears to be a tree, light pole, water tower, clock tower or any of a number of other similar *structures*/natural vegetation. The choice of

County. Henderson County, North Carolina.

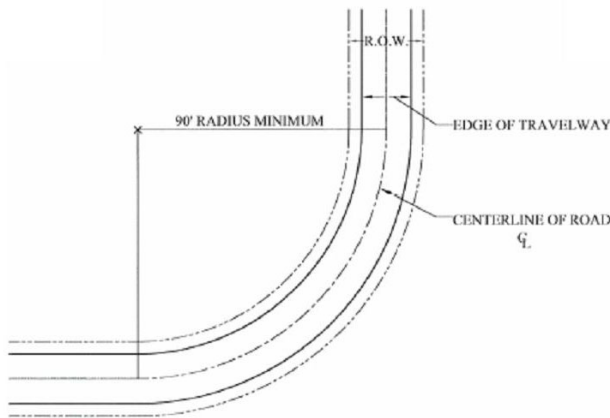
County Permit. Any zoning, subdivision, building construction, septic system, soil erosion, or similar permit granted by Henderson County or any employee thereof.

Critical Area. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the *watershed*. The critical area is defined as extending either one-half ($\frac{1}{2}$) mile from the normal pool elevation of the reservoir in which the intake is located or to the ridgeline of the *watershed* (whichever comes first) or one-half ($\frac{1}{2}$) mile upstream from the intake located directly in the stream or river (run-of-the-river) or the ridgeline of the *watershed* (whichever comes first). The Board of Commissioners may extend the critical area as needed. Major landmarks, such as highways or property lines, may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half ($\frac{1}{2}$) mile.

Critical Root Zone. The minimum area beneath a *tree* which must be left undisturbed and protected from construction disturbance in order to preserve a sufficient root mass to give a *tree* a reasonable chance of survival. The critical root zone is delineated by a concentric circle with the *tree* trunk as the center. The radius of the critical root zone equals one (1) foot for every one (1) inch of *tree* diameter. For example: a 20 inch diameter *tree* will have a critical root zone radius of 20 feet.

Curve Radius. The distance measured from the centerline of the *road* to a fixed point inside the curve (see below Figure. Minimum Curve Radius).

Figure. Minimum Curve Radius
Not to Scale



Deciduous. A plant with foliage that is shed annually.

Department. (Soil Erosion and Sedimentation Control) [The North Carolina Department of Environmental Quality.](#)

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Director. (Soil Erosion and Sedimentation Control) The Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.

Design Manual, Erosion and Sedimentation Control. The County adopted manual that provides comprehensive guidelines and practices for controlling *erosion* and *sedimentation*. Unless a manual is adopted by the County, the State manual shall serve as the *Design Manual*.

Design Professional. A civil engineer or landscape architect who prepares the Erosion and Sediment Control Plan for the *person* or agent engaged in *land-disturbing activity*.

Determination. A development regulation enacted under the authority of this Chapter may designate the staff member or members charged with making *determinations* under the development regulation *as defined in G.S. 160D-403*.

Development (Flood Damage Prevention). Any man-made change to improved or unimproved real estate, including but not limited to, *structures*, mining, dredging, filling, grading, paving, excavating operations, drilling operations, or storage of equipment or materials.

Development (Water Quality). A *land-disturbing activity* which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

Development, Agriculture. A development where the *use* is agriculture, including *agritourism farms* and *bona fide farms* as defined in *G.S. 160D-903*.

Development, Commercial/Office/Institutional. A *nonresidential development* that is not industrial.

Development, Existing. Those developments that, at a minimum, have established a vested right under North Carolina zoning law.

Development, Industrial. A *nonresidential development* that requires a National Pollutant Discharge Elimination System (*NPDES*) permit for an industrial discharge and/or requires the *use* or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Development, Multiphase. All development containing 100 acres or more that is submitted for site plan approval for construction to occur in more than one *phase* and is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

Development, Nonresidential. All development other than *residential development* and *agriculture*. Nonresidential development consists of office, institutional, commercial and industrial development.

Development, Residential. *Buildings* for residential *use* (including *single* and *multifamily dwellings*) and their associated *accessory structures* and *uses*.

Development, Single-Tenant. A single establishment, activity or *use* which does not share any facilities (parking, storage areas, entrances, etc.) with another *tenant* or *use* and is developed on an individual parcel.

Development Agreement. An agreement approved by the Board of Commissioners pursuant to the procedures and requirements of *NCGS* Section 160D-1001 through 160D-1006.

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Discharge Point or Point of Discharge. (Soil Erosion and Sedimentation Control). ~~That point at which stormwater runoff leaves a tract of land means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.-~~

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Disposal (Flood Damage Prevention). The discharge, deposit, injection, dumping, spilling, leaking or placing of any *solid waste* into or on any land or water so that the *solid waste* or any constituent part of the *solid waste* may enter the environment or be emitted into the air or discharged into any waters, including groundwaters (NCGS §130A-290(a)(6)).

Disqualified Party. Any *person* or entity who has had any *county permit* suspended, during the period of such suspension.

District. (Soil Erosion and Sedimentation Control) means the Henderson County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

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Dock/Pier. A *water dependent structure*; a platform extending from a shore over water and supported by piles or pillars, whose purpose is to secure, protect and provide access to boats.

Dormitory. A facility providing group sleeping accommodations in one (1) or several rooms under joint occupancy and single management, where the use of the facility is associated with an institution or business which provides services, employment or education to people who require temporary housing during the time of their association with the institution or business.

Driveway/Entryway. An area used for ingress or egress of *vehicles* and allowing access from a *traveled way* onto a property.

DU. Dwelling unit (See *Dwelling Unit*).

Dwelling, Accessory. A unit added to, contained within or detached from a principal *dwelling unit* that provides self-contained, complete and permanent (non-transient) living facilities for one (1) family.

Dwelling, Apartment. (See *Accommodation*).

Dwelling, Conventional. A *dwelling unit* constructed in accordance with the standards of the North Carolina State Building Code that is constructed on site.

Dwelling, Duplex. See two family attached dwellings

Dwelling, Manufactured Home. A *dwelling unit* constructed in accordance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976), as amended, and composed of components substantially assembled in a manufacturing plant and transported to the *building site* for final assembly on a permanent foundation. The term “*manufactured home*” does not include “*mobile home*,” “*recreational vehicle*” or “*park model home*.”

Dwelling, Mobile Home. A transportable, factory-built home designed for *use* as a *single-family detached* residential dwelling and manufactured prior to the Federal Manufacture Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976).

Dwelling, Modular. A *dwelling unit* constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the *building site* for final assembly on a permanent foundation.

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the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

Garage, Residential. A *building* primarily designed to house *vehicles*, which can be either attached to or detached from the *dwelling unit*.

Gate and/or Guardhouse. *Structures* for the purpose of restricting access to all or portions of a property.

Gate, Entry. Movable partition for controlling access and egress (See Chapter 47 of the Henderson County Code, *Entry Gates*).

Golf Course and/or Country Club. An establishment primarily engaged in operating golf courses (except miniature) and/or dining and other recreational facilities known as country clubs. These establishments often provide food, beverage, equipment rental and golf and recreational instructional services.

Governmental Recreational Facilities. A public recreation facility that is indoors and/or outdoors which may include: courts (basketball, tennis, etc.), swimming pools, batting cages, shuffleboard areas and/or other such *uses* that fit the intent of this Chapter as determined by the *Zoning Administrator*. A government recreational facility shall, for purposes of this Chapter, not include go-cart tracks (a *recreational motor sports facility*), golf courses, miniature golf courses, golf driving tees/ranges.

Greenhouse. An enclosed *structure* with transparent or translucent roof and/or wall panels, and devoted to the cultivation and protection of plants out of season or climate.

Greenway. A public space that may be a linear *park*, alternative transportation route and/or *open space* conservation area that provides passive recreational opportunities, pedestrian and/or bicycle paths and/or the conservation of *open spaces* or natural areas, which may be so indicated in a greenway plan.

Ground Cover. Any natural vegetative growth or other material which renders the soil surface stable against *accelerated erosion*.

Hazardous Waste Management Facility. A facility for the collection, storage, processing, treatment, recycling, recovery or disposal of hazardous waste as defined in *NCGS Chapter 130A, Article 9*.

Height. The height of a *building* or *structure* measured as the vertical distance from the finished main floor level to the highest point of the *building* or *structure*. Chimneys, cupolas and steeples are not included in measuring a *building* or *structure* height.

Heliport (Private Accessory). A facility or *structure* that is used for the landing and take-off of rotary-wing aircraft, but not including the regular repair, fueling and/or maintenance of such aircraft or the sale of goods/materials to users of such aircraft.

High-Density Project. Any project that exceeds the *low-density* threshold for *dwelling units* per acre or *built-upon area*.

High Quality Waters. Those classified as such in 15A *NCAC* 2B.0101(e) (5) — ~~General Procedures, 0224~~, which is hereby incorporated herein by reference ~~to include further amendments. Including subsequent amendments and additions.~~

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Issuing Party. The Henderson County Department or employee who originally granted the permit to the *disqualified party*.

Junk. Litter; debris; animal carcasses; used or unserviceable *motor vehicle* and machinery parts; used and non-functional furniture, appliances, tools, equipment and implements; and waste materials of any kind (excluding compost piles for normal, personal or noncommercial *uses*, in their proper location).

Junkyard. A parcel having a *principal use* consisting of the storing, keeping, buying or selling of *junk*, as defined herein. This definition excludes any *vehicle graveyard* or *manufactured/mobile home graveyard*.

Junked Motor Vehicle. A *motor vehicle* which does not display a current license plate or *vehicle* registration.

Kennel. A collection of *structures*, property, *outside/outdoor uses* of land in which domestic animals are housed, maintained and/or bred. (See Chapter 16 of the Henderson County Code, *Animal*).

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

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Land Clearing Debris and Inert Debris Storage or Disposal. A disposal facility which stores solid waste resulting solely from land-clearing activities (stumps, *trees*, bricks, concrete, etc.).

Land-Disturbing Activity. Any use of the land by any *person* in residential, industrial, education, 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*.

Landfill. A facility for the disposal of solid waste on land in a sanitary manner in accordance with *NCGS* Chapter 130A, Article 9. For the purpose of this Chapter, this term does not include composting facilities.

Landfill, Non-discharging. A *landfill* which does not discharge treated leachate into surface waters and for which no National Pollutant Discharge Elimination System (*NPDES*) permit is required.

Landscaping Materials Sales and Storage. An establishment primarily engaged in selling and storing a variety of landscaping materials including but not limited to plants, *shrubs*, *trees*, mulch, timbers, rocks, etc. directly associated with or used for landscaping.

Larger Common Plan of Development or Sale. Any area where multiple separate and distinct construction or *land-disturbing activities* will occur under one (1) plan. A plan is any announcement or piece of documentation (including but not limited to a *sign*, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, *lot* stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Library/Archive. These establishments are engaged in maintaining collections of documents (books, journals, newspapers and music) and facilitating the *use* of such documents as are

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required to meet informational, research, educational or recreational needs of their user(s). These establishments may also acquire, research, store, preserve and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material and other archival material of historical interest. All or portions of these collections may be accessible electronically.

Lighting, Adequate. Lighting of areas used for vehicular and pedestrian access which serves to heighten visibility and, as a result, protect the public health, safety and welfare.

Lighting Mitigation. Mitigating the impact of outdoor lighting fixtures in order to protect neighboring properties and *roads* from direct glare or hazardous interference of any kind. Lighting mitigation typically involves directing lighting fixtures away from adjacent properties but may also include the installation of planted *buffers*, screens, walls, etc.

Local Government (Soil Erosion and Sedimentation Control). 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 ~~North Carolina Sedimentation Pollution Control Act of 1973~~ and all rules and orders adopted pursuant thereto.

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Local Road. Local roads generally are designed to provide final access to properties, rather than through movements. There is no control of access (i.e. no physical restrictions on access). Traffic signals are allowed, at a recommended minimum spacing of one-quarter (1/4) mile. *Driveways* are allowed with full movement, but are still recommended to be consolidated or shared if possible. Roadways in this category will have neither a center left turn lane nor a median. Speed limits are generally regulated at 35 miles per hour or less.

Lot. A parcel of land occupied or capable of being occupied by a *structure* or group of *structures* devoted to a common *use*, together with the customary *accessory structures/uses* and *open spaces* belonging to the same.

Lot, Double-Fronted. A *lot* abutting two (2) *traveled ways*.

Lot, Existing. (See *Lot of Record*)

Lot, Flag. An irregularly shaped *lot* where the buildable portion of the *lot* is connected to a *road* by a narrow extension of the *lot*.

Lot, Auxiliary. *Lots* clearly identified and restricted for a designated use (placement of a *sign*, *common area(s)*, recreation area(s), water tank, pump station, etc.), not intended for sale, and clearly identified as such on development plans and *final plats*.

Lot, Zoning. A parcel of land that is designated by its *owner/developer* at the time of applying for a building permit as one (1) *lot*, all of which is to be used, developed or built-upon as a unit under single ownership. Such *lot* may consist of a: single *lot of record*; portion of a *lot of record*; combination of complete *lots of record*; combination of complete *lots* and portions of *lots of record*; or combination of portions of *lots of record*.

Lot Area. The amount of horizontal land area contained inside the *lot* lines of a *lot* or site.

Lot Line, Front. The line of a *lot* separating a *lot* from the edge of the *traveled way*.

Lot Line, Rear. The line of a *lot* which is opposite and farthest from the *front lot line*.

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

Person Conducting Land-Disturbing Activity. Any person who may be held responsible for violation unless expressly provided otherwise by this Chapter, ~~the North Carolina Sedimentation Control Act of 1973, or any order adopted pursuant to this Chapter or the North Carolina Sedimentation Control Act of 1973.~~

Person Who Violates or Violator Responsible for the Violation. ~~The (1) developer or other person who has or holds himself out as having financial or operation control over the land-disturbing activity; or (2) landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this Chapter, the North Carolina Sedimentation Control Act of 1973, or any order adopted pursuant to this Chapter or the North Carolina Sedimentation Control Act of 1973.~~ 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."

Phase. A portion of a development delineated on a development plan/site plan.

Phase of Grading. One (1) of two (2) types of grading: rough or fine.

PIN. (Property Identification Number).

Place of Assembly. A structure or area designed and designated to accommodate persons for the purposes of assembly.

Plan. (Soil Erosion and Sedimentation Control) An erosion and sedimentation control plan.

Planned Seasonal Agricultural Worker Development. A residential use of property for the purpose of seasonally housing workers hired to provide assistance in agricultural operations.

Planning Board. The Planning Board of Henderson County, North Carolina.

Planning Director. The Planning Director for Henderson County, or his/her designee, appointed and authorized to administer this Chapter. Any act authorized by this Chapter to be carried out by the Planning Director is, by implication, authorized to be carried out by a designee of the Planning Director.

Plat. A map showing planned or actual features of an area. A plat may depict a subdivision of land, designation of right-of-way, or other feature to be recorded into public record.

Police Station. A government establishment primarily engaged in criminal and civil law enforcement, police, traffic safety and other activities related to the enforcement of the law and preservation of order. Combined police and fire departments are included in this industry.

Portable Storage Container. A movable storage container, such as but not limited to "PODS," which is placed temporarily.

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improvements; (5) the approximate dimensions, including height and scale, of the proposed *structures* (and their relation to surrounding existing and proposed future *uses*); (6) the approximate locations and dimensions of proposed *buffers* and landscaping; (7) the proposed location and dimensions of *signs*; (8) the approximate location of all existing and proposed infrastructure on the site, including *stormwater*, water, sewer, *roads*, parking and pedestrian walkways; and (9) any proposed phasing.

Site-Specific Vesting Plan. A plan which has been submitted to the County by a landowner describing with reasonable certainty the type and intensity of *use* for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: a preliminary or master development plan, *Special Use Permit*, or any other land-use approval designation as may be utilized by the County. Such plan shall include: (1) the approximate boundaries of the site; (2) significant topographical and other natural features effecting development of the site; (3) the approximate location on the site of the proposed *buildings, structures* and other improvements; (4) the approximate dimensions, including height, of the proposed *buildings* and other *structures*; and (5) the approximate location of all existing and proposed infrastructure on the site, including water, sewer, *roads* and pedestrian walkways. A *variance* shall not constitute a *site-specific vesting plan*, and approval of a *site-specific vesting plan* with the condition that a *variance* be obtained shall not confer a vested right unless and until the necessary *variance* is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of *use* for a specified parcel/parcels or property may constitute a *site-specific vesting plan*. (See *NCGS §160D-102(29)*).

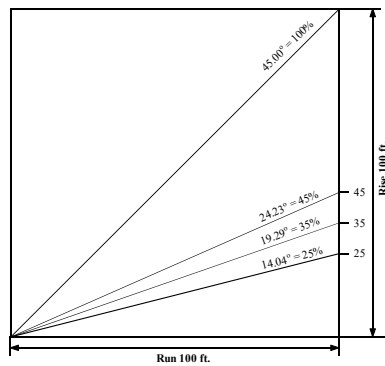
~~**Sketch Plan (Soil Erosion and Sedimentation Control).** A graphic illustration used to depict proposed land-disturbing activities.~~

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Slope. The level inclination of land from the horizontal plane determined by dividing the horizontal run of the land into the vertical rise of the same land and converting the result into a percentage value. For purposes of measurement, property must be at least 25 feet vertically and 50 feet horizontally. See Figure 19A, for measuring slope.

Figure 19A. Measurement of Slope

Not to Scale



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Special Flood Hazard Area (SFHA). The land in the *floodplain* subject to a one (1) percent or greater chance of being flooded in any given year, determined in §42-232.2 (Basis for Establishing the Special Flood Hazard Areas).

Special Use. *Uses* that are generally compatible with land *uses* permitted in a general *use district*, however, because of their unique characteristics or potential impacts on the surrounding *neighborhood* and/or the County as a whole, require individual consideration of their location, design, configuration and/or operation at the particular location proposed. A special use must meet both the specific standards for the *use* as well as the general standards for the issuance of *Special Use Permits*. Special uses are permitted *uses* which require a *Special Use Permit*.

Special Use Permit. A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring judgement and discretion be exercised as well as compliance with specific standards.

Start of Construction. Includes *substantial improvement*, and means the date the building permit was issued, provided the actual *start of construction*, repair, reconstruction, rehabilitation, *addition*, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a *structure* (including a *manufactured/mobile home*) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the state of excavation; or the placement of a *manufactured/mobile home* on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of *roads* and/or walkways; nor does it include excavation for a *basement*, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of *accessory structures*, such as *garages* or sheds not occupied as *dwelling units* or not part of the main *structure*. For *substantial improvement*, the actual *start of construction* means the first alteration of any wall, ceiling, *floor* or other structural part of the *structure*, whether or not that alteration affects the external dimensions of the *structure*.

State Road Standards. Those standards contained in the NCDOT publication *Subdivision Roads—Minimum Construction Standards*, dated January 1, 2000, as amended.

Steep Slope. (See Slope, Steep).

Stop-Work Order. The *Floodplain Administrator* may issue a stop-work order where *floodplain* development is occurring, in accordance with specific procedures and reasons outlined therefore.

Storm Drainage Facilities. The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey *stormwater* through and from a given drainage area.

Stormwater Best Management Practices (BMP). (See Best Management Practices (BMP), Stormwater).

Stormwater BMP Manual. (See BMP Manual, Stormwater).

Stormwater Runoff. ~~The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting. The runoff of water resulting from precipitation in any form.~~

Structure. That which is built or constructed (North Carolina State Building Code, Chapter 2, Section 202).

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Ten-Year Storm. ~~The stormwater runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten (10) years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions~~—a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

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Tenant. A person, corporation, partnership or group, whether or not the legal *owner* of record, occupying a *building* or portion thereof as a unit.

Text Amendment. (See *Amendment, Text*).

Thoroughfare. Thoroughfares generally feature characteristics of moderate to low mobility and high accessibility. Access control points are allowed, but limited. No control of access is allowed in the category. Traffic signals are allowed and recommended at one-half (½) mile intervals. *Driveways* are allowed with full movement, but are still recommended to be consolidated or shared if possible. This category includes all *roads* with a two-way center left-turn lane, but no *roads* with medians. Speed limits generally are posted between 25 to 55 miles per hour.

Top of Bank. The ordinary high water level for a water basin or wetland, and the break in slope for a watercourse.

Toxic Substance. A substance or combination of substances (including disease-causing agents) which, after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

Tract. An area, site, piece of land or property which is the subject of a development application. A tract may contain one or more smaller parcels or *lots* all under/in the same ownership or control.

Tract (Soil Erosion and Sedimentation Control). All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Trail. A public or private path of travel for recreation and/or transportation within a *park*, natural environment or designated corridor (not to be a highway or *road*).

Transit and Ground Passenger Transportation. An establishment comprised of a variety of passenger transportation activities such as: chartered bus, school bus, interurban bus transportation and taxis. These activities are defined by *vehicle* type, route and schedule.

Travel Trailer. (See *Recreational Vehicle*).

Travel Trailer Park. (See *Recreational Vehicle Park*).

Traveled Way. A means of access to a property. Typically this shall mean a public or private *road*. Where no public or private *road* adjoins a property, the vehicular access to a personal drive shall be considered as the *traveled way* for purposes of determining *front yard* requirements.

Traveled Way, Edge. The edge of the *road* pavement on a paved *road* or the edge of the riding surface on an unpaved *road* or drive.

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Travelway. The portion of a *road*, highway, *driveway*, access *road* corridor, *right-of-way*, etc., that is designed and maintained for the purpose of accommodating vehicular passage. Specifically excluded are *road* shoulders, ditches, curb and gutter systems, other drainage facilities and unimproved *road rights-of-way* not intended to be driven on by *vehicles*.

TRC. Technical Review Committee.

Tree. A living, self-supporting woody perennial plant which normally obtains a trunk diameter of at least two (2) inches and a height of at least ten (10) feet, and typically has one (1) main stem and many branches.

Tree, Large. A *tree* whose height under average regional growing conditions will exceed 35 feet in height at maturity.

Tree, Small. A *tree* whose height under average regional growing conditions will be 35 feet in height or less at maturity.

Truck Terminals. An establishment primarily engaged in providing services to trucks which may include offices of transport companies, easy loading and unloading facilities and large parking areas for idle trucks.

Twenty-Five Year Storm. The *stormwater runoff* resulting from precipitation of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority ~~expected~~ to be equaled or exceeded on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

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

Undertaken (Soil Erosion and Sedimentation Control). 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.

Unique Natural Area. An area that meets the criteria for qualifications as a natural heritage area as prescribed in *NCAC* Chapter 15A-12H, Section 0202.

Urgent Care Clinic. A full service walk-in medical clinic (which may include a physical therapy facility) which provides immediate/urgent health care services (including services for individuals with sudden, serious and unexpected illnesses, injuries or conditions which require immediate medical attention) but which does not provide emergency medical/emergency room services.

Use. The purpose or activity for which a piece of land (or portion thereof) and/or its *structures* (or portion thereof) is/are designed, arranged or intended or for which it/they is/are occupied or maintained.

Use, Accessory. A *use* customarily incidental and subordinate to a *principal use*, located within a *principal* and/or *accessory structure*.

Use, Existing. Those *uses* that, at a minimum, have established a vested right under North Carolina zoning law.

Use, Principal. The specific primary purpose for which land is used.

Use, Temporary. A *use* permitted on a temporary basis.

Use District. A zone established through this Chapter which regulates the *use* of land. use districts are applied to particular *tracts* of land by the Board of Commissioners through a *zoning map amendment* in accordance with this Chapter. When a use district is applied to a particular *tract* of land, the land is said to have been “zoned.” Use districts each contain a variety of *uses* which are generally compatible with one another and which accomplish the stated purpose of the district.

USGS. United States Geological Survey.

Utility Substation. Substation engaged in the operating of utilities such as, but not limited to, electricity, water, sewer, telephone and cable. Substations arrange, facilitate or coordinate the transmission of a utility from the generating source to the distribution centers, other utilities or final consumers.

Variance. A grant of relief from the requirements of this Chapter (excluding *variances* from *watershed* and *floodplain* development requirements).

Variance, Accommodative Temporary. (See *Variance*).

Variance (Flood Damage Prevention). A grant of relief from the requirements of this Chapter related to flood damage prevention regulations.

Variance, Watershed Local. A *variance* from the minimum statewide *water supply watershed* protection criteria that results in the relaxation, by a factor of up to five (5) percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low-density option.

Variance, Watershed Major. A *variance* from the minimum statewide *water supply watershed* protection criteria that results in any of the following:

- (1) The relaxation, by a factor greater than ten (10) percent, of any management requirement under the low-density option;
- (2) The relaxation, by a factor greater than five (5) percent, of any buffer, density or built-upon area requirement under the high density option; and
- (3) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved *stormwater* control system.

Vehicle (Gate Regulations). Any *motor vehicle* which is allowed to *use* the public roadways in North Carolina, but not including *vehicles* which include trailers or semi-trailers (See Chapter 47 of the Henderson County Code, *Entry Gate*).

Vehicle Graveyard. A parcel of land having an *accessory use* consisting of the storage or keeping of five (5) or more wrecked, scrapped, ruined, dismantled, *junked or inoperable motor vehicles* (including but not limited to cars, trucks, tractor trailers, boats, motorcycles or jet skis or other motorized equipment) located on a land parcel or adjacent land parcels under the same ownership or control, if such storage or keeping is not enclosed within a *structure(s)*.

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

velocity of flow. 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.

Vertical Clearance. A minimum established height clearance required for the passage of emergency vehicles. For the purposes of this Chapter, *vertical clearance* shall be a minimum of 13 feet, six (6) inches.

Violation. The failure of a *structure* or other development to be fully compliant with the County's regulations.

Violation (Flood Damage Prevention). The failure of a *structure* or other development to be fully compliant with the County's *floodplain management regulations*. A *structure* or other development without an elevation certificate, other certifications or other evidence of compliance required in §42-234 (Administration) and §42-235 (Flood Hazard Reduction) is presumed to be in *violation* until such time as that documentation is provided.

Warehousing and Storage. An establishment primarily engaged in operating warehousing and storage facilities (excluding warehousing of hazardous substances).

Waste (Soil Erosion and Sedimentation Control). Surplus materials resulting from on-site *land-disturbing activities* and being disposed of at other locations.

Waste Collection and Transfer Facility (Hazardous). An establishment primarily engaged in: (1) collecting and/or hauling hazardous waste; and/or (2) operating hazardous waste transfer stations. Hazardous waste collection establishments may be responsible for the identification, treatment, packaging and labeling of wastes for the purposes of transport.

Waste Collection and Transfer Facility (Non-hazardous). An establishment primarily engaged in: (1) collecting and/or hauling non-hazardous waste and/or recyclable materials; and/or (2) operating non-hazardous waste transfer stations. Non-hazardous waste collection establishments may be responsible for the identification, treatment, packaging and labeling of wastes for the purposes of transport.

Wastewater. Sewage or industrial process wastewater discharged, transmitted or collected from any place into sewage disposal (wastewater) system.

Wastewater Treatment Plant. A facility containing a series of tanks, screens, filters, and other combination of physical, chemical and biological processes to treat *wastewater* so that less harmful byproducts result as pollutants are removed.

Wastewater Treatment Plant, Small Accessory. A facility, including package wastewater treatment plants, containing a series of tanks, screens, filters, and other combination of physical, chemical and biological processes to treat *wastewater* so that less harmful byproducts result as pollutants are removed. These facilities are intended to be accessory to and used for a single development (i.e. *subdivision, shopping mall, etc.*), and is not designed to serve multiple developments.

Water Dependent Structure. *Structure* for which the *use* requires access to, proximity to or siting within surface waters to fulfill its basic purpose such as boat ramps, boathouses, piers, docks and *bulkheads*. Ancillary facilities, such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.