

CHAPTER 152: SOIL EROSION AND SEDIMENTATION

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Cross-references:

Flood damage prevention, see Chapter 157

Mountain and hillside development, see Chapter 156

§ 152.01 TITLE.

This chapter may be cited as the "Town of Columbus Soil Erosion and Sedimentation Control Ordinance."

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.02 PURPOSE.

This chapter is adopted for the purposes of:

(A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

(B) Establishing procedures through which these purposes can be fulfilled.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCELERATED EROSION. Any increase over the rate of natural erosion as a result of land-disturbing activity.

ACT. The State Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 et seq., 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.

AFFILIATE. A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

BEING CONDUCTED. A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

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

BUFFER ZONE. The strip of land adjacent to a lake or natural watercourse.

COMMISSION. The State Sedimentation Control Commission.

COMPLETION OF CONSTRUCTION OR DEVELOPMENT. That no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

DEPARTMENT. The State Department of Environment and Natural Resources.

DIRECTOR. The Director of the Division of Energy Mineral and Land Resources of the Department of Environment and Natural Resources.

DISCHARGE POINT. The point at which storm water runoff leaves a tract of land.

DISTRICT. The Polk Soil and Water Conservation District created pursuant to G.S. Ch. 139.

ENERGY DISSIPATOR. A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

EROSION. The wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

GROUND COVER. Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

HIGH QUALITY WATERS. Those classified as such in 15A NCAC 2B.0101(e)(5) General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. § 150B-14(c).

HIGH QUALITY WATER (HQW) ZONES. Areas within one mile and draining to HQWs.

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.

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.

LOCAL GOVERNMENT. Any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

NATURAL EROSION. The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by humans.

PARENT. An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

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 Act, or any order adopted pursuant to this chapter or the Act.

PERSON RESPONSIBLE FOR THE VIOLATION. The developer or other person who has or holds himself or herself out as having financial or operation control over the land-disturbing activity; or The landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefitted from it or failed to comply with a duty imposed by any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

PHASE OF GRADING. One of two types of grading: rough or fine.

PLAN. An erosion and sedimentation control plan.

SEDIMENT. Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

SEDIMENTATION. The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

SILTATION. Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

STORM DRAINAGE FACILITIES. The system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey storm water through and from a given drainage area.

STORM WATER RUNOFF. The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

SUBSIDIARY. An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

TEN-YEAR STORM. The storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration, which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

TRACT. All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

TWENTY-FIVE YEAR STORM. The storm water runoff resulting from precipitation of an intensity 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.

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

UNDERTAKEN. 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.

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.

WASTE. Surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

WORKING DAYS. Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.04 SCOPE AND EXCLUSIONS.

(A) *Geographical scope of regulated land-disturbing activity.* This chapter shall apply to land-disturbing activity within the territorial jurisdiction of the town, and to the extraterritorial jurisdiction of the town 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 chapter to all land-disturbing activity, this chapter shall not apply to the following types of land-disturbing activity:

(1) An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to humans, including, but not limited to:

- (a) Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts;
- (b) Dairy animals and dairy products;
- (c) Poultry and poultry products;
- (d) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats;
- (e) Bees and apiary products; and
- (f) Fur producing animals.

(2) An activity undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department;

(3) An activity for which a permit is required, under the Mining Act of 1971, G.S. Ch. 74, Art. 7;

(4) A land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a); and

(5) An activity, which is essential to protect human life during an emergency.

(C) *Plan approval requirement for land-disturbing activity.* No person shall undertake any land-disturbing activity without first obtaining a plan approval therefor from the town.

(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 this chapter and federal, state, or other local laws, ordinances, or rules, the more restrictive provision shall apply.

(F) *Plan approval exceptions.* Notwithstanding the general requirement to obtain a plan approval prior to undertaking land-disturbing activity, a plan approval shall not be required for land-disturbing activity that does not exceed one acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

§ 152.05 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY.

No land-disturbing activity subject to the control of this chapter 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% of the buffer zone nearest the land-disturbing activity.

(a) *Projects on, over, or under water.* This division (A) 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 water to the nearest edge of the disturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

Figure 1



(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% of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Commission may approve plans which include land-disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of said disturbance would be minimal.

(a) *Projects on, over, or under water.* This division 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 10% of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

(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

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

(C) *Fill material.* Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete, and brick in sizes exceeding 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 the 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 § 152.08(B)(5) below, provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever period is shorter.

(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 plan for the activity is filed with and approved by the town. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The town shall forward to the Director of the Division of Water Resources a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

(F) *Conduct.* The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015) Penalty, see § 152.99

§ 152.06 EROSION AND SEDIMENTATION CONTROL PLANS

(A) *Plan submission.* A plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity will disturb more than one acre on a tract. At least 30 days prior to the commencement of the proposed activity, the applicant shall file three copies of the plan with the town and simultaneously one copy of the plan with the Polk County Soil and Water Conservation District. The town shall forward to the Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

(B) *Financial responsibility and ownership.*

(1) Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney in fact.

(2) The statement shall include the mailing and street addresses of the principal place of business of:

- (a) The person financially responsible;
- (b) The owner of the land; and
- (c) Any registered agents.

(3) If the person financially responsible is not a resident of the State of North Carolina, a State of North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter.

(4) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

(5) Except as provided in divisions (B)(2) or (J) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

(C) *Environmental policy act document.* Any plan submitted for a land-disturbing activity for which an environmental document is required by the State Environment Policy Act (G.S. § 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The town shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to this chapter shall not begin until a complete environmental document is available for review.

(D) *Content.* The 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 chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the town, on request.

(E) *Soil and water conservation district comments.* The district shall review the plan and submit any comments and recommendations to the town, within 20 days after the district received the plan, or within any shorter period of time as may be agreed upon by the district and the town. 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 plan.

(F) *Time line for decisions on plans.* The town will review each complete plan submitted to it and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. The town will review each revised plan submitted to them and within 15 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval.

(G) *Approval.* The town shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations, and rules. The town shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations, and rules. The town may establish an expiration date, not to exceed three years, for plans approved under this chapter.

(H) *Disapproval for content.* The town shall disapprove a plan or draft plan based on its content. A disapproval based upon a plan's content must specifically state in writing the reasons for disapproval.

(I) *Other disapprovals.*

(1) The town may disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of the rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The town may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under division (J) of the section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(a) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this section and has not complied with the notice within the time specified in the notice;

(b) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to this section by the time the payment is due;

(c) Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this section; or

(d) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to this Article.

(2) In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the town pursuant to division (I)(1) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within ten days of the disapproval. The town shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of § 152.26(A) of this chapter, the applicant may appeal the local government's disapproval of the plan directly to the Commission. For purposes of this division (I)(2), an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

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

(1) The town may transfer a plan if all of the following conditions are met.

(a) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.

(b) The town finds all of the following:

1. The plan holder is one of the following:

a. A natural person who is deceased;

b. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved;

c. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur; or

d. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur;

3. The successor-owner is the sole claimant of the right to engage in the permitted activity; and

4. There will be no substantial change in the permitted activity.

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

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

(4) Notwithstanding changes to law made after the original issuance of the plan, the town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this division shall prevent the town from requiring a revised plan pursuant to G.S. § 113A-54.1(b).

(K) *Notice of activity initiation.* No person may initiate a land-disturbing activity before notifying the agency that issued the plan approval of the date that land-disturbing activity will begin.

(L) *Preconstruction conference.* When deemed necessary by the approving authority a preconstruction conference may be required.

(M) *Display of plan approval.* A plan approval issued under this section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

(N) *Required revisions.* After approving a plan, if the town, either upon review of the plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the town shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved plan, the town determines that the plan is inadequate to meet the requirements of this chapter, the town may require any revision of the plan that is necessary to comply with this chapter.

(O) *Amendment to a plan.* Applications for amendment of a plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the town, the land-disturbing activity shall not proceed except in accordance with the plan as originally approved.

(P) *Failure to file a plan.* Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

(Q) *Self-inspection.* The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. § 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of

those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this division (Q) shall be in addition to inspections required by G.S. § 113A-61.1. Where inspections are required by § 152.06(Q) of this chapter and G.S. § 113A-54.1(e), the following apply.

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

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

(b) The completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating, and signing an inspection report;

(c) The location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in division (Q)(1)(e) of this rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating, and signing an inspection report;

(d) That maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices, and devices have been performed. Such documentation shall be accomplished by completing, dating, and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and

(e) Any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating, and signing an inspection report. A significant deviation means an omission, alteration, or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

(2) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.

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

(a) Installation of perimeter erosion and sediment control measures;

(b) Clearing and grubbing of existing ground cover;

(c) Completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. § 113A-57(2);

(d) Completion of storm drainage facilities;

(e) Completion of construction or development; and

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

and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

(R) *Ordinance administration.* Except where duties under this chapter are expressly reserved to the Town Council, all duties of the town under this chapter shall be performed by the Town Manager or his or her designee(s).

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015) Penalty, see § 152.99

§ 152.07 BASIC CONTROL OBJECTIVES.

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

(A) *Identify critical areas.* On-site areas, which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention;

(B) *Limit time of exposure.* All land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time;

(C) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time;

(D) *Control surface water.* Surface water runoff originating upgrade 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; and

(F) *Manage storm water runoff.* When the increase in the velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, a plan is to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.08 DESIGN AND PERFORMANCE STANDARDS.

(A) Except as provided in § 152.08(B)(2) below, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

(B) 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.

(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 United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

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

(4) *Grade.* Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical (2:1) 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 ditch liners. In any event, the angle for

side slopes shall be sufficient to restrain accelerated erosion

(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.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.09 STORM WATER OUTLET PROTECTION.

(A) *Intent.* Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.

(B) *Performance standard.*

(1) Persons shall conduct land-disturbing activity so that the post construction velocity of the ten year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

- (a) The velocity established by the Maximum Permissible Velocities Table set out below; or
- (b) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

(2) If condition (B)(1)(a) or (b) above 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%.

(3) 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.):

<i>Maximum Permissible Velocities Table</i>		
<i>Material</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.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	1.7
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts	5.0	1.5

(colloidal)		
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 town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
- (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
- (5) Upgrade or replace the receiving device, structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

(D) *Exceptions.* This rule shall not apply where it can be demonstrated to the town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015) Penalty, see § 152.99

§ 152.10 BORROW AND WASTE AREAS.

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

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.11 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

(Am. Ord. 2015-01, passed 1-8-2015)

§ 152.20 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 the activity.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.21 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.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.22 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 chapter, the Act, or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.23 ADDITIONAL MEASURES.

Whenever the town determines that significant erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.24 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on the effective date of this chapter which resulted from land-disturbing activity exceeding one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(B) The town shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this chapter, a rule or order adopted or issued pursuant to the Act by the Commission or by the town. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in G.S. § 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 town reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required.

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

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015) Penalty, see § 152.99

§ 152.25 FEES.

(A) The town may establish a fee schedule for the review and approval of plans.

(B) In establishing the fee schedule, the Town Council shall consider the administrative and personnel costs incurred for reviewing the plans and for related compliance activities.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.26 PLAN APPEALS.

(A) Except as provided in § 152.26 (B) below, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions.

(1) The disapproval or modification of any proposed plan by the town shall entitle the person submitting the plan to a hearing if the person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications. A hearing held pursuant to this section shall be conducted by the Town Manager within 30 days after the date of the appeal or request for a hearing. The Town Manager will render his or her decision within 15 days after the date of the hearing on any plan.

(2) If the Town Manager upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the Town Manager's decision to the Town Board of Adjustments if the person submits written demand for a public hearing within 15 days after receipt of written notice of disapproval or modifications. A hearing held pursuant to this section shall be conducted by the Board of Adjustments within 30 days after the date of the appeal or request for a hearing. The Board of Adjustments will render its decision within 15 days after the date of the hearing on any plan.

(3) If the Board of Adjustments upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the Board of Adjustments' decision to the Town Council if the person submits written demand for a public hearing within 15 days after receipt of written notice of disapproval or modifications. A hearing held pursuant to this section shall be conducted by the Town Council within 30 days after the date of the appeal or request for a hearing. The Town Council will render its decision within 15 days after the date of the hearing on any plan.

(4) If the Town Council upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the Town Council's decision to the Commission as provided in G.S. § 113A-61(c) and 15A NCAC 4B.0118(d).

(B) In the event that a plan is disapproved pursuant to § 152.06(I) above, the applicant may appeal the town's disapproval of the plan directly to the Commission.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.27 INSPECTIONS AND INVESTIGATIONS.

(A) *Inspection.* Agents, officials, or other qualified persons authorized by the town, will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan.

(B) *Willful resistance, delay, or obstruction.* No person shall willfully resist, delay, or obstruct an authorized representative, employee or agent of the town, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(C) *Notice of violation.* If the town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date, by which the person must comply with the Act, or this chapter, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. § 113A-64 and this chapter.

(D) *Investigation.* The town shall have the power to conduct such investigation as it may reasonably deem necessary to carry out

its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

(E) *Statements and reports.* The town shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(F) *Additional protective action.* If through inspections the town determines that significant erosion and sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of all protective practices required by the approved soil erosion and sedimentation control plan, the person conducting the land disturbing activity will be required to take additional protective action.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015) Penalty, see § 152.99

§ 152.28 INJUNCTIVE RELIEF.

(A) *Violation of local program.* Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation, or order adopted or issued by the town or any term, condition, or provision of an approved plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the town for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

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

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)

§ 152.29 RESTORATION AFTER NON-COMPLIANCE.

The town may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. § 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015) Penalty, see § 152.99

§ 152.99 PENALTY.

(A) *Civil penalties.*

(1) *Civil penalty for a violation.* Any person who violates any of the provisions of this chapter, or rule or order adopted or issued pursuant to this chapter, or who initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty amount that the town may assess per violation is \$5,000. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) *Civil penalty assessment factors.* The Town Manager or his or her designee shall determine the amount of the civil penalty based upon the following factors:

- (a) The degree and extent of harm caused by the violation;
- (b) The cost of rectifying the damage;
- (c) The amount of money the violator saved by noncompliance;
- (d) Whether the violation was committed willfully; and
- (e) The prior record of the violator in complying or failing to comply with this chapter.

(3) *Notice of civil penalty assessment.* The Town Manager or his or her designee shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. § IA-1, Rule 4. A notice of assessment by the town shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the Town Manager. A hearing held pursuant to this section shall be conducted by the Town Manager within 30 days after the date of the appeal or request for a hearing. The Town Manager will render his or her decision within 15 days after the date of the hearing on the assessment.

(a) If the Town Manager upholds or modifies the assessment following the hearing, the person submitting the plan shall then be entitled to appeal the Town Manager's decision to the Town Board of Adjustments if the person submits written demand for a public hearing within 15 days after receipt of written notice of the Town Manager's decision. A hearing held pursuant to this section shall be conducted by the Board of Adjustments within 30 days after the date of the appeal or request for a hearing. The Board of Adjustments will render its decision within 15 days after the date of the hearing on the assessment.

(b) If the Board of Adjustments upholds or modifies the assessment, the person submitting the plan shall then be entitled to appeal the Board of Adjustments' decision to the Town Council if the person submits written demand for a public hearing within 15 days after receipt of written notice of the Board of Adjustments' decision. A hearing held pursuant to this section shall be conducted by the Town Council within 30 days after the date of the appeal or request for a hearing. The Town Council will render its decision within 15 days after the date of the hearing on the assessment.

(c) Appeal from the decision of the Town Council shall be to the Superior Court of the county where the violation occurred. The appeal must be made within 30 days of the decision of the Town Council.

(4) *Collection.* If payment is not received within 30 days after it is due, the town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Those civil actions must be filed within three 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.

(5) *Credit of civil penalties.* The clear proceeds of civil penalties collected by the town under this division shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2.

(B) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

(Ord. 2007-11, passed 10-16-2008; Am. Ord. 2015-01, passed 1-8-2015)