

**DEPARTMENT OF ENVIRONMENTAL
QUALITY**

**DIVISION OF ENERGY, MINERAL,
AND LAND RESOURCES**

**SEDIMENTATION
CONTROL COMMISSION
MEETING**

**10:00 A.M.
Tuesday
August 11, 2020**

ONLINE MEETING via WEBEX

**If you have any questions concerning this meeting, please contact
Julie Coco at (919) 707- 9215**

I. **Preliminary Matters**

A. Call to Order

B. Recognition of Those Attending

C. Swearing in of New Members, if Present

D. Approval of Meeting Minutes from May 12, 2020

AGENDA

North Carolina Sedimentation Control Commission
Business Meeting

Ground Floor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh North Carolina

Though normally held at the above location, this meeting will be held via webinar.

August 11, 2020, 10:00 AM

The Elections and Ethics Enforcement Act mandates that the Chair inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. Executive Order 34 requires any member to recuse herself or himself from voting on any matter before this Commission which would confer a financial benefit on the member. If any member knows of a conflict of interest, appearance of a conflict, or possible financial benefit please so state at this time.

Dr. Susan White, Chair, Presiding

I. Preliminary Matters

- A. Call to Order
- B. Recognition of Those Attending
- C. Swearing in of New Members, if Present
- D. Approval of Meeting Minutes from May 12, 2020

II. Action Items

- A. Informal Review of Local Government Ordinance
Staff is requesting initial review of an ordinance for the Town of Clayton.
- B. Model Ordinance Changes
Staff is seeking to re-adopt the Model Ordinance for Local Programs.

III. Information Items

- A. Commission Technical Committee – Dr. Susan White
The Chair will lead a discussion of potential committee members, seek feedback from the Commission as to gaps in committee member representation and discuss initial potential topics for the committee's work.

- B. Land Quality Section Active Sediment Cases and Enforcement — Ms. Julie Coco
Staff will report on the status of Civil Penalty Assessments, action on Civil Penalty Assessments, and Judicial Actions.
- C. Education Program Status Report — Ms. Rebecca Coppa
Staff will report on Sediment Education Program activities.
- D. Sediment Program Status Report — Ms. Julie Coco
Staff will report on LQS's current statewide plan approval, inspection, and enforcement activities.
- E. NCDOT Report – Ms. Julie Coco
Staff will report on the Immediate Corrective Action Reports issued by the Department.
- F. Land Quality Section Report — Mr. Toby Vinson
Staff will provide a report on the current number of vacancies in the Section and other LQS activities and issues.
- G. COVID-19 Status – Mr. Toby Vinson
Staff will provide an update on the division's current mode of operation during the pandemic.

IV. **Conclusion**

- A. Remarks by DEMLR Chief of Program Operations
- B. Remarks by Commission Members
- C. Remarks by Chairman
- D. Adjournment

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
MAY 12, 2020
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on May 12, 2020 at 10:00 a.m. via an online webinar. The following persons were in attendance via webinar for all or part of the meeting, with Commission members being present for the entire meeting:

COMMISSION MEMBERS

Dr. Susan White (Chair)
Mr. Jonathan Bivens
Ms. Natalie Berry
Ms. Heather Deck
Mr. Mark Taylor
Mr. Hartwell Carson
Ms. Susan Foster
Ms. LaToya Ogallo
Dr. Richard McLaughlin
Mr. Robert (Jason) Conner
Ms. Marion Deerhake

OTHERS

Mr. Matt Gantt, Regional Operations Chief, DEMLR
Mr. Toby Vinson, Program Operations Chief, DEMLR
Mr. Brian Wrenn, Interim Director, DEMLR
Ms. Julie Coco, State Sedimentation Engineer, DEMLR
Ms. Rebecca Coppa, State Sedimentation Education Specialist, DEMLR
Mr. Boyd DeVane, DEMLR
Mr. Tom Gerow, Jr., NCFS
Mr. Zac Lentz, DEMLR-Winston Salem Regional Office
Ms. Sarah Zambon, Attorney General's Office
Ms. Nancy Watford, City of Asheville
Mr. Craig Benedict, Orange County
Mr. Michael Harvey, Orange County
Ms. Karyn Pageau, Wake County
Mr. Shelton Sullivan, DWR
Ms. Anna Martin, WRRRI

PRELIMINARY MATTERS

Dr. White called the meeting to order at 10:01.

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest.

Those in attendance introduced themselves. Dr. White announced any potential conflicts with the Commission members and reminded them to recuse themselves from any discussions related to those conflicts. Dr. White read the guidelines for participating in the webinar.

Dr. White asked for a motion to approve the minutes from the February 20, 2020 meeting. Ms. Deck requested a change to the minutes to reflect she was not present. Ms. Foster moved to approve the minutes with the change. Mr. Carson made a second; the motion passed, and the minutes were approved unanimously.

ACTION ITEMS

Sediment Control Rules Adoption: Update and Action Required

Mr. Boyd DeVane explained the action required by the Sedimentation Control Commission to address the Rules Review Commission's recommendation that two existing rules, 15A NCAC 04C .0103 and .0106, be repealed. Mr. Boyd Devane and Mr. Toby Vinson addressed Commissioners' questions.

The motion was as follows:

Ms. Deck moved to adopt the recommendation to repeal both rules. Dr. McLaughlin made a second to the motion. The Commission voted unanimously to repeal rules 15A NCAC 04C .0103 and 15A NCAC 04C .0106.

City of Asheville Local Program Review

Ms. Coco summarized the DEMLR staff review of the City of Asheville Program. Staff recommended to continue delegation of the City's program.

The motion was as follows:

Mr. Bivens moved to continue delegation of the City's program. Ms. Deck made a second. The Commission voted to continue delegation authority for the program. The motion passed unanimously.

County of Orange Local Program Review

Ms. Coco summarized the DEMLR staff review of the Orange County Program. Staff recommended to continue delegation authority for the program.

The motion was as follows:

Dr. McLaughlin moved to continue delegation of the County's program. Ms. Deck made a second. The Commission voted to continue delegation authority for the program.

The motion passed unanimously.

Memorandum of Agreement Template

Ms. Julie Coco summarized proposed changes to the memorandum issued to Local Programs. Ms. Deck made a motion to accept the changes with one revision to that requested. The one revision involved continued notification by Local Programs to the DEMLR regional offices of the issuance of Notices of Violation. Dr. McLaughlin made a second; The Commission voted unanimously to approve the changes requested by DEMLR staff that included the revision to notifications.

INFORMATION ITEMS

Committee Nominations & Topics

Ms. Rebecca Coppa summarized the nominations received for committee membership and topics of interest.

Dr. McLaughlin reminded the members of an earlier discussion in the meeting whereby it was suggested to add a topic regarding the effectiveness of construction entrances. Dr. White extended the nomination deadline by one month. She encouraged members to submit nominations for the Commission Technical Committee (CTC) and Education Advisory Commission directly and only to Rebecca Coppa with the DEMLR.

Local Program Ordinance Review and Delegation Procedures

Ms. Julie Coco summarized the discussion on these two procedures from the October 2, 2019 committee meeting. An ordinance review procedure is being developed by DEMLR staff in conjunction with interested commission members. DEMLR staff are also developing criteria and enhancing their procedures by which local governments receive delegation for administering and enforcing the Sedimentation Pollution Control Act.

Civil Penalty Remission Guidelines and Pending Cases

Ms. Coco provided an update on the status of the pending remission requests from civil penalties assessed by Local Programs. She also answered questions regarding the guidelines approved on February 20, 2020.

Land Quality Section Active Sediment Cases and Enforcement

Ms. Coco reported on the status of civil penalty assessments and judicial actions.

Education Program Status Report

Ms. Rebecca Coppa reported on Sediment Education Program activities.

Sediment Program Status Report

Ms. Coco reported on the Land Quality Section's statewide plan approvals, inspections, and enforcement activities.

NCDOT Report

Ms. Julie Coco reported on the Immediate Corrective Action Report issued by the

Department.

Land Quality Section Report

Mr. Toby Vinson provided a report on the current number of vacancies in the Section and other Land Quality Section activities and issues.

CONCLUSION

Remarks by the Acting DEMLR Director – Mr. Wrenn stated that based on the current guidance to minimize the spread of COVID-19, the DEMLR has adjusted operations to protect the health and safety of the staff and public. Many employees are working remotely or are on staggered shifts. To accommodate these staffing changes, all DEQ office locations are limiting public access to appointments only. We have temporarily stopped routine inspections but are continuing to conduct complaint investigations, emergency response, and compliance/enforcement inspections.

PED report response update – DEMLR continues to analyze and implement process improvements in response to the Performance Evaluation Division report. He highlighted topics that include risk-based inspections, inspection expectations during the pandemic, progress on our electronic permitting of projects, and the possible budget cuts to the program based on this COVID-19 pandemic.

Remarks by Commission Members – Ms. Ogallo reminded the members of upcoming expiration dates for their Statements of Economic Interest and the need to provide new statements to the DEMLR. The annual deadline is April 15th. Ms. Ogallo also reminded the members of upcoming expiration dates for their ethics training. She will send an email to the members whose ethics training will be expiring soon.

Remarks by Chairman – The Chair thanked everyone for their time in attendance, and patience with this first-ever webinar. She thanked the DEMLR staff for conducting a successful online event.

Adjournment – Dr. White adjourned the meeting at approximately 12:47 pm.

Julie Coco, State Sediment Engineer
Division of Energy, Mineral, and Land
Resources

Brian Wrenn, Acting Director
Division of Energy, Mineral, and Land
Resources

Dr. Susan White, Chair
Sedimentation Control Commission

II. Action Items

- A. Informal Review of Local Government Ordinance – Staff is requesting initial review of an ordinance for the Town of Clayton.
- B. Model Ordinance Changes – Staff is seeking to re-adopt the Model Ordinance for Local Programs.

TITLE XV: LAND USE

CHAPTER 156

SOIL EROSION and SEDIMENTATION CONTROL ORDINANCE

Town of Clayton, NC

effective
January 1, 2021

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ARTICLE 1: GENERAL PROVISIONS

156.100 – TITLE.

This chapter shall be known and may be cited as the Town of Clayton Soil Erosion and Sedimentation Control Ordinance.

156.101 – PURPOSE.

This ordinance is adopted for the purposes of:

1. regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
2. establishing procedures through which these purposes can be fulfilled.

156.102 –DEFINITIONS.

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

1. *Accelerated Erosion* - means any increase over the rate of natural erosion as a result of land-disturbing activity.
2. *Act* - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
3. *Adequate Erosion Control Measure, Structure, or Device* - means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.
4. *Affiliate* – means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
5. *Approving Authority* – the Division or other State or local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provision of the Act.
6. *Being Conducted* - means a land-disturbing activity has been initiated and not deemed complete by the approving authority.
7. *Borrow* - means fill material which is required for on-site construction and is obtained from other locations.

8. *Buffer Zone* - means the strip of land adjacent to a lake or natural watercourse.
9. *Commission* - means the North Carolina Sedimentation Control Commission.
10. *Completion of Construction or Development* - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
11. *Department* - means the North Carolina Department of Environmental Quality (DEQ).
12. *Director* - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
13. *Discharge Point or Point of Discharge*- means that point at which storm water runoff leaves a tract of land where a land disturbing activity has occurred or enters a lake or natural watercourse.
14. *Energy Dissipator* - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
15. *Erosion* - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
16. *Ground Cover* - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
17. *Lake or Natural Watercourse* – means 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.
18. *Land-disturbing Activity* - means 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.
19. *Local Government* - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.
20. *Natural Erosion* - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
21. *Parent* – means an affiliate that directly, or indirectly through one or more

- intermediaries, controls another person.
22. *Person* - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
 23. *Person Conducting Land-Disturbing Activity* - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
 24. *Person Responsible for the Violation*, as used in this article, and G.S. 113A-64, - means:
 - A. the developer or other person who has or holds himself out as having financial or operation control over the land-disturbing activity; or
 - B. the 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 Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
 25. *Person Who Violates or Violator* – as used in G.S. 113A-64, means:
 - A. any landowner or other person who has financial or operational control over the land-disturbing activity; or
 - B. who has directly or indirectly allowed the activity, and who has failed to comply with the provisions of the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant the Act, as it imposes a duty upon that person.
 26. *Phase of Grading* - means one of two types of grading: rough or fine.
 27. *Plan* - means an erosion and sedimentation control plan
 28. *Program Administrator* – means Town Engineer or Town Engineer’s designee
 29. *Sediment* - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
 30. *Sedimentation* - means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.
 31. *Siltation* - means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing

- activity; and which has been deposited, or is in suspension in water.
32. *Storm Drainage Facilities* - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.
 33. *Storm Water Runoff* - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
 34. *Subsidiary* – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
 35. *Ten-Year Storm* or Q10- means 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, or the probability (10%) of a storm of this magnitude occurring in any given year and of a duration which will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
 36. *Town* – means the Town of Clayton, NC; both town limits and extra territorial jurisdiction (ETJ)
 37. *Tract* - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
 38. *Twenty-five Year Storm* or Q25- means 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 25 years, or the probability (4%) of a storm of this magnitude occurring in any given year and of a duration which will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
 39. *Uncovered* - means the removal of ground cover from, on, or above the soil surface.
 40. *Undertaken* - means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.
 41. *Velocity* - means the speed of flow through a cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows. 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.
 42. *Waste* - means surplus materials resulting from on-site land-disturbing activities and

being disposed of at other locations.

43. *Working Days* - means days exclusive of Saturday and Sunday and Federal and State holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

156.103 – SCOPE AND EXCLUSIONS.

1. *Geographical Scope of Regulated Land-Disturbing Activity.* This ordinance 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.
2. *Exclusions from Regulated Land-Disturbing Activity.* Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:
 - A. Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - (ii) dairy animals and dairy products.
 - (iii) poultry and poultry products.
 - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - (v) bees and apiary products.
 - (vi) fur producing animals.
 - (vii) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
 - B. An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.

- C. An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
 - D. A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
 - E. An activity which is essential to protect human life during an emergency.
 - F. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
 - G. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2
3. *Plan Approval Requirement for Land-Disturbing Activity.* No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval from the Town.
 4. *Protection of Property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
 5. *More Restrictive Rules Shall Apply.* Whenever conflicts exists between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
 6. *Plan Approval Exceptions.* Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed 1 acre (43,560 square feet) in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

156.104 – MADATORY STADARDS FOR LAND-DISTURBING ACTIVITY.

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

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

- (i) *Projects On, Over or Under Water.* This standard shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - (ii) *Buffer Measurement.* Unless otherwise provided, the width of a buffer zone is measured horizontally from the top of bank 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.
- 2. *Graded Slopes and Fills.* The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 working days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- 3. *Fill Material.* 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 twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
- 4. *Ground Cover.* Whenever land-disturbing activity is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction 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. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 14 working days following completion of construction or development if an NCG01 permit is required. Unless where otherwise specified in the Act or the rules of this Chapter, provisions for permanent ground cover sufficient to restrain erosion shall be accomplished within 90 calendar days following completion of construction or development.
- 5. *Prior Plan Approval.* No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the Town. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved.

6. *De-watering*. 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.
7. The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.
8. All individuals that obtain a State or locally-approved erosion and sedimentation control plan that disturb one acre or more of land are required by the U.S. Environmental Protection Agency to obtain coverage under the N.C. Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in NCG01 for temporary or permanent ground cover may differ from the ground cover, or stabilization, requirements in this Chapter. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance with the NCG01.

156.105 – EFFECTIVE DATE.

This ordinance becomes effective on January 1, 2021.

156.106 – SEVERABILITY.

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

ARTICLE 2 - EROSION AND SEDIMENTATION CONTROL PLANS

156.200 - PLAN SUBMISSIONS.

A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than one acre on a tract. Plans should be submitted per current Town standard procedures and policies.

156.201 - FINANCIAL RESPONSIBILITY and OWNERSHIP.

1. Plans shall 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 attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections 156.202 *Utilities* and

156.210 *Transfers* 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.

2. Plans shall be disapproved unless accompanied by documentation of property ownership.

156.202 - UTILITIES.

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.

156.203 - SURETY.

A surety will be required in the form of a performance bond or a letter of credit. The surety will ensure that stabilization of the site is achieved throughout the disturbed area in the event the contractor is unable to complete the project and shall be paid to the Town prior to the issuance of the land disturbance (grading) permit. The surety shall be equal to \$1500/acre of land disturbance rounded to the nearest ½ acre. This surety will be released once a certificate of completion is issued by the Town. A certificate of completion will be provided when the site is stabilized with a sufficient amount of ground cover to prevent erosion, or permanent mow-able planting with 100 coverage and 80 percent growth with no large bare patches. The Town may cash the surety if the site is issued a continuing violation notice for ground stabilization.

156.204 - ENVIRONMENTAL POLICY ACT DOCUMENT.

Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Town shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.

156.205 - CONTENT.

The Plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town on request.

156.206 - TIMELINE for DECISIONS on PLANS.

The Town will review each complete Plan submitted to them 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 of Clayton 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.

156.207 – 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. Plan approval is contingent on land-disturbing activity commencing within a year of permit issuance. If after a year no land disturbing activity has occurred, permit and plan approval shall be void. Once the land disturbance (grading) activity has commenced, the permit is valid for 2 years from the date of commencement. Permit renewal is required if the project has not been completed by the 2 year expiration date and is valid for an additional year from original expiration date previously established with the commencement of the land disturbance. The permit renewal application must be submitted prior to expiration of the original permit, otherwise, a new plan submittal and permit shall be required. The permit renewal fee is listed in the Town’s Fee Schedule.

156.208 - DISAPPROVAL for CONTENT.

The Town may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan’s content must specifically state in writing the reasons for disapproval.

156.209 - OTHER DISAPPROVALS.

The Town shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Town may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection *156.210 Transfers* of this section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (A) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission

or the Town pursuant to this Article and has not complied with the notice within the time specified in the notice.

- (B) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.
- (C) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
- (D) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Town pursuant to subsection *156.209 Other Disapprovals* of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The Town shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 156.210(1), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

156.210 – PLAN APPEALS.

1. The appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:
 - A. The disapproval or modification of any proposed Plan by the Town, shall entitle the person submitting the Plan to a public hearing if such person submits written demand for a hearing to the Town Clerk within 15 days after receipt of written notice of disapproval or modifications.
 - B. A hearing held pursuant to this section shall be conducted by the Town Council, within 30 days after the date of the request for a hearing.
 - C. The Town Council shall make recommendations to the Program Administrator, within 30 days after the date of the hearing on any Plan.
 - D. The Program Administrator, will render its final decision on any Plan within 15 days of receipt of the recommendations from the Town Council.
 - E. If the Town 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's decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

2. In the event that a Plan is disapproved pursuant to 156.209 *Other Disapprovals* of this ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.

156.211 - TRANSFERS.

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 subsection.

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:
 - i. 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.
 - d. A person who has sold the property on which the permitted activity is occurring or will occur.
 - ii. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - iii. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - iv. 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 subsection shall prevent the Town from requiring a revised plan pursuant to G.S. 113A-54.1(b).

156.212 - 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.

156.213 - PRECONSTRUCTION CONFERENCE.

When deemed necessary by the Town a preconstruction conference may be required and must be included as part of the plan.

156.214 - DISPLAY of PLAN APPROVAL.

A Plan approval issued under this article shall be prominently displayed at either the primary entrance of the job site or at another location that is observable to the public and inspectors until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A paper copy of the approved plan shall be kept on file at the job site.

156.215 - REQUIRED REVISIONS.

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

156.216 – 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.

156.217 – FAILURE to FILE a PLAN.

Any person engaged in land-disturbing activity who fails to file a Plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this ordinance.

156.218 – FEES.

Fees for review and approval of plans and permits are determined by the, Town’s current fee schedule. In establishing the fee schedule, the Town shall consider the administrative and personnel costs incurred for reviewing the Plans and for related compliance activities.

ARTICLE 3 – INSPECTIONS

156.300 - SELF INSPECTIONS.

1. 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 subsection shall be in addition to inspections required by G.S. 113A-61.1.
2. Weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000.
3. Where inspections are required by 156.300(1) of this Chapter and G.S. 113A-54.1(e), the following apply:
 - A. The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - i 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 Sub-item (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;

- ii. 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;
- iii. the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate [as defined in 156.300(2)(A)(v)] 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;
- iv. 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
- v. 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. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

- B. 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.

- C. The inspection shall be performed during or after each of the following phases of a plan:
 - i. installation of all erosion and sediment control measures;
 - ii. clearing and grubbing of existing ground cover;
 - iii. completion of any grading that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
 - iv. completion of storm drainage facilities;
 - v. completion of all land-disturbing activities, construction, or development, including permanent ground cover establishment and removal of all temporary measures;
 - vi. quarterly until the establishment of permanent ground cover sufficient to restrain erosion
 - vii. transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized

156.301 – OTHER INSPECTIONS AND INVESTIGATIONS.

- 1. *Inspection.* Agents, officials, or other qualified persons authorized by the Town, will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall

be included in the certificate of approval of each Plan.

2. *Willful Resistance, Delay or Obstruction.* No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Town, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
3. *Notice of Violation.* If the Town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. Failure to comply may result in the issuance of a Stop Work Order by the Plan Administrator.
4. *Investigation.* The Town, shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and 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.
5. *Statements and Reports.* The Town shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

ARTICLE 4 – BASIC CONTROL OBJECTIVES

156.400 – OBJECTIVES.

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

1. *Identify Critical Areas* - On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
2. *Limit Time of Exposure* - Limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority
3. *Limit Exposed Areas* - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

4. *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.
5. *Control Sedimentation* - All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
6. *Manage Storm Water Runoff* - Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

ARTICLE 5 – DESIGN AND PERFORMANCE STANDARDS

156.500 – DESIGN and PERFORMANCE STANDARDS.

1. Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of a 10-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 (Handbook 630)." This document is herein incorporated by reference including subsequent amendments and editions, and may be accessed at no cost at <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063>. Other methodologies may be used if based on generally accepted engineering standards that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.
2. The Sedimentation Control Commission and DEQ have created and adopted a *North Carolina Erosion and Sedimentation Control Planning and Design Manual* describing recommended sedimentation control techniques for construction activities. This is an acceptable resource for design of the erosion control plan.

ARTICLE 6 – STORMWATER OUTLET PROTECTION

156.600 - 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.

156.601 - PERFORMANCE STANDARD.

1. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - A. the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - B. the velocity of the ten-year storm runoff in the receiving watercourse prior to development.
2. If condition (A) or (B) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.
3. TABLE 1 - Maximum Permissible Velocities**:

<u>Material</u>	F.P.S. (feet per second)	M.P.S. (meters per second)
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	1.5
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.

156.602 - 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 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
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.

156.603 - 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.

ARTICLE 7 – OTHER DISTURBED AREAS

156.700 – 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. When a borrow or waste disposal activity is associated with a project, it must be identified with the original plan submittal and identified on the permit.

156.701 – 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.

156.702 – EXISTING UNCOVERED AREAS.

1. All uncovered areas existing on the effective date of this ordinance which resulted from land-disturbing activity, exceed 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.
2. 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 ordinance, 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 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 Town shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.
3. The Town, reserves the right to require preparation and approval of a Plan in any instance where extensive control measures are required.
4. This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

ARTICLE 8 – NATURAL FEATURES

156.800 – OPERATIONS IN LAKES AND 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.

ARTICLE 9 – MAINTENANCE

156.900 – RESPONSIBILITY FOR MAINTENANCE.

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

156.901 – 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.

ARTICLE 10 – PENALTIES AND INJUNCTIVE RELIEF

156.1000 – CIVIL PENALTIES.

1. *Civil Penalty for a Violation.* Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the Town may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand

dollars (\$25,000).

2. *Environmental Impacts.* In addition to the civil penalties provided with the Town's Fee Schedule, the Plan Administrator may assess a one-time civil penalty of \$5,000.00 on the day of the violation for off-site sedimentation damage especially in the case of damage to a body of water, wetlands or buffer. Moreover, any malicious or intentional destruction of silt fencing or other sedimentation and erosion control device will result in a one-time fine of up to \$1,000.00.
3. *Repeat Offender.* An additional civil penalty of \$1,000.00 per day shall be charged to any person assessed a civil penalty for any violation of this chapter within the prior two years. A person may be assessed a civil penalty from the date the violation is detected if the deadline stated is not met. Each day of a continuing violation shall constitute a separate violation.
4. *Civil Penalty Assessment Factors.* The Program Administrator shall determine the amount of the civil penalty based upon the following factors:
 - A. the degree and extent of harm caused by the violation,
 - B. the cost of rectifying the damage,
 - C. the amount of money the violator saved by noncompliance,
 - D. whether the violation was committed willfully, and
 - E. the prior record of the violator in complying or failing to comply with this ordinance.
5. *Notice of Civil Penalty Assessment.* The Program 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 G.S. 1A-1, Rule 4. A notice of assessment by the Town shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the Town 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.
6. *Final Decision.* The final decision on contested assessments shall be made by the Town Council in accordance with this ordinance *Appeal of Final Decision*. Appeal of the final decision by Town Council shall be to the Superior Court of Johnston County. Such appeals must be made within 30 days of the final decision of the Town Council.
7. *Collection.* If payment is not received within 60 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 Johnston County Superior Court, or the County Superior Court of the violator's residence or principal place of business. 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.

8. *Credit of Civil Penalties.* The clear proceeds of civil penalties collected by the Town under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the Town may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each Town for the prior fiscal year. [In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

156.1001 – CRIMINAL PENALTIES.

Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, 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.

156.1002 – INJUNCTIVE RELIEF.

1. *Violation of Local Program.* Whenever the Program Administrator has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the Town, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the Town, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Johnston County Superior Court.
2. *Abatement of Violation.* Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

156.1003 – 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 ordinance.

MODEL LOCAL ORDINANCE

SOIL EROSION and SEDIMENTATION CONTROL

Revised ~~November 2018~~ August 2020

SEDIMENTATION CONTROL COMMISSION

RALEIGH, NORTH CAROLINA

11/15/2018

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ORDINANCE NO. _____

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION.

NOW, THEREFORE, BE IT ORDAINED by the (Governing Body) of the (City), (Town), (County) hereby adopts the following ordinance.

SECTION 1 Title

This ordinance may be cited as the (city), (town), (county) Soil Erosion and Sedimentation Control Ordinance.

SECTION 2 Purpose

This ordinance 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.

SECTION 3 Definitions

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

- (a) Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- (b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- (c) Adequate Erosion Control Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.
- (d) Affiliate – means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(e) Approving Authority – means 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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(e) Being Conducted - means a land-disturbing activity has been initiated and ~~permanent stabilization of the site has not been~~ not deemed complete ~~by the approving authority~~.

(f) Borrow - means fill material ~~which that~~ is required for on-site construction ~~and that~~ is obtained from other locations.

(g) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.

(h) Coastal Counties - means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

(i) Commission - means the North Carolina Sedimentation Control Commission.

(j) Completion of Construction or Development - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

(k) Department - means the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality.

(l) Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of ~~Environment and Natural Resources~~ Environmental Quality.

(m) Discharge Point or Point of Discharge - means that point ~~at which storm water~~ 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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(n) District - means the _____ Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

(o) Energy Dissipator - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

(p) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

- (q) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (r) High Quality Waters - means those classified as such in 15A NCAC ~~02B.0101(e)~~ .0224, which is herein incorporated by reference including subsequent amendments and additions.
- ~~(5) General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(e).~~
- (s) High Quality Water (HOW) Zones –means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW’s.
- (t) Lake or Natural Watercourse – means 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.~~
- (u) Land-disturbing Activity - means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
- (v) Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.
- (w) Natural Erosion - means the wearing away of the earth’s surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- (x) Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (y) Person - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (z) Person Conducting the Land-Disturbing Activity - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ~~(aa) Person Responsible for the Violation means:~~
- ~~——— (1) ——— the developer or other person who has or holds himself out as having financial or operation control over the land disturbing activity; or~~

~~(2) the 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 Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.~~

(aa) Person Who Violates or Violator, as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order or local ordinance adopted pursuant to the Act as it imposes a duty upon that person.

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(bb) Phase of Grading means ~~one of two types of grading: rough or fine.~~

(cc) Plan - means an erosion and sedimentation control plan.

(dd) Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

(ee) Sedimentation - means the process by which sediment resulting from accelerated erosion has been or is being transported off the sit of the land-disturbing activity or into a lake or natural watercourse.

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

(gg) Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

(hh) Stormw-Water Runoff - means the surface flow runoff of water resulting from precipitation in any form, ~~and occurring immediately after rainfall or melting.~~

(ii) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

(jj) Ten-Year Storm - means ~~the storm water runoff resulting from precipitation a rainfall~~ of an intensity ~~expected 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 ~~which that~~ will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

- (kk) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (ll) Twenty-five Year Storm - means ~~the storm water runoff resulting from precipitation a rainfall~~ of an intensity ~~expected 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 25 years, and of a duration ~~which that~~ will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (mm) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (nn) Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.
- (oo) Velocity - means the ~~average velocity speed~~ of flow through ~~the a~~ cross section ~~of the main channel at the peak flow of the storm of interest perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.~~
~~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.~~
- (pp) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.
- (qq) Working Days - means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

[NOTE: IT IS SUGGESTED FOR LOCAL PROGRAMS TO ALSO EXCLUDE FEDERAL AND STATE HOLIDAYS, UNLESS WORK IS BEING CONDUCTED ON THESE HOLIDAYS.]

SECTION 4 Scope and Exclusions

- (a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the territorial jurisdiction of the (city), (town), (county) and to the extraterritorial jurisdiction of the (city), (town), (county) 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 ordinance to all land-disturbing activity, this ordinance 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:
 - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - (ii) dairy animals and dairy products.
 - (iii) poultry and poultry products.
 - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - (v) bees and apiary products.
 - (vi) fur producing animals.

- (vii) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
- (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 the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
- (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in 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 Service 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 ordinance without first obtaining a Plan approval therefor from the (city)(town)(county).
- (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 exists between federal, state, or local laws, ordinance, 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 _____ square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

SECTION 5 Mandatory Standards for Land-Disturbing Activity

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

(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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.

(i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(ii) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water 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.

- (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 twenty-five percent (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 said disturbance would be temporary and the extent of said disturbance would be minimal.

(i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

- (ii) 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.
 - (iii) 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 percent (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 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
 - (iv) 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.”
- (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 twelve (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~~ 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 Section 8~~(b)(5)(g)(4)~~, provisions for a permanent 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.

Commented [CJ2]: Where did this come from? Not in statutes or rules.

- (e) Prior Plan Approval. No person shall initiate any land-disturbing activity that will disturb more than ~~one acre~~ square feet on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the (city)(town)(county). ~~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.

Commented [CJ3]: or if one acre must remain as in G.S. 113A-57.4., then does this mean that plans are not required to be submitted 30 days prior to LPs with thresholds less than 1 acre?

Commented [CJ4]: Remove?

[NOTE: LOCAL PROGRAMS MAY HAVE PERMITS WHICH ALLOW FOR LAND DISTURBING ACTIVITIES TO BE INITIATED SUBSEQUENT TO BOTH A PLAN APPROVAL AND THE LOCAL PERMIT BEING ISSUED. IN THIS CASE, THE ABOVE SENTENCE WILL NEED TO BE REVISED OR EXPANDED.]

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The (city)(town)(county) 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) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(g) Design Standards for The Upper Neuse River Basin (Falls Lake Watershed)

In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3. (a), shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out 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 the State or the United States.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that 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 the State or the United States.

- (3) Newly constructed open channels shall be planned, designed, and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit steeper side slopes or where the side slopes are stabilized by using mechanical devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion, as determined by the Division, based on soil conditions.
- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven calendar days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
 - (a) For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 calendar days.
 - (b) For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 calendar days. For purposes of this Item, "moderate slope" means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance.
 - (c) For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven calendar days. For purposes of this Item, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

SECTION 6 Erosion and Sedimentation Control Plans

- (a) Plan Submission. A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than ~~one acre~~ _____ square feet on a tract. ~~Three (3) copies of the~~ The Plan shall be filed with the (city)(town)(county); a copy shall be simultaneously submitted to the _____ Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

[NOTE: THE LAST SENTENCE IN PARAGRAPH (a) DEALING WITH PLAN SUBMISSIONS MAY BE DELETED IF SUBMISSIONS TO THE SOIL AND WATER CONSERVATION DISTRICTS ARE NOT REQUIRED UNDER PARAGRAPH (c).]

- (b) Financial Responsibility and Ownership. 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 attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections (b1) 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.
- (b1) 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.
- (c) Environmental Policy Act Document. Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The (city)(town)(county) shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.
- (d) Content. The Plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the (city)(town)(county) on request.
- (e) Soil and Water Conservation District Comments. The District shall review the Plan and submit any comments and recommendations to the (city)(town)(county) 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 (city)(town)(county). Failure of the District to submit its comments and recommendations within 20 days or

Commented [CJ5]: Why include if this does not apply to LPs?
Can these be privately-funded utility projects?

Commented [CJ6]: Does this not apply to public projects only?
Local governments may be required to complete an environmental document for their publicly-funded projects, but they are not to review publicly-funded projects, whether their own or another program's project, or the State's projects.

Section (c) is required under NCAC for Approval of Plans, pertaining to Commission approvals, but not under the paragraph pertaining to Local Government approvals.

(SEPA-related documents)

within any agreed-upon shorter period of time shall not delay final action on the Plan.

~~[PARAGRAPH (e) MAY BE DELETED WITH CONSENT FROM THE SEDIMENTATION CONTROL COMMISSION.]~~

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(f) Timeline for Decisions on Plans. The (city)(town)(county) will review each complete Plan submitted to them 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 (city)(town)(county) 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.

Commented [CJ7]: This is not in GS 113A-61 regarding local approvals. Automatic approval is not granted upon expiration of the 30 days. The MOA says that the person must be notified in writing within 30 and 15 days, yet there is no automatic approval granted.

(g) Approval. The (city)(town)(county) 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 (city)(town)(county) shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The (city), (town), (county) may establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance ~~whereby no land-disturbing activity has been undertaken.~~

(h) Disapproval for Content. The (city)(town)(county) may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.

(i) Other Disapprovals. The (city)(town)(county) shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The (city)(town)(county) may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (j) of this section 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 plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this

Article and has not complied with the notice within the time specified in the notice.

- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the (city)(town)(county) pursuant to subsection (i) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The (city)(town)(county) shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 17(a), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- (j) **Transfer of Plans.** The (city)(town)(county) 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 subsection.

- (1) The (city)(town)(county) 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 (city)(town)(county) finds all of the following:
 1. The plan holder is one of the following:
 - I. A natural person who is deceased.
 - II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - IV. 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.

Commented [CJ8]: Is this REQUIRED to be included within the MO? I think we want to encourage appeals to go through the local process instead of the Commission at least the first time around, and it is allowed by statute.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 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 (city)(town)(county) may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the (city)(town)(county) 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 ~~Article~~ 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 (city)(town)(county), either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the (city), (town), (county) 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 (city)(town)(county) determines that the Plan is inadequate to meet the requirements of this ordinance, the (city, (town), (county) may require any revision of the Plan that is necessary to comply with this ordinance.
- (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 (city)(town)(county), 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

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file a Plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this ordinance.

- (q) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

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

~~(i) 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 Sub item (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 Sub-item (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.~~
- ~~(ii) 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.~~
- ~~(iii) 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.~~

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

- (a) initial installation of erosion and sediment control measures;
- (b) clearing and grubbing of existing ground cover;
- (c) completion of any grading that requires ground cover;
- (d) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
- (e) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (c) of this Item.

ii) Documentation of self-inspections performed under Item (1) of this Rule shall include:

- (a) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
- (b) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
- (c) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.
- (d) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required

to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

SECTION 7 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 specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority.
- (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 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 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. Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.~~

SECTION 8 Design and Performance Standards

- (a) Except as provided in Section 8(b)(2) and Section 5(g)(1) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be

planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the 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) 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 twenty 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 upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the 25-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 twenty-five 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 according to the following criteria:~~
 - (i) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
 - (ii) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
 - (iii) have a minimum surface area of 325 square feet per cfs of Q25 peak flow;

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- (iv) have a minimum dewatering time of 48 hours;
- (v) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (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 horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other ~~acceptable forms of~~ ditch liners proven as being effective in restraining accelerated erosion. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

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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.~~

SECTION 9 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. Persons shall conduct land-disturbing activity so that the post construction velocity of the 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%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	<u>0.8</u>
Sandy loam (noncolloidal)	2.5	<u>0.8</u>
Silt loam (noncolloidal)	3.0	<u>0.9</u>
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 (city)(town)(county) 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 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
 - (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 (city), (town), (county) that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

SECTION 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.~~

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.

SECTION 11 Access and Haul Roads

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

Commented [CJ10]: This whole section needs to be re-written. Refer to 15A NCAC 04B.0110 for meaning. The borrow/waste must be related or meant for the particular land-disturbing activity, not just any land-disturbing activity! Delivered to or taken off-site.

Commented [CJ11R10]: Copied & pasted rule as re-adopted on April 1, 2020.

SECTION 12 Operations in Lakes or Natural Watercourses

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

SECTION 13 Responsibility for Maintenance

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

SECTION 14 Additional Measures

Whenever the (city)(town)(county), 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.~~ accelerated erosion and sedimentation 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.

~~SECTION 15 Existing Uncovered Areas~~

- ~~(a) All uncovered areas existing on the effective date of this ordinance which resulted from land disturbing activity, exceed 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 (city)(town)(county), shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the Commission or by the (city)(town)(county). 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 (city)(town)(county), 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.~~

Commented [CJ12]: This entire Section (a-d) is from 15A NCAC 04B .0116, which EXPIRED effective 3/1/16. Propose to remove.

SECTION 16 Fees

(a) The (city)(town)(county), may establish a fee schedule for the review and approval of Plans.

~~(b) In establishing the fee schedule, the _____ shall consider the administrative and personnel costs incurred for reviewing the Plans and for related compliance activities.~~

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~~[NOTE: THE LOCAL PROGRAM SHALL CONSIDER THE ADMINISTRATIVE AND PERSONNEL COSTS INCURRED FOR REVIEWING THE PLANS AND FOR COMPLIANCE RELATED ACTIVITES.]~~

SECTION 17 Plan Appeals

(a) Except as provided in Section 17(b) of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall governed by the following provisions:

(1) The disapproval or modification of any proposed Plan by the (city)(town)(county), shall entitle the person submitting the 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 (city)(town)(county), (appropriate local agency), within _____ days after the date of the appeal or request for a hearing.

(3) The agency conducting the hearings shall make recommendations to the governing body of the (city)(town)(county), within ____ days after the

date of the hearing on any Plan.

- (4) The Governing Body of the (city)(town)(county), will render its final decision on any Plan within ____ days of receipt of the recommendations from the agency conducting the hearing.
- (5) If the (city)(town)(county) upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the (city)(town)(county)'s decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

[NOTE: THE APPEALS PROCEDURES ABOVE ARE INCLUDED ONLY TO ENSURE THAT EACH LOCAL ORDINANCE CONTAINS PROCEDURES FOR APPEALS. THE PROCEDURE SHOULD BE WRITTEN TO CONFORM TO APPLICABLE EXISTING PROCEDURES, OR AS CREATED FOR THE ADMINISTRATION OF THE ORDINANCE.]

- (b) In the event that a Plan is disapproved pursuant to Section 6(i) of this ordinance, the applicant may appeal the (city)(town)(county)'s disapproval of the Plan directly to the Commission.

SECTION 18 Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the (city), (town), (county), will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.
- (b) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the (city), (town), (county), while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) Notice of Violation. If the (city)(town)(county) determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be

taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. 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 deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the (city)(town)(county) is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

- (d) Investigation. The (city)(town)(county), shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and 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 and who presents appropriate credentials-
- (e) Statements and Reports. The (city)(town)(county), 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.

SECTION 19 Penalties

(a) Civil Penalties

- (1) Civil Penalty for a Violation. Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the (city)(town)(county) may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand

dollars (\$25,000).

- (2) Civil Penalty Assessment Factors. The governing body of the (city)(town)(county) shall determine the amount of the civil penalty based upon the following factors:
 - (i) the degree and extent of harm caused by the violation,
 - (ii) the cost of rectifying the damage,
 - (iii) the amount of money the violator saved by noncompliance,
 - (iv) whether the violation was committed willfully, and
 - (v) the prior record of the violator in complying of failing to comply with this ordinance.

- (3) Notice of Civil Penalty Assessment. The governing body of the (city)(town)(county) 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. 1A-1, Rule 4. A notice of assessment by the (city)(town)(county) shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the (city)(town)(county) (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 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 North Carolina General Statutes and a stipulation of the facts on which the assessment was based.

- (4) Final Decision: The final decision on contested assessments shall be made by the governing body of the (city)(town)(county) in accordance with (the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.)

- (5) Appeal of Final Decision. Appeal ~~from~~ of the final decision of the governing body of the (city)(town)(county) shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the governing body of the (city)(town)(county).

(6) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the (city, town, county commission/board) within 60 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.

(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.

[NOTE: THE PETITIONER HAS THE BURDEN OF PROVIDING INFORMATION CONCERNING THE FINANCIAL IMPACT OF A CIVIL PENALTY ON THE PETITIONER AND THE BURDEN OF SHOWING THE PETITIONER'S FINANCIAL HARDSHIP. THE CITY/TOWN/COUNTY COMMISSION/BOARD MAY REMIT THE ENTIRE AMOUNT OF THE PENALTY ONLY WHEN THE PETITIONER HAS NOT BEEN ASSESSED CIVIL PENALTIES FOR PREVIOUS VIOLATIONS AND PAYMENT OF THE CIVIL PENALTY WILL PREVENT PAYMENT FOR NECESSARY REMEDIAL ACTIONS. THE CITY/TOWN/COUNTY COMMISSION/BOARD MAY NOT IMPOSE A PENALTY UNDER THIS SECTION THAT IS IN EXCESS OF THE CIVIL PENALTY IMPOSED BY THE LOCAL PROGRAM.]

[NOTE: THE FOREGOING PROCEDURES ARE OFFERED AS GUIDANCE TO LOCAL GOVERNMENTS TO ENSURE THAT CIVIL PENALTIES ARE ACCOMPANIED BY REMISSION REQUESTS AND APPEAL PROCEDURES, INCLUDING HEARING OPPORTUNITIES.]

- (6) Collection. If payment is not received within 60 days after it is due, the (city)(town)(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 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 and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the

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Commented [CJ13]: At the request of Counsel

administrative and judicial review of the assessment.

- (7) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the (city)(town)(county) under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the (city)(town)(county) may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by ~~each the~~ (city)(town)(county) for the prior fiscal year.

[IN ANY EVENT, THE COST PERCENTAGE SHALL NOT EXCEED TWENTY PERCENT (20%) OF PENALTIES COLLECTED.]

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

Commented [CJ14]: Matches G.S. § 113A-64(b) more closely.

SECTION 20 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 (city)(town)(county), or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the (city)(town)(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 ordinance.

SECTION 21 Restoration After Non-Compliance

The (city)(town)(county), may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to

restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.

SECTION 22 Severability

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

SECTION 23 Effective Date

This ordinance becomes effective on _____. [IN ESTABLISHING AN EFFECTIVE DATE, THE LOCAL GOVERNMENT SHOULD CONSIDER THE NEED FOR LEAD-TIME TO ORIENT AND EDUCATE THOSE AFFECTED BY FULL IMPLEMENTATION OF THE ORDINANCE.]

CHAPTER 04 - SEDIMENTATION CONTROL

SUBCHAPTER 04A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

15A NCAC 04A .0101 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION

Persons may contact the North Carolina Sedimentation Control Commission offices at the Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, North Carolina 27611. Persons may contact regional offices of the Commission's staff in the Division of Energy, Mineral, and Land Resources at the following locations:

- (1) Asheville Regional Office
2090 U.S. 70 Hwy.
Swannanoa, NC 28778-8211
- (2) Winston-Salem Regional Office
450 W. Hanes Mill Rd., Suite 300
Winston-Salem, N.C. 27105
- (3) Mooresville Regional Office
610 E. Center Avenue, Suite 301
Mooresville, N.C. 28115-2578
- (4) Raleigh Regional Office
3800 Barrett Drive
Raleigh, N.C. 27609-7222
- (5) Fayetteville Regional Office
225 Green Street, Suite 714
Fayetteville, N.C. 28301-5095
- (6) Washington Regional Office
1424 Carolina Ave.
Washington, N.C. 27889-3314
- (7) Wilmington Regional Office
127 Cardinal Dr., Ext.
Wilmington, N.C. 28405-3845

History Note: Authority G.S. 113A-54; 143B-298;
Eff. February 1, 1976;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; February 1, 1992;
May 1, 1990; December 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February
2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04A .0102 PURPOSES

15A NCAC 04A .0103 STRUCTURE

15A NCAC 04A .0104 DELEGATION

History Note: Authority G.S. 113A-54(b)(d)(3); 113A-56(a)(b); 113A-58(1); 113A-61(d); 143B-298;
Eff. February 1, 1976;
Amended Eff. August 1, 1985; November 1, 1984; June 5, 1981; January 31, 1979;
Repealed Eff. August 1, 1988.

15A NCAC 04A .0105 DEFINITIONS

In addition to the terms defined in G.S. 113A-52, the following definitions shall apply in this Chapter and have these meanings:

- (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of land-disturbing activities.
- (2) "Act" means the Sedimentation Pollution Control Act of 1973 in G.S. 113A-50, et seq.
- (3) "Adequate Erosion Control Devices or Structures" means one that controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

- (4) "Approving Authority" means 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.
- (5) "Being Conducted" means a land-disturbing activity has been initiated and not deemed complete by the approving authority.
- (6) "Borrow" means fill material that is required for on-site construction that is obtained from other locations.
- (7) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.
- (8) "Coastal Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (9) "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which, as determined by the approving authority, is necessary for establishing a permanent ground cover.
- (10) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.
- (11) "Discharge Point" or "Point of Discharge" means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
- (12) "Division" or "DEMLR" means the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.
- (13) "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- (14) "Ground Cover" means any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.
- (15) "High Quality Waters" means those described in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and editions.
- (16) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the State, areas that are within one mile of and drain to HQW's.
- (17) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake, or pond.
- (18) "Natural Erosion" means "erosion" as defined in G.S. 113A-52(5) under natural environmental conditions undisturbed by man.
- (19) "Person Conducting the Land-disturbing Activity" means any person who may be held responsible for a violation unless provided otherwise by the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to these Rules or the Act.
- (20) "Person Who Violates," or "Violator," as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to the Act, as it imposes a duty upon that person.
- (21) "Plan" means an erosion and sedimentation control plan.
- (22) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.
- (23) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches, and appurtenances that serve to collect and convey stormwater through and from a given drainage area.
- (24) "Stormwater Runoff" means the runoff of water resulting from precipitation in any form.
- (25) "Ten-Year Storm" means 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 10 years, and of a duration that will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
- (26) "Twenty-five Year Storm" or "Q25" means 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 25 years, and of a duration that will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
- (27) "Uncovered" means having had ground cover removed from, on, or above the soil surface.
 - (28) "Undertaken" means the initiating of any activity or phase of activity that results or will result in a change in the ground cover or topography of a tract of land.
 - (29) "Velocity" means the speed of flow through a cross-section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
 - (30) "Waste" means surplus materials resulting from on-site construction and to be disposed offsite.

History Note: Authority G.S. 113A-52; 113A-54;
 Eff. November 1, 1984;
 Amended Eff. May 1, 1990;
 Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire on April 29, 1991;
 ARRC Objection Lodged November 14, 1990;
 ARRC Objection Removed December 20, 1990;
 Amended Eff. January 1, 1991;
 Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; April 1, 1992;
 Readopted Eff. April 1, 2020.

SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

15A NCAC 04B .0101 AUTHORITY

History Note: Authority G.S. 113A-54; 113A-64;
 Eff. February 1, 1976;
 Repealed Eff. November 1, 1984.

15A NCAC 04B .0102 PURPOSE

15A NCAC 04B .0103 SCOPE

History Note: Authority G.S. 113A-54(a)(b);
 Eff. February 1, 1976;
 Amended Eff. November 1, 1984;
 Repealed Eff. August 1, 1988.

15A NCAC 04B .0104 DEFINITIONS

History Note: Authority G.S. 113A-52; 113A-54;
 Eff. February 1, 1976;
 Amended Eff. March 14, 1980; January 31, 1979; July 1, 1978;
 Repealed Eff. November 1, 1984.

15A NCAC 04B .0105 PROTECTION OF PROPERTY

Persons conducting land-disturbing activity shall follow the measures specified in this Chapter and the Act to protect all public and private property from sedimentation and erosion damage caused by the land-disturbing activities.

History Note: Authority G.S. 113A-54(d)(2);
 Eff. February 1, 1976;
 Amended Eff. August 1, 1988; November 1, 1984;
 Readopted Eff. April 1, 2020.

15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES

An erosion and sedimentation control plan developed pursuant to this Chapter shall be designed to address the following:

- (1) Identify Critical Areas. Identify site areas subject to accelerated erosion, and off-site areas vulnerable to damage from erosion and sedimentation.
- (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- (3) Limit Time of Exposure. Limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority.
- (4) Control Surface Water. Control surface water originating upgrade of exposed areas in order to reduce erosion and sediment loss during exposure.
- (5) Control Sedimentation. All land-disturbing activity shall be planned to prevent off-site sedimentation damage.
- (6) Manage Stormwater Runoff. Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

History Note: Authority G.S. 113A-54(d)(4); 113A-54.1;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY

- (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with G.S. 113A-57 and the standards established in these Rules.
- (b) Unless where otherwise specified in the Act or the rules of this Chapter, provisions for permanent ground cover sufficient to restrain erosion shall be accomplished within 90 calendar days following completion of construction or development.
- (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan shall be filed and approved by the approving authority.
- (d) All individuals that obtain a State or locally-approved erosion and sedimentation control plan that disturb one acre or more of land are required by the U.S. Environmental Protection Agency to obtain coverage under the N.C. Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in NCG01 for temporary or permanent ground cover may differ from the ground cover, or stabilization, requirements in this Chapter. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance with the NCG01.

History Note: Authority G.S. 113A-54(d)(4); 113A-57;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD

Except where otherwise specified in this Chapter, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of a 10-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 (Handbook 630)." This document is herein incorporated by reference including subsequent amendments and editions, and may be accessed at no cost at

<https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063>.

Other methodologies may be used if based on generally accepted engineering standards that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.

*History Note: Authority G.S. 113A-54;
 Eff. February 1, 1976;
 Amended Eff. November 1, 1984; July 1, 1978;
 Readopted Eff. April 1, 2020.*

15A NCAC 04B .0109 STORMWATER OUTLET PROTECTION

(a) Persons shall provide a design for the land-disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving stormwater conveyance to, and including, the discharge point, does not exceed the greater of:

- (1) the velocity established by the table in Paragraph (d) of this Rule; or
- (2) the projected velocity of the ten-year storm runoff in the receiving stormwater conveyance prior to development.

If the projected conditions in Subparagraphs (1) or (2) of this Paragraph cannot be met, then the receiving stormwater conveyance to, and including, the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the velocity prior to development by ten percent.

(b) When conditions of this Rule can be met, the Commission shall allow alternative measures to control downstream erosion, including:

- (1) compensation for increased runoff from areas rendered impervious by designing measures to promote infiltration;
- (2) avoiding increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and paved sections;
- (3) providing energy dissipators at storm drainage outlets to reduce flow velocities to the discharge points; or
- (4) protecting stormwater conveyances subject to accelerated erosion by improving cross sections or providing erosion-resistant lining.

(c) This Rule shall not apply when stormwater discharge velocities will not result in accelerated erosion in the receiving stormwater conveyance or discharge point.

(d) The following table sets maximum permissible velocity for storm water discharges:

Material	Maximum Permissible Velocities in feet and Meters Per Second*	
	F.P.S.	M.P.S.
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	1.5
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

*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. Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment.

*History Note: Authority G.S. 113A-54(b); 113A-54(c);
 Eff. February 1, 1976;
 Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978;
 Readopted Eff. April 1, 2020.*

15A NCAC 04B .0110 BORROW AND WASTE AREAS

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

History Note: Authority G.S. 113A-54(b);
Eff. February 1, 1976;
Amended Eff. May 1, 1990; November 1, 1984;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0111 ACCESS AND HAUL ROADS

Except for public roads, temporary access and haul roads constructed or used in connection with any land-disturbing activity shall be considered a part of the activity.

History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES

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

History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0113 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 the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to the Act. After site development, the land owner or person in possession or control of the land shall install and maintain all 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.

History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. November 1, 1984; July 1, 1978;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0114 GUIDELINES FOR EROSION AND SEDIMENT CONTROL PRACTICES

History Note: Authority G.S. 113A-54; 113A-64;
Eff. February 1, 1976;
Repealed Eff. November 1, 1984.

15A NCAC 04B .0115 ADDITIONAL MEASURES

Whenever the Commission or a local government determines that accelerated erosion and sedimentation 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 the rules of this Chapter.

History Note: Authority G.S. 113A-54(b); 113A-54.1(b);

Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0116 EXISTING UNCOVERED AREAS

History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; February 1, 1992; May 1, 1990; November 1, 1984;
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

15A NCAC 04B .0117 STATEMENT OF FINANCIAL RESPONSIBILITY AND OWNERSHIP

History Note: Authority G.S. 113A-54(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. May 1, 1990.

15A NCAC 04B .0118 APPROVAL OF PLANS

(a) Persons conducting land-disturbing activity on a tract that covers one or more acres shall file the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction. The approving authority shall act on the plan within 30 days of receipt of the plan or the plan shall be deemed approved. A paper copy of the approved plan shall be kept on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or upon inspection of the job site, that the plan is inadequate to meet the requirements of the Act and of this Chapter, the Commission or local government shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the approving authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction pursuant to G.S. 113A-56, and all other land-disturbing activity where no local government has jurisdiction.
- (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person submitting the plan in writing that it has been:
 - (A) approved;
 - (B) approved with modification; or
 - (C) disapproved.
- (3) The Commission's approval with modification or disapproval of any proposed plan shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23.
- (4) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act, G.S. 113, Article 1, and the Department rules set forth in 15A NCAC 01C shall be deemed incomplete until an environmental document is available for review. The Commission shall notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to Subparagraph (2) of this Paragraph shall not begin until the environmental document is available for review.

(c) An erosion and sedimentation control plan shall be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) Local Government Approval:

- (1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. The procedures shall follow applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) Appeals of local government decisions shall be conducted pursuant to G.S. 113A-61(c).

- (3) The Secretary shall appoint employees of the Department as he or she deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, the departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan be approved, approved with modifications, or disapproved.
 - (4) If the person submitting the plan disagrees with the decision reached by a Departmental employee, he or she may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Energy, Mineral, and Land Resources. The Director shall make the proposed erosion control plan and the records relating to the local government's and Departmental employee's review, available to an erosion and sedimentation control plan review committee consisting of three members of the Commission appointed by the Chairman. Within 10 days following receipt of the notification of appeal, the erosion and sedimentation control plan review committee shall notify the local government and the person submitting the plan of a place and time for a hearing for consideration of the appeal. Both parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or oral arguments. The erosion and sedimentation plan review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following the hearing.
- (e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under G.S. 113A-54.1(c) gives rise to a right to an appeal to the Commission. An applicant desiring to appeal the Commission's disapproval of an erosion control plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3.

History Note:

*Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-57; 113A-60(a); 113A-61(b); 113A-61(c);
Eff. February 1, 1976;
Amended Eff. May 1, 1990; August 1, 1988;
Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); June 1, 1995; February 1, 1992;
Readopted Eff. April 1, 2020.*

15A NCAC 04B .0119 COMPLIANCE WITH PLAN REQUIREMENT

*History Note: Authority G.S. 113A-54(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.*

15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS

- (a) The Commission, Department of Environmental Quality, or local government may require written statements related to items including Notices of Violation (NOVs) or Stop-Work orders, or the filing of reports under oath, such as self-inspection or engineering/design reports, concerning land-disturbing activity, as necessary to carry out duties specified in the Act.
- (b) Inspection of sites shall be carried out by the staff of Department of Environmental Quality, representatives of a delegated local government, or other qualified persons authorized by the Commission or Department of Environmental Quality as necessary to carry out duties specified in the Act.
- (c) No person shall refuse entry or access to any person authorized by the Commission or any representative of a delegated local government who requests entry for purposes of inspection.
- (d) When a preconstruction conference is proposed pursuant to G.S. 113A-51, the request shall be set forth in the plan.

*History Note: Authority G.S. 113A-51; 113A-54(b); 113A-58; 113A-61.1;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984;
Readopted Eff. April 1, 2020.*

15A NCAC 04B .0121 PENALTIES

*History Note: Authority G.S. 113A-54; 113A-64;
Eff. February 1, 1976;
Repealed Eff. November 1, 1984.*

15A NCAC 04B .0122 SEVERABILITY CLAUSE

If any of these provisions are held invalid or unenforceable, all of the other provisions shall nevertheless continue in full force and effect.

*History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

15A NCAC 04B .0123 EFFECTIVE DATE

*History Note: Authority G.S. 113A-54(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1984; November 15, 1976;
Repealed Eff. August 1, 1988.*

15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS

(a) Uncovered areas in HQW zones shall be limited to a maximum total area of 20 acres within the boundaries of the tract. Only the land-disturbing activity within a HQW zone shall be governed by this Rule. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and more conservative design than the 25-year storm. The Director may also stipulate the inclusion of other conditions in the plan as necessary based on specific site conditions.

(b) 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 that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices." Other methodologies may be used if based on generally accepted engineering standards that are shown to the Division to be equivalent to or improved over the procedures in Handbook 630. The Division shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.

(c) In order to provide for water quality protection in HQW zones, sediment basins that discharge to those areas shall be designed and constructed to meet the following criteria:

- (1) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
- (2) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
- (3) have a minimum surface area of 325 square feet per cfs of Q25 peak inflow;
- (4) have a minimum dewatering time of 48 hours; and
- (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

(d) Upon a written request of the applicant, the Director may allow alternative design or control measures in lieu of meeting the conditions required in Subparagraphs (c)(2) through (c)(5) of this Rule 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 sedimentation control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

(e) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization, unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices, or other forms of ditch liners proven to the Division as being effective in restraining accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion.

*History Note: Authority G.S. 113A-54(b); 113A-54(c)(1);
Eff. May 1, 1990;
Readopted Eff. April 1, 2020.*

15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS

- (a) The width of a buffer zone shall be measured from the edge of the water 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.
- (b) A 25-foot minimum width undisturbed buffer zone shall be protected adjacent to trout waters designated by the Environmental Management Commission. The 25-foot width buffer zone shall be measured horizontally from the top of the bank to the nearest area of disturbance.
- (c) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10 percent of the total length of the buffer zone within the tract and distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone.
- (d) Upon a written request of the applicant, the Director may allow a larger area of disturbance than provided in Paragraph (c) of this Rule if the applicant demonstrates that additional measures will be utilized that will achieve an equal or more effective level of erosion and sedimentation control than would be achieved had the specifications prescribed in Paragraph (c) of this Rule been followed.
- (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to trout waters that is predicted by the approving authority to cause stream temperature violations in these waters as set forth in 15A NCAC 02B .0211 which is hereby incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);
Eff. May 1, 1990;
Amended Eff. February 1, 1992;
Readopted Eff. April 1, 2020.*

15A NCAC 04B .0126 APPLICATION FEE

- (a) The nonrefundable application fee, in the amount provided in G.S. 113A-54.2, shall be paid when an erosion and sedimentation control plan is filed in accordance with Rule .0118 of this Section.
- (b) Each plan shall be deemed incomplete until the application fee is paid.
- (c) No application fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount specified in G.S. 113A-54.2 for each additional acre (or any part thereof) disturbed.

*History Note: Authority G.S. 113A-54; 113A-54.2;
Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;
AARC Objection Lodged November 14, 1990;
AARC Objection Removed December 20, 1990;
Eff. January 1, 1991;
Amended Eff. August 1, 2002; July 1, 2000;
Readopted Eff. April 1, 2020.*

15A NCAC 04B .0127 CERTIFICATE OF PLAN APPROVAL

- (a) The Commission shall issue a certificate of plan approval to the applicant by hard copy or electronic submittal. Before construction begins, that documentation shall be posted at the primary entrance of the job site or other location that is observable to the public and inspectors.
- (b) No person may initiate a land-disturbing activity until notifying the approving authority of the date that the land-disturbing activity will begin.

*History Note: Authority G.S. 113A-54(b);
Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;
ARRC Objection Lodged November 14, 1990;*

ARRC Objection Removed December 20, 1990;
Eff. January 1, 1991;
Amended Eff. July 1, 2000;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0128 RAILROAD COMPANIES

History Note: Authority G.S. 113A-52(6); 113A-54(b); 113A-54(c); 113A-54(d)(4); 113A-57(1);
Eff. August 1, 1995;
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE

If no land-disturbing activity has been undertaken on a site, an erosion control plan shall expire three years following the date of approval.

History Note: Authority G.S. 113A-54.1(a);
Eff. October 1, 1995;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0130 EMERGENCIES

Any person who conducts an emergency repair essential to protect human life that results in a land-disturbing activity within the meaning of G.S. 113A-52(6) and these Rules shall take the following actions:

- (1) notify the Director, or his or her designee, of the repair as soon as possible, but no later than five working days after the emergency ends; and
- (2) take all measures necessary to protect all public and private property from damage caused by the repair as soon as possible, but no later than 15 working days after the emergency ends.

History Note: Authority G.S. 113A-52.01(4); 113A-54(b);
Eff. October 1, 1995;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0131 SELF-INSPECTIONS

All land-disturbing activities required to have an approved erosion and sedimentation control plan under G.S. 113A-54.1(e) shall conduct self-inspections for initial installation or modification of any erosion and sedimentation control devices and practices described in an approved plan. In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000.

- (1) For self-inspections required pursuant to G.S. 113A-54.1(e), the inspection shall be performed during or after each of the following phases of the plan:
 - (a) initial installation of erosion and sediment control measures;
 - (b) clearing and grubbing of existing ground cover;
 - (c) completion of any grading that requires ground cover;
 - (d) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - (e) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (c) of this Item.
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
 - (a) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - (b) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - (c) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the

DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

- (d) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

History Note: Authority G.S. 113A-54; 113A-54.1(e);
Eff. October 1, 2010;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0132 DESIGN STANDARDS FOR THE UPPER NEUSE RIVER BASIN (FALLS LAKE WATERSHED)

In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3.(a), shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the United States Department of Agriculture, Natural Resources Soil Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Soil Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States.
- (3) Newly constructed open channels shall be planned, designed, and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit steeper side slopes or where the side slopes are stabilized by using mechanical devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion, as determined by the Division, based on soil conditions.
- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but not later than seven days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
 - (a) For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 days.
 - (b) For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 days. For purposes of this Item, "moderate slope" means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance.
 - (c) For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven days. For purposes of this Item, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

History Note: Authority G.S. 113A-54(b); S.L. 2009-486;

Eff. February 1, 2012;
Readopted Eff. April 1, 2020.

SUBCHAPTER 4C - SEDIMENTATION CONTROL CIVIL PENALTIES

15A NCAC 04C .0101 PURPOSE AND SCOPE

History Note: Authority G.S. 113A-54(b); 113A-64(a);
Eff. February 1, 1976;
Amended Eff. November 1, 1984; October 5, 1980;
Repealed Eff. August 1, 1988.

15A NCAC 04C .0102 DEFINITIONS

History Note: Authority G.S. 143B-10;
Eff. February 1, 1976;
Amended Eff. January 31, 1979; September 3, 1976;
Repealed Eff. November 1, 1984.

15A NCAC 04C .0103 WHO MAY ASSESS

History Note: Authority G.S. 113A-55; 113A-64; 143B-10;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. June 1, 2020.

15A NCAC 04C .0104 WHEN ASSESSABLE

History Note: Authority G.S. 113A-64;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.

15A NCAC 04C .0105 AMOUNT OF ASSESSMENT

History Note: Authority G.S. 113A-64;
Eff. February 1, 1976;
Repealed Eff. November 1, 1984.

15A NCAC 04C .0106 CRITERIA

History Note: Authority G.S. 113A-54(b); 113A-55; 113A-64(a);
Eff. February 1, 1976;
Amended Eff. November 1, 1984; April 1, 1978;
Repealed Eff. June 1, 2020.

15A NCAC 04C .0107 PROCEDURES: NOTICES

(a) The notice of violation shall describe the violation, request that all illegal activity cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be taken, specify a time period for

compliance, and state that upon failure to comply within the allotted time, the person shall become subject to the assessment of a civil penalty for each day of the continuing violation beginning with the date of the violation.

(b) The stop-work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the stop-work order shall be served upon persons the Department has reason to believe may be responsible for the violation pursuant to G.S. 1A-1, Rule 4.

History Note: Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1;
Eff. February 1, 1976;
Amended Eff. May 1, 1990; November 1, 1984;
Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2001;
Readopted Eff. April 1, 2020.

15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING

History Note: Authority G.S. 113A-64; 143B-10; 150B-23;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; October 1, 1988; October 5, 1980; April 1, 1978;
Repealed Eff. April 1, 2020.

15A NCAC 04C .0109 TENDER OF PAYMENT

History Note: Authority G.S. 113A-55; 143B-10;
Eff. February 1, 1976;
Amended Eff. October 5, 1980; April 1, 1978;
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

15A NCAC 04C .0110 ADMINISTRATIVE HEARING

15A NCAC 04C .0111 FURTHER REMEDIES

History Note: Authority G.S. 113A-54; 113A-55; 113A-60; 113A-64 through 113A-66; 150B-22 et seq.;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; August 1, 1988; November 1, 1984; October 5, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

SUBCHAPTER 4D - LOCAL ORDINANCES

15A NCAC 04D .0101 SUBMISSION AND APPROVAL OF PROPOSED LOCAL ORDINANCES

History Note: Authority G.S. 113A-54; 113A-60;
Eff. February 1, 1976;
Repealed Eff. August 1, 1988.

15A NCAC 04D .0102 MODEL ORDINANCE

History Note: Authority G.S. 113A-54(d); 113A-60;
Eff. February 1, 1976;
Amended Eff. March 14, 1980; February 23, 1979;
Summary Rule Filed January 26, 1982;

*Amended Eff. October 1, 1995; May 1, 1990; August 1, 1988; November 1, 1984;
Repealed Eff. April 1, 2020.*

15A NCAC 04D .0103 REVISIONS TO APPROVED LOCAL ORDINANCES

*History Note: Authority G.S. 113A-54(d); 113A-60;
Eff. May 1, 1990;
Amended Eff. January 4, 1993;
Repealed Eff. October 1, 1995.*

SUBCHAPTER 04E - RULEMAKING PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 04E .0101 GENERAL PURPOSE

15A NCAC 04E .0102 DEFINITIONS

*History Note: Authority G.S. 113A-54; 113A-55; 150B;
Eff. March 14, 1980;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); May 1, 1990; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February
2, 2016;
Repealed Eff. April 1, 2020.*

15A NCAC 04E .0103 ADDRESS

*History Note: Authority G.S. 113A-54;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.*

15A NCAC 04E .0104 COPIES OF RULES

- (a) Copies of Commission rules may be requested by contacting the Commission's staff at the Archdale building address set forth in 15A NCAC 04A .0101. The request shall specify the rules requested, for example, 15A NCAC 04, Sedimentation Control, or 15A NCAC 04B .0113, Responsibility for Maintenance. A fee may be charged to recover mailing and duplication costs for requests of more than one copy of the same rule(s).
- (b) The rules of the Commission (15A NCAC 04) can also be found on the website of the NC Office of Administrative Hearings at: <https://www.oah.nc.gov>.

*History Note: Authority G.S. 113A-54; 113A-55;
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February
2, 2016;
Amended Eff. April 1, 2020.*

15A NCAC 04E .0105 DELEGATIONS OF AUTHORITY TO THE DIRECTOR

*History Note: Authority G.S. 113A-54; 113A-55; 150B;
Eff. March 14, 1980;
Amended Eff. November 1, 1984; June 5, 1981;
Repealed Eff. August 1, 1988.*

SECTION .0200 - PETITIONS FOR RULEMAKING

15A NCAC 04E .0201 FORM AND CONTENT OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall make the request in a petition to the Commission addressed to the:

Director
Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
- (3) a statement of the effect on existing rules or orders; and
- (4) the name(s) and address(es) of the petitioner(s).

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (5) documents and data supporting the proposed rule(s).

(d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director on behalf of the Commission.

(e) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities.

History Note: Authority G.S. 113A-54; 150B-20;
Eff. March 14, 1980;
Amended Eff. November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04E .0202 CONTENTS OF PETITION

History Note: Authority G.S. 113A-54; 150B-16;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0203 DISPOSITION OF PETITIONS

History Note: Authority G.S. 113A-54; 113A-55; 150B-16;
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

SECTION .0300 - NOTICE OF RULEMAKING HEARINGS

15A NCAC 04E .0301 TIMING OF NOTICE

History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0302 NOTICE MAILING LIST

History Note: Authority G.S. 113A-54; 150B-12(b);
Eff. March 14, 1980;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.

15A NCAC 04E .0303 ADDITIONAL INFORMATION

History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

SECTION .0400 - RULEMAKING HEARINGS

15A NCAC 04E .0401 REQUEST TO PARTICIPATE

15A NCAC 04E .0402 CONTENTS OF REQUEST: GENERAL TIME LIMITATIONS

History Note: Authority G.S. 113A-54; 150B-12(d),(e);
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0403 WRITTEN SUBMISSIONS

History Note: Authority G.S. 113A-54; 150B-12(e);
Eff. March 14, 1980;
Amended Eff. June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

15A NCAC 04E .0404 PRESIDING OFFICER: POWERS AND DUTIES

History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION

15A NCAC 04E .0406 RECORD OF PROCEEDINGS

History Note: Authority G.S. 113A-54; 150B-11(2); 150B-12(e);
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

SECTION .0500 - DECLARATORY RULINGS

15A NCAC 04E .0501 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Sedimentation Control Commission may issue a declaratory ruling as provided in G.S. 150B-4 and the rules of this Section.

History Note: Authority G.S. 113A-54; 150B-4;
Eff. March 14, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, NC 27699-1612.

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute, or order upon which a ruling is desired;
- (3) a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, statute, or order to a given factual situation;
- (4) arguments or data that demonstrate that the petitioner is aggrieved by the rule, statute, or order, or its potential application to petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a statement of the facts proposed for adoption by the Commission;
- (7) a draft of the proposed ruling; and
- (8) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an oral argument.

(c) A request for a ruling on the applicability of a rule, order or statute shall include a description of the specific factual situation on which the ruling is to be based and documentation supporting those facts. A request for a ruling on the validity of a Commission rule shall state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may ask for both types of declaratory rulings in a single request.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Chairman.

History Note: Authority G.S. 113A-54; 150B-4;
Eff. March 14, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04E .0503 DISPOSITION OF REQUEST

(a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0502 of this Section, and the Chairman shall make a recommendation to the Commission on whether to grant or deny a request for a declaratory ruling.

(b) Before deciding the merits of the request, the Commission may:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the Department, or any other person; and
- (3) hear oral arguments from the petitioner(s) and the Department or their legal counsel.

(c) Whenever the Commission believes for good cause that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reason(s) for the refusal to issue a ruling on the request.

(d) "Good cause" as the term is used in Paragraph (c) of this Rule shall include:

- (1) finding that there has been a similar determination in a previous contested case or declaratory ruling;
- (2) finding that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (3) finding that no genuine controversy exists as to the application of a rule, statute, or order to the specific factual situation presented; or
- (4) finding that the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.

(e) The Commission, through the Department, shall keep a record of each declaratory ruling, which shall include at a minimum the following items:

- (1) the request for a ruling;

- (2) any written submission by a party;
 - (3) the given state of facts on which the ruling was based;
 - (4) any transcripts or recordings of oral proceedings, or, in the absence of a transcript or recording, a summary of all arguments;
 - (5) any other matter considered by the Commission in making the decision; and
 - (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling.
- (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
 - (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule that is the subject of the declaratory ruling in a manner irreconcilable with the declaratory ruling;
 - (3) the Commission changes the declaratory ruling prospectively; or
 - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environmental Quality and the party requesting the ruling.
- (g) The party requesting a declaratory ruling may agree to allow the Commission to extend any of the deadlines beyond the timeframes provided in G.S. 150B-4.
- (h) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a decision or a ruling on the merits within the time provided in G.S. 150B-4 shall constitute a denial of the request as well as a denial on the merits of the request and shall be subject to judicial review.

History Note: Authority G.S. 113A-54; 113A-55; 150B-4
Eff. March 14, 1980;
Amended Eff. August 1, 1988; June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04E .0504 RECORD OF DECISION

History Note: Authority G.S. 113A-54; 150B-11;
Eff. March 14, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

III. Information Items

- A. Commission Technical Committee – Dr. Susan White
- B. Land Quality Section Active Sediment Cases and Enforcement— Ms. Julie Coco
- C. Education Program Status Report — Ms. Rebecca Coppa
- D. Sediment Program Status Report — Ms. Julie Coco
- E. NCDOT Report – Ms. Julie Coco
- F. Land Quality Section Report — Mr. Toby Vinson
- G. COVID-19 Status — Mr. Toby Vinson

Commission's Technical Committee Nominations

1. Greg Jennings, PhD, PE
Jennings Environmental
2. Donald R. Pearson, Jr. EI, CPESC
Roadside Environmental Field Operations Engineer
North Carolina Department of Transportation
3. Daniel E. Line, PE, Extension Specialist, Bio and Ag Engineering
NCSU Bio. & Ag. Engineering
4. Richard C. Brooks
Henderson County Local Program
5. Karyn Pageau
Wake County Local Program
6. Jonathan Bivens, P.E.
SCC Representative for Associated General Contractors
7. Mark Taylor
SCC Representative for Professional Engineers
8. Dr. Rich McLaughlin (if needed)
SCC Representative for NCSU Soil Science
9. A.J. Lang, PhD
N.C. Forest Service
10. Beth McLaughlin
McLaughlin Consulting
11. Lauren Witherspoon
City of Raleigh

Education Advisory Committee Nominations

1. Victor Barbour
with Carolinas AGC
2. Dr. Rich McLaughlin
SCC Representative for NCSU Soil Science
3. Tom Gerow, Jr.
N.C. Forest Service
4. Eric Romaniszyn
Haywood Waterways Association

Updated - Summary of Suggested Topics for the Commission's Technical Committee

Topics suggested by SCC Members:

- Topics related to rainfall/storm intensity/extreme weather events:
 - Are current sedimentation erosion control practices meeting state/local specific needs with increasing amounts and increased regularity of precipitation? For example, are the standards and BMPs for assessing 10 year return storm volumes, etc. and associated volumes appropriate now and/or into the future?
 - Are there correlations between BMP failures with increasing/repeated intensity events? Are there seasonality impacts?
 - How will projected increases in precipitation for NC/local areas across the state influence E&SC practices into the future?
- How are other south east states assessing and addressing legal requirements and changing needs in sedimentation and erosion control planning early in the design process?
- Potential applications of unmanned aerial vehicles (UAV) for monitoring and enforcement of SPCA.
- Looking at new products that may want to include in the Design Manual, example:
 - CRAFS – corrugated retention & filtration system
- Larger overarching discussion/brainstorming session of why there is still so much sediment pollution in our waterways. What the issues are, what tweaks can be made now to address the issues, and what the long range goals/plan should be.
- How effective requiring erosion control plans for sites under an acre would be, what local governments are doing and what's working for them.
- Are the current construction entrance requirements effective?

Topics suggested by LQS Staff

- Design Manual Topics, example:
 - Seeding, and further incorporating native seeds
- Updating E&SC Field Manual (last updated in 2003/04)
- Updating E&SC Inspectors Guide (hasn't been updated since it was published in 1992)

Summary of Suggested Topics for the Education Advisory Committee

Topics suggested by LQS Staff

- Create a high school curriculum (similar to or an accompaniment to NCDEQ-DWR's It's Our Water high school curriculum)
- Update & improve the Green Dozer Contractor modules in such a way that they can be put into an online learning management system so they can be offered as a self-paced course
- Create script for new E&SC Video Modules

Active Sediment Case Report as of August 11, 2020

Atty	Case#	Violator (Name of Case)	County	Date of Assessment	Property Assessment Amt	Final Amt Paid	Comments
JP	19-003	Onslow Development Group, LLC	Onslow	03-Apr-19	\$5,000.00	See below.	Remitted and settled cases 003 & 004 together.
JP	19-004	Onslow Development Group, LLC	Onslow	05-Apr-19	\$31,464.00	\$26,304.00	Both cases closed.
JP	19-011	Keystone Group Inc.	Alamance	03-Jun-19	\$5,408.00	\$5,408.00	Paid in full. Case closed.
	1920-001	David Drye Company, LLC	Mecklenburg	07-Aug-19	\$5,200.00		Penalty remission requested
	S5180	Caruso Land, LLC	Wake	22-Jul-19	\$5,000.00		Penalty remission requested
	TBD	Larry Ward	Wake	05-Nov-19	\$5,000.00		Penalty remission requested
CM	20-003	ZP No. 335, LLC	Jackson	23-Apr-20	\$25,000.00		Pre-Hearing Statement filed
CM	20-009	Caviness & Cates Building and Development Co.	Franklin	15-Apr-20	\$3,200.00		Appeal Filed
CM	20-010	Clearly Development, Inc.	Onslow	25-Mar-20	\$5,000.00	\$4,500.00	Settled. Case closed.
CM	20-011	Case Farms Processing, Inc.	Wayne				Pending Assessment (Initial)

N.C. SEDIMENTATION CONTROL COMMISSION ENFORCEMENT REPORT

by the OFFICE OF THE ATTORNEY GENERAL

7/22/2020

Status of Cases	10/18/2019	2/4/2020	4/30/2020	7/22/2020
1. LQS Drafting CPA	0	0	1	2
2. CPAs Out to Violator (30-day)	0	0	0	0
3. CPAs Out to Violator (60-day)	0	0	0	0
4. CPAs Prepared by LQS Under Review	2	0	2	0
5. CP Remission Requests Under Review	4	3	3	3
6. CP Remission Decisions	0	0	0	0
7. Cases Pending in OAH	0	0	1	4
8. Cases Awaiting Final Agency Decision	0	0	0	0
9. Cases Pending in General Courts of Justice				
a. Judicial Review	0	0	0	0
b. Injunctions	2	1	1	1
c. Pre-Judgement Collections	0	0	0	0
d. Post-Judgement Collections	0	0	0	0
e. Federal Cases	1	1	1	1
10. Cases in Bankruptcy Proceedings	0	0	0	0
11. *Cases where CPA Being Paid by Installment	0	0	0	0
12. Cases to be Closed	1	0	0	0
TOTALS:	10	5	9	10
Action Since Prior Quarterly Report:				
New Cases Received by AGO	0	0	1	3
Cases Closed by AGO	7	0	0	0

Education Program Status Report

Presentations/Exhibits

Participated in the Wake Ed's Summer STEM webinar for educators on July 16, 2020. Shared what resources DEMLR has available for teachers, as well as answering questions about erosion and water pollution.

Workshops

The 2020 Local Program Workshop and Awards Luncheon has been cancelled due to the continued in person event restrictions associated with COVID-19.

The in-person E&SC Design workshops originally scheduled for October 1 in Hickory and December 3 in Raleigh have been canceled. In its place, a series of free one hour weekly webinars is being planned and will run from the beginning of October through mid-December. These are being planned in coordination with SE-IECA and NCSU Department of Crop and Soil Sciences.

Updates

The E&SC website pages are continuously being updated as needed.

The latest issue of the Sediments newsletter has been created. Thank you to Marion E. Deerhake and Dr. Rich McLaughlin for contributing articles to this issue. Sediments can be accessed online at <http://deq.nc.gov/SEDIMENTS> and is distributed via WRRI's Sediment listserv.

If you have any suggestions or would like to write an article for future issues of the biannual Sediments newsletter, email the education specialist.

LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2019-2020 through:

June

Activity	WIRO	WIRO	ARO	ARO	WARO	WARO	WSRO	WSRO	RRO	RRO	FRO	FRO	MRO	MRO	TOTALS
	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	
PLAN/APPLICATION REVIEW															
1. New Sedimentation Control Projects Rec'd	22	308	7	90	15	184	38	282	29	484	67	588	58	444	2380
2. New Sedimentation Plan Reviews	20	273	5	75	26	315	14	143	6	256	39	491	47	400	1953
3. Sedimentation Plan EXPRESS Reviews	2	46	1	10	2	56	18	145	4	49	11	110	12	116	532
4. New Sedimentation Plan Disapprovals	0	11	0	7	0	7	2	45	0	123	3	63	13	69	325
5. Revised Sedimentation Plan Received	1	65	7	59	2	31	6	74	6	272	15	130	15	145	776
6. Revised Sedimentation Plan Reviews	5	74	7	54	1	46	7	63	4	252	10	84	15	144	717
7. Revised Sedimentation Plan Disapprovals	0	0	1	7	0	0	2	17	0	43	1	16	0	5	88
8. Unreviewed E&SC Plans - End of Month	13	156	1	15	13	116	0	11	0	0	0	95	34	0	393
9. E&SC Plan Reviews > 30 Days	0	0	0	0	0	0	0	0	0	3	0	3	0	0	6
10. Revised Plan Reviews > 15 Days	0	0	0	0	0	0	0	0	0	0	1	3	0	0	3
11. Mine Permits Reviewed	3	22	0	1	4	60	3	32	0	24	0	0	0	11	150
12. Dam Safety Plans (Construction/Repair)	0	0	0	3	5	21	2	14	0	25	2	17	1	24	104
13. Dam Safety Plans (Impoundment)	0	0	2	2	0	0	0	1	0	0	0	0	3	23	26
14. Dam Safety Plans (EAP)	0	0	0	0	0	0	0	0	0	0	1	14	0	3	17
15. State Stormwater Plans Received	32	556	0	0	28	261	0	0	0	9	0	10	0	0	836
16. State Stormwater Plans Reviewed	85	1074	0	0	19	249	0	0	0	0	0	7	0	0	1330
17. Stormwater EXPRESS Reviews	10	198	0	0	2	25	0	0	0	0	0	0	0	0	223
18. State Stormwater Revised Plans Received	23	393	0	N/A	1	25	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	418
19. State Stormwater Revised Plans Reviewed	54	663	6	N/A	1	23	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	686
MONITORING															
1. Sedimentation Inspections (Total)	124	2191	6	291	105	1221	244	1527	52	1017	258	2033	305	2533	10813
A. Landfills	0	0	0	12	4	12	3	3	0	1	1	5	0	2	35
B. DOT Contract	0	2	1	5	0	4	0	14	0	16	0	0	0	0	41
C. DOT Force Account	0	0	0	0	0	0	0	3	0	0	0	0	0	5	8
D. Complaints	4	33	0	45	0	7	16	156	3	67	8	57	27	220	585
2. Mining Inspections (Total)	5	106	0	11	5	156	1	55	0	38	5	39	0	73	478
A. Mining Inspections (Annual)	2	25	0	3	9	82	0	28	2	6	5	21	0	54	219
B. Complaints	0	8	0	3	0	3	0	6	1	2	0	3	0	6	31
3. Dam Safety Inspections (Total)	0	17	0	16	5	40	15	261	11	261	0	42	4	280	917
A. Existing Dams Added to IBEAM	0	0	0	0	0	6	0	1	0	10	0	1	0	4	22
B. Complaints	0	0	0	3	0	1	0	5	0	2	1	4	0	9	24
C. Emergency Inspections	0	5	0	2	0	8	3	4	0	0	0	10	0	4	33
4. Stormwater Inspections (Total)	18	528	0	9	141	1561	137	677	50	965	211	1837	295	2415	7992
A. State Stormwater Inspections	18	278	0	4	28	250	0	0	0	4	0	7	0	10	553
B. Industrial Stormwater Inspections	5	110	0	12	0	75	3	59	0	35	1	47	4	198	536
C. Construction Stormwater Inspections	127	2218	0	253	113	1202	41	466	26	492	209	1703	280	2117	8451
D. Assisted Inspections	1	108	0	2	14	63	57	103	0	77	0	77	0	170	600
E. No Exposure Certification Inspections	0	2	0	0	0	15	3	22	0	18	1	3	5	28	88
F. Stormwater Complaints	1	39	0	0	0	17	6	47	0	117	0	6	1	11	237
G. Representative Outfall Status Requests	0	0	0	0	0	0	0	0	0	2	0	5	1	1	8
ENFORCEMENT															
1. Sedimentation															
A. Notices of Violation (Total)	0	30	0	12	0	12	1	9	1	9	0	8	1	12	92
B. NOVs to Repeat Violators	0	7	0	4	0	0	0	2	0	2	0	3	0	0	18
C. Cases Referred for Enforcement	0	3	0	1	0	0	0	2	0	2	0	0	0	0	8
2. Mining	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Notices of Violation w/o Permit	0	4	0	0	0	3	0	1	0	1	0	0	0	0	9

LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2019-2020 through:

June

Activity	WIRO	WIRO	ARO	ARO	WARO	WARO	WSRO	WSRO	RRO	RRO	FRO	FRO	MRO	MRO	TOTALS
	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	
B. Notices of Violation of Permit	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
C. Letters of Deficiency	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
D. Cases Referred for Enforcement	0	0	0	0	0	0	0	1	0	1	0	0	0	0	2
3. Dam Safety	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Letters of Deficiency	0	3	0	1	0	8	0	2	0	2	0	22	0	1	39
B. Enforcement Requests	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4. Stormwater	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Notices of Violation (Total)	0	8	0	0	0	0	0	3	0	3	1	11	0	2	27
B. Notices of Deficiency (Total)	0	6	0	0	0	1	0	1	0	1	0	7	0	0	16
C. NOVs to Repeat Violators	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
D. Cases Referred for Enforcement	1	1	0	0	0	0	0	0	0	0	0	0	0	0	1
<u>*LOCAL PROGRAMS*</u>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
1. Local Ordinance Reviews	0	0	0	0	0	0	0	4	0	4	0	0	0	0	8
2. Local Programs Aided (hours)	0	93	0	0	0	0	1	83.5	0	24	0	0	8	83	283.5
<u>*DREDGE & FILL APPLICATIONS*</u>	8	78	0	0	6	64	0	0	0	0	0	0	10	142	284
<u>*CUSTOMER SERVICE*</u>	2	16	0	0	0	0	0	0	0	0	0	0	8	81	
Technical Assistance (Aided Hours)	20	491.00	5	40.00	181	2,202.00	12	129.00	5	208.00	21	340.00	53	649.00	4059
Pre-Application Meetings	0	0.00	0	0.00	11	156.00	0	0.00	0	0.00	0	0.00	0	0.00	156

Monthly Activity Report

Activity Definitions

PLAN/APPLICATION REVIEW

1. **New Sedimentation Control Projects Rec'd** – The number of *complete* packages for a project that were received (FR/O form, plans, fee, and calculations, if required). These are projects which have been assigned a new project identification number.
2. **New Sedimentation Plan Reviews** – The number of first time plan reviews that resulted in issuance of letters of approval and/or letters of disapproval. It should not include preliminary or cursory reviews conducted by technicians that are followed by a detailed review by the ARE and/or RE. This number should be unique to the Project ID, and not to the reviewer.
3. **Sedimentation Plan EXPRESS Reviews** - Of the NEW plans that were reviewed, this item reflects the number of those that were express reviews. This number should always be equal to or less than the number reported under Item 2.
4. **New Sedimentation Plan Disapprovals** - Regular or express plans reviewed and disapproved for the first time. It should not include preliminary or cursory reviews conducted by technicians that are followed by a detailed review by the ARE and/or RE.
5. **Revised Sedimentation Plans Received** - Total number of previously reviewed regular and express plans received this month. It should not include preliminary or cursory reviews conducted by technicians. The same Project ID can be counted multiple times.
6. **Revised Sedimentation Plan Reviews** – Total number of regular and express plans revised and reviewed this month. It should not include preliminary or cursory reviews conducted by technicians. The same Project ID can be counted multiple times.
7. **Revised Sedimentation Plan Disapprovals** – Total number of **revised** regular or express plans reviewed that were disapproved. The same Project ID can be counted multiple times.
8. **Unreviewed E&SC Plans – End of Month** – The number of complete plans received at the end of the month that have not yet been reviewed. This includes any plans received near the end of the previous month.
9. **E&SC Plan Reviews > 30 days** – The number of new projects that took more than 30 days from receipt to approve or disapprove. The goal is zero days.

10. **Revised Plan Reviews > 15 days** – Revisions to projects submitted that have not been reviewed within 15 days of receipt. The goal is zero days.

MONITORING

1. **Sedimentation Inspections (Total)** – The total number of inspections conducted under the sedimentation program. This number should always be greater than the sum of A through D. Two inspectors together looking at one project equals one inspection.
 - A. **Landfills** – Inspections conducted at landfill sites
 - B. **DOT Contract** – Inspections conducted on NCDOT projects under a contract (TIP Projects) and any supplemental agreements
 - C. **DOT Force Account** – Inspections conducted on NCDOT projects under force accounts. These types of arrangements involve notices to contractors to perform extra or altered work not covered by the original contract or by supplemental agreements.
 - D. **Complaints** – Inspections conducted on behalf of citizen complaints. The number of contacts that require field review to determine necessary actions or applicability. Those occurrences that only require office telephone interpretation of the law, rules, and/or procedures are not to be included.

ENFORCEMENT

1. **Sedimentation**
 - A. **Notices of Violation (Total)** – The total number of notices issued under the sedimentation program. This includes first-time and repeat violators.
 - B. **NOVs to Repeat Violators** – Of the total above, this item represents the number of notices issued to repeat violators. This number should always be equal to or less than the number reported under Item A.
 - C. **Cases Referred for Enforcement** – The number of projects that have been issued case numbers (LQS-####-###).

LOCAL PROGRAMS

1. **Local Ordinance Reviews** – The total number of formal reviews of local programs that are reported to the Sedimentation Control Commission through the Raleigh Central Office.
2. **Local Programs Aided (hours)** – The total number of hours spent by staff in informal review of local programs and the total number of hours spent working with local programs on specific projects and program administration (i.e., plan reviews, site inspections, enforcement assistance, presentations, training, etc.)

North Carolina Department of Transportation Roadside Environmental Unit Erosion & Sedimentation / Stormwater Report

ICA

Immediate Corrective Action

This project does not comply with the North Carolina Erosion and Sedimentation Control laws. Immediate Corrective Action is needed to resolve the situation to full compliance with the Law: (T15A: 04B.0000).

Project Information

Inspection Date:	06/01/2020	Evaluator:	Katherine Marciniak	
Project #:	34409.3.GV17	TIP #:	R-2247EB	Contract #: C204137
Division #:	9	County:	Forsyth	
Project Type:	Contract	Engineer:	Winston-Salem Resident Eng 1	
Project Length:	2.60	Disturbed Acres:	100	
River Basin:	Yadkin	HQW Zone:	NO	Trout Zone: NO
Location Description:	Winston Salem Northern Beltway Interchange at US 52			

Project Evaluation

Report Type: Routine ICA ICA Ex 1st ICA Ex 2nd CICA - SWO
 PCN ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
	SB 52- offsite culverts 20/21 and JS	6	6	6	6	6

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

Remarks and Recommendations:

Met with Lee, Nick, Darryl, Dale, and Austin (NCDOT); Luca, Pete, David, Paul, Steve, and John (Blythe) onsite.

This inspection was a follow up to the offsite sediment at jurisdictional areas reported on May 26 and May 28, 2020. See report dated May 27, 2020 for reported offsite inspection and corrective actions related to the reported offsite.

Sediment has been deposited in the small stream located below basin 13S-3 (Permit site 13B) down the length of the creek to where it joins the temporary diversion channel located near culvert 21. No clean up in this area had occurred. Sediment at the temporary stream crossing back up to the Permit site 13B area needs to be cleaned up and the bank areas repair seeded and have coir fiber matting installed to provide stabilization as groundcover is established.

Sediment washing into the culvert and stream from above culvert 20 to beyond culvert 21 has not been cleaned up. Sediment within the stone along the relocated stream and streambank stabilization areas need to be removed; sediment within the culverts needs to be removed. Pockets of sediment deposited along the creek past where culvert 21 need to be cleaned up per DEO. Ensure all headwall/wingwall areas are stabilized to prevent continued loss of material. Near culvert 20- stabilize area above the geotextile fabric where base soil is

exposed.

Silt fence and SDOs from culvert 21 need to have the accumulated sediment removed, SDOs repaired/reinstalled, and sediment that has accumulated along the top of bank area clean up.

Offsite sediment (silt/mud/screenings) located within the permit and jurisdictional areas needs to be cleaned up.

Efforts to clean up offsite sediment, repair and reinstall measures, and restabilize the site needs to be a priority. Efforts need to be concentrated on urgent repairs and cleanup of offsite, repairs to measures leading/draining to SDOs, and all other measures needing repair/maintenance.

Sediment removal and clean up needs to be completed to the satisfaction of REU, Div Env Staff and DWR/DEMLR. Site will be reinspected on Monday, June 8th at 9am for completion of clean up and repairs in this report. Note: failure to address the above issues and take adequate corrective measures can result in issuance of further ICA reports for this project.

North Carolina Department of Transportation
 Roadside Environmental Unit
 Erosion & Sedimentation / Stormwater Report



Project Information

Inspection Date: 06/08/2020 Evaluator: Katherine Marciniak
 Project #: 34409.3.GV17 TIP #: R-2247EB Contract #: C204137
 Division #: 9 County: Forsyth
 Project Type: Contract Engineer: Winston-Salem Resident Eng 1
 Project Length: 2.60 Disturbed Acres: 100
 River Basin: Yadkin HQW Zone: NO Trout Zone: NO
 Location: Winston Salem Northern Beltway Interchange at US 52
 Description:

Project Evaluation

Report Type: Routine ICA ICA Ex 1st ICA Ex 2nd CICA - SWO
 PCN ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
	SB 52- offsite culverts 20/21 and JS	8	8	8	8	8

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

Remarks and Recommendations:

Met with Lee, Jordan, Nick, Amy, Phil, Darryl, Billy, and Austin (NCDOT); and Luca, Pete, and Steve (Blythe) onsite.

This inspection was a follow up to the ICA issued on June 1. ICA being lifted by REU.

Offsite sediment has been cleaned up to the satisfaction of REU and Div Env Staff in the JS at culverts 20/21 and the small JS from basin 13S-1 to the temporary stream crossing near culvert 21. Areas near basin 13S-1 has been seeded and have some grass germination starting. Headwall areas at the culverts have had additional fabric installed to immediately stabilize these areas.

Erosion control measures that were installed in the easement area beyond culvert 21 have been removed and the areas repair seeded and matted.

Contractor has a few items to address to better stabilize areas and protect the JS's. Install additional coir fiber matting, as discussed onsite, to better stabilize the affected creek banks. Repair the orange safety fence around the small JS where it has come off of the posts. Upstream side of culvert 21- install section of fabric to stabilize the 1-2ft wide section of base soil along the silt fence and geotextile fabric.

Discussed stabilizing the bare areas at culvert 21 with at least temporary groundcover. This area is not intended to be worked for some time.

Additional type b basin has been added near the outlet side of culvert 21- ensure there is positive drainage to the basin from the surrounding area. Repair the silt fence where it is full.

Continue with efforts onsite to establish positive drainage to measures and to stabilize areas with groundcover that won't be worked within the NPDES timelines.

Land Quality Section Report - August 11, 2020

Org Unit Description	Position Location	Position	Position Description
ENR SO EML Director's Office	Central Office, Raleigh	60032410	Administrative Associate II