

- (5) ***Riparian Buffers Regulation Supersede Clear-Cutting & Protection of Heritage Trees Regulations.*** The provisions of the Clear-Cutting & Protection of Heritage Trees Regulations shall not supersede but instead are in addition to the requirements of §9-1404 Riparian Buffer Regulations.

## §9-1407 SOIL EROSION & SEDIMENTATION CONTROL

### a. General Provisions

- (1) ***Title.*** This Ordinance may be cited as the Town’s Soil Erosion & Sedimentation Control Ordinance. It is referred to herein as “Erosion & Sedimentation Control Requirements.”
- (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.
- (3) ***Definitions.*** As used in this Ordinance, unless the context clearly indicates otherwise, definitions apply as provided in **Article S Interpretations & Definitions.**
- (4) ***Applicability.*** Except for the exemptions noted in this Section, the erosion and sedimentation control regulations of this Article apply to all land disturbances exceeding one (1) acre in disturbed surface area.
- A. ***Jurisdiction.*** This Ordinance shall apply to land disturbing activity within the jurisdiction of the Town.
  - B. ***Borrow & 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.

- C. *Access & 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.
- D. *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.
- E. *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.
- F. *Conflict with Federal, State, County or Other Town Regulations.* Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
- G. *Plan Approval Exceptions.* Notwithstanding the general requirement to obtain a plan approval prior to undertaking land disturbing activity, a plan approval shall not be required for land disturbing activity that does not exceed one (1) acre in surface area. In determining the area, lands under one (1) or diverse ownership being developed as a unit will be aggregated.
- H. *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:
- i. *Agricultural Activities.* An activity, including 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:
    1. Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts
    2. Dairy animals and dairy products
    3. Poultry and poultry products
    4. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats

5. Bees and apiary products
  6. Fur-producing animals
  7. Mulch, ornamental plants and other horticultural products. For the purposes of this Section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
- ii. *Forestland Activities.* An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department. If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with 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.
  - iii. *Mining.* An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the North Carolina General Statutes.
  - iv. *Activities Under State Jurisdiction.* A land disturbing activity over which the State has exclusive regulatory jurisdiction as provided in North Carolina General Statutes §113A-56(a), including land disturbing activities that are:
    1. Conducted by local, state or federal government
    2. Conducted by persons having the power of eminent domain
    3. Funded in whole or part by the state or federal government.
  - v. *Emergency Activities.* An activity which is essential to protect human life during an emergency.
  - vi. *Wetland Mitigation.* 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.

- vii. *Wetland Restoration*. 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.

**b. General Standards**

(1) ***Mandatory Standards for Land Disturbing Activity.***

- A. Whenever land disturbing activities disturb more than one (1) acre on a tract, an approved erosion and sedimentation control plan and land disturbance permit is required. Any person conducting a land disturbing activity must 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 the development of said tract.
- B. All soil erosion and sedimentation control plans and measures must conform to the minimum applicable standards specified in the most current *North Carolina's Erosion and Sediment Control Planning and Design Manual* and the most current *Town's Standard Specifications & Construction Details*. Erosion control devices must be installed to prevent any offsite sedimentation for any construction site regardless of the size of the land disturbance.
- C. *Buffer*
  - i. *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 is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent (25%) of the buffer nearest the land disturbing activity.
    - 1. *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.
    - 2. *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 (25%) of the strip nearer the land disturbing activity containing natural or artificial means of confining visible siltation.

- D. *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.
- E. *Graded Slopes & 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 seven (7) calendar days from the last date of land disturbing activity, 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.
- F. *Fill Material.* Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
- G. *Ground Cover.* Whenever land disturbing activity that will disturb more than one (1) 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 this Section, provisions for a ground cover sufficient to restrain erosion must be accomplished within 14 calendar days from the last land disturbing activity.
- H. The land disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.
- I. *Prior Plan Approval.* No person shall initiate any land disturbing activity that will disturb more than one (1) acre on a tract unless, 30 or more days prior to initiating the activity, a plan for the activity is filed with and approved by the Town. The land disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The Town shall forward to the Director of the Division of Water Resources a copy of each plan for a land disturbing activity that involves the

utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

**c. Plan Review & Approval Procedures**

**(1) *Erosion & 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 (1) acre on a tract. See the *Town's Standard Specifications & Construction Details* for submittal requirements.
- B. *Financial Responsibility & Ownership.* Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his/her attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the following:
- i. *The Person Financially Responsible.* If the person financially responsible is not a resident of Wake County, North Carolina, a Wake County agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
  - ii. *The Owner of The Land*
  - iii. *Authorized Agents.* Except as provided in this Section, if the applicant is not the owner of the land to be disturbed, the erosion and sedimentation control plan application must include the owner's written consent to submit an erosion and sedimentation control plan and to conduct the anticipated land disturbing activity.
  - iv. 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 erosion and sedimentation control plan application 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. *Fees.* Payment of fees, as established by the Town Board of Commissioners, must be made with plan submittal.
- D. *Content.* The plan required by this Section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this 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.
- E. *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 approved. The Town will review each revised plan submitted to them and within 15 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approved.
- F. *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.
- G. *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.
- H. *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.

- i. The Town may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under 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, the Town or the County 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 North Carolina General Statutes §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.
  - ii. In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Town pursuant this Section, the Town shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The Town shall advise the applicant or the proposed transferee and the Director of Engineering in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of this Section, the applicant may appeal the Town's disapproval of the plan directly to the Commission. For purposes of this Section, an applicant's record or the proposed transferee's record may be considered for only the two (2) years prior to the application date.
- I. The Town may transfer an erosion and sedimentation control plan approved pursuant to this Section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all the following conditions are met:
- i. The successor-owner of the property submits to the Town a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
  - ii. The Town finds all of the following:

1. The plan holder is one (1) 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.
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.
- iii. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- iv. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- v. 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 North Carolina General Statutes §113A-54.1(b).
- J. *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.

(2) ***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 Ordinance, or as directed by the Town.
- C. *Limit Exposed Areas.* All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one (1) time.
- D. *Control Surface Water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- E. *Control Sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- F. *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.

(3) ***Design & Performance Standard***

- A. Except as provided in 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 10-year storm. Runoff rates shall be calculated using the procedures in the latest edition of the United States Department of Agriculture (USDA), Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.
- B. *High Quality Water (HQW) Zones.* In HQW zones, the following design standards shall apply:

- i. *Limit on Uncovered Area.* Uncovered areas in HQW zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the tract. Only the portion of the land disturbing activity within an HQW zone shall be governed by this Section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director of Engineering 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 Twenty-five Year Storm.
- ii. *Maximum Peak Rate of Runoff Protection.* Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA 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.
- iii. *Sediment Basin Design.* Sediment basins within HQW zones shall be designed and constructed according to 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 the Twenty-five Year Storm (Q25) peak flow;
  4. Have a minimum dewatering time of 48 hours;
  5. Incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.
  6. Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in this 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.

iv. *Grade.* Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two (2) horizontal to one (1) vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(4) ***Stormwater Outlet Protection.*** If condition (i) or (ii) of this paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10 percent (10%).

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:

- i. The velocity established by the Table – Maximum Permissible Velocities set out within this subsection; or
- ii. The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

**Table – Maximum Permissible Velocities**

Material	Feet per Second (FPS)	Meters per Second (MPS)
Fine Sand (Noncolloidal)	2.5	0.8
Sandy Loam (Noncolloidal)	2.5	0.8
Silt Loam (Noncolloidal)	3.0	0.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (Very Colloidal)	5.0	1.5
Graded, Loam to Cobbles (Noncolloidal)	5.0	1.5
Graded, Silt to Cobbles (Colloidal)	5.5	1.7
Alluvial Silts (Noncolloidal)	3.5	1.1
Alluvial Silts (Colloidal)	5.0	1.5
Coarse Gravel (Noncolloidal)	6.0	1.8
Cobbles & Shingles	5.5	1.7
Shales & Hard Pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

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

- i. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- ii. Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
- iii. Provide energy dissipaters at outlets of storm drainage system to reduce flow velocities to the point of discharge;

- iv. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
    - v. Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
  - D. *Exceptions.* This rule shall not apply where it can be demonstrated to the Town that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.
- (5) ***Plan Appeals***
  - A. Except as provided in this Ordinance, the appeal of a disapproval or approval with modifications of a plan shall be governed by the provisions set forth in **Article P Administrative Powers & Duties**.
  - B. In the event that a plan is disapproved pursuant to Section (c)(1)(H) of this Ordinance, the applicant may appeal the Town's disapproval of the plan directly to the Commission.
- (6) ***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.
- (7) ***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.
- (8) ***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.

- (9) ***Validity of Plan, Lapse of Approval.*** An approved erosion and sedimentation control plan is valid for one (1) calendar year from the date of approval. If a land disturbance permit has not been obtained within the one (1) year period, the erosion control and sedimentation plan approval becomes null and void.

**d. Land Disturbance Permit Requirements**

- (1) Land Disturbance Permits may be obtained upon satisfaction of the following items:
- A. Erosion & Sedimentation Control Plan Approval
  - B. ***Preconstruction Meeting.*** A preconstruction meeting is required following construction plan approval and prior to initiating land disturbing activity.
  - C. ***Fees.*** Payment of fees established by the Town Board for the administration of these erosion control regulations must be made prior to scheduling of a preconstruction meeting.
- (2) ***Compliance Inspection.*** An approved compliance inspection must be issued confirming that initial erosion and sedimentation controls have been installed in accordance with the approved plan.
- A. Grading, other than for installation of erosion and sedimentation control measures, is prohibited prior to completion of an approved compliance inspection.
- (3) ***Notice of Activity Initiation.*** No person may initiate a land disturbing activity before notifying the agency that the land disturbing activity will begin.
- (4) ***Permit Validity***
- A. The land disturbance permit is valid for two (2) calendar years. If no construction activity has begun within the two (2) year period, the land disturbance permit becomes null and void. If construction activity has begun, but an approved compliance inspection has not been renewed within the two (2) years, the land disturbance permit must be renewed.
  - B. The land disturbance permit may be renewed for a maximum of two (2) years as either a single two (2)-year extension or in two (2) one (1)-year extensions by submitting a request for a permit extension 30 days prior to the expiration date and payment of all applicable land disturbance fees.

- i. Permit renewal fees for the one (1)-year extension will be prorated at 50% of the two (2)-year renewal fee. Extension of the original permit approval beyond the maximum two (2)-year renewal period is not allowed. Any change of ownership must be reflected in a revised financial responsibility form.
  
- C. Projects shall be phased using multiple permits. The phasing of a project under a single permit is not permissible. Each project phase requires a separate and independent plan submittal, review fees, permit approval and payment of applicable land disturbance fees.
  
- D. Failure to renew the land disturbance permit, in accordance with this Section, is the same as failure to submit an erosion and sedimentation control plan in accordance with this Article and may be subject to a civil penalty per the Adopted Fee Schedule for that fiscal year. Any person who is subject to civil penalty under this subsection may be subject to additional civil penalties for violation of any other provisions of this Article, or rules or orders adopted or issued pursuant to the erosion and sedimentation control regulations of this Article.
  - i. All site improvements, as shown on the approved plan, must be completed by the end of the one-year renewal period and before an approved permit completion is issued, if the land disturbance permit is not renewed for an additional 1-year period as allowed by this Section. Any person who fails to meet the conditions of the renewal will be subject to a civil penalty as set forth in the Adopted Fee Schedule for that fiscal year
  
  - ii. If the property associated with the approved plan is sold in whole or in part before all conditions of the approved plan are met, the land disturbance permit holder must provide notice to the new owner of conditions of the land disturbance permit and provide The Town with revised financial responsibility forms.
  
- e. **Inspection Requirements**

(1) ***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 North Carolina General Statutes §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 North Carolina General Statutes §113A-61.1.

- A. Where inspections are required by this Ordinance or North Carolina General Statutes §113A-54.1(e), the following apply:
- i. The inspection shall be performed during or after each of the following phases of a plan:
    1. Installation of perimeter erosion and sedimentation control measures.
    2. Clearing and grubbing of existing ground cover.
    3. Completion of any grading that requires ground cover;
    4. Completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
    5. 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 this Section.
  - ii. Documentation of self-inspections performed under Item (i) of this Section shall include:
    1. Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
    2. Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
    3. 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.

4. 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.

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

- (2) ***Maintenance Responsibility.*** 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 & sedimentation control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.
- (3) ***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 necessary to achieve compliance with the conditions specified in the Act or its rules.

f. **Enforcement**

(1) ***Inspections & Investigations***

- A. *Inspection.* Agents, officials, or other qualified persons authorized by the Town, will periodically inspect land disturbing activities to ensure compliance with the act, this 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 Town while that person is inspecting or attempting to inspect a land disturbing activity under this Section.
- C. *Notice of Violation.* If the Town determines that a person engaged in land disturbing activity has failed to comply with the act, this 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 North Carolina General Statutes §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 North Carolina General Statutes §113A-64 and this Ordinance.
- D. *Initial Notice.* If the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall offer assistance in developing corrective measures. The notice of violation may be served in the manner prescribed for service of process by North Carolina General Statutes §1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.
- E. *Investigation.* The Town shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and who presents appropriate credentials for this purpose to enter at reasonable times, 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.

F. *Statements & 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.

(2) ***Penalties***

A. *Civil Penalties*

- i. *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 will be determined by the Adopted Fee Schedule for that fiscal year. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. 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).
- ii. *Civil Penalty Assessment Factors.* The Town shall determine the amount of the civil penalty based upon the following factors:
  1. The degree and extent of harm caused by the violation.
  2. The cost of rectifying the damage.
  3. The amount of money the violator saved by noncompliance.
  4. Whether the violation was committed willfully.
  5. The prior record of the violator in complying or failing to comply with this Ordinance.

iii. *Notice of Civil Penalty Assessment.* The Town 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 North Carolina General Statutes §1A-1, Rule 4. A notice of assessment by the Town shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the Town as directed by **Article P Administrative Powers & Duties**. 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.

iv. *Appeals*

1. *Final Decision.* The final decision shall be made by the governing body of the Town of Fuquay-Varina in accordance with **Article P Administrative Powers & Duties**.
2. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with Town within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:
  - I. Whether one (1) or more of the civil penalty assessment factors in North Carolina General Statutes §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.
- 3. 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.
  - 4. The Town 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.
  - 5. *Appeal of Final Decision.* Appeal of the final decision of the governing body of the Town shall be to the Superior Court of Wake County. Such appeals must be made within 30 days of the final decision of the governing body of the Town.
- v. *Collection.* If payment is not received within 30 days after it is due, the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in to the Superior Court of Wake County, 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 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.
  - vi. *Credit of Civil Penalties.* The clear proceeds of civil penalties collected by the Town under this Section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with North Carolina General Statutes §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 the Town for the prior fiscal year.

- 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, 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 the amount in the Adopted Fee Schedule for that fiscal year as provided in North Carolina General Statutes §113A-64.

(3) ***Injunctive Relief***

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

- (4) ***Restoration After Noncompliance.*** 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 North Carolina General Statutes §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.

- (5) ***Severability.*** If any 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.

g. *Effective Date.* The updates to this Ordinance are effective as of November 7, 2022.