

EROSION CONTROL ORDINANCE
WATAUGA COUNTY, NORTH CAROLINA

2003

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

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

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Watauga, North Carolina.

Section 1 Title and Authority

This ordinance shall be known as the Watauga County Erosion Control Ordinance, and is adopted pursuant to authority granted in the North Carolina Sedimentation Pollution Control Act of 1973.

Section 2 Purpose

This ordinance is adopted for the purposes of:

- a. Regulating certain land-disturbing activities to control accelerated erosion and sedimentation in order that water pollution from sedimentation may be prevented, that the accelerated erosion and sedimentation of lakes and natural watercourses and damage to public and private property by sedimentation be prevented, 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 activities.
- 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 - a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material which is required for on-site construction and 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 Health, and Natural Resources.
- l. Director - means the Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.
- m. Discharge Point - means that point at which runoff leaves a tract of land.
- n. District - means the Watauga Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- o. Energy Dissipater - 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 surface 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 2B.0101(e) (5) - General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S.150B-14(c).
- s. High Quality Water (HQW) zones - means area in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder for the state areas that are within one mile and drain 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 Watauga County, North Carolina

w. Parent - an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

x. 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.

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

z. Person Conducting Land-Disturbing Activity - means any person who may be held responsible for a violation unless expressly provided otherwise by the Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

aa. Person Responsible for the Violation - as used in this Ordinance and G.S.113A-64, means:

(a) the developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or

(b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefited from it or he has failed to comply with any provision of this Ordinance or the Act as imposes a duty upon him.

bb. Phase of Grading - means one of two types of grading, rough or fine.

cc. Plan - means 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 site of the land-disturbing 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 or 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 stormwater through and from a given drainage area.

hh. Subsidiary - an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

ii. Storm Water Runoff - means the direct runoff of water resulting from precipitation in any form.

jj. Ten Year Storm - means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

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 surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from 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 of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

pp. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.

qq. Working Days - means days exclusive of Saturday, Sunday, and legal holidays during which weather or soil conditions permit land-disturbing activity to be undertaken.

Section 4 Scope and Exclusions

This ordinance shall apply to land-disturbing activities undertaken by any person, with the following exclusions:

a. those undertaken on agricultural land for the production of plants and animals useful to man including, but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats,

including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; and

b. those undertaken on forestland for the production and harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) 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 related land-disturbing activity on the tract; and

c. activities for which a permit is required under the mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

d. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S.113A-56(a).

Section 5 General Requirements

a. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

b. Plan Required - No person shall initiate any land-disturbing activity which uncovers more than one-half acre without having an erosion control plan approved by Watauga County. Erosion control plan submission may be waived for land-disturbing activity of one half acre or more but less than one acre by the Watauga County Department of Planning and Inspections as specified in Section 17.

c. 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.

Section 6 Basic Control Objectives

An erosion and sedimentation control plan may be disapproved pursuant to Section 17 of this ordinance if the plan fails to address the following control objectives:

a. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent off site sedimentation damage.

b. Control Surface Water - Surface water runoff originating upgradient of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

c. 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.

d. 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.

e. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

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, plans are 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.

Section 7 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. 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. 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 county 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. 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. Unless otherwise provided, the width of a buffer zone is 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.

3. 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.

4. Where a temporary and minimal disturbance is permitted as an exception by Section 7(a) (1) of this ordinance, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be distributed 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.

5. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature

fluctuations, as set forth in 15A NCAC 2B.0211 "Fresh Surface Water Classification and Standards", in these waters.

b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

c. Ground Cover - Whenever land-disturbing activity is under-taken on a tract comprising more than one half acre, if more than one-half acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as 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) of this ordinance, provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development whichever period is shorter.

d. Prior Plan Approval - No person shall initiate any land disturbing activity on a tract if more than one-half acre is to be uncovered unless, thirty or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by Watauga County, or unless for land-disturbing activity or more than a half acre but less than an acre the requirement for such plan had been waived as specified in Section 17. The County will attempt to review plans as quickly as possible. The initiation of land-disturbing activities shall not be restricted when the plan is approved and permit issued in less than 30 days.

Section 8 Design and Performance Standards

a. Except as provided in Section 8 (b) (2) of this ordinance erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as 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 USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

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

1. Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

2. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the run off of the 25-year storm which produces the maximum peak rate of run off 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. 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 mm) size soil particle transported into the basin by the runoff of that 2-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

4. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 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.

5. 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. 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 table in Paragraph (d) of this Section; or
2. the velocity of the 10-year storm runoff in the receiving watercourse prior to development.

If conditions (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%.

b. 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 Commission 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 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 lieu 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. These may range from simple rip-rapped sections to complex structures.

(4) protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

c. Exceptions - This rule shall not apply where it can be demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

d. The following is a table for maximum permissible velocity for storm water discharges:

<u>Material</u>	<u>Maximum permissible velocities</u>	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	

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.

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 Solid 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.

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.

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 be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

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 provisions of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After site development, the land owner 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 county determines that significant sedimentation is occurring as a result of a 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.

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-half 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 county will serve upon the landowner a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. 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 county reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.
- d. This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Section 16 Permits

a. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a permit therefore from the Watauga County Department of Planning and Inspections, except that no permit shall be required for the following land-disturbing activities:

(1) those done for the purpose of fighting fires,

(2) the stock piling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off site damages.

(3) land-disturbing activities that do not exceed 21,780 square feet in surface area, except that all roads serving proposed subdivisions shall need a permit regardless of the area proposed. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

b. Fees for permits may be established from time to time by resolution of the Board of Commissioners of Watauga County.

Section 17 Erosion and Sedimentation Control Plans

a. An erosion control plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity is to be undertaken on a tract comprising more than one half acre, if more than one-half acre is to be uncovered. For land-disturbing activity of a half acre or more but less than one acre, the Watauga County Department of Planning and Inspection may waive the submission of an erosion control plan if, upon site inspection a determination is made that the site does not have the potential to cause erosion or off-site damage. A plan is required for all land-disturbing activity of one acre or more.

The plan shall be filed with the county and the Watauga Soil and Water Conservation District, thirty (30) days prior to the commencement of the proposed activity.

b. Persons conducting land-disturbing activity on a tract which covers one half or more acres except as specified above shall file one copy of the erosion control plan with the county at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. If the 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 county will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

c. Erosion control 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 the person financially responsible, and of the owner of the land or their 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, this ordinance, or rules or orders adopted or issued pursuant to the ordinance.

d. The Watauga Soil and Water Conservation District within twenty (20) days of receipt of any plan, or within any shorter period of time as may be agreed upon by the county and the Soil and Water Conservation District shall review such plan and submit its comments and recommendations to the county. Failure of the Soil and Water Conservation District to submit its comments and recommendations within twenty (20) days or within any agreed upon shorter period of time shall not delay final action on the plan.

e. The county will review each complete plan submitted to it and within thirty (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 or disapprove a complete erosion and sedimentation control plan within thirty (30) days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The county must approve or deny a revised plan within fifteen (15) days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the county determines that the plan is inadequate to meet the requirements of this ordinance, the county may require such revisions as are necessary to comply with this ordinance. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. The county may establish an expiration date for erosion control plans approved under this ordinance.

f. Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The county shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Section 17 (e) of this ordinance shall not begin until a complete environmental document is available for review.

g. 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 county on request.

h. An erosion control plan may be disapproved upon a finding that an applicant, 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 the Act and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act which 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 the Act or;

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act. For purposes of this subsection (h) an applicant's record may be considered for only the two years prior to the application date.

i. Application for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the county the land-disturbing activities shall not proceed except in accordance with the erosion control plan as originally approved.

j. Any person engaged in land-disturbing activities 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.

Section 18 Appeals

a. Except as provided in Section 18(b) of this ordinance the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions.

1. The disapproval or modification of any proposed erosion control plan by the 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. Hearings held pursuant to this section shall be conducted by the Watauga County Planning Board, within thirty (30) days after written demand for a hearing on any erosion control plan is received.

3. The Planning Board shall make recommendations to the Board of Commissioners of Watauga County within seven (7) days after the date of the hearing on any erosion control plan.

4. The Board of Commissioners of Watauga County shall render their final decision on any erosion control plan upon which a hearing is requested within five (5) days of receipt of the recommendations from the Planning Board.

5. If the county upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the local government's decision to the North Carolina Sedimentation Control Commission as provided in Section 113A-61 (c) of the General Statutes and Title 15 NCAC 4B.00018 (b).

b. In the event that an erosion control plan is disapproved pursuant to Section 17 (h) of this ordinance, the county shall notify the Director of the Division of Land Resources of such disapproval within 10 days. The county shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal

the county disapproval of the plan pursuant to Section 17 (h) of this ordinance directly to the Commission.

Section 19 Inspections and Investigations

a. Agents, officials, or other qualified persons authorized by the 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 sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.

b. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the county while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

c. If, it is determined 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. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this ordinance.

d. The 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.

e. The county shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Section 20 Stop Orders

Wherever land-disturbing activity is being undertaken in a manner which is in violation of this ordinance, the Watauga County Department of Planning and Inspection may order the work that is in violation to be immediately stopped. The stop order shall be in writing and directed to the person responsible for the violation, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Appeals from a stop order shall be made as prescribed in Section 18 of this ordinance. Pending the ruling on the appeal, no further work may take place in violation of a stop order. Violation of a stop order constitutes a misdemeanor.

In addition, in accordance with N.C.G.S. 153A-361, the Watauga County Building Inspectors are authorized to issue stop orders for building permits where violations of this ordinance are taking place in connection with construction authorized by the building permit.

NCGS 153A-361. Stop Orders - Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance within five (5) days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance written notice of appeal, with a copy to the local inspector. The Commissioner shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and the Commissioner shall rule on the appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on an appeal, no further work may take place in violation of a stop order. Appeals from a stop order based on violations of any other local ordinance relating to buildings shall be taken to the local official designated by that ordinance and shall be taken, heard, and decided in the same manner as prescribed herein for appeals to the Commissioner. Violation of a stop order constitutes a misdemeanor.

Section 21 Revocation of Grading Permits

The Watauga County Department of Planning and Inspections may revoke and require the return of any permit by giving written notice to the permit holder, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application or plans and specifications, for refusal or failure to comply with the requirements of any applicable State or local laws or local ordinances or regulations, or for false statements or misrepresentations made in securing the permit. A permit mistakenly issued in violation of an applicable State or local law or local ordinance or regulation also may be revoked.

Section 22 Building Permits

No permits for any building or structure shall be issued upon any land requiring submission of a soil erosion control plan and issuance of a grading permit until such plan is submitted and permit issued.

Section 23 Security Required

a. The applicant for a permit may, prior to commencing any land-disturbing activity, be required to file with Watauga County an improvement security in the form of an escrow account, surety bond, irrevocable letter of credit, or other undertaking satisfactory to the County Attorney, in an amount deemed sufficient by the Watauga County Department of Planning and Inspections, to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this ordinance.

Such security shall remain in force until the improvements are completed in accordance with the approved plan and said improvements are finally inspected and approved as set out in subsection (b) below.

b. Upon completion of the improvements as required by this ordinance, written notice thereof shall be given by the applicant to the Department of Planning and Inspections and the Department shall cause an inspection of the improvements to be made and, if approved, shall within 30 days of the date of notice authorize in writing the release of the security given provided that the improvements have been made in accordance with the approved plan and this ordinance.

c. The security shall be forfeited upon violation of this ordinance and shall be used to establish protective cover on the site. Any monies in excess of the cost of establishing protective cover shall be refunded.

Section 24 Penalties

a. Civil Penalties

1. Any person who violates any of the provisions of this ordinance, or rules or orders adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a five thousand dollar civil penalty. For a violation, the maximum amount that the county may assess a person is a civil penalty of up to five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of service of the violation. Each day of a continuing violation shall constitute a separate violation.

2. Any person who violates any of the provisions of this ordinance, or rules or orders adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity; or who fails to acquire an approved erosion control plan shall also be subject to a single five thousand dollar civil penalty.

3. The governing body of the county shall determine the amount of the civil penalty to be assessed under this subsection and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the governing body shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this ordinance. The notice of assessments shall be served by any means authorized under section 19 (c) of this ordinance, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing. A hearing on a civil penalty shall be conducted by the county within thirty (30) days after the date of the written demand for the hearing. Appeal from the final decision of the governing body shall be to the Superior Court of the county where the violation occurred, or the location of the violator's residence or principal place of business.

4. If payment is not received within 30 days after demand for payment is made the 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 is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

5. Civil penalties collected pursuant to this ordinance shall be credited to the general fund of the local government as nontax revenue.

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 an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000, or both, at the discretion of the court.

Section 25 Injunctive Relief

a. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this ordinance or any rule or order adopted or issued pursuant to this ordinance, or any term, condition, or provision of any approved erosion control 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 county, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Watauga County.

b. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

Section 26 Restoration of areas affected by failure to comply

The 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 27 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.

Section 28 Conflict With Other Ordinances

Whenever the provisions of this ordinance and any other ordinance impose overlapping or contradictory regulations, the ordinance which is more restrictive or imposes higher standards or requirements shall be controlling.

Section 29 Effective Date

This ordinance shall be in full force and effect from and after the 1st day of June, 1986, and shall repeal Watauga County Ordinance \$14 - An ordinance to provide for the Control of Soil Erosion and Sedimentation, effective July 1, 1975. Such repeal shall not affect erosion control plans approved prior to the effective date of this ordinance. Amended November 17, 1992 and June 18, 1996.

Amended by the Board of Commissioners on November 17, 1992.

David J. Triplett, Chairman

ATTEST:

Roberta M. Watson, Clerk to the Board

Amended by the Board of Commissioners on June 18, 1996.

Jack Lawrence, Sr. Chairman

ATTEST:

Roberta M. Watson, Clerk to the Board

Amended by the Board of Commissioners on August 19, 2003.

James Coffey, Chairman

ATTEST:

Anita Fogle, Clerk to the Board