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**ORDINANCE NO. 2023-0214-\_\_\_\_\_**

**AN ORDINANCE AMENDING ARTICLE X OF CHAPTER 5 “SOIL  
EROSION AND SEDIMENTATION CONTROL” OF THE TOWN OF  
APEX CODE OF ORDINANCES**

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Apex as follows:

**Section 1.** That Sections 5-142, 5-143, 5-144, 5-145, 5-146, 5-147, 5-148, 5-149, 5-150, 5-153, 5-154, 5-155, 5-156, 5-157, 5-158, 5-159, 5-160, 5-161, and 5-162 of Article X of Chapter 5 of the Town of Apex Code of Ordinances are hereby amended as shown below with additions shown by underlined text and deletions shown as struck-through text:

**Sec. 5-142. - Purposes.**

This article is adopted for the purposes of:

- (1) Regulating certain land-disturbing activity within the corporate limits of the ~~town~~Town and within the extraterritorial jurisdiction (ETJ) of the ~~town~~Town to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (2) Establishing procedures through which these purposes can be fulfilled.

(Ord. of 7-16-96, § 2; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-143. - Definitions.**

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

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

*Act* means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

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*Adequate erosion control measure, structure, or device* means one which controls the soil material within the land area under responsible control of the ~~person~~ Person conducting the land-disturbing activity.

*Affiliate* means a ~~person~~ Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another ~~person~~ Person.

*Being conducted* means a land-disturbing activity has been initiated and ~~permanent stabilization of the site has not been completed~~ not deemed complete by the Town.

*Borrow* means fill material which is required for on-site construction and is obtained from other locations.

*Buffer zone* means the strip of land adjacent to a lake or natural watercourse to remain undisturbed and in its natural state.

*Calendar days* means all days inclusive of Saturday and Sunday. Federal and State Holiday's are not Calendar days for the purpose of this Article.

*Certificate of compliance* means a certificate issued by the ~~€~~ Town once all the measures shown on the approved soil erosion and sedimentation control plan are installed, inspected and approved.

*Certificate of completion* means a certificate issued by the Town when the project is completed and all the temporary measures shown on the approved soil erosion and sedimentation control plan have been removed, permanent measures have been installed, and all disturbed areas have been stabilized.

*Commission* means the North Carolina Sedimentation Control Commission.

*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.

*Construction site waste management plan* means the Town's plan for containing, managing and disposing of building materials, other waste materials and general good housekeeping of the building site. A copy of the plan is available on the Town website at the following link: <http://www.apexnc.org/269/Soil-Erosion-Sedimentation-Control>.

*Department* means the North Carolina Department of Environmental ~~Quality, Health, and Natural Resources~~ Quality.

*Director* means the director of the ~~division~~ Division of Energy, Mineral and Land resources ~~Resources~~ of the ~~d~~ Department of ~~environment~~ Environmental, health, and natural resources Quality.

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*Discharge point or Point of Discharge* means that point at which runoff leaves a tract of land or enters a ~~water body~~ lake or natural watercourse or public storm drainage system.

~~*District* means the Wake Soil and Water Conservation District created pursuant to G.S. ch. 139.~~

*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.

*Erosion* means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

*Ground cover* means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

~~*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(e).~~

~~*High quality water (HQW) zones* means areas that are within one mile and drain to waters designated as HQWs.~~

*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.

*Land-disturbing activity* means any use of the land within the corporate limits or extraterritorial jurisdiction of the ~~T~~town by any ~~person~~ 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.

*Letter of soil erosion and sedimentation control plan approval* means a letter issued by the ~~T~~town, only after a complete soil erosion and sedimentation control application package is submitted and reviewed, tree protection fencing is installed and inspected and the performance guarantee has been provided, indicating approval of the proposed soil erosion and sedimentation control plan.

*Local government* means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

*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.

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*Parent* means an affiliate that directly, or indirectly through one or more intermediaries, controls another ~~person~~Person.

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

*Person conducting land-disturbing activity* means any ~~person~~Person who may be held responsible for a violation unless expressly provided otherwise by this article, the Act, or any order adopted pursuant to this article or the Act.

*Person responsible for the violation* as used in this article, and G.S. 113A-64, means:

- (1) The developer or other ~~person~~Person who has or holds himself out as having financial or operational -control over the land-disturbing activity; or
- (2) The landowner or ~~person~~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 article, the Act, or any order adopted pursuant to this article or the Act as imposes a duty upon ~~him~~that Person.

*Phase of grading* means one of two types of grading, rough or fine.

*Soil erosion and sedimentation control plan* or *Plan* means plan to control soil erosion and sedimentation and to protect associated riparian buffers.

*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.

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

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

*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.

*Stormwater runoff* means the direct runoff of water resulting from precipitation in any form.

*Subsidiary* means an affiliate that is directly or indirectly through one or more intermediaries, controlled by another ~~person~~Person.

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*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 24-hour duration which will produce the maximum peak rate of run-off, for the watershed of interest under average antecedent wetness conditions.

*The ~~T~~own* means the Town of Apex, North Carolina.

*Tract* means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

*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 24-hour duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

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

*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.

*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.

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

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

(Ord. of 7-16-96, § 3; Ord. No. 05-0719-11, § 1, 7-19-05)

**Cross reference**— Definitions and rules of construction generally, § 1-3.

#### **Sec. 5-144. - Exclusions.**

This article shall not apply to the following land-disturbing activities:

- (1) Activities, including the breeding and grazing of livestock, and production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, and all other forms of agriculture undertaken on agricultural

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land for the production of plants and animals useful to man, including, but not limited to:

- a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
  - b. Dairy animals and dairy products.
  - c. Poultry and poultry products.
  - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
  - e. Bees and apiary products.
  - f. Fur-producing animals.
  - f.g. Mulch, ornamental plants and other horticultural products. For purposes of this section "mulch" means substances composed primarily of plant remains or mixtures of such substances.
- (2) Activities 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~~ Forest Practice Practice guidelines Guidelines related Related to water Water quality Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality forest practice guidelines related to water quality, the provisions of this article shall apply to such activity and any related land-disturbing activity on the tract; and
  - (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the N.C. General Statutes G.S. ch. 74, art. 7.
  - (4) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
  - (5) For the duration of an emergency, activities essential to protect human life.
  - (6) ~~For the purpose of fighting fires.~~ Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
  - (7) ~~For 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 damage.~~ Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetland functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

~~To qualify for exemption under this section, a request for exemption shall be submitted to the town (no exemption is to be assumed until approval of the request by the town). Where land disturbing activities are undertaken for the purpose of establishing a farm, constructing farm roads, paths, or ponds, the owner of the property shall file an application for exemption to the town's environmental programs coordinator. The environmental programs coordinator shall review the application and grant or deny the exemption within 15 working days of receipt. The land owner shall receive notification of this decision in writing and have ten working days to respond if the exemption is denied. The Director of Water Resources shall have five days to~~

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~~review and decide on the appeal. After receipt of the exemption, the property owner shall have 30 days to file a conservation plan for review with the Wake Soil and Water Conservation District board of supervisors. The board of supervisors will have 30 days to review the request. Conservation measures must be installed as scheduled in the approved plan. Failure to meet the conditions of the exemption shall constitute a violation of this article and shall be retroactive to the approved date of the original exemption.~~

(Ord. of 7-16-96, § 4; Ord. No. 05-0719-11, § 1, 7-19-05)

### **Sec. 5-145. - General requirements.**

- (a) *Soil erosion and sedimentation control plan, letter of soil erosion and sedimentation control plan approval, ~~and~~ grading permit, certificate of compliance and State Certificate of Coverage (COC) for the NPDES General Permit NCG010000 (NCG01) required.* No person shall initiate any land-disturbing activity which uncovers more than 20,000 square feet without having a soil erosion and sedimentation control plan approved by the Town as evidenced by receipt of a letter of soil erosion and sedimentation control plan approval, provide a performance guarantee per Sec. 5-162, and obtain a grading permit from the Town. Applicants shall receive a letter of soil erosion and sedimentation control plan approval only after all required tree protection fencing is installed and inspected. The applicant must obtain the COC issued by the State to satisfy the requirements of the NCG01 permit. Information can be found at the NCDEQ DEMLR - Stormwater Program website: <https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/npdes-construction-program>. Before installing any approved erosion and sedimentation control measures the applicant must have received the letter of soil erosion and sedimentation control plan approval. No land disturbing activity (which includes logging), other than the installation of the perimeter control measures and erosion and sedimentation control measures, shall be started until the Town issues a certificate of compliance to the applicant. A certificate of compliance will be signed once all required tree protection fencing has been inspected and approved by the zoning compliance officer, and all the measures shown on the approved soil erosion and sedimentation control plan are installed, inspected and approved by the stormwater engineering staff. Sites must follow the approved soil erosion and sedimentation control plan which includes the construction sequence. Grading and development of sites, including single-family residential lots, not exceeding 20,000 square feet shall meet the requirements of subsection (b) of this section.
- (b) Grading and development of sites including single-family residential lots not exceeding 20,000 square feet in surface area shall implement and maintain control measures to restrain erosion and prevent off-site sediment migration. No person shall initiate any land disturbing activity under 20,000 square feet without submitting an erosion and sedimentation control installation and maintenance agreement for residential lots to the Building Inspections & Permitting Department. Minimum required measures will include: silt fencing (steel posts, woven wire, and silt fence geotextile fabric), construction entrances, and downstream rock

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check dams in ditch lines. Disturbed areas shall not be left exposed ~~after 15 working days or 30~~ for more than 14 calendar days ~~after the~~ of completion of any phase of grading. No footing inspection by the building inspection division shall be approved without proper installation of the required sedimentation and erosion control measures.

- (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.
- (d) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state, or local laws, ordinance or rules, the more restrictive provision shall apply.
- (e) Applicants shall post a performance guarantee as provided by section 5-162 of the Apex Town Code.
- (f) *Construction Site Waste Management Plan.* The development of all sites requiring a soil erosion and sedimentation control plan must adhere to the requirements as stated in the Construction Site Waste Management Plan.
- (g) *Plan approval exceptions.* Notwithstanding the general requirements 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 20,000 square feet in surface area; unless it is part of a larger common plan of development disturbing 20,000 square feet or greater. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(Ord. of 7-16-96, § 5; Ord. No. 05-0719-11, § 1, 7-19-05; Ord. No. 09-0804-07, § 1, 8-4-09)

#### **Sec. 5-146. - Basic control objectives.**

A soil erosion and sedimentation control plan may be disapproved pursuant to section 5-157 of this article if the plan fails to address the following control objectives:

- (1) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time. In any event, areas left exposed will, within 15 working days or 30 14 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.
- (3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (6) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the

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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. Measures are to be implemented to ensure that post-development stream velocities of the receiving watercourses do not exceed the pre-development velocities as defined in section 5-149 of this article.

(Ord. of 7-16-96, § 6; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-147. - Mandatory standards for land-disturbing activity.**

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

- (1) *Buffer zone.*
  - a. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity. 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. Refer to section 6.1, watershed protection overlay districts, of the Ttown's UDO for primary and secondary riparian buffers.
  - b. Unless otherwise provided, the width of a buffer zone is measured horizontally from the top of the bank (nearest the land-disturbing activity) of the stream or waterbody to the nearest edge of the disturbed area. The 25 percent of the strip nearest the land-disturbing activity must contain natural or artificial means of confining visible siltation.
- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 2+14 calendar days of completion of any phase of grading, ~~whichever period is shorter~~, be planted or otherwise provided with groundcover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- (3) *Groundcover.* Whenever land-disturbing activity is undertaken on a tract comprising more than 20,000 square feet, if more than 20,000 square feet is uncovered, the ~~person~~ 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. All seeding and mulch activities shall be stabilized with a tackifier, netting or other suitable material that secures the mulch. ~~Except as provided in section~~

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~~5-148(b)(5) of this article, provisions~~ Provisions for a ground cover sufficient to restrain erosion must be accomplished ~~within 15 working days or 30~~ 14 calendar days following completion of construction or development ~~whichever period is shorter.~~

- (4) ~~Prior plan approval.~~ No ~~person~~ Person shall initiate any land-disturbing activity on a tract if more than 20,000 square feet is to be uncovered unless, ~~30 or more days prior to initiating the activity,~~ a soil erosion and sedimentation control plan for such activity is filed with and approved by the ~~T~~town as outlined in section 5-145.
- (5) ~~Fill material.~~ Unless a permit from the ~~state~~ Department's of environment and natural resources division of solid waste management Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding 12 inches, and any materials which would cause the site to be regulated ~~or as~~ a landfill by the state.
- (6) The land-disturbing activity shall be conducted in accordance with the approved soil erosion and sedimentation control plan.

(Ord. of 7-16-96, § 7; Ord. No. 05-0719-11, § 1, 7-19-05; Ord. No. 07-0821-12, § 2, 8-21-07)

#### **Sec. 5-148. - Design and performance standards.**

- (a) ~~Soil~~ Except as provided in subsection (b)(2) herein, 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 25-year, 24 hour storm, and in accordance with Section 400, Soil Erosion & Sedimentation Control, of the Town's Standard Specifications & Details, as amended. Runoff rates shall be calculated using the procedures in the United States Department of Agriculture (USDA) Soil Natural Resources Conservation Service's "National Engineering Field Manual Handbook 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 percent for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that two year~~

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~~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 two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices, or other acceptable ditch liners. In any event, the angle for side slope 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.~~

(Ord. of 7-16-96, § 8; Ord. No. 05-0719-11, § 1, 7-19-05; Ord. No. 07-0821-12, § 3, 8-21-07)

#### **Sec. 5-149. - Stormwater outlet protection.**

- (a) *Intent.* Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.
- (b) *Performance standards.* Persons shall conduct land-disturbing activity so that the post construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
- (1) The velocity established by the table in subsection (d) of this section; or
  - (2) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If conditions (1) or (2) of this subsection 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 ten percent.

- (c) *Acceptable management measures.* Measures applied along or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The ~~Town~~ Commission 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 are to:
- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious.
  - (2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.

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- (3) Provide energy dissipaters 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.
  - (5) Upgrade or replace the receiving device structure or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
  - ~~(6) Energy dissipaters and outlet structures shall not be constructed in riparian buffer areas unless no practical alternative exists. In any event, there shall be no direct discharge of stormwater into watercourses.~~
  - (d) *Exceptions.* This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.
  - (e) *Maximum permissible velocities.* The following is a table for maximum permissible velocity for stormwater discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

Material	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	<u>0.8</u>
Sandy loam (noncolloidal)	2.5	<u>0.8</u>
Silt loam (noncolloidal)	3.0	<u>0.9</u>
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graced, 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

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Shales and hard pans	6.0	1.8
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**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.

(Ord. of 7-16-96, § 9; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-150. - Borrow and waste areas.**

When the ~~person~~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, G.S. 74, Article 7, and waste areas for surplus materials other than landfills regulated by the ~~department's~~Department's ~~division~~Division of solid waste~~Waste management~~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~~Person conducting the land-disturbing activity is not the ~~person~~Person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(Ord. of 7-16-96, § 10; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-153. - Responsibility for maintenance.**

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

(Ord. of 7-16-96, § 13; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-154. - Additional measures.**

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Whenever the Town determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the ~~person~~ Person conducting the land-disturbing activity will be required to and shall take additional protective action to achieve compliance with the conditions specified in the Act or its rules.

(Ord. of 7-16-96, § 14; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-155. - ~~Existing uncovered areas.~~Reserved.**

**Editor's note**— An ordinance adopted \_\_\_\_\_, 2022, repealed § 5-155 in its entirety. Former § 5-155 pertained to existing uncovered areas and derived from an Ord. of 7-16-96, § 15; and Ord. No. 05-0719-11, § 1, 7-19-05.

- ~~(a) All uncovered areas existing on the effective date of this article which resulted from land-disturbing activity, exceed 20,000 square feet, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.~~
- ~~(b) The town will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested, or by any means authorized under G.S. 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.~~
- ~~(c) The town reserves the right to require preparation and approval of a soil erosion and sedimentation control plan (with appropriate fees) in any instance where extensive control measures are required.~~
- ~~(d) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.~~

~~(Ord. of 7-16-96, § 15; Ord. No. 05-0719-11, § 1, 7-19-05)~~

**Sec. 5-156. - Procedures related to soil erosion and sedimentation control plans.**

- (a) In determining the area to be disturbed, lands under one or diverse ownership being developed as a unit will be aggregated. If the combined total area of aggregated lots in any subdivision equals 20,000 square feet by one owner, ~~a grading fee and~~ a soil erosion and sedimentation control plan will be required even if the lots are not contiguous.
- (b) A soil erosion and sedimentation control plan may be disapproved if implementation of the plan would result in a violation of rules adopted by the environmental management commission, other Town rules, or for failure to pay fees or fines owed to the Town.

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- (c) The Town will establish a soil erosion and sedimentation control plan review fee schedule and payment shall be required.
- (d) All proposed soil erosion and sedimentation control plans shall be filed with the Town accompanied by appropriate fees and forms ~~a copy shall be simultaneously submitted to the Wake Soil and Water Conservation District, at least 30 days prior to the anticipated commencement of the proposed activity.~~ The Town shall forward to the ~~director~~ Director ~~of the division of water quality~~ a copy of each soil erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract, pursuant to G.S. 113A-57(4).
- (e) All applicants shall ~~file two copies of the soil erosion and sedimentation control plan with the town, at least 30 days prior to the anticipated beginning of such activity and shall keep a~~ copy of the approved soil erosion and sedimentation control plan on file at the job site. After approving the 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 will require a revised soil erosion and sedimentation control plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Town water resources director.
- (f) ~~Soil erosion and sedimentation control plans may~~ shall be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the ~~person~~ Person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing, ~~and street, and electronic mail~~ addresses of the principal place of business of: (1) the ~~person~~ Person financially responsible; (2) the owner of the land; and (3) any registered agents. If the ~~person~~ 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 noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article as well as for service of civil summonses and complaints. If the applicant is not the owner of the land to be disturbed, the draft soil erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft soil erosion and sedimentation control plan and to conduct the land-disturbing activity.
- ~~(f)~~(g) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.
- ~~(g)~~ ~~The Wake Soil and Water Conservation District shall review the soil erosion and sedimentation control plan and submit any comments and recommendations to the town within 20 days after the soil and water conservation district received the soil erosion and sedimentation control plan or within any shorter period of time as may be agreed upon by the soil and water conservation district and the town. Failure of the soil and water conservation district to submit its comments and recommendations within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.~~
- (h) The Town will review each complete soil erosion and sedimentation control plan submitted to ~~them~~ it and within 30-days of receipt thereof will notify the person submitting the plan

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that it has been approved, approved with modifications, ~~approved with performance reservations,~~ or disapproved. Any type of approval shall be indicated by the town's executing the letter of plan approval to the applicant. The letter of plan approval is issued ~~only after the tree protection fencing (if applicable to the project) is inspected and approved by the town's planning and community development department.~~ Failure to either approve, approve with modifications, ~~approve with performance reservations,~~ or disapprove a completed soil erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. The town will review each complete revised plan submitted to it within 15 days of receipt thereof will notify the person submitting the revised plan that it has been approved, approved with modifications, or disapproved. ~~must approve, approve with modifications, or disapprove~~ Failure to either approve, approve with modifications, or disapprove a complete revised plan within 15 days of receipt shall be deemed approval. ~~a revised plan within 15 days of receipt, or it is deemed to be approved. Disapproval of a plan must specifically state in writing the reasons for disapproval.~~ If, following commencement of a land-disturbing activity pursuant to an approved soil erosion and sedimentation control plan, the ~~T~~town determines that the plan is inadequate to meet the requirements of this article, the ~~T~~town may require any revision of the plan that is 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.~~ If land disturbing activities are not initiated within one year from the date of the letter of plan approval, plan approval shall expire and a new plan submittal is required. The approval of an soil erosion and sedimentation control plan is conditioned upon the applicant's compliance with federal and state water quality laws, regulations and rules pursuant to G.S. 113A-61(b)(1). Documentation of compliance with federal and state water quality laws, rules and regulations from the regulating agency shall be submitted at the request of the plan reviewer.

- (i) Any soil erosion and sedimentation control 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 town shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to subsection (h) of this section shall not begin until a complete environmental document is available for review.~~
- (j) The soil erosion and sedimentation control plan required by this section shall contain architectural ~~and~~ or engineering drawings, maps, assumptions, calculations, and narrative statements appropriately sealed by the responsible designer, except when limited by G.S. 113A-60(b1), as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Soil erosion and sedimentation control plan content may vary to meet the needs of specific site requirements. Detailed mandatory guidelines for plan preparation shall be drafted by the Water Resources Department of the ~~T~~town and may be obtained from the ~~T~~town on request.
- (k) The ~~T~~town may disapprove a plan or ~~draft plans~~ disapprove a transfer of a plan if implementation of the plan would result in a violation of the rules adopted by the environmental management commission to protect riparian buffers along surface waters. The ~~T~~town may disapprove or revoke a soil erosion and sedimentation control plan upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

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- (1) Is conducting or has conducted land-disturbing activity without an approved soil erosion and sedimentation control 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 by the time the payment is due;
  - (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act;
  - (4) Has failed to pay appropriate fees required by the Ttown; or
  - (5) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

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

In the event that a plan or a transfer of a plan is disapproved pursuant to this subsection, the Ttown shall notify the Director of such disapproval within ten days of the disapproval. The Ttown shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved.

- (l) Applications for amendment of a soil erosion and sedimentation control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Ttown the land-disturbing activity shall not proceed except in accordance with the soil erosion and sedimentation control plan as originally approved.
- (m) No ~~person~~ Person may initiate a land-disturbing activity in accordance with an approved plan before notifying the Ttown of the date that the land-disturbing will begin.
- (n) When deemed necessary by the Ttown, a preconstruction conference may be required and noted on the approved plan.
- (o) Any ~~person~~ Person engaged in land-disturbing activity who fails to file a soil erosion and sedimentation control plan in accordance with this article, or who conducts a land-disturbing activity except in accordance with provisions of an approved soil erosion and sedimentation control plan shall be deemed in violation of this article.
- ~~(p) The public works director may issue a stop work order to any person in violation of any section of this article.~~
- ~~(p) Fees.~~ The Ttown shall adopt and periodically update a fee schedule to cover the costs of administering the sediment and erosion control program.
- ~~(q) The Town may transfer a 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 as provided in this subsection.~~
  - (1) The Town may transfer a plan if all of the following conditions are met:
    - a. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
    - b. The Town finds all of the following:
      1. The plan holder is one of the following:

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- 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.
    - (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
    - (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
    - (4) Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. 113A-54.1(b).
  - (r) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform a self-inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. The Person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1. 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. Where inspections are required by this section or G.S. 113A-54.1(e), the following apply:
    - (1) The inspection shall be performed during or after each of the following phases of the plan;
      - a. initial installation of erosion and sediment control measures;
      - b. clearing and grubbing of existing ground cover;
      - c. completion of any grading that requires ground cover;

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d.completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and

e.transfer of ownership or control of the tract of land where the plan has been approved and work has begun. The new owner or Person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item c. of this Item.

(2) Documentation of self-inspections performed under Item (1) of this section shall include:

a.Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;

b.Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.

c.The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

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

(Ord. of 7-16-96, § 16; Ord. No. 05-0719-11, § 1, 7-19-05; Ord. No. 07-0821-12, §§ 4—6, 8-21-07)

### **Sec. 5-157. - Appeals.**

(a) Except as provided in subsection (b) of this section, the appeal of a disapproval or approval with modifications of a soil erosion and sedimentation control plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed soil erosion and sedimentation control plan by the Ttown shall entitle the ~~person~~ Person submitting the plan to a

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public hearing if such ~~person~~ Person submits written demand for a hearing to the Ttown clerk within 15 days after receipt of written notice of the disapproval or modification.

- (2) Hearings held pursuant to this section shall be conducted by the Board of Adjustment~~town council~~ within ~~30 days~~ a reasonable time after the date of the Ttown's receipt of the appeal or request for a hearing.
  - (3) The Board of Adjustment~~town council~~ will render its final decision on any soil erosion and sedimentation control plan upon which a hearing is requested within 20 days of the close of the hearings record.
  - (4) If the Ttown upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the ~~person~~ Person submitting the plan shall then be entitled to appeal the local government's decision to the ~~state sedimentation control e~~ Commission as provided in G.S. 113A-61(c) and title 15A NCAC 4B.0018(d).
- (b) In the event that a soil erosion and sedimentation control plan is disapproved pursuant to section 5-156(k) of this article, the Ttown shall notify the ~~director of the division of land resources~~ Director of such disapproval within ten days. The Ttown shall advise the applicant and the ~~director~~ Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Ttown disapproval of the soil erosion and sedimentation control plan pursuant to section 5-156 of this article directly to the ~~commission~~ Commission.

(Ord. of 7-16-96, § 17; Ord. No. 05-0719-11, § 1, 7-19-05)

### **Sec. 5-158. - Inspections and investigations.**

- (a) Agents, officials, or other qualified persons authorized by the Ttown will periodically inspect land-disturbing activities to ensure compliance with the Act, this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the measures required in the soil erosion and sedimentation control plan are effecting in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the letter of soil erosion and sedimentation control plan approval of each soil erosion and sedimentation control plan.
- (b) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Ttown while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) If, it is determined that a ~~person~~ Person engaged in land-disturbing activity has failed to comply with the Act, this article, or rules, or orders adopted or issued pursuant to this article, a notice of violation shall be served upon that ~~person~~ Person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4 ~~or in the case of violations on single family residential lots, be served by personnel service with a return of service form.~~

The notice shall specify a date by which the ~~person~~ Person must comply with the Act, or this article, or rules, or orders adopted pursuant to this article, and inform the ~~person~~ Person of the

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actions that need to be taken to comply with the Act, this article, or rules or orders adopted pursuant to this article. However, no time period for compliance need be given for failure to submit a soil erosion and sedimentation control plan for approval or for obstructing, hampering or interfering with an authorized representative, employee, or agent of the Town while in the process of carrying out ~~his~~ that person's official duties. Any ~~person~~ Person who fails to comply within the time specified is subject to the civil and criminal penalties provided in G.S. 113A-64 and this article. If the Person engaged in the land-disturbing activity has not received a previous notice of violation under this article, the Town shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents.

- (d) 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 article, and who presents appropriate credentials for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- (e) The Town 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.
- (f) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.
- (g) The Stormwater Engineering Manager may issue a stop work order to any person in violation of this article.

(Ord. of 7-16-96, § 18; Ord. No. 05-0719-11, § 1, 7-19-05; Ord. No. 07-0821-12, § 7, 8-21-07)

### **Sec. 5-159. - Penalties.**

- (a) *Civil penalties.*
  - (f) ~~Any person~~ Person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is

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subject to a civil penalty. The maximum civil penalty for a violation is \$5,000.00. Civil penalties may be assessed from the date of the violation. However, no penalty shall be assessed until the ~~person~~ Person alleged to be in violation has been notified of the violation as provided in subsection 5-158(c) of this article. If, after the allotted time period has expired, the violator has not completed corrective action a civil penalty may be assessed. Nevertheless, no time period for compliance need be given for failure to submit a soil erosion and sedimentation control plan for approval, proceeding with the work before the letter of plan approval is signed by the Town, or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Proceeding with work before the letter of soil erosion and sedimentation control plan approval is signed shall constitute grading without a permit. Each day of 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).

In addition to the civil penalty schedule listed below, the water resources director may assess a one-time civil penalty of \$5,000.00 on the day of the violation for off-site sedimentation damage especially in the case of damage to a body of water, wetlands or buffer. Moreover, any malicious or intentional destruction of silt fencing or other sedimentation and erosion control device will result in a one-time fine of up to \$1,000.00.

Civil penalties for specific violations may be assessed as follows:

- Grading without a soil erosion and sedimentation control plan or land-disturbing permit: \$5,000.00 per day for failure to secure a valid, required land disturbing permit (certificate of compliance) prior to conducting a land-disturbing activity.
- Grading beyond the limits of a grading permit: \$1,000.00 per day per 1/10 of a graded acre beyond the limits of an existing grading permit without the approval of an amended grading permit, but not to exceed \$5,000.00 per day.
- Failure to protect: \$5,000.00 per day for failure to take all reasonable measures to protect public property or private property, from damage caused by the failure to retain sediment on-site.
- Failure to follow soil erosion and sedimentation control plan: \$3,000.00 per day for failure to conduct a land disturbing activity in accordance with the provisions of an approved erosion and sedimentation control plan.
- Failure to install devices: \$5,000.00 per day for failure, when more than one acre is disturbed (\$2,500.00 per day when 20,000 square feet or less than 20,000 square feet is disturbed), to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.
- Failure to maintain permanent and/or temporary measures: \$2,500.00 per day for failure to maintain adequate erosion control measures.

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- Failure to maintain properly slopes and fills: \$2,500.00 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate erosion control measures.
  - Failure to protect exposed slopes: \$2,500.00 per day for failure, within ~~15 working days or 30~~<sup>14</sup> calendar days of completion of any phase of grading, ~~whichever period is shorter~~, to plant or otherwise provide exposed, graded slopes or fills with groundcover, devices, or structures sufficient to restrain erosion.
  - Failure to provide adequate cover: \$2,500.00 per day for failure, within ~~15 working days or 30~~<sup>14</sup> calendar days of completion of any phase of grading, ~~whichever is shorter~~, to plant or otherwise provide exposed, graded slopes or fills with groundcover, devices, or structures sufficient to restrain erosion.
  - Failure to correct a violation after notice: \$5,000.00 per day for failure to correct violation within the time limitations established in a notice of violation.
  - Failure to revise plan: \$2,500.00 per day for failure to file an acceptable revised erosion and sedimentation control plan within the established deadline after being notified of the need to do so.
  - Any other action or failure to act that constitutes a violation of this article: \$2,500.00 per day for any other action or failure to act that constitutes a violation of this article.
  - Failure to keep dirt and mud off public streets: \$1,000.00 per day for failure to prevent the accumulation of more than one-fourth-inch of dirt, mud, both on public streets, or in public storm drainage, plus \$500.00 per hour per wash truck if the street is cleaned by the Ttown, its employees or its contractors.
  - Failure to follow the Construction Site Waste Management Plan is subject to \$1,000.00 per day for failing to follow all aspects of the Plan.
  - An additional civil penalty of \$1,000.00 per day shall be charged to any person assessed a civil penalty for any violation of this article within the prior two years. A person may be assessed a civil penalty from the date the violation is detected if the deadline stated is not met. Each day of a continuing violation shall constitute a separate violation.
- (1) The Ttown water resources director shall determine the amount of the civil penalty to be assessed. In determining the amount of the penalty the Ttown water resources director 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 article.
- (2) The Ttown water resources director shall provide notice of the civil penalty amount and basis for assessment to the ~~person~~Person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, 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, or file a request with the Town for remission of the assessment within 30 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to

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- 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.:
- (3) A hearing on a civil penalty shall be conducted by the Town Board of Aadjustment within ~~30 days~~ a reasonable time after the date of the written demand for the hearing. The board shall render its final decision on the civil penalty within 20 days after the close of the hearing record. Appeal from the final decision of the Town Board of Aadjustment 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. Such appeals must be made within 30 days of the final decision of Town Board of Adjustment.
- (4) A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the 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:
- a. Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
  - b. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
  - c. Whether the violation was inadvertent or a result of an accident.
  - d. Whether the petitioner had been assessed civil penalties for any previous violations.
  - e. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
  - f. 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.
- ~~(4)~~(5) If payment is not received within 30 days after demand for payment is made the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three years of the date the assessment was due. An assessment that is not contested and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
- ~~(5)~~(6) The clear proceeds of civil penalties collected by the Town under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the Town may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection

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~~costs by the Town for the prior fiscal year. Civil penalties collected pursuant to this article shall be used or disbursed as directed by law.~~

- (b) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this article, or rule or order adopted or issued pursuant to this article, 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 class 2 misdemeanor which may include a fine not to exceed \$5,000.00 as provided in G.S. 113A-64.

(Ord. of 7-16-96, § 19; Ord. No. 05-0719-11, § 1, 7-19-05; Ord. No. 07-0821-12, § 8, 8-21-07)

**Sec. 5-160. - Injunctive relief.**

- (a) Whenever the governing body has reasonable cause to believe that any ~~person~~ Person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to this article, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the Town for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.
- (b) 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 article.

(Ord. of 7-16-96, § 20; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-161. - Restoration of areas affected by failure to comply.**

The Town may require a ~~person~~ 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 article.

(Ord. of 7-16-96, § 21; Ord. No. 05-0719-11, § 1, 7-19-05)

**Sec. 5-162. - Performance guarantee.**

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- (a) Prior to the commencement of any land disturbing activity ~~town's issuing a letter of soil erosion and sedimentation control plan approval for an approved soil erosion and sedimentation control plan, and in addition to obtaining a grading permit,~~ the applicant shall provide a performance guarantee in the form of a certified check, cash or irrevocable letter of credit from any commercial bank doing business in the State of North Carolina in terms and form approved by the Ttown. The amount of the performance guarantee shall be in accordance with the Town of Apex Fee Schedule, based on the proposed disturbed area as identified on the approved plan \$2,500.00 per disturbed acre as defined in the request for plan approval and approved by the water resources director or designee.
- (b) Compliance with this chapter and an approved soil erosion and sedimentation control plan shall be at all times the responsibility of the applicant/owner. Land-disturbing activities that violate either this chapter or the applicable approved soil erosion and sedimentation control plan after the deadline for compliance stated in an applicable notice of violation has passed shall subject applicable performance guarantees to forfeiture.
- (c) The performance guarantee shall be used by the Ttown to stabilize the site and otherwise bring the site into compliance. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land-disturbing activity after a certificate of completion for the project has been issued.
- (d) The performance guarantee shall remain in full force and effect until a certificate of completion has been issued by the Water Resources Department. Any time after the first plat is signed by the water resources director, a written request may be made to the water resources director requesting a one-time reduction of the performance guarantee for up to 50% of the total guarantee. If a reduction of the performance guarantee is approved the reduced amount will be based on the remaining disturbed area up to 50% of the total guarantee. 100 percent of the buildings (residential and commercial) in the area(s) covered under the performance guarantee have received a permanent certificate of occupancy and until a certificate of completion has been issued by the public works department. Failure to extend an irrevocable letter of credit, either original or reduced, until a certificate of completion has been issued by the Ttown will result in collection of the performance guarantee.
- (e) Collection or use of the performance guarantee by the Ttown does not relieve the applicant, owner or financially responsible party of penalties, fines or other requirements of this chapter.

(Ord. No. 09-0804-07, § 2, 8-4-09)

**Section 2.** It is the intention of the governing body, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances and the sections of this ordinance may be renumbered to accomplish such intention.

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**Section 3.** The Town Clerk and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this Ordinance or future amendments as long as doing so does not alter the terms of this Ordinance.

**Section 4. Severability, Conflict of Laws.** If this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**Section 5. Effective Date.** This ordinance shall be effective upon adoption.

Introduced by Council Member: \_\_\_\_\_

Seconded by Council Member: \_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jacques K. Gilbert  
Mayor

ATTEST:

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Laurie L. Hohe  
Town Attorney