

**AN ORDINANCE OF THE MACON COUNTY BOARD OF COMMISSIONERS FOR
AN AMENDED AND RESTATED "MACON COUNTY SOIL EROSION AND
SEDIMENTATION CONTROL ORDINANCE"**

WHEREAS, the Macon County Board of Commissioners originally adopted the Macon County Soil Erosion and Sedimentation Control Ordinance on November 1, 2001; and

WHEREAS, the same has been amended and/or restated from time to time in order to make changes to the same; and

WHEREAS, the Board of Commissioners wishes to make certain specific amendments to the Ordinance in order to bring the Ordinance into compliance with amendments made by the North Carolina State Legislature to the Sedimentation Pollution Control Act of 1973 under S.L. 2021-121 and S.L. 2021-158; and

WHEREAS, the Board of Commissioners has the authority to make such amendments to the Ordinance pursuant to Chapter 601 of Chapter 160D and Article 4 of Chapter 113A of the North Carolina General Statutes; and

WHEREAS, the required Notice of Public Hearing has been duly given and duly published in accordance with the law and the required Public Hearing in connection with such amendments has been duly held in accordance with law.

NOW, THEREFORE, BE IT ORDAINED by the Macon County Board of Commissioners that:

The Macon County Soil Erosion and Sedimentation Control Ordinance, originally adopted on November 1, 2001 and which has been amended and/or restated from time to time is hereby amended and restated so that the same will hereafter read as follows:

See Exhibit A attached hereto which is incorporated herein by reference as if more fully set forth herein.

This the 8th day of March, 2022.



Chairman, Macon County Board of Commissioner

ATTEST:



Clerk to the Macon County Board of Commissioners



EXHIBIT A

**MACON COUNTY
SOIL EROSION
AND
SEDIMENTATION
CONTROL ORDINANCE**

Amended: November 10, 2009

Amended: April 12, 2011

Amended and Restated: November 9, 2021, 2021

Amended And Restated: March 8, 2022

TABLE OF CONTENTS

§ 153.01	Title.
§ 153.02	Purposes.
§ 153.03	Definitions.
§ 153.04	Scope and Exclusions.
§ 153.05	General Requirements.
§ 153.06	Mandatory Standards for Land-Disturbing Activity.
§ 153.07	Land -Disturbing Permit.
§ 153.08	Erosion and Sedimentation Control Plans.
§ 153.09	Basic Control Objectives.
§ 153.10	Design and Performance Standards.
§ 153.11	Storm Water Outlet Protection
§153.12	Borrow and Waste Areas.
§ 153.13	Access and Haul Roads.
§ 153.14	Operations in Lakes or Natural Watercourses.
§ 153.15	Responsibility for Maintenance.
§ 153.16	Additional Measures.
§ 153.17	Fees.
§ 153.18	Appeals.
§ 153.19	Inspections and Investigations.
§ 153.20	Penalties.
§ 153.21	Enforcement Alternatives and Injunctive Relief.
§ 153.22	Restoration After Non-Compliance.
§ 153.23	Severability.

§ 153.01 Title.

This chapter may be cited as the *Macon County Soil Erosion and Sedimentation Control Ordinance*.

§ 153.02 Purposes.

This chapter is adopted for the purposes of:

- (A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses and other public and private property by sedimentation; and
- (B) Establishing procedures through which these purposes can be fulfilled.

§ 153.03 Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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, as amended (G.S. §§113A-50 *et seq.*), and all rules and orders adopted pursuant to it.

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.

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

Administrator means the person appointed by the Macon County Board of Commissioners to assure compliance with the provisions of this Chapter and associated administration process.

Approved Erosion and Sediment Control Plan means a written course of action including maps, construction schedules, drawings, calculation or assumptions, found by the Administrator or other duly appointed agent to satisfy all requirements of this ordinance which details the timing and proper installment of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off site sediment damage associated with a land-disturbing activity.

Approving Authority means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act. The Administrator is the approving authority for purposes of taking action under this ordinance. Wherein this ordinance specifies action will be taken by the local government, the Administrator is the intended office, except where the context clearly indicates otherwise.

Being Conducted means a land-disturbing activity has been initiated and not deemed complete by the Approving Authority.

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

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

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, Tyrell and Washington.

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.

Department means the North Carolina Department of Environmental Quality.

Director means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.

Discharge point or Point of Discharge means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

District means the Macon Soil and Water Conservation District created pursuant to G.S. ch. 139, as amended.

Energy dissipater means a structure or 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 surfaces 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.

Hazardous Materials means those chemicals or substances which are physical hazards or health hazards, whether the materials are in usable or waste conditions.

High Quality Waters (HQW) means those classified as such in 15A NCAC 02B .0224 which is herein incorporated by reference including subsequent amendments and additions.

High Quality Water (HQW) Zones means areas in the coastal counties that are within 575 feet of high quality waters and, for the remainder of the state, areas that are within one mile and drain to 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.

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 that may cause or contribute to sedimentation.

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. The Administrator is the action agent for purposes of taking action under this ordinance. Wherein this ordinance specifies action will be taken by the local government, the Administrator is the intended office, except where the context clearly indicates otherwise.

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.

Off Site Sediment Damage means the transport of sediment across boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or on any land, public or private, not owned by the person responsible for the land-disturbing activity.

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

Permit means a land-disturbing authorization issued by the Administrator in accordance with this ordinance.

Person means an 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 who may be held responsible for a violation of the ordinance unless expressly provided otherwise by the Act, or any order adopted pursuant to this ordinance or the Act.

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

Plan means an erosion and sedimentation control plan.

Receiving watercourse means a lake, natural watercourse or other natural or manmade area into which stormwater runoff flows from a land-disturbing activity.

Road means all roads, either permanent or temporary, used for private travel, construction vehicles, earth-moving or heavy equipment or other machinery and constructed and used in conjunction with land-disturbing activities under this chapter.

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 nature 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.

Slope means the description of the angle of the land being disturbed with respect to horizontal. For example, a 2-1 slope would have a vertical rise or fall of 1 foot for each 2 feet of horizontal distance.

Stabilize means to establish groundcover sufficient and adequate to prevent erosion. Temporary stabilization measures are those that are sufficient to prevent erosion until the appropriate time for establishing permanent control measures.

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 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.

Ten-year storm means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest, under average antecedent wetness conditions.

Tract or site 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 a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff for 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 speed of flow through the cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.

Waste means surplus materials resulting from on-site land disturbing activities and disposed of at other locations.

§ 153.04 Scope and Exclusions.

This ordinance shall apply to all land-disturbing activities undertaken by any person within the jurisdiction of the County of Macon, with the following exclusions:

- (A) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry and all other forms of agriculture, undertaken on agricultural land for the production of plants and animals useful to man, as set forth in G.S. § 113A-52.01, including but not limited to:

- (1) Forages and sod crops, grain and feed crops, tobacco, cotton and peanuts.
 - (2) Dairy animals and dairy products.
 - (3) Poultry and poultry products.
 - (4) Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules and goats, including the breeding and grazing of any or all such animals.
 - (5) Bees and apiary products.
 - (6) Fur producing animals.
 - (7) Mulch, ornamental plants, and other horticultural products, including the raising of shrubs, Christmas trees, and other nursery operations. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
 - (8) Trout production and other aquaculture activities.
- (B) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by Forest Practice Guidelines Related to Water Quality, as adopted by the Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract;
- (C) 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);
- (E) For the duration of an emergency, activities essential to protect human life;
- (F) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act; and
- (G) Activities undertaken pursuant to the Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations §12.2.

§ 153.05 General Requirements.

- (A) Land Disturbing Permit and Erosion Control Plan Required. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a permit from

the Administrator, or their designee, except that no permit shall be required for any land-disturbing activity specifically excluded in this ordinance. In addition, no person shall undertake any land-disturbing activity which disturbs more than one-half acre or disturbs an area that has a slope of greater than 1 to 1, without having an erosion control plan approved by the Administrator, except those land-disturbing activities specifically excluded by this ordinance. It is the responsibility of the person conducting such activities to submit to the Administrator any application, plan or form required and/or to apply to the Administrator for any permit required.

(B) 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. In addition, they will be held responsible for knowing and following the requirements of this ordinance. The approval of a land-disturbing permit, the approval of an erosion control plan, or the absence of a requirement to submit an erosion control plan shall not relieve the property owner or the operator of the requirement stated in subsection (B) above.

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

§ 153.06 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. Except where more stringent buffer requirements are specified in the Macon County Code of Ordinances, the following requirements shall apply:
- (1) Standard Buffer. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.
 - (i) Projects On, Over or Under Water. This subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse.
 - (ii) Buffer Measurements. 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.

- (2) Trout Buffer. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided however, that the Administrator may approve plans which include land-disturbing activity along trout waters when the duration of such disturbance would be temporary and the extent of such disturbance would be minimal.
- (i) Projects On, Over or Under Water. This subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse.
 - (ii) Trout Buffer Measurement. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank to the nearest edge of the disturbed area.
 - (iii) Limit On Land Disturbance. Where a temporary and minimal disturbance is permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10 percent of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Administrator.
 - (iv) Limit on Temperature Fluctuations. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211, "Fresh Surface Water Classification and Standards."

(B) Graded Slopes and Fills; Roads.

- (1) Angle. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical restraints.
- (2) Finished Grade. Generally, unless the following conditions can be met, an approved plan for erosion control and stabilization of the soil is required.
 - (a) All cut slopes will have a minimum finished grade of 1.5:1.

(b) All fill slopes will have a minimum finished grade of 2:1.

(3) Road Grades.

(a) Maximum sustained grades for roads should not exceed:

- (i) 6 percent for natural soil and grass;
- (ii) 10 percent for gravel or crushed stone;
- (iii) 16 percent for paving (asphalt or concrete);

(b) Notwithstanding the conditions above, these grades may be increased up to 15 percent for gravel or crushed stone and 20 percent for pavement for reaches of 200 feet or less where no alternative exists.

(c) Culverts are required in natural drains on all roads. Culverts should be placed every 130 to 200 feet on all in-sloped roads.

(C) Fill Material. Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.

(D) Ground Cover. Whenever land-disturbing activity is undertaken on a tract, 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. Provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development.

(E) Prior Plan Approval. No person shall initiate any land-disturbing activity that will disturb more than one-half acre on a tract, unless thirty (30) or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the Administrator, and the required permit is obtained.

(F) Prevention of Material Deposited on Public Roadways. Soil material shall be prevented from being deposited on public roadways by the use of mud mats, gravel taps, washing methods, and the like.

(G) Commencement of Activity. Prior to initiating land-disturbing activity the person conducting such an activity must notify the Administrator of the date that such activity

will begin. The land-disturbing activity shall be conducted in accordance with the approved permit and approved erosion and sedimentation control plan, if required.

§ 153.07 Land -Disturbing Permit.

- (A) Permit Required. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a permit therefore from the Administrator, or their designee, except that no permit shall be required for any land-disturbing activity:
- (1) For the purpose of fighting fires; or
 - (2) For the stockpiling 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.
- (B) Less than One-Half Acre Disturbed. In cases where less than one-half acre will be disturbed, applicants for building permits for any construction will be required to complete a form that explains how erosion control will be managed during construction and to obtain a land-disturbing permit, except that no permit is required for any addition or alteration to a single-family residence when the only land-disturbing activity is for pier or foundation wall footings. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated. Should the applicant fail to fill out the notification form and obtain a land-disturbing permit in advance of clearing land, fail to install the procedures as called for on the form or provide false information on the form, the applicant shall be deemed in violation of this ordinance.
- (C) Application Submittal Requirements. A land-disturbing permit may be obtained upon submitting the fee, statement of financial responsibility and ownership in accordance with section 153.08(B), approved sedimentation and erosion control plan, if required, security deposit, if required, and certification that tree protection fencing has been installed, if required.

Pursuant to G.S. 160D-403(a), applications for a permit may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for a permit as is authorized by the easement.

The applicant shall submit a land-disturbing permit application to the Administrator or their designee, at least 30 days prior to the commencement of the proposed activity. The Administrator or their designee shall review permit applications for land-

disturbing activities and, within 30 calendar days of receipt thereof, shall notify the person submitting the application that it has been approved, approved with modifications, or disapproved. Notification of the decision shall be in accordance with G.S. 160D-403(b). Failure to approve, approve with modifications, or disapprove a complete land-disturbing permit application within 30 calendar days of receipt shall be deemed approval.

The Administrator will review each revised permit application submitted to them and within 15 days of receipt thereof will notify the person submitting the permit application that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications or disapprove a revised permit application within 15 days of receipt shall be deemed approval.

No permit shall be issued until such time as the Administrator is assured that the proposed land-disturbing activity will be carried out in accordance with this ordinance and the approved sedimentation and erosion control plan, if required. A land-disturbing permit application may be disapproved for the same reasons that an erosion control plan may be disapproved, as set forth in section 153.08(I) and (J) and section 153.09 of this ordinance.

- (D) Planned Reservoir. This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.
- (E) Pre-Construction Conference. When deemed necessary by the Administrator, or their designee, a pre-construction conference may be required.
- (F) Display of Permit. A land-disturbing permit issued under this ordinance shall be prominently displayed until all land disturbance is complete. A copy of the approved permit shall be kept on file at the job site.
- (G) Required Revisions. After approving a permit, if the Administrator, either upon review of such permit or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Administrator shall require an erosion and sedimentation control plan in accordance with section 153.08 of this ordinance. Pending the preparation of the plan, work shall cease or shall continue under conditions outlined by the Administrator.
- (H) Amendment to a Permit. Applications for any amendments to the permit may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Administrator, or their designee, the land-disturbing activity shall not proceed except in accordance with the permit as originally approved.

- (I) Failure to Apply for a Permit. Any person engaged in land-disturbing activity who fails to apply for a land-disturbing permit shall be deemed in violation of this ordinance.
- (J) Surety. The Administrator, or their designee, shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Administrator determines the activity may result in significant off-site damage. The applicant shall be required to file with the Administrator an improvement security in the form of a performance bond in an amount no less than \$500 or more than \$5,000 per acre of disturbed area as set forth in the approved erosion and sedimentation control plan. The amount shall be deemed sufficient by the Administrator, or their designee, to cover all costs of protection or other improvements required for conformity with standards specified in this ordinance. The security shall be released when the Administrator or their designee has certified that all of the requirements of this ordinance have been met. Forfeiture of the improvement security shall not release the person conducting land-disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this ordinance, the Act, or any rule or order promulgated in furtherance thereof.
- (K) Permit Expires. A land-disturbing permit shall expire at the end of:
- (1) One year from the date of issuance if no land-disturbing activity has been undertaken in that period. No land-disturbing activity may take place until the person responsible has applied for, and received, a new land-disturbing permit. The fee for the new permit shall be 100 percent of the current applicable fee.
 - (2) A two-year period, unless it is extended by the Administrator upon written request of the permit holder. The request for extension shall include reasons for incompleteness of the work. After review of the original plan and an on-site inspection of the completed work, the permit may be extended effective for a period not to exceed six months from the date of expiration of the original permit. The fee for the extended permit shall be 25 percent of the current applicable fee. If work cannot be completed and the site permanently stabilized prior to expiration of the permit or permit extension, then a new land-disturbing permit must be applied for and obtained as described in this section.

§ 153.08 Erosion and Sedimentation Control Plans.

(A) Plan Submission. An erosion and sedimentation control plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than one-half acre on a tract. Provided, however, for those cases where the area has a slope of greater than 1 to 1, a plan shall be required for land disturbance associated with any project, regardless of the size of the project or the area being disturbed.

Three copies of the plan shall be filed at least 30 calendar days prior to the commencement of the proposed activity with the Administrator, and a copy will be simultaneously submitted by the applicant to the Macon Soil and Water Conservation District office. A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table must be forwarded to the director of the Division of Water Quality. One copy of the approved plan shall be kept on file at the job site. After approving the plan, if the Administrator, or their designee, upon inspection of the job site, determines that a significant risk of off-site sedimentation exists, the Administrator, or their designee, will require a revised plan.

Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Administrator, or their designee.

The approval of an erosion control plan is conditioned on the applicant's compliance with federal, state and local water quality laws, regulations and rules.

(B) Financial Responsibility and Ownership. Erosion and sedimentation control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections (C) or (K) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

(C) Construction of Utility Lines. 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.

(D) Environmental Policy Act Document. 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 Administrator shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to subsection (G) of this section shall not begin until a complete environmental document is available to review.

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

(F) Soil and Water Conservation District Comments. The Macon Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the Administrator within 20 calendar days after the District received the erosion control plan, or within any shorter period of time as may be agreed upon by the District and the Administrator. Failure of the District to submit its comments and recommendations within 20 calendar days or within any agreed upon shorter period of time shall not delay final action on the plan.

(G) Timeline for Decisions on Plans. The Administrator will review each complete plan submitted to it and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. Notification of the decision of the Administrator shall be in accordance with G.S. 160D-403(b). The 30-day review period will not begin until all required items are submitted. The Administrator shall have five (5) business days to check the plan for completeness. Incomplete plans will be returned for completion. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation plan within 30 calendar days of receipt shall be deemed approval.

The Administrator will review each revised plan submitted to them and within 15 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications or disapprove a revised plan within 15 days of receipt shall be deemed approval.

(H) Approval. The Administrator shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The Administrator shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. Plans shall expire in accordance with Section 153.07(K) of this ordinance.

(I) Disapproval for Content. The Administrator may disapprove a plan or draft plan based on its content. A disapproval based upon a plan's content must specifically state in writing the reasons for disapproval.

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

- (1) Is conducting or has conducted land-disturbing activity without an approved plan or has received notice of violation of a plan previously approved by the Commission or Administrator 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 this ordinance 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 this ordinance.
- (4) Has failed to substantially comply with the State rules, this ordinance and regulations adopted pursuant to the Act.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved the Administrator pursuant to this subsection, the Administrator shall so notify the Director of the Division of Energy, Mineral and Land Resources within 10 days of the disapproval. The Administrator shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of section 153.18, the applicant may appeal the Administrator's disapproval of the plan directly to the Commission.

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

(K) Transfer of Plans. The Administrator may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

- (1) The Administrator may transfer of a plan if all of the following conditions are met:
 - (i) The successor-owner of the property submits to the Administrator a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
 - (ii) The Administrator finds all the following:

- a. The plan holder is one of the following:
 - 1. A natural person who is deceased.
 - 2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4. A person who has sold the property on which the permitted activity is occurring or will occur.
- b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
- c. The successor-owner is the sold claimant of the right to engage in the permitted activity.
- d. 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 Administrator may not impose new or different terms and condition in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Administrator from requiring a revised plan pursuant to G.S. 113A-54.1(b).

(L) Notice of Activity Initiation. No person may initiate a land-disturbing activity before approval of the plan and notifying the Administrator, or their designee, of the date that the land-disturbing activity will begin.

(M) Pre-construction Conference. When deemed necessary by the Administrator, or their designee, a pre-construction conference may be required and notified on the approved plan.

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

(O) Required Revisions. After approving a plan, if the Administrator, 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 Administrator shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Administrator. If following commencement

of a land-disturbing activity pursuant to an approved plan, the Administrator determines that the plan is inadequate to meet the requirements of this ordinance, the Administrator may require any revision of the plan that is necessary to comply with this ordinance.

- (P) Amendment to a Plan. Applications 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 Administrator, or their designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.
- (Q) Failure to File a Plan. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this ordinance.
- (R) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by this ordinance 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:
- (i) Initial installation of erosion and sediment control measures;
 - (ii) Clearing and grubbing of existing ground cover;
 - (iii) Completion of any grading that requires ground cover;
 - (iv) Completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and

- (v) Transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in sub-item (iii) above.

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

- (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan.
- (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
- (iii) 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.
- (iv) 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.

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.

§ 153.09 Basic Control Objectives.

An erosion and sedimentation control plan or land-disturbing permit may be disapproved pursuant to Section 153.08(I) and (J) if the plan fails to address the following control objectives:

- (A) Identify critical areas. On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (B) Limit time of exposure. All land-disturbing activity is to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of this ordinance, or as directed by the Approving Authority.
- (C) Limit exposed areas. All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (D) Control surface water. Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (E) Control sedimentation. All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (F) Manage stormwater runoff. Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

§ 153.10 Design and Performance Standards.

- (A) Except as provided in subsection (B)(2) below, erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed to provide protection from the calculated maximum peak of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the latest edition of the United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering and Field Handbook", or other calculation procedures acceptable to the Administrator, or their designee.
- (B) In high quality water (HQW) zones, the following design standards shall apply:
 - (1) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of 20 acres, within the boundaries of the tract. Only the portion of the land-disturbing activity within an HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.

- (2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Handbook" or according to procedures adopted by any other agency of North Carolina or the United States or any generally recognized organization or association.
- (3) Sediment Basin Design. Sediment basins within HQW zones shall be designed and constructed according to the following criteria:
- (i) Use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
 - (ii) Have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
 - (iii) Have a minimum surface area of 325 square feet per cfs of the Twenty-five Year Storm (Q25) peak flow;
 - (iv) Have a minimum dewatering time of 48 hours;
 - (v) Incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon a written request of the applicant, the Administrator may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(ii) through (3)(v) of this subsection if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

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

§ 153.11 Storm Water Outlet Protection.

- (A) Intent. Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.
- (B) Performance Standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
- (1) The velocity established by the Maximum Permissible Velocities Table set out within this subsection below; or
 - (2) The velocity of the 10-year storm runoff in the receiving watercourse prior to the development.

If subsections condition (1) or (2) of this paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

The following is a table for maximum permissible velocity for stormwater discharges:

<i>Maximum Permissible Velocities</i>		
<i>Materials</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Alluvial silts (colloidal)	5.0	1.5
Alluvial silts (noncolloidal)	3.5	1.1
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Fine Gravel	5.0	1.5
Fine Sand (noncolloidal)	2.5	0.8
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7

Ordinary firm loam	3.5	1.1
Sandy loam (noncolloidal)	2.5	0.8
Shales and hard pans	6.0	1.8
Silt loam (noncolloidal)	3.0	0.9
Stiff clay (very colloidal)	5.0	1.5
Source – Adapted from recommendations by Special Committee on Irrigation research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.		

(C) Acceptable Management Measures. Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The County recognizes that the management of stormwater runoff to minimize 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;
- (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; and
- (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

This rule shall not apply where it can be demonstrated to the Administrator that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

§153.12 Borrow and Waste Areas.

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

§ 153.13 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.

§ 153.14 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 disruption of the stream channel. Where relocation of a stream is an essential part of the proposed activity, the relocation shall be planned and executed so as to minimize the changes in the stream flow characteristics, except when justification for significant alternation to flow characteristics is provided. Persons undertaking such land-disturbing activity shall consult with the Army Corps of Engineers and the Department to determine if a permit is required before undertaking any such land-disturbing activity.

§ 153.15 Responsibility for Maintenance.

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

§ 153.16 Additional Measures.

Whenever the Administrator, or their designee, determines that accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

§ 153.17 Fees.

The fees charged for the administration and enforcement of this ordinance shall be as prescribed by the County Board of Commissioners.

§ 153.18 Appeals.

(A) Except as provided in subsection (B) of this section, the denial of a permit or soil erosion control plan, the approval of a permit or soil erosion plan with modifications, or the issuance of violation notices and/or revocation of permit or plan by the Administrator may be appealed to the Macon County Planning Board and governed by the following provisions:

- (1) The person shall submit a written demand to the clerk to the board for a hearing within 30 days after receipt of written notice of the disapproval, modifications, notice of violation, or revocation of a permit in accordance with G.S. Chapter 160D-405 and 406. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued. Pending appeal, the time limits set out in the notice or order shall be suspended in accordance with Chapter 160D-405(f).
- (2) Hearings held pursuant to this section shall be conducted by the Macon County Planning Board within 15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later. Hearings shall be held in accordance with G.S. 160D-406.
- (3) If the Macon County Planning Board upholds the disapproval or modification of a proposed erosion and sedimentation control plan following a public hearing, the person submitting the plan is entitled to appeal the decision to the North Carolina Sedimentation Control Commission as provided in G.S. § 113A-61(c) If the Macon County Planning Board upholds any other decision of the Administrator, the applicant may appeal to Superior Court in accordance with G.S. 160D-406(k).

(B) Notwithstanding the above, in the event that an erosion control plan or a transfer of a plan is disapproved by the Administrator, the applicant may appeal the Administrator's disapproval of the plan directly to the North Carolina Sedimentation Control Commission as provided in G.S. § 113A-61(b2).

§ 153.19 Inspections and Investigations.

(A) Inspections. Agents, officials and other qualified persons authorized by the Administrator 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 notification of the plan approval of each erosion control plan. Pursuant to GS 160D-403(e), the agent, official and other qualified persons authorized by the Administrator, must enter the premises during reasonable hours and upon presenting credentials; provided however that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(B) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of Macon County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.

(C) Notice of Violation. If the Administrator or their designee determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, the Administrator shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. §1A-1, Rule 4. The notice of violation shall specify a date by which the person must comply with the Act, this ordinance, or rules, or orders adopted pursuant to this ordinance and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Administrator ~~shall deliver the notice of violation in person and~~ shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. ~~If the Administrator is unable to deliver the notice of violation in person within 15 days following discovery of the violation,~~ the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

(D) Investigations. The Administrator, or their designee, shall have the power to conduct such investigations as it may reasonably deem necessary to carry out their duties as prescribed in this ordinance, 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. Pursuant to GS 160D-403(e), the agent, official and other qualified persons authorized by the Administrator, must enter the premises during reasonable hours; provided however that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(E) Statements and Reports. The Administrator, or their designee, 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.

§ 153.20 Penalties.

(A) Revocation of Permits.

- (1) The Administrator shall have the authority to revoke land-disturbing permits issued pursuant to this ordinance. Should the Administrator determine that the land-disturbing permit should be revoked then they shall serve the permittee, or other responsible person, with a notice of revocation. Notification of the revocation shall be in accordance with G.S. 160D-403(b). Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.
- (2) After the Administrator, or their designee, has inspected the site and approved the remedial work, the responsible party may re-apply for a land-disturbing permit. The fee for reapplication shall be 100 percent of the current application fee.

(B) Civil Penalties.

- (1) Civil Penalty for a Violation. 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 and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit shall be subject to a civil penalty. The maximum civil penalty for a violation is \$5,000. A civil penalty may be assessed from the date the violation. 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 \$25,000.00.

Pursuant to G.S. 113A-61.1(d), damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty provided that the silt fence is repaired or replaced within the compliance period/deadline noted in the inspection report or notice of violation. This does not apply to off-site sediment that occurs due to the silt fence being in place, but merely damage to the silt fence itself.

(2) Civil Penalty Assessment Factors. The Administrator shall impose the civil penalty authorized by this section. The Administrator shall determine the amount of the civil penalty based upon the following factors;

- (i) consider the degree and extent of harm caused by the violation,
- (ii) the cost of rectifying the damage,
- (iii) the amount of money the violator saved by noncompliance,
- (iv) whether the violation was committed willfully, and
- (v) the prior record of the violator in complying or failing to comply with this ordinance, rule or order adopted pursuant to the Act or this ordinance.

(3) Notice of Civil Penalty Assessment. The Administrator shall provide notice to the person who is assessed the civil penalty of the following: the amount of the civil penalty; the reason for assessing the penalty; the option available to that person to request a remission of the civil penalty under G.S. 113A-64.2; the date of the deadline for that person to make the remission request regarding this particular penalty; and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to subject to the maximum cumulative total civil penalty under (1) of this subsection. 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 civil penalty assessment, contest the assessment within 30 days by filing a petition for hearing with the Planning Board or file a request with the ~~Planning Board Sedimentation Control Commission~~ for remission of the assessment within ~~360~~ 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.

(4) Appeal of Final Decision. Appeal of the final decision of the Macon County Planning Board shall be to the Superior Court. Such appeals must be made within 30 days of the final decision of the Macon County Planning Board.

(5) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Planning Board within 360 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:

- (i) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
- (ii) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
- (iii) Whether the violation was inadvertent or a result of an accident.
- (iv) Whether the petitioner has been assessed civil penalties for any previous violations.
- (v) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
- (vi) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

(6) Collection. If payment is not received within 60 days after it is due, the matter will be referred to the County Attorney for initiation of a civil action to recover the amount of the civil penalty. The civil action may be brought in the Superior Court. Such civil actions must be filed within three (3) years of the date the assessment was due. A civil penalty that is not contested and a remission that is not requested is due when the violator is served with a notice of the civil penalty assessment. A civil penalty that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.

(7) Credit of Civil Penalties. Pursuant to G.S. 113A-64(a)(5), the clear proceeds of civil penalties collected by the County pursuant to this ordinance shall be remitted to the Civil Penalty and Forfeiture Funds in accordance with provisions of G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina office of State Budget and Management on an annual basis, based upon the computation of actual collections costs by the County for the prior fiscal year.

(C) Criminal Penalties.

Any person who knowingly or willfully violates any provision of the Act, this ordinance, or rule or order adopted or issued by the Commission or the County, or who

knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit, 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.

§ 153.21 Enforcement Alternatives and Injunctive Relief.

- (A) Forfeiture of Surety. Violation of any provision of this ordinance shall result in forfeiture of any applicable security or portion thereof required under subsection 153.07(J).
- (B) Injunctive Relief. Whenever the County has reasonable cause to believe that any person is violating or threatening to violate this ordinance, rule, regulation or order adopted or issued by the County 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 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 the county in which the violation is occurring or threatened.
- (C) Abatement of Violation. Upon determination by a court that an alleged violation is occurring, or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

§ 153.22 Restoration After Non-Compliance.

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) and section 153.06(D)) of this chapter, 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

§ 153.23 Severability.

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

As amended and restated by the Board of Commissioners _____, ~~2022~~**21**.