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# Article 8: Erosion and Sedimentation Control

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[11-16-2020]

## Section 8.1. Title

This Article may be cited as the “New Hanover County Soil Erosion and Sedimentation Control Ordinance.”

## Section 8.2. Purposes

This Article is adopted for the purposes of:

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

## Section 8.3. Definitions

### **ACCELERATED EROSION**

Any increase over the rate of natural erosion as a result of land-disturbing activity.

### **ACT**

The Sedimentation Pollution Control Act of 1973 in G.S. 113A-50, et seq. and all rules and orders adopted pursuant to it.

### **ADEQUATE EROSION CONTROL DEVICES, OR STRUCTURES**

Erosion control devices or structures that control the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

### **AFFILIATE**

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

### **APPROVING AUTHORITY**

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.

### **BEING CONDUCTED**

A land-disturbing activity has been initiated and not deemed complete by the approving authority.

### **BORROW**

Fill material that is required for on-site construction and is obtained from other locations.

### **BUFFER ZONE**

The strip of land adjacent to a lake or natural watercourse.

### **COASTAL COUNTIES**

The following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

**COMMISSION**

The North Carolina Sedimentation Control Commission.

**COMMON PLAN OF DEVELOPMENT**

A contiguous area where multiple separate and distinct land-disturbing activities may be taking place at different times and on different schedules under one common plan. The “Common Plan” of development or sale indicates construction activities are planned to occur on a specific plot regardless of ownership of the parcels.

**COMPLETION OF CONSTRUCTION OR DEVELOPMENT**

No further land-disturbing activity is required on a phase of a project except that which, as determined by the approving authority, is necessary for establishing a permanent ground cover.

**DEPARTMENT**

The North Carolina Department of Environmental Quality.

**DIRECTOR**

The Director of the Division of Energy, Mineral, and Land Resources of the N.C. Department of Environmental Quality.

**DISCHARGE POINT**

That point at which stormwater runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

**DISTRICT**

The New Hanover County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

**DIVISION OR DEMLR**

The Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.

**ENERGY DISSIPATER**

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**

The wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

**GROUND COVER**

Any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.

**HIGH QUALITY WATER**

Those described in 15A NCAC 02B .0224, which is incorporated by reference to include subsequent amendments and editions.

**HIGH QUALITY WATER (HQW) ZONES**

Areas in the Coastal Counties that are within 575 feet of High Quality Waters, and for the remainder of the State, areas that are within one mile of and draining to HQW's

**LAKE OR NATURAL WATERCOURSE**

Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.

**LAND-DISTURBING ACTIVITY**

Any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway or road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

**LOCAL GOVERNMENT**

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**

Any wearing away of the earth’s surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man as defined in G.S. 113A-52(5).

**PARENT**

An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

**PERSON**

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**

Any person who may be held responsible for a violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

**PERSON RESPONSIBLE FOR THE VIOLATION**

- A. The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or
- B. The landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or has benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

**PERSON WHO VIOLATES OR VIOLATOR**

Any land owner 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, or Ordinance adopted pursuant to the Act, as it imposes a duty upon that person as used in G.S. 113A-64.

**PLAN**

An erosion and sedimentation control Plan.

**SECRETARY**

The Secretary of Environmental Quality.

**SEDIMENT**

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**

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**

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**

The system of inlets, conduits, channels, ditches, and appurtenances that serve to collect and convey stormwater through and from a given drainage area.

**STORMWATER RUNOFF**

The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

**SUBSIDIARY**

An affiliate that is, directly or indirectly through one or more intermediaries, controlled by another person.

**TEN-YEAR STORM**

A rainfall of an intensity that is based on historical data, is predicted, by a method acceptable to the approving authority, to be equaled or exceeded, on the average, once in 10 years, and of a duration that will produce a maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.

**TRACT**

All continuous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

**TWENTY-FIVE YEAR STORM OR Q25**

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, one in 25 years, and of a duration that will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

**UNCOVERED**

The removal of ground cover from, on, or above, the soil surface.

**UNDERTAKEN**

The initiating of any activity, or phase of activity, that results or will result in a change in the ground cover or topography of a tract of land.

**VELOCITY**

The speed of flow through a cross-section perpendicular to the direction of the main channel at peak flow of the storm of interest but not exceeding bank full flows.

**WASTE**

Surplus materials resulting from on-site land-disturbing activities, to be disposed of offsite.

**WORKING DAYS**

Days exclusive of Saturday and Sunday and Federal and State holidays unless work is being conducted on these holidays, during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

## **Section 8.4. Scope and Exclusions**

- A.** This Ordinance shall apply to land-disturbing activities within the following territorial jurisdiction of New Hanover County and to the extraterritorial jurisdiction of New Hanover County as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.
- B.** Notwithstanding the general applicability of this Ordinance to all land-disturbing activity, this Article shall not apply to the following types of land-disturbing activity:
  - 1.** Including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
    - a.** Forage and sod crops, grain 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, including the breeding and grazing of any or all such animals;
    - e.** Bees and apiary products;
    - f.** Fur producing animals;
    - g.** Mulch, ornamental plants, and other horticultural projects. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
  - 2.** An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the tract.
  - 3.** An activity for which a permit is required under the Mining Act of 1971; Article 7 of Chapter 74 of the General Statutes;
  - 4.** A land-disturbing activity over which the State has exclusive regulatory jurisdiction and provided in G.S. 113A-56(a).
  - 5.** An activity which is essential to protect human life during an emergency;
  - 6.** Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigations to offset impacts permitted under Section 404 of the Clean Water Act and;
  - 7.** Activities undertaken pursuant to National Resources Conservation Service Standards to restore the wetland functions of a converted wetland defined in Title 7 Code of Federal Regulations § 12.2.

## Section 8.5. General Requirements

- A. Plan Approval Required:** No person shall undertake any land-disturbing activity subject to this Ordinance that uncovers an acre, or more than one acre, without first having an erosion control Plan approved by the County. No land-disturbing activity may be initiated until the County is notified of the date that the land-disturbing activity will begin.
- B. Protection of Property:** Persons conducting land-disturbing activity shall take measures to protect all public and private property from damage caused by sedimentation and erosion damage caused by land-disturbing activities.
- C. More Restrictive Rules Shall Apply:** Whenever conflicts exist between Federal, State, or local laws, Ordinance, or rules, the more restrictive provision shall apply.
- D. Plan Approval Exceptions:** Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity, that does not exceed 43,560 square feet in surface area and is not considered a part of a common plan of development. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- E. Building Permits:** No building permit, unless excluded by Section 8.17, Permits, shall be issued without an erosion control sign-off pursuant to G.S. 153A-357 and G.S. 160A-417 as amended.
- F. Inspections:** Any and all applicable intermediate inspections may be held in any trade (building, mechanical, electric, and/or plumbing) if any land-disturbing activity, on a tract, including single family residences, is found not to be in compliance with any part of this Ordinance.
- G. Building Finals:** Building finals and/or certificates of occupancy may not be issued if any land-disturbing activity, including single-family residences, is found not to be in compliance with any part of this Ordinance.

## Section 8.6. Basic Control Objectives

- A.** An erosion and sedimentation control Plan may be disapproved pursuant to Section 8.18, Erosion and Sedimentation Control Plans, if the Plan fails to address the following control objectives:
  - 1. Identify critical areas:** On-site areas which are subject to accelerated erosion, and off-site areas 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 specified in G.S. 113A-57 or as directed by the approving authority.
  - 3. Limit exposed area:** 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:** 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.
- B. Preconstruction conferences are optional. In the event, a preconstruction conference is required, it must be included on the plan.
  - C. No person may initiate a land-disturbing activity before notifying the County of the date that land-disturbing activity will begin and when the initial erosion control measures are installed.
  - D. A Plan approval issued under this Ordinance shall be prominently displayed at either the primary entrance of the job site or at another location that is observable to the public and inspectors until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A paper copy of the approved Plan shall be kept on file at the job site.

## **Section 8.7. Mandatory Standards for Land-Disturbing Activity**

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with G.S. 113A-57 and the following mandatory standards:

- A. **Buffer Zone:**
  1. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within 25% 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.
  2. The width of a buffer zone shall be measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearest the land-disturbing activity containing natural or artificial means of confining visible siltation.
- B. **Graded Slopes and Fills:** The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. 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. In any event, slopes left exposed shall, 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.
- C. **Fill Material:** Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding

12 inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

- D. Ground Cover:** Whenever land-disturbing activity that will disturb one or more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 8.8.B.5 of this Ordinance, provisions for a 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 one or more than one acre on a tract unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control Plan for the activity has been both filed with and approved by the County pursuant to G.S. 113A-57(4) and G.S. 113A-54(d)(4). The land-disturbing activity shall be conducted in accordance with the approved Plan once the Plan has been approved.
- F.** All individuals that obtain a locally-approved erosion and sedimentation control plan that disturbs one acre or more of land, are required by the U.S. Environmental Protection Agency to obtain coverage under the N. C. Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in NCG01 for temporary or permanent ground cover, or stabilization requirements, may differ from the ground cover, or stabilization, requirement in this Ordinance. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance with the NCG01.

## **Section 8.8. Design and Performance Standards**

- A.** Except provided in Subsection B.2 of this Section, erosion and sedimentation control devices and structures shall be planned, designed and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Services “National Engineering Field Handbook 630 for Conservation Practices”.
- 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 of 20 acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and more conservative design than the 25-year storm. The Director may also stipulate the inclusion of other conditions in the plan as necessary, based on specific site conditions.
  - 2.** Erosion and sedimentation control devices, and structures within HQW zones shall be so planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of



Agriculture, National Resources Conservation Services “National Engineering Field Handbook 630 for Conservation Practices”. Other methodologies may be used if based on generally accepted engineering standards that are shown to the County to be equivalent to or improved over the procedures in Handbook 630. The County shall determine acceptability of an alternative methodology based upon a showing that the runoff model was based on observed data in agreement with the predictive model.

3. In order to provide for water quality protection in the HQW zones, sediment basins that discharge to those areas shall be designed and constructed to meet the following criteria:
  - a. Use a surface withdrawal mechanism, except when the basin area is less than 1 acre;
  - b. Have a minimum of 1,800 cubic feet of storage area per acre of disturbed area;
  - c. Have a minimum surface area of 325 square feet per cfs of Q25 peak inflow;
  - d. Have a minimum dewatering time of 48 hours; and
  - e. Incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.
4. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontals to one vertical if a vegetative cover is used for stabilization, unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices, or other forms of ditch liners proven to the County as being effective in restraining accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion.
5. Upon a written request of the applicant, the Director may allow alternative design or control measures in lieu of meeting the conditions required in Subparagraph 3(b) through 3(e) of this Section if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sedimentation control on the site. Alternative measures may include, quicker applications of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

## Section 8.9. 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 provide a design and conduct land-disturbing activity so that the post-construction velocity of the 10-year storm runoff in the receiving watercourse to, and including the discharge point, does not exceed the greater of:
  1. The velocity established by the Maximum Permissible Velocities table in subsection E of this section; or

2. The projected velocity of the 10-year stormwater runoff in the receiving stormwater conveyance prior to development.

**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 storm- water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

1. Avoid increases in stormwater discharge velocities by designing measures to promote infiltration to compensate for increased runoff from areas rendered impervious; or
2. Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high-velocity paved sections; or
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; or
4. Protect stormwater conveyance subject to accelerated erosion by improving cross sections or providing erosion-resistant lining; and
5. Upgrade or replace the receiving device structure, or stormwater conveyance such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity;

**D. Exceptions:** This rule shall not apply where it can be demonstrated to the County that stormwater discharge velocities will not result in accelerated erosion in the receiving stormwater conveyance or discharge point.

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

Table 8.9.E: Maximum Permissible Velocities		
Material	F.P.S.	M.P.S.
Fine sand (non-colloidal)	2.5	0.8
Sandy loam (non-colloidal)	2.5	0.8
Silt loam (non-colloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (non-colloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (non-colloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Course gravel (non-colloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

<b>Table 8.9.E: Maximum Permissible Velocities</b>		
<b>Material</b>	<b>F.P.S.</b>	<b>M.P.S.</b>
Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.		

## **Section 8.10. Borrow and Waste Areas**

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971; Article 7 of Chapter 74 of the General Statutes, and waste areas for surplus materials other than landfills regulated by the Department's Division of Waste Management shall be considered as part of the land-disturbing activity. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

## **Section 8.11. Access and Haul Roads**

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

## **Section 8.12. Operations in Lakes, 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 forms an essential part of the proposed activity, the relocation shall minimize changes in the stream flow characteristic.

## **Section 8.13. Responsibility for Maintenance**

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

## **Section 8.14. Restoration of Areas Affected by Failure to Comply**

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Ordinance.

## **Section 8.15. Additional Measures**

Whenever the County determines that accelerated erosion and sedimentation continues as a result of land-disturbing activity, despite installation of protective practices and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action necessary to achieve compliance with the conditions specified in this Ordinance or the Act.

## **Section 8.16. Areas Not Otherwise Covered**

Notwithstanding previous provisions, when it is determined that severe off-site erosion and/or sedimentation has occurred as a result of any land-disturbing activity, regardless of the size of the site, and despite application and maintenance of protective practices, remedial action shall be taken within a reasonable time period after notification. A notice shall be served upon that person by any means authorized under G.S. 1A-1 Rule 4. The notice shall specify a date by which the person must comply with the Ordinance or rules adopted by 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 by this Ordinance.

## **Section 8.17. Permits**

- A.** No person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a hardcopy or electronic permit from the County, except that no permit shall be required for any land-disturbing activity:
  - 1. For the purpose of fighting fires;
  - 2. 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; or
  - 3. That does not exceed 43,560 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated. (Note: This exclusion from permits should allow land-disturbing activities for construction of a single-family residence on a single lot, but may not exceed one acre or be part of a common plan of development).
- B.** The County may establish a fee schedule for the review and approval of erosion control Plans. In establishing the fee schedule, the County shall consider the administrative and personnel cost incurred by the department for reviewing the Plans and for related compliance activities.
- C.** The permit fees as seen in Table 8.17.C include review and land disturbance fees:

**Table 8.17.C: Permit Fees**

<b>Residential</b>			
<b>Review</b>	\$200 New Projects (Paid at time of application)	\$200 Active Projects (Adding new acreage)	\$200 Previously permitted inactive projects (With modification)
<b>Land Disturbance</b>	\$300 per acre disturbed or any increment of an acre. Due prior to Plat Recordation. Builders in a subdivision with active permits where the developer previously paid review and land-disturbing fees will not owe fees.		
<b>Commercial</b>			
<b>Review</b>	\$200 New Projects (Paid at time of application)	\$200 Active Projects (Adding new acreage)	\$200 Previously permitted inactive projects (With modification)
<b>Land Disturbance</b>	\$300 per acre disturbed or any increment of an acre. Due prior to issuance of a Certificate of Occupancy.		
<b>Other</b>			
<b>Review</b>	\$200 (Paid at time of application)		
<b>Land Disturbance</b>	\$300 per acre or increment of an acre. Due prior to issuance of the land-disturbing permit		

- D. Permits will expire one year from the date of issue if no construction activity begins on site. If activity ceases on a permitted site for a period of 12 months, the permit will expire.

## **Section 8.18. Erosion and Sedimentation Control Plans**

- A. An erosion control Plan shall be prepared for all land-disturbing activities subject to this Ordinance whenever the proposed activity will disturb one or more than one acre on a tract. The Plan shall be filed with the County Engineering Department, the New Hanover Soil and Water Conservation District, and for areas outside municipal corporate limits, the County Planning Department, at least 30 days prior to the commencement of the proposed activity.
- B. Persons conducting land-disturbing activity on a tract which covers one or more than one acres shall file three copies of the erosion control Plan or a digital copy, with the County at least 30 days prior to beginning such activity and shall keep another paper copy of the approved Plan and a posted copy of the permit prominently displayed at either the primary entrance of the job site or at another location that is observable to the public and inspectors until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. After approving the Plan, if the County either upon review of such Plan or inspection of the job site, determines that the Plan is inadequate to meet the requirements of the Act and of this Ordinance, the County shall require a revised Plan. Pending the preparation of the

revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

- C.** Erosion control Plans 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 financially responsible for the land-disturbing activity or his or her attorney-in-fact. The statement shall include the mailing and street addresses of the principle place of business of the person financially responsible, and of the owner of the land, or 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 subsection D and 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 notarized written consent for the applicant to submit a draft erosion and sedimentation control Plan and to conduct the anticipated land-disturbing activity.
- D.** 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 had been provided prior notice of the project.
- E.** The New Hanover Soil and Water Conservation District and the County Planning Department within 20 days of receipt of any Plan, shall review such Plan and submit its comments and recommendations to the County Engineering Department. Failure of the Soil and Water Conservation District and the County Planning Department to submit its comments and recommendations within 20 days or within the prescribed additional time will not delay final action on the Plan.
- F.** The County will review each complete Plan submitted to them and within 30 days of receipt. The person submitting the Plan, will be notified that it has been approved, approved with modifications, or disapproved. The County shall condition approval of an erosion control plan upon the applicant's compliance with Federal and State Water Quality laws, regulations, and rules. The County shall also disapprove an erosion 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. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control Plan within 30 days of receipt shall be deemed approval. Disapproval of an erosion control Plan or a revised erosion control Plan must specifically state in writing the reasons for disapproval. The County must approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved Plan, the County determines that the Plan is inadequate to meet the requirements of the Act and of this Ordinance, either upon review of such Plan or inspection of the job site, the County shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. Approval with modification or disapproval of any proposed plan shall entitle the person submitting the Plan to a public hearing in accordance with the provisions of G.S. 113A-61(c).
- G.** Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy G.S. 113 Article 1, and the

Department rules set forth in 15A NCAC 01C. shall be deemed incomplete until a complete environmental document is available for review. The County shall notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to subsection F of this Section shall not begin until the environmental document is available for review.

- H. The County shall approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. The County shall condition approval of Plans upon the applicant's compliance with the Federal and State water quality laws, regulations and rules. Approval assumes the applicant's compliance with the Federal and State water quality laws regulations, and rules.
- I. The Plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the County, on request. The Plan shall contain a schedule for inspections after each phase has been completed.
- J. The County may disapprove an erosion and sedimentation control Plan or disapprove a transfer of a Plan under subsection K of this Section upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:
  - 1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation of a Plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
  - 2. Has failed to pay a civil penalty assessed pursuant to the Article or a local Ordinance adopted pursuant to this Article by the time the payment is due;
  - 3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local Ordinance adopted pursuant to this Article or;
  - 4. Has failed to substantially comply with State rules or local Ordinances and regulations adopted pursuant to this Article.

For purposes of Subsection J an applicant's record or the proposed transferee's record may be considered for only two (2) years prior to the application date.

In the event that an erosion and sedimentation control Plan or transfer of a Plan is disapproved by the county pursuant to subsection J of this Section, the County shall notify the Director of the Division of Energy, Mineral, and Land Resources of such disapproval within 10 days of the disapproval. The County shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the Plan was disapproved. Notwithstanding the provisions of Section 8.19.A, the applicant may appeal the local government's disapproval of the Plan directly to the Commission.

- K. The County administering an erosion and sedimentation control program may transfer an erosion and sedimentation control Plan approved pursuant to this Section without the consent of the Plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.
  - 1. The County may transfer a Plan if all 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 proof of ownership:
- b. The County finds all the following:
  - 1. The Plan holder is one of the following:
    - i. A natural person who is diseased.
    - 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 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 County may not impose new or different terms and conditions in the Plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the County from requiring a revised Plan pursuant to G.S. 113A-54.1 (b).
- L. No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that the land-disturbing activity will begin. The County shall also be notified when the initial erosion control measures are installed, if no preconstruction meeting is held. If preconstruction meetings become a requirement it must be included on the plan.
- M. 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 County, the land-disturbing activity shall not proceed except in accordance with the erosion control Plan as originally approved.
- N. Any person engaged in land-disturbing activity who fails to file a Plan in accordance with the 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.
- O. All land-disturbing activities required to have an approved erosion and sedimentation control plan under G.S. 113A-54.1(e) and Sec. 8.18 (A) shall conduct self-inspections for initial installation or modification of any erosion and sedimentation control devices and practices described in an approved Plan. In addition, weekly and rain-event self-inspections are required by Federal regulations, that are implemented through the NPDES Construction General Permit No. NCG010000.

Where self-inspections are required by G.S. 113A-54.1(e) and Section 8.18.O of this Ordinance, the following apply:



1. The person who performs the inspections shall make a record of the site inspection by documenting the following items: The inspection shall be performed during or after each of the following phases of the Plan;
  - a. Initial installation of the erosion and sedimentation control measures;
  - b. Clearing and grubbing of existing ground cover;
  - c. Completion of any grading that requires ground cover;
  - d. Completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
  - e. Transfer of ownership or control of the tract of land where the erosion and sedimentation control Plan has been approved and work has begun. The new owners or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item 1(c) of this Section.
2. Documentation of self-inspections performed under Section 1 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 dissipaters, 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 the 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 Section, 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 approve Plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

## **Section 8.19. Plan Review Appeals**

- A. Except as provided in subsection B of this section, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:

1. The disapproval or modification of any proposed erosion control Plan by the County, shall entitle the person submitting the Plan or applying for the permit, to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
  2. Hearings held pursuant to this section shall be conducted by the County Engineer within ten (10) days after the date of the appeal or request for a hearing.
  3. The County Engineer shall make recommendations to the New Hanover County Board of Commissioners, within ten days (10) after the date of the hearing on any erosion control Plan.
  4. The Board of Commissioners will render its final decision on any Plan upon which a hearing is requested within 30 days of conducting the hearings.
  5. If the Board of Commissioners upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the Board of Commissioners decision to the Commission. The Commission shall direct the Secretary to appoint employees of the Department as provided in G.S. 113A-61(c) and Title 15A NCAC 4B.0118 (d), to a Plan review committee, to hear appeals from the disapproval or modification of erosion and sedimentation control Plans by local governments. Within 30 days following receipt of notification of the appeal, department employees shall complete the review and shall notify the County and the person appealing the County decision that the Plan should be approved, approved with modifications, or disapproved.
  6. If either the local government or the person submitting the Plan disagrees with the decision reached by the Department, the applicants right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control Plan under G.S. 113 A-54.1(c) gives rise to a right to an appeal to the Commission by filing a notice within 15 days with the Director of the Division of Energy, Mineral, and Land Resources. A Plan review committee consisting of three members of the Commission will be appointed to review the Department's decision. Within 10 days following receipt of the notification of appeal, the Commissions erosion and sedimentation Plan review committee shall notify the local government and the person submitting the plan of a place and time for a hearing for consideration of the appeal. Both parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or oral arguments. The erosion and sedimentation Plan review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed Plan within 30 days following the hearing.
  7. An applicant desiring to appeal the Commission's disapproval of an erosion control Plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3.
- B.** If an erosion control Plan is disapproved pursuant to Section 8.18.H, of this Ordinance. The applicant may appeal the County disapproval of the Plan directly to the State Sedimentation Control Commission.

## **Section 8.20. Inspections and Investigations**

- A.** Agents, officials, or other qualified persons authorized by the County, will periodically inspect land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval.
- B.** If the County determines that a person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, a notice of violation shall be served upon that person by any means authorized under in G.S. 1A-1 Rule 4 to give actual notice. The notice shall set forth the measures necessary to achieve compliance with the, Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, specify a reasonable time period within which such measures must be completed, and warn that failure to correct the violation within the time period specified in the notice of violation may result in additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this Ordinance. However, no time period for compliance need be given for failure to submit an erosion control Plan for approval or for willfully obstructing, hampering or interfering with an authorized representative, while in the process of carrying out his official duties. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action may be initiated.
- C.** The County shall have power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent who requests entry for purposes of inspection and who presents appropriate credentials;
- D.** The County shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity including self-inspections, engineering design reports, or Notices of Violation (NOVs), as necessary to carry out duties specified in the Act or this Ordinance.

## **Section 8.21. Penalties**

### **A. Civil Penalties:**

- 1.** Any person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or order adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be subject to a civil penalty. The maximum civil penalty amount that the county may assess per is five thousand dollars (\$5,000.00) per calendar day. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. The person alleged to be in violation will be notified of the violation by any means authorized under G.S. 1A-1 Rule 4 to give actual notice. The notice shall describe the violation, state the reason for accessing the penalty, request the illegal activity cease, specify the actions to be taken, specify a reasonable

time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action pursuant to G.S. 113A-64. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of the notice of violation. However, no time period for compliance need be given for failure to submit an erosion control Plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. 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 the person abated the continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control Plan is required is twenty-five thousand dollars (\$25,000).

2. The County Manager or his designee shall determine the amount of the civil penalty to be assessed under this subsection and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the County Manager or his designee shall consider the severity of the violation, the type(s) of violation; the duration; the cause; the extent of any off-site damage which may have resulted; effectiveness of action taken by the violator; adherence to the Plan submitted by the violator; effectiveness of the Plan submitted by the violator; estimated cost of taking corrective sediment control actions; staff investigative cost; the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Ordinance, the Commission, or the Act. The County shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. The notice of assessment shall direct the violator to either pay the civil penalty assessment, or contest the assessment within 30 days after receipt of the notice of assessment, by filing a written petition for a hearing before the Board of County Commissioners, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based. Notice of the assessment shall be served by any means authorized under G.S.1A-1, Rule 4 to give actual notice.
3. Any appeals from the determination of the Board of County Commissioners must be filed with the Superior Court of the County within 30 days following the Board's issuance of its final determination. If payment is not received or equitable settlement reached within 60 days after demand for payment is made, the matter shall be referred to the County Attorney for institution of a civil action in the name of the County in Superior Court where the violation occurred, or the violators residence or principle place of business. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An

assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

4. The clear proceeds of civil penalties collected pursuant to this Ordinance shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with 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 collection cost by each County for the prior fiscal year. (In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected).
- B. Criminal Penalties:** Any person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this Ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control Plan is required except in accordance with terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed five thousand dollars (\$5,000.00) per calendar day as provided in G.S. 113A-64.

## **Section 8.22. Injunctive Relief**

- A. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the County, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of the County in which the violation is occurring or is threatened.
- B. 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.

## **Section 8.23. Severability**

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

## **Section 8.24. Effective Date**

November 16, 2020

## **Section 8.25. Reserved**