

TOWN OF HUNTERSVILLE
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED by the Town of Huntersville Board of Commissioners that:

Section 1. Title

This Ordinance may be cited as the "Town of Huntersville Soil Erosion and Sedimentation Control Ordinance."

Section 2. Preamble

The Sedimentation of streams, lakes, wetlands, and other waters of this State constitute a major pollution problem. Sedimentation occurs from the Erosion or depositing of soil and other materials into the waters. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town's Board of Commissioners that pre-construction conferences be held among the affected parties.

Section 3. Definitions

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. Accelerated Erosion - means any increase over the rate of Natural Erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. Adequate Erosion Control Measures, Structures, or Devices - means ones that control the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- d. 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.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material that is required for on-site construction and is obtained from other locations.
- g. Buffer Zone - means the strip of land adjacent to a Lake or Watercourse.

- h. Reserved
- i. Reserved
- j. Commission - means the North Carolina Sedimentation Control Commission.
- k. Committee - means The Town of Huntersville Storm Water Advisory Committee as established by the resolution of the Huntersville Board of Commissioners, together with any amendments thereto.
- l. Completion of Construction or Development - means that no further land-disturbing activity is required on a Tract except that which is necessary for establishing a permanent Ground Cover. Completion of Construction or Development may occur for a Tract, a Phase, or an entire Project as determined by the Town Engineer.
- m. Contractor Conducting the Land-disturbing Activity - means any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the Tract for the changing of the natural cover or topography of the Tract, or any part thereof.
- n. Days - means calendar days unless otherwise specified.
- o. Department - means the North Carolina Department of Environmental Quality.
- p. Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
- q. Discharge Point - means that point at which runoff leaves a Tract of land.
- r. Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity flow.
- s. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines - means the written directions related to water quality prepared by the Department's Division of Forest Resources and the United States Forest Service, including but not limited to the "Forestry Best Management Practices Manual" prepared by the Department.
- u. Ground Cover - means any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.
- v. Lake or Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- w. Land-disturbing Activity - means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to Sedimentation.

- x. 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.
- y. 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.
- z. Parent - means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Reserved
- bb. Permit - means the "Permit to Conduct Land-disturbing Activities" (grading permit) issued by the Town Engineer after a Plan is approved.
- cc. Person(s) - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- dd. Person Conducting Land-disturbing Activity - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ee. Person Responsible for the Violation - as used in this Ordinance means:
 1. The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity;
 2. The landowner or Person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ff. Phase - means a specific geographic portion of a Project as indicated on an approved Plan.
- gg. Phase of Grading - means one of two types of grading, rough or fine.
- hh. Plan(s) - means an Erosion and Sedimentation Control Plan for a Project, including all Phases and all Tracts.
- ii. 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.
- jj. 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 Wetland, Lake or Watercourse.
- kk. 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.
- ll. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.

- mm. Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- nn. Subsidiary - means an Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- oo. Ten-Year Storm - means a rainfall of an intensity expected 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.
- pp. Town Department of Engineering and Public Works - as used in this Ordinance, “Town Department of Engineering and Public Works” refers to both the Town Department of Engineering and the Town Department of Public Works.
- qq. Town Engineer - as used in this Ordinance, “Town Engineer” refers to both the Town Engineer and the Director of Public Works, both of whom shall have full authority and responsibility under this Ordinance where the term “Town Engineer” is used.
- rr. Tract - means contiguous lands and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. A Plan may have more than one Phase, and each Phase may have more than one Tract.
- ss. Twenty-five Year Storm - means a rainfall of an intensity expected 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, from the watershed of interest under average antecedent wetness conditions.
- tt. Uncovered - means the removal of Ground Cover from, on, or above the soil surface.
- uu. 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.
- vv. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- ww. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.
- xx. Watershed - means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the Town of Huntersville.
- yy. Wetland(s) - means land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- zz. Working Days - means days exclusive of Saturday, and Sunday and Town government holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4. Scope and Exclusions

This Ordinance shall regulate land-disturbing activity within the territorial jurisdiction of the Town of Huntersville and to the extraterritorial jurisdiction of the Town of Huntersville.

This Ordinance shall not apply to the following land-disturbing activities. Only those portions of a Tract that are in actual use for the land-disturbing activities listed below shall be exempt from this Ordinance:

- 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, including, but not limited to:
 1. Forages and sod crops, grains 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.
 5. Bees and apiary products.
 6. Fur producing animals.
 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the 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 such Forest Practice Guidelines, then the provisions of this Ordinance shall apply.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- 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.
- g. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5. Forest Practice Guidelines

- a. The Town of Huntersville Board of Commissioners adopts by reference the Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services.

- b. If land-disturbing activity undertaken on forest land 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.

Section 6. General Requirements

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance 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 the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site:
 - 1. uncovers one acre or more or
 - 2. in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.

For residential development projects involving land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single Erosion and Sedimentation Control Plan for the entire development, so long as the developer and the builder are the same financially responsible person. Alternatively, the person conducting the land-disturbing activity may submit for review and approval the information required by Subsection (c) below for each individual lot pursuant to N.C.G.S. § 113A-60(b2)(2).

- c. Individual Lot Erosion Control Plan (Residential Development) - When a residential development project contains an approved Erosion and Sedimentation Control Plan for the entire development as described in Subsection (b) above, separate Erosion and Sedimentation Control Plans shall not be required for development of each individual residential lot within that development, which disturbs less than one acre. Where the developer and builder of the common plan of residential development are not the same financially responsible person, plans shall be submitted for each single-family, residential lot and the plans shall require only the following information:
 - 1. Name, address, telephone number, and email of owner of lot being developed.
 - 2. Street address of lot being developed.
 - 3. Subdivision name.
 - 4. Lot number.
 - 5. Tax parcel number of lot being developed.
 - 6. Total acreage of lot being developed.
 - 7. Total acreage disturbed.
 - 8. Anticipated start and completion date.
 - 9. Person financially responsible.
 - 10. Signature of person financially responsible.
 - 11. Existing platted survey of the lot.
 - 12. A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.

- d. Exceptions -
 - 1. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
 - 2. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- e. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 and 11 of this Ordinance.
- f. 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 and associated Sedimentation.
- g. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 7. Basic Control Objectives

A Plan may be disapproved pursuant to Section 10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that 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 feasible time.
- 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 Sedimentation damage.
- f. Manage Storm Water Runoff - When the increase in the Velocity of Storm Water Runoff resulting from a land-disturbing activity is sufficient to cause Accelerated Erosion of the receiving watercourse, Plans are to include measures to control the Velocity at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

Section 8. 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. Lake, Watercourse and Wetland Protection - Additional erosion control measures structures, or devices as specified in the “Policies and Procedures” statement issued by the Town Engineer shall be required to provide a higher level of protection to Lakes, Watercourses, and Wetlands from Sedimentation.
 1. Buffer zone - No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a Lake or Watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity.
 - i. Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a Lake or Watercourse.
 - ii. Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer 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 that can be retained by vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 7 or 14 calendar days after completion of any Phase of Grading.
- 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 twelve (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 - The Person conducting the land-disturbing activity 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 21 calendar days following Completion of Construction or Development. For an area of a site that is inactive for a period of 14 days from the last land-disturbing activity, temporary or permanent ground cover would be required.
- e. Prior Plan Approval - No Person shall initiate any land-disturbing activity on a Tract if one acre or more is to be disturbed unless, thirty (30) or more days prior to initiating the activity, a Plan for that activity has been submitted and approved in accordance with Section 10(b). The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.

- f. Pre-construction Conference - If one acre or more is to be, Uncovered, the Person(s) conducting the land-disturbing activity or an agent of that party shall contact the Town Engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Town Engineer or duly authorized representative to review and discuss the approved Plan and the proposed land-disturbing activity.

- g. Self-Monitoring and Self-Inspections - The Landowner, the financially responsible party, or the landowner's or financially responsible party's agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per 24-hour period or more frequently if required by State or Federal Law, hereinafter "Self-Monitoring." The Landowner, the financially responsible party, or the landowner's or financially responsible party's agent shall also 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 N.C.G.S. § 113A-57(2), hereinafter "Self-Inspections." The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, except as may be required by 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.
 - 1. A record of the Self-Monitoring and Self-Inspections shall be maintained and made available at the site of the land-disturbing activity. These records shall set out any significant deviation from the approved Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. These records shall be maintained at the site until permanent ground cover has been established as required by the approved Plan. The Self-Inspections required by this subsection shall be in addition to inspections required by N.C.G.S. § 113A-61.1 and Section 12 of this Ordinance.
 - 2. If one acre or more is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until three years after construction is completed and approved by the Town Engineer. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection. Additional record keeping may be required by State or Federal Law and as stated on the approved plans.
 - 3. Corrective action on the repairs and maintenance indicated on the record are to begin within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Town Engineer. The date of the completion of such repairs noted. The records of inspection shall be retained and made available to the Town Engineer upon request.
 - 4. Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the Town Engineer with a self-inspection record for the particular Tract.
 - 5. Any Person who falsifies, tampers with, or knowingly renders inaccurate

records can be penalized under Section 13 of this Ordinance.

6. In addition to the requirements contained in Subsections 8(g)(1)-(5) above, Self-Inspections shall comply with the following:
 - i. The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - a. All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
 - b. the completion of any Phase of Grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - c. the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in paragraph (e) of this sub-part) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - d. that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
 - e. any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such

documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

- ii. The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. 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. Any inspection reports shall also be made available on the site.
- iii. The inspection shall be performed during or after completion of each of the following activities:
 - a. installation of perimeter erosion and sediment control measures;
 - b. clearing and grubbing of existing ground cover;
 - c. completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to N.C.G.S. 113A-57(2);
 - d. completion of storm drainage facilities;
 - e. completion of construction or development; and
 - f. quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

Section 9. Design and Performance Standards

- a. Design Storm - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak rate of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Town of Huntersville's Storm Water Design Manual.
- b. Innovative Measures - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Town Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- c. 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 development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.

d. Additional Measures - Whenever the Town Engineer, determines that accelerated Erosion and Sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the Person conducting the land-disturbing activity shall take additional protective action.

e. Storm Water Outlet Protection

1. 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.

2. Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

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

If 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%.

Maximum Permissible Velocities Table

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.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

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

3. Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of 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:
 - i. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - ii. Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
 - iii. Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - iv. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - v. Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
4. Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.
5. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the land-disturbing activity.
 - i. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
 - ii. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

When the Person conducting the land-disturbing activity is the Person conducting the Borrow or Waste disposal activity, the activity shall not be considered a separate land-disturbing activity.

The responsible Person conducting the Borrow or Waste Areas shall provide Adequate Erosion Control Measures, Structures, or Devices and comply with all provisions of this Ordinance.

6. 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.
7. Operations in Lakes or Watercourses - land-disturbing activity in connection with construction in, on, over, or under a lake or watercourse shall be planned

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

Section 10. Erosion and Sedimentation Control Plans

- a. Plan Requirements - All Plans required for Land- disturbing Activities as identified in Section 6(b) of this Ordinance, except as provided by Subsection 6(c), shall be submitted with an approved site plan and shall meet the following requirements:
1. Plans shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of all Tracts for the Project, including all Phases, and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town Engineer on request.
 2. Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the land-disturbing activity or that Person's attorney in fact, and all such signatures shall be notarized. The statement shall include the mailing and street addresses of the principal place of business of the Person financially responsible and of the owner of the land or their registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving service of process and notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
 3. 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.
 4. The land-disturbing activity described in the Plan shall comply with all Federal, State, and Local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Town Engineer may require supporting documentation.
 5. The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
 6. The land-disturbing activity described in the Plan shall not result in a violation of any local Ordinance, law, rule, or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
 7. Two (2) hard copies of the Plan shall be filed with the Town Engineer in addition to an electronic copy filed as directed by the Town. A copy of the approved Plan shall be maintained on the job site.

8. Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:
 - i. The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
 - ii. A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
 - iii. Construction sequence and construction phasing to justify the time and amount of exposure.
 - iv. Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
 - v. Additional erosion control measures, structures, and devices to prevent Sedimentation.
 9. All Plans must be sealed by a professional engineer, licensed to do business in the State of North Carolina.
 10. No person may initiate a land-disturbing activity before notifying the Town in writing of the date that land-disturbing activity will begin.
- b. Plan Review Process - Once a Plan has been submitted with the applicable review fee, the review process will be initiated. The Town Engineer will review each Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter “the applicant”) that it has been approved, approved with modifications, or disapproved. The Engineer’s time for review shall not begin until a complete Plan has been submitted. Plan requirements shall be as required by the Town Department of Engineering and Public Works. Should the Plan be filed and not reviewed within the specified time frame, the land-disturbing activity may commence subject to the provisions of Section 8(e), Section 10(a)(4) and Section 10.a.5, and the Town Engineer will endeavor to review the plan on an expedited schedule.

In the event the Plan or a transfer of a plan is disapproved pursuant to Subsection (d) of this Section, the Town Engineer shall notify the applicant and the Director of such disapproval within 10 Days thereof. The Town Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the Town Engineer’s decision to the Stormwater Advisory Committee as provided in Section 16 of this Ordinance, or may appeal directly to the Commission.

Plans for which land-disturbing activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans - If the Town Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the Town Engineer shall require a revised Plan. Pending the preparation of the revised Plan, work on affected area shall cease or shall continue only under conditions outlined by the Town Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and shall be submitted at any time under the same requirements for submission of original Plans. Until such time as the Town Engineer approves any amendments or revisions, the land-disturbing activity shall not proceed, except in accordance with the Plan as originally approved.

The Town Engineer must approve, approve with modifications, or deny a revised Plan within 15 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state, or local regulations.

- d. Grounds for Disapproval of Plans - Any Plan that is not in accordance with the requirements set forth in Subsection (a) above shall be disapproved. In addition, a Plan may be disapproved 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 regarding a Plan previously approved by the Commission or the Town and has not complied with the provisions of the notice within the time specified in the notice;
 2. Has failed to pay a civil penalty assessed pursuant to the Act, or a local ordinance adopted pursuant to the Act, by the time the payment is due;
 3. Has been convicted of a misdemeanor pursuant to N.C.G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

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

- e. Violations - Any Person engaged in land-disturbing activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.
- f. Plan Transfer - The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all of the following conditions are met:
1. 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 ownership.
 2. The Town finds all of the following:
 - i. The plan holder is one of the following:
 - a. A natural person who is deceased.
 - b. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - c. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - d. A person who has sold the property on which the permitted activity is occurring or will occur.
 - ii. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

- iii. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - iv. There will be no substantial change in the permitted activity.
3. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 4. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to N.C.G.S. § 113A-54.1(b).

- g. Display of Plan Approval - A Plan approval issued under this Section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

Section 11. Permits

- a. No Person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Permit from the Town Engineer. The only exception to this requirement is a land-disturbing activity that:
 1. has been approved by the Town Engineer at a pre-construction conference for the purpose of installing erosion control measures indicated on the approved Plan,
 2. is for the purpose of fighting fires,
 3. is for the stock piling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
 4. does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.
- b. No Person shall undertake any land-disturbing activity for more than one acre without acquiring an NCG01 Permit (in addition to the Permit required by Section 11(a) above) by completing and submitting an electronic Notice of Intent (NOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction Stormwater General Permit. The Letter of Approval from the Engineer shall contain a notice of the NCG01 Permit requirement and the acreage approved for disturbance.

Section 12. Inspections and Investigations

- a. The Town Engineer is authorized and required to inspect the sites of 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 activity is being conducted in accordance with the Ordinance, the Act, and the approved Plan and 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 or issuance of the Permit.
- b. No Person shall willfully resist, delay, or obstruct the Town Engineer while the Town Engineer is inspecting or attempting to inspect a land-disturbing activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the Town Engineer shall immediately serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. Notwithstanding the foregoing, if the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents. If the Town is unable to deliver the notice of violation 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.

A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall specify a date by which the Person must comply with this Ordinance and advise that the Person may be subject to a civil penalty and that failure to correct the violation within the time specified will subject that Person to the civil and criminal penalties for a continued violation as provided in G.S. 113A-64 and Section 13 of this Ordinance, or any other authorized enforcement action.

- d. In determining the measures required and the time for achieving compliance, the Town Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The Town Engineer shall use local rainfall data approved by the Town Engineer to determine whether the design storm identified in Section 9(a) has been exceeded.
- f. Penalties may be assessed for any of the following:
 - 1. Failure to submit a Plan.
 - 2. Performing land-disturbing activities without an approved Plan and pre-construction conference, or Permit.
 - 3. Obstructing, hampering, or interfering with an authorized representative who is in the process of carrying out official duties.

4. A repeated violation for which a notice was previously given on the same Tract or to the Person Responsible for the Violation.
 5. Willful violation of this Ordinance.
 6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9(d) such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.
 7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9(d) such that it results in off-site Sedimentation.
- g. The Town Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Reasonable time shall be deemed to include daylight hours, Monday through Saturday, and otherwise shall include all emergencies. No Person shall refuse entry or access to the Town Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Town Engineer while in the process of carrying out official duties.
- h. The Town Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, a Certificate of Occupancy shall not be issued where any of the following conditions exist:
1. There is a violation of this Ordinance with respect to the Tract.
 2. If there remains due and payable to Town of Huntersville civil penalties that have been levied against the Person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Town Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
 3. The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.
 4. On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.
 5. On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

Section 13. Penalties

- a. 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 a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the Town Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.
- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this Ordinance 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 Section 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).
- c. In determining the amount of the civil penalty, the Town Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance; whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with this Ordinance, the Act, or any other erosion and sedimentation control ordinance, rule, order or law.
- d. The Town Engineer shall determine the amount of the civil penalty and shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under N.C.G.S. § 1A-1, Rule 4 and shall direct the violator to either pay the assessment, contest the assessment within 30 days as specified in Section 16, 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 by the Stormwater Advisory Committee and a stipulation as to the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Town Engineer within 60 Days after it is due, the Town Engineer shall request the Town Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court.
- e. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and for which no request for remission is made within the required timeframe is due when the violator is served with a notice of assessment. An assessment that is contested or for which a request for remission is made within the required timeframe is due at the conclusion of the administrative and judicial review of the assessment or final remission decision.
- f. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged.

- g. A violation of the Town Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.
- h. The clear proceeds of civil penalties collected by the Town of Huntersville under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with N.C.G.S. § 115C-457.2. Penalties collected by the Town of Huntersville may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year.
- i. The 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 under this section provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.

Section 14. Injunctive Relief

- a. Whenever the Town Engineer has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, any rule, regulation or order adopted by the Town of Huntersville, or any term, condition, or provision of an approved Plan, the Town Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the Town Attorney to institute a civil action in the name of the Town of Huntersville, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to N.C.G.S. 113A-65(b) in Mecklenburg County Superior Court.
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation or 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 15. Restoration of Areas Affected by Failure to Comply

The Town Engineer may require a Person who engaged in any land-disturbing activity and failed to retain Sediment generated by the activity 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 penalty or injunctive relief authorized under this Ordinance.

Section 16. Appeal

- a. Disapproval or Modification of Proposed Plan
 - 1. The disapproval or modification of any proposed Plan by the Town Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 15 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be

accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.

2. In the event a Plan is disapproved pursuant to Section 10(d) of this Ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.
 3. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16(c) of this Ordinance.
 4. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15A, Chapter 4B Section .0118(b) of the North Carolina Administrative Code and N.C.G.S. 113A-61(c).
- b. Issuance of a Notice of Civil Penalty Assessment
1. The issuance of a notice of assessment of a civil penalty by the Town Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of assessment of a civil penalty. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. Within 5 Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 16.c of this Ordinance.
 3. Any party aggrieved by the decision of the Committee with regard to the issuance of assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Committee to file a petition for review in Superior Court with the Clerk of Mecklenburg County Superior Court.

- c. Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 16(a) or 16(b) above.
1. At the hearing, Petitioner and the Town Engineer shall have the right to be present and be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
 2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
 3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
 4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
 5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the Town and for the Petitioner shall have the right to cross-examine witnesses.
 6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.
 - i. If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, or assessing a civil penalty are true and substantiated, the Committee shall uphold the action on the part of the Town Engineer.
 - ii. If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Town Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Town Engineer.

Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which assessment factors were not properly considered by the Town Engineer in determining the amount of the civil penalty assessed against the Petitioner.
 7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote.

The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.

8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Town Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
9. The decision of the Committee shall constitute a final decision.

Section 17. Existing Permits and Land-disturbing Activity

All permits and approved plans existing on the effective date of this Ordinance which were duly issued and/or approved by Mecklenburg County pursuant an interlocal agreement between Mecklenburg County and the Town of Huntersville, which provided for the enforcement by Mecklenburg County of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance within the territorial jurisdiction of the Town of Huntersville, including the extraterritorial jurisdiction of the Town, shall be recognized by the Town as valid permits and approved plans, and land-disturbing activity shall be allowed to continue in accordance with such permits and approved plans. Land-disturbing activity performed prior to the effective date of this Ordinance in violation of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance shall not be vested, and shall be subject to the terms of this Ordinance (the Town of Huntersville Soil Erosion and Sedimentation Control Ordinance).

Section 18. Severability

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

Section 19. Effective Date

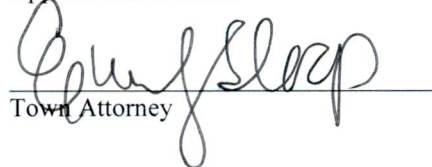
This Ordinance shall be effective November 4, 2019

Section 20. Revisions

Town of Huntersville shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the 18th day of March 2019, amended June 17, 2019, amended July 15, 2019, amended November 4, 2019, amended October 18, 2021, and amended August 15, 2022.

Approved as to form:


Town Attorney


Town Clerk



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