

## SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

### Section 1. Title

This Ordinance may be cited as the Pitt County Soil Erosion and Sedimentation Control Ordinance.

### Section 2. Purposes

This Ordinance 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.
- C. Regulating soil erosion and sedimentation in accordance with the Sedimentation Pollution Control Act of 1973, N.C.G.S. 113A-50, et seq.

### Section 3. Authority

Pitt County hereby exercises its authority to enact the control of soil erosion and sedimentation pursuant to the North Carolina General Statutes 113A-60.

### Section 4. Jurisdiction

This Ordinance shall govern the control of soil erosion and sedimentation within Pitt County and outside the jurisdiction of any incorporated municipality; furthermore, this Ordinance may also regulate the control of soil erosion and sedimentation within the jurisdiction of any municipality whose governing body by resolution agrees to such regulation; provided, however, that any such municipal governing body, upon one year's written notice, may withdraw its approval of the Pitt County Soil Erosion and Sedimentation Control Ordinance, and those regulations shall have no further effect within the municipality's jurisdiction (except state's exclusive jurisdiction as provided in (GS 113A-56(A))).

### Section 5. Definitions

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

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

**Act:** The North Carolina Sedimentation Pollution Control Act of 1973, and all rules and orders adopted pursuant to it.

**Active construction:** Activities, which contribute directly to the building of facilities including land-disturbing activities for roads, parking lots, footings, etc.

**Adequate Erosion Control Measure, Structure, or Device:** One which controls 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 permanent stabilization of the site has not been completed.

**Borrow:** Fill material, which 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.

**Caving:** The collapse of a bank by undercutting due to wearing away of the toe or an erodible soil layer above the toe.

**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.

**Committee:** The Technical Review Committee (TRC).

**Completion of Construction or Development:** That no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

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

**Department:** The North Carolina Department of Environmental Quality (NCDEQ).

**Director:** The Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.

**Discharge Point:** The point at which runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

**District:** The Pitt County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

**Drainage Easement:** A minimum strip of land reserved for conveyance of stormwater generally located along the rear or side lot lines, but may cross lots at such points that will not pose a hazard to persons or property.

**Energy Dissipator:** 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 surface by the action of wind, water, gravity, or any combination thereof.

**Failure:** The collapse or slippage of a large mass of bank material into a ditch or stream.

**Ground Cover:** Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

**High Quality Waters:** Those classified as such in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and additions.

**High Quality Water (HQW) Zones:** Areas in the Coastal Counties that are within 575 (five hundred and seventy-five) feet of High-Quality Waters and for the remainder of the state areas that are within one mile and drain 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, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

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

**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:** The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

**On-site soil loss:** Sedimentation that has not been deposited off-site, but has been deposited from its natural origin on a given parcel of property.

**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, or Violator:** As used in this Ordinance, and G.S. 113A-64, means:

- A. Any landowner or other Person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of this Ordinance, the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to the Act, as it imposes a duty upon that Person.

**Phase of Grading:** One of two types of grading, rough or fine.

**Plan:** An erosion and sedimentation control plan.

**Receiving Watercourse:** A lake, natural watercourse, or other natural or manmade area into which stormwater run-off flows from a land-disturbing activity.

**Rill Erosion:** The removal of soil particles from a bank slope by surface runoff moving through relatively small channels.

**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 which serve to collect and convey storm water through and from a given drainage area.

**Stormwater Runoff:** The direct runoff of water resulting from precipitation in any form.

**Subsidiary:** An affiliate that is directly or indirectly through one or more intermediaries, controlled by another Person.

**Technical Review Committee (TRC):** Representatives of local and state agencies who collectively review and evaluate Erosion and Sedimentation Control Plans for compliance with all regulations.

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

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

**Twenty-Five Year Storm:** A rainfall of an intensity that, based on historical data, is predicted, by a method acceptable to the Approving Authority, to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff 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, which 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 the peak flow of the storm of interest but not exceeding bank full flows.

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

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

## **Section 6. Scope and Exclusions**

Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this Ordinance shall not apply to the following land-disturbing activities:

- 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 forestland 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 (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. 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.
  - C. Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
  - B. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
  - C. For the duration of an emergency, activities essential to protect human life.
  - D. 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.
  - E. 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 7. General Requirements**

- A. *Plan Required.* No Person shall initiate any land-disturbing activity when more than one acre is to be disturbed, without having an erosion control plan approved by the County of Pitt.
- B. *Less than one-acre disturbance.* Whenever the disturbed area on a tract is to be less than one acre, no erosion control plan is required. However, the person conducting the land-disturbing activity is still responsible for installing and maintaining erosion control measures. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- C. *Protection of Property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
- D. *More Restrictive Rules Shall Apply.* Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

## **Section 8. Administration**

- A. *Pitt County Technical Review Committee (TRC)*
  1. *Composition:* The Committee as established by the Pitt County Board of Commissioners on May 21, 1991, shall consist of one representative from each of the following agencies:

North Carolina Department of Transportation

Pitt County Emergency Services Department

Pitt County Engineering Department

Pitt County Environmental Health Division

Pitt County Planning Department

Pitt County Soil Conservation Service

Any change in the membership structure of the Technical Review Committee shall be approved by the Board of Commissioners.

2. *Duties:* The Committee shall review all erosion and sedimentation control plans. It shall approve, modify, or disapprove based on the plan's compliance with this Ordinance.
3. *Organization:* The Committee shall operate as a staff committee and shall meet and correspond as necessary to approve plans and enforce this Ordinance.

B. *Pitt County Sediment Control Officer*

1. *Appointment:* The Pitt County Manager shall appoint a Sediment Control Officer. The Sediment Control Officer may be a County employee.
2. *Term of Appointment:* The term of the Sediment Control Officer shall be determined by the County Manager.
3. *Duties:* The Sediment Control Officer shall be:
  - a. Responsible for the enforcement of the Pitt County Soil Erosion and Sedimentation Control Ordinance;
  - b. Responsible for periodic on-site inspections.

**Section 9. Basic Control Objectives**

An erosion and sedimentation control plan may be disapproved for failure to comply with this Ordinance or if the plan fails to address the following control objectives:

- A. *Identify Critical Areas.* On-site areas, which are subject to severe erosion, and off-site areas, which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- B. *Limit Time of Exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of the aforementioned Chapter, or as directed by the Approving Authority.
- C. *Limit Exposed Areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed or denuded 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 to prevent off-site sedimentation damage and on-site soil loss.
- F. *Manage Storm Water 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.

## **Section 10. Mandatory Standards for Land-disturbing Activity**

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

### **A. Buffer Zone**

1. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the County of Pitt may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
2. Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

### **B. Graded Slopes and Fills.** The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

### **C. Ground Cover.** Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 11-B(5), provisions for a ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development.

### **D. Prior Plan Approval.** No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the County of Pitt. All individuals that obtain a State or locally-approved erosion and sedimentation control plan that disturb 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 may differ from the ground cover, or stabilization, requirements in this Chapter. It is

the responsibility of the person conducting the land-disturbing activity to ensure compliance with the NCG01.

## Section 11. Design and Performance Standards

- A. Except as provided in Subsection B(2) hereinbelow, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of run off from the 10-year storm. Runoff rates shall be calculated using the procedures in the United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering Field Handbook", or other acceptable calculation procedures.
- B. In High Quality Water (HQW) zones the following design standards shall apply:
1. Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this Section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director, upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.
  2. Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the run off of the 25-year storm which produces the maximum peak rate of run off as calculated according to procedures in the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Handbook" or according to procedures adopted by any other agency of this State or the United States or any generally recognized organization or association.
  3. In order to provide for water quality protection in 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 drainage area is less than 1.0 acre;
    - (b.) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
    - (c.) have a minimum surface area of 325 square feet per cfs of the 25-year storm (Q25) peak flow;
    - (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.

Upon a written request of the applicant, the Sediment Control Officer may allow alternative design or control measures in lieu of meeting the conditions required in Subparagraphs (3)(a) through (3)(e) of this Rule 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 application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

4. Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 1 vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.



5. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60-calendar days following completion of construction or development, whichever period is shorter.

**Section 12. 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 Standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
  1. The velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
  2. The velocity of the 10-year storm run off in the receiving watercourse prior to development.

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

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	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	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 (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.

- B. *Acceptable Management Measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The County recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

1. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
2. Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
3. Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple riprapped sections and other methods to complex structures;
4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining, and
5. Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

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

### **Section 13. Borrow and Waste Areas**

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

### **Section 14. 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 15. Operations in Lakes or Natural Watercourses**

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided. This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir, provided adequate erosion and sediment control measures are in place.

### **Section 16. Responsibility for Maintenance**

During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After site development, the 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 17. Additional Measures**

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

## **Section 18. Existing Uncovered Areas**

- A. All uncovered areas existing on the effective date of this Ordinance which resulted from land-disturbing activity exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- B. The County of Pitt will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.
- C. The County of Pitt reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.
- D. This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir, provided adequate erosion and sediment control measures are in place.

## **Section 19. Permits**

- A. No person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a permit therefore from the County of Pitt except that no permit shall be required for any land-disturbing activity:
  - 1. For the purpose of fighting fires; or
  - 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 do not intend to 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.
- B. The Pitt County Board of Commissioners may establish a fee if considered necessary.

## **Section 20. Erosion and Sedimentation Control Plans**

- A. An erosion control plan shall be prepared for all land-disturbing activities subject to this Ordinance whenever the proposed activity is to be undertaken on a tract comprising more than one acre, if more than one acre is to be uncovered. The plan shall be filed with the County of Pitt and a copy shall be simultaneously submitted to the Pitt County Soil and Water Conservation District, 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 acres shall file **three** paper copies and one digital copy of the erosion control plan with the County of Pitt, at least 30 days prior to beginning such activity and shall keep another paper copy of the plan on file at the job site. After approving the plan, if the County of Pitt either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the County of Pitt will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.
- C. Erosion control plans 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 attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
- D. The County of Pitt may establish a fee schedule for the review and approval of Plans. These fees can be found within the Pitt County Manual of Fees, and will be prorated to include any additional fractional acreage for plans greater than 1 acre. A review fee will be required for construction plans in addition to the acreage fee. These fees are due when the application is submitted, and any Plan submittal is not viewed as a complete submittal unless the fees are included. The County may not require these fees for a resubmitted plan unless there is a significant increase in disturbed area.
- E. The Pitt Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the County of Pitt within 20 days after the Soil and Water Conservation District received the erosion control plan, or within any shorter period of time as may be agreed upon by the Soil and Water Conservation District and Pitt County. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.
- F. The County of Pitt will review each complete plan submitted to them and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with conditions, or disapproved. The County shall condition approval of a plan based on the applicant's compliance with federal and state water quality laws, rules and regulations. Failure to approve, approve with modifications, approve with performance modifications or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The County of Pitt must approve, approve with conditions, 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 of Pitt determines that the plan is inadequate to meet the requirements of this Ordinance, the County of Pitt may require any revisions of the plan that is necessary to comply with this Ordinance. Failure to approve, approve with modifications or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. The County of Pitt may establish an expiration date for erosion control plans approved under this Ordinance.
- G. Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et. seq.) shall be deemed incomplete until a complete environmental document is available for review. The County of Pitt shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to Section 20-E of this Ordinance shall not begin until a complete environmental document is available for review.

- H. The plan required by this Section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the County of Pitt on request.
- I. A local government may disapprove an erosion control plan upon finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:
1. Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;
  2. Has failed to pay a civil penalty assessed pursuant to the Act or a local Ordinance adopted pursuant to the Act by the time the payment is due;
  3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local Ordinance adopted pursuant to the Act;
  4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act;
  5. Has failed to submit a revised plan reflecting recommended changes by TRC by the given deadline following a TRC meeting.

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

- J. The plan shall consist of a narrative report and map.

*The narrative shall contain the following:*

1. The name and address of the landowner, the developer, registered agent, attorney-in-fact, and the person submitting the plan;
2. A general description of the predominant soil types on the site;
3. A timing schedule and sequence of operations stating the expected starting and completion dates of the development sequence;
4. The estimated time of exposure of each area prior to the completion of effective erosion and sedimentation control measures and other related data such as seeding mixtures and rates, type of sod, seed bed preparation, lime and fertilizer application, and mulching;
5. A statement giving any applicable engineering assumptions and calculations.

*The map shall contain the following:*

1. Title, scale, north arrow, date, and name of person preparing the plan;
2. Vicinity map drawn to a scale of not less than 2,000 ft. to one inch showing the relationship of the site to its general surroundings;
3. Boundary lines of the site on which the work is to be performed, including the approximate acreage of the site;

4. Existing contours with intervals of not more than five feet where the slope is from ten percent to twenty percent and not more than two feet where the slope is less than ten percent;
  5. Existing topography, including existing streams and ditches, water bodies, structures, road, and vegetative cover of the site and on land adjacent to the site;
  6. Proposed improvements of the site, proposed changes to the land surface and vegetative cover, and areas of cuts and fills;
  7. All drainage provisions, including culvert piping, ditches, sediment basins, diversions, or other devices;
  8. Vegetative and nonvegetative protection measures, including paving, riprap, and walls to be constructed in connection with the proposed work;
  9. Facilities for erosion control during construction and during the life of the facility.
10. Description of Riparian Buffer Zones
  11. Map legend clarifying symbols and abbreviations.
  12. Applicable Parcel Number(s) of site
- J. Application for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the County of Pitt, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.
- K. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this article.
- L. An erosion control plan shall expire three years following the date of approval, if no land-disturbing activity has been undertaken.
- M. Certificate of Plan Approval.
1. The Commission shall issue a certificate of plan approval to the applicant by hard copy and electronic submittal. Before construction begins, that documentation shall be posted at the primary entrance of the job site or other location that is observable to the public and inspectors.
  2. No person may initiate a land-disturbing activity until notifying the approving authority of the date that the land-disturbing activity will begin.
- N. Self-Inspections.
- All land-disturbing activities required to have an approved erosion and sedimentation control plan under G.S. 113A-54.1(e) 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. NCG 010000.
- a. For self-inspections required pursuant to G.S. 113A-54.1(e), the inspection shall be performed during or after each of the following phases of the plan;
    - i. initial installation of erosion and sediment control measures;

- ii. clearing and grubbing of existing ground cover;
  - iii. completion of any grading that requires ground cover;
  - iv. completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
  - v. transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (c) of this Item.
- b. Documentation of self-inspections performed under Item (1) of this Rule shall include:
- i. Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
  - ii. Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
  - iii. The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.
  - iv. A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

## **Section 21. Appeals**

- A. Except as provided in Subsection B herein below, 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 of Pitt shall entitle the Person submitting the plan to a public hearing if such Person submits written demand to the Assistant County Manager for Planning and Environment for a hearing within 30 days after receipt of written notice of disapproval or modification.
  2. Hearings held pursuant to this section shall be conducted by the Pitt County Board of Adjustment at their next regularly scheduled meeting after the date of the appeal or request for a hearing.
  3. The Pitt County Board of Adjustment will render their final decision on any erosion control plan upon which a hearing is requested within 30 days of receipt of the recommendations from the agency conducting the hearing.
  4. If the Board of Adjustment upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the County's decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

- B. In the event that an erosion control plan is disapproved pursuant to Section 20-H of this Ordinance, the County of Pitt shall notify the Director of the Division of Energy, Mineral, and Land Resources of such disapproval within 10 days. The County of Pitt shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the County of Pitt disapproval of the plan pursuant to Section 20-H of this Ordinance directly to the Commission.

## **Section 22. Inspections and Investigations**

- A. Agents, officials, or other qualified persons authorized by the County of Pitt will periodically inspect the sites of land-disturbing activities to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan. When a preconstruction conference is proposed pursuant to G.S. 113A-51, the request shall be set forth in the plan.
- B. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County of Pitt, while that person is inspecting or attempting to inspect a land-disturbing activity under this Section.
- C. If, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, a notice of violation shall be served upon that Person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the Person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the Person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any Person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. If the Person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the County shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. The notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.
- D. The County of Pitt shall also have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and who presents appropriate credentials for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the site or any land-disturbing activities.
- E. The County of Pitt 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 activities.

## **Section 23. Penalties**

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

- 1. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation, other than a violation of a stop-work order issued under G.S. 113A-65.1, is five thousand dollars (\$5,000.00). The maximum civil penalty for a violation of a stop-work order is five thousand dollars (\$5,000.00). No penalty shall be assessed until the Person alleged to



be in violation has been notified of the violation pursuant to Section 22-C of this Ordinance. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the first day the violation is detected. However, no time period for compliance need be given for 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 that Person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

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

2. The Technical Review Committee (TRC) 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 committee shall consider the following criteria:
  - a. The degree and extent of harm caused by the violation,
  - b. The cost of rectifying the damage,
  - c. The amount of money the violator saved by noncompliance,
  - d. Whether the violation was committed willfully, and
  - e. The prior record of the violator in complying or failing to comply with this ordinance.
3. The Technical Review Committee 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. A notice of assessment by the Technical Review Committee shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the Board of Adjustment, or file a request with the Technical Review Committee for remission of the assessment within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.
4. The civil penalty appeal shall be conducted by the Board of Adjustment within (30) days after the date of receipt of the written demand. The Board of Adjustment shall render its final decision on the civil penalty within (30) days of consideration of the appeal.
5. Appeal from the final decision of the Board of Adjustment shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the Board of Adjustment.
6. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Board of Adjustment within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant

to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:

- a. Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
  - b. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
  - c. Whether the violation was inadvertent or a result of an accident.
  - d. Whether the petitioner had been assessed civil penalties for any previous violations.
  - e. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
  - f. The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.
7. If payment is not received within 30 days after demand for payment is made, the County of Pitt may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
8. The clear proceeds of civil penalties collected by the County of Pitt under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County of Pitt 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 County of Pitt 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 the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. 113A-64.

#### **Section 24. Injunctive Relief**

- A. Whenever the County of Pitt 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 erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the County of Pitt for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Pitt County.
- B. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this Section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

#### **Section 25. Restoration of Areas Affected by Failure to Comply**

The County of Pitt 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 26. Severability**

If any section or 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.

**Adoption Certification**

I hereby certify that this is a true and correct copy of the Soil Erosion and Sedimentation Control Ordinance as adopted by the Board of County Commissioners of Pitt County, North Carolina, on the 18<sup>th</sup> day of July, 2022, effective on the 1<sup>st</sup> day of August, 2022.

WITNESS my hand and the official seal of Pitt County, this the 18<sup>th</sup> day of July, 2022.

\_\_\_\_\_  
(signature)