

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

### Section

- 164.01 Title
- 164.02 Purpose
- 164.03 Definitions
- 164.04 Scope and exclusions
- 164.05 Mandatory standards
- 164.06 Slope standards
- 164.07 Borrow and waste areas
- 164.08 Operation in surface waters
- 164.09 Existing uncovered areas
- 164.10 Erosion and sedimentation control plans
- 164.11 Basic control objectives
- 164.12 Permits
- 164.13 Residential lot disturbance permits
- 164.14 Fees
- 164.15 Certificates of compliance and completion
- 164.16 Design and performance standards
- 164.17 Additional measures
- 164.18 Responsibility for maintenance
- 164.19 Plan appeals
- 164.20 Inspections and investigations
- 164.21 Injunctive relief
- 164.22 Restoration after noncompliance
- 164.23 Effective date
  
- 164.99 Penalty

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

### § 164.01 TITLE.

This chapter may be cited as the Chatham County Soil Erosion and Sedimentation Control Chapter. (Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.02 PURPOSE.

This chapter is adopted for the purposes of:

(A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses and other public and private property by sedimentation, and to otherwise protect the public health, safety and general welfare; and

(B) Establishing procedures through which these purposes can be fulfilled. (Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.03 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**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.

**ADEQUATE EROSION CONTROL MEASURE, STRUCTURE OR DEVICE.** One which controls accelerated erosion and contains sediment within the boundaries of a site or a 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.

**APPLICANT.** The financially responsible person submitting a plan for approval or applying for a land-disturbing permit.

**BORROW.** Earth fill material used in the construction of embankments or other earth fill structures.

**BORROW AREA.** An area from which borrow is obtained and which is not regulated by the provisions of the Mining Act of 1971.

**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.

## **CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL**

**DEPARTMENT.** The North Carolina Department of Environment and Natural Resources.

**DIFFUSE FLOW.** Non-concentrated, low velocity flow of stormwater runoff that is spread out over or distributed evenly along the same elevation. Diffuse flow prevents or reduces scour and erosion and provides for increased ground contact for infiltration and pollutant removal.

**DIRECTOR.** The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

**DISCHARGE POINT.** The point at which stormwater runoff leaves a tract of land or a site.

**DISTRICT.** The Chatham County Soil and Water Conservation District created pursuant to G.S. Ch. 139.

**ENERGY DISSIPATOR.** A device used to reduce the energy of flowing water to prevent erosion.

**EROSION.** The wearing away of land surfaces by the action of wind, water, gravity, ice, other geologic agents or any combination thereof.

### **FINANCIALLY RESPONSIBLE PERSON.**

(1) The developer or other person who has or holds themselves out as having financial or operation control over the land-disturbing activity; or

(2) The landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefitted from it or failed to comply with a duty imposed by any provision of this chapter, the Act or any order adopted pursuant to this chapter or the Act.

**GRADUAL SLOPE.** Includes all areas that are not designated steep or moderate slope areas as provided on the county GIS website (<http://www.chathamgis.com/>).

**GROUND COVER.** Also called stabilization or ground cover. Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

**HIGH QUALITY WATER (HQW) ZONES.** Areas within 575 feet of high quality waters, for the coastal counties, and within one mile of high quality waters for the remainder of the state.

**HIGH QUALITY WATERS.** Surface water that is classified as such in 15A NCAC 2B .0101(e)(5). General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. § 150B-14(c).

**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 or existing ground 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.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

**MODERATE SLOPE.** Includes all land on gradients of 15 to 24.9%, except for gradients of 20% or greater on soils with a RUSLE K-Factor of 0.49 or higher. **MODERATE SLOPE AREAS** are provided on the county GIS website (<http://www.chathamgis.com/>).

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

**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 violation unless expressly provided otherwise by this chapter, the Act or any order adopted pursuant to this chapter or the Act.

**PHASE OF GRADING.** One of two types of grading: rough or fine.

**PLAN.** An erosion and sedimentation control plan.

**RIPARIAN BUFFER.** A natural or vegetated area that provides a protective distance between any surface water or wetland, and an adjacent land area or land-disturbing activity. The **RIPARIAN BUFFER** shall be measured horizontally on a line perpendicular from the top of the bank or from the normal pool elevation of a perennial water body or wetland.

**RUSLE-K FACTOR.** Revised Universal Soil Loss Equation K-Factor is a measure of a soil's potential to erode. **K-FACTOR** values for each soil in the county are provided in the *Chatham County Soil Survey*, in the Physical Soil Properties table under the Erosion Factors column. **K-FACTORS** shall be those provided under Kf (fine earth fraction) within the upper six inches of the soil.

**SEDIMENT.** Solid particulate matter, both mineral and organic, that has been or is being transported by wind, 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 any surface water.

**SILTATION.** Sediment resulting from accelerated erosion which may be settled or removed 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.

**SITE.** The area of a land-disturbing activity within the proposed or existing limits of disturbance.

**STEEP SLOPE.** Includes all land on gradients of 25% or greater, or 20% or greater on soils with a RUSLE K-Factor of 0.49 or higher. **STEEP SLOPE AREAS** are provided on the county GIS website (<http://www.chathamgis.com/>).

**STORM DRAINAGE FACILITIES.** The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

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

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

**SURFACE WATER.** Any stream (perennial, intermittent or ephemeral), river, brook, swamp, wetland, sound, bay, creek, run, branch, canal, waterway, estuary, draw 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.

**TEN-YEAR STORM.** The stormwater runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff for 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.** The stormwater runoff resulting from precipitation of an intensity expected to be equaled or exceeded on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff for 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 average **VELOCITY** of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing **VELOCITY** of flow.

**WASTE.** Surplus earth materials resulting from on-site land-disturbing activities.

**WASTE AREA.** An area for waste other than landfills regulated by the State Department of Environment and Natural Resources, Division of Waste Management.  
(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.04 SCOPE AND EXCLUSIONS.

(A) *Jurisdictional scope.* This chapter shall apply to land-disturbing activity within the territorial jurisdiction of the county and within the extraterritorial jurisdiction of the county as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

(B) *Exclusions.* Notwithstanding the general applicability of this chapter to all land-disturbing activity, this chapter shall not apply to the following types of land-disturbing activity:

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

### (1) *Agriculture.*

(a) An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to people, including, but not limited to:

1. Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
2. Dairy animals and dairy products;
3. Poultry and poultry products;
4. Livestock, including beef cattle, sheep swine, horses, ponies, mules and goats;
5. Bees and apiary products;
6. Fur-producing animals; and
7. Horticultural and nursery operations.

(b) In order for a land-disturbing activity to be eligible for an agricultural exemption, it must be reasonably demonstrated to the county that the land on which the disturbance is taking place is intended for continuous agricultural use. Reasonable demonstration may be documented by any of the following:

1. A farm plan registered with the County Soil and Water Conservation District for ongoing uses;
2. A farm number obtained from the state cooperative extension;
3. Documentation of revenue of not less than \$1,000/year resulting from an agricultural activity; or
4. Documentation from the county tax office of agricultural status.

(c) The county may require preparation and approval of an erosion and sedimentation control plan for land-disturbing activities applying for an application for exemption where sediment control measures are needed to protect against off-site damages due to sediment from the land-disturbing activity as documented by the county staff.

(d) A land-disturbing activity for agricultural purposes is not considered exempt until an application for exemption has been made and a letter of exemption has been issued by the county.

### (2) *Silviculture.*

(a) An activity 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*, as adopted by the Department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

accordance with *Forest Practice Guidelines Related to Water Quality*, the provisions of this chapter shall apply to that activity and any related land-disturbing activity on the tract.

(b) If land-disturbing activity undertaken on forest land for the production and harvesting of timber or timber products is being conducted in preparation of a site development that is in any phase of the approval process with any county department, the provisions of this chapter shall apply.

(c) In order for a land-disturbing activity to be eligible for a forestry exemption, it must be reasonably demonstrated to the county that the land on which the disturbance is taking place is intended exclusively for forestry management. Reasonable demonstration may be documented by any of the following:

1. A timber management plan registered with the State Division of Forest Resources;
2. Compliance with the *Forest Practice Guidelines for Water Quality* and the *Forestry Best Management Practices Manual*;
3. Documentation of revenue of not less than \$1,000/year resulting from forestry activity; or
4. Documentation from the county tax office of forestry status.

(d) The county may require preparation and approval of an erosion and sedimentation control plan for land-disturbing activities applying for an application for exemption where sediment control measures are needed to protect against off-site damages due to sediment from the land-disturbing activity as documented by the county staff.

(e) A land-disturbing activity for forestry purposes is not considered exempt until an application for exemption has been made and a letter of exemption has been issued by the county.

(3) *Mining.* An activity for which a permit is required under the Mining Act of 1971, G.S. Ch. 74, Article 7 is exempt;

(4) *State authority.* A land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a) is exempt; and

(5) *Emergency operations.* An activity which is essential to protect human life or property during an emergency is exempt.  
(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.05 MANDATORY STANDARDS.

All land-disturbing activity that is subject to the control of this chapter shall be conducted in accordance with the following mandatory standards.

(A) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by the activity.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(B) *Riparian buffers.* Land-disturbing activity conducted in proximity to any surface water is also subject to, and must provide a riparian buffer in accordance with the riparian buffer requirements set forth in the County Watershed Protection Ordinance. Under no circumstance shall a riparian buffer be less than 30 feet.

(C) *Graded slopes and fills.*

(1) The angle for graded slopes and fills shall be no greater than two horizontal to one vertical (2:1). In any event, all slopes will be planted or otherwise provided with ground cover, devices or structures sufficient to control erosion within 15 calendar days of completion of any phase of grading or any period of inactivity, unless a shorter timeframe is applicable pursuant to § 164.06.

(2) Erosion control matting, of sufficient design, shall be used for stabilization on all fill slopes and slopes greater than three horizontal to one vertical (3:1).

(3) All graded slopes must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without structural restraints or devices.

(D) *Fill material.* Unless the site is permitted by the Department's Division of Waste Management to operate as a landfill, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding three inches, and any materials which would cause the site to be regulated as a landfill by the state.

(E) *Sediment in roads.* It shall be a violation of this chapter for any land-disturbing activity to leave sediment of any form on existing roads, sidewalks, greenways or any other travel way. It shall be the responsibility of the financially responsible person(s) or entity to have this material removed by the end of each work day. If, at any time, the county finds that accumulated material resulting from a land-disturbing activity is causing a hazard of any kind, the county will have the material removed and charge the financially responsible person(s) or entity a minimum of \$300 per hour for the first hour or part of hour and \$200 per hour or part of hour there after until the work is completed as specified by the County Erosion and Sedimentation Control staff.

(F) *Stormwater 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 and quantity of runoff from the land-disturbing activity.

(2) *Performance standard.* Any land-disturbing activity shall be conducted so that the post construction runoff is controlled and released in accordance with the design and performance standards specified in the Stormwater Management Chapter (Chapter 165).

(3) *Erosion and sedimentation control plans.* All erosion and sedimentation control plans shall include, or have attached, a plan showing and documenting the size and location of all permanent stormwater control devices. The plan must have a detailed construction sequence that describes the conversion of temporary devices or existing conditions into the permanent stormwater control device. If at any time during construction the stormwater management devices result in off-site erosion, the county may require submittal of a revised plan and remediation of the off-site impacts. Land-disturbing activities that require county, state or federal permits for impacts to any water body shall submit a copy of the

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

approval for those permits and a copy of the plans associated with those permits to the County Erosion and Sedimentation Control Office.

(G) *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract if more than 20,000 square feet is to be uncovered unless, a plan for the activity is filed with the county 30 or more days prior to initiating the activity, and the plan is approved and a land-disturbing permit is granted by the county in accordance with § 164.12 of this chapter.

(H) *More restrictive rules shall apply.* Whenever conflicts exist between these mandatory standards or any other standards in this chapter and other applicable federal, state or local laws, ordinance or rules, the more restrictive provision shall apply.

(I) *Ground cover.* The financially responsible person for a land-disturbing activity must plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of any phase of construction or development. Except when a shorter timeframe is applicable pursuant to § 164.06 or § 164.16(A)(3), provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 calendar days following completion of any phase of grading or any period of inactivity, regardless of weather conditions, weekends, holidays, equipment malfunction and/or any extenuating circumstance.

(J) *Erosion and sedimentation control devices.* The financially responsible person for a land-disturbing activity must install erosion and sedimentation control devices and practices that are sufficient to retain sediment, generated by the land-disturbing activity, within the boundaries of the site. (Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.06 SLOPE STANDARDS.

(A) The county's GIS data shall be used to determine and indicate where steep, moderate and gradual slopes exist on a slopes map. Where the accuracy of these data is in question by the applicant, an on-site topographic survey may be provided to the county by a state registered land surveyor or a professional engineer licensed by the state to demonstrate compliance with this section. The county GIS map or on-site topographic survey must be submitted with the initial erosion and sedimentation control plan or prior to obtaining a residential lot disturbance permit pursuant to § 164.13.

(B) All land-disturbing activity for which an erosion and sedimentation control plan has not been approved prior to December 2, 2008 that requires a plan or a residential lot disturbance permit must meet the following slope standards.

(1) *Steep slopes.*

(a) No land-disturbing activity in excess of 5,000 square feet shall occur on any steep slope, except to the extent it is necessary and otherwise permitted by state law to be used for septic system needs, or for roadway crossings or utilities, where no practicable alternative exists; provided, however, that this limitation shall not apply to subdivision lots which have sketch, preliminary or final approval prior to December 2, 2008.

(b) All land-disturbing activity that will be permitted within areas of steep slopes as defined by this chapter and identified on the county GIS map must include the following standards on the erosion and sedimentation control plan and all site work must conform to these standards.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

1. *Erosion and sedimentation control devices.* The person conducting the land-disturbing activity shall provide erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the limits of disturbance during construction. All devices and practices must be designed in accordance with this chapter.

2. *Ground cover.* The person conducting the land-disturbing activity shall provide temporary or permanent ground cover sufficient to restrain erosion within seven calendar days following completion of any phase of grading or any period of inactivity. The provisions for ground cover must be provided regardless of weather conditions, weekends, holidays, equipment malfunction and/or any extenuating circumstance.

3. *Phasing.* Land-disturbing activities must be phased so that no more than one acre of land will be disturbed on steep slopes at any time.

4. *Scale and contours.* The scale of the erosion and sedimentation control plan must not exceed one inch equals 30 feet and must produce a legible document. Existing and proposed grades shall be depicted at contour intervals of two feet.

5. *Inspections.* All land-disturbing activity conducted on steep slopes must be visually inspected by the financially-responsible person as specified in § 164.12(I). Copies of the inspections must be provided to the county erosion and sedimentation control staff. Any erosion observed during these inspections must be immediately repaired and stabilized with temporary or permanent stabilization.

(2) *Moderate slopes.* All land-disturbing activity that will be conducted within areas of moderate slopes as defined by this chapter and identified on the county GIS map must include the following standards on the erosion and sedimentation control plan, and all site work must conform to these standards.

(a) *Erosion and sedimentation control devices.* The person conducting the land-disturbing activity shall provide erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the limits of disturbance during construction. All devices and practices must be designed in accordance with this chapter.

(b) *Ground cover.* The person conducting the land-disturbing activity shall provide temporary or permanent ground cover sufficient to restrain erosion within ten calendar days following completion of any phase of grading or any period of inactivity. The provisions for ground cover must be provided regardless of weather conditions, weekends, holidays, equipment malfunction and/or any extenuating circumstance.

(c) *Phasing.* Land-disturbing activities must be phased so that no more than ten acres of land will be disturbed on moderate slopes at any time.

(d) *Scale and contours.* The scale of the erosion and sedimentation control plan must not exceed one inch equals 50 feet and must produce a legible document. Existing and proposed grades shall be depicted at contour intervals of two feet.

(e) *Inspections.* All land-disturbing activity conducted on moderate slopes must be visually inspected by the financially-responsible person as specified in § 164.12(I). Copies of the inspections must be provided to the county erosion and sedimentation control staff. Any erosion observed

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

during these inspections must be immediately repaired and stabilized with temporary or permanent stabilization.

(3) *Gradual slopes.* All land-disturbing activity that will be conducted within areas of gradual slopes as defined by this chapter and identified on the county GIS map must include the following standards on the erosion and sedimentation control plan, and all site work must conform to these standards.

(a) *Erosion and sedimentation control devices.* The person conducting the land-disturbing activity shall provide erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the limits of disturbance during construction. All devices and practices must be designed in accordance with this chapter.

(b) *Ground cover.* The person conducting the land-disturbing activity shall provide temporary or permanent ground cover sufficient to restrain erosion within 15 calendar days following completion of any phase of grading or any period of inactivity. The provisions for ground cover must be provided regardless of weather conditions, weekends, holidays, equipment malfunction and/or any extenuating circumstance.

(c) *Phasing.* Land-disturbing activities must be phased so that no more than 15 acres of land will be disturbed on gradual slopes at any time.

(d) *Scale and contours.* The scale of the erosion and sedimentation control plan must not exceed one inch equals 50 feet and must produce a legible document. Existing and proposed grades shall be depicted at contour intervals of two feet.

(e) *Inspections.* All land-disturbing activity conducted on gradual slopes must be visually inspected by the financially-responsible person as specified in § 164.12(I). Copies of the inspections must be provided to the county erosion and sedimentation control staff. Any erosion observed during these inspections must be immediately repaired and stabilized with temporary or permanent stabilization.

(4) *Steep slopes variance.*

(a) A property owner may apply to the Board of Commissioners for a variance from the requirements of division (B)(1) above.

(b) In order for the Board of Commissioners to grant the variance the applicant has the burden of proving the following:

1. The proposed land-disturbing activity on the steep slopes will not result in:
  - a. Significantly increased velocity of flow, deposit of sediment or erosion;
  - b. Significant threats to water quality;
  - c. The removal of significant wildlife or plant habitat; or
  - d. A public nuisance.
2. The provisions of this section's steep slope requirements leave the owner no legally reasonable use of the property; and

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

3. A failure to grant the variance would result in hardship.

(C) If the Board of Commissioners grants a variance to the steep slopes requirements of this chapter, the Board may attach reasonable conditions to the grant of the variance as it deems necessary to achieve the purposes of this section.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.07 BORROW AND WASTE AREAS.

(A) When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, the borrow or waste disposal site shall be considered as part of the land-disturbing activity.

(B) When the person conducting the land-disturbing activity is not the person obtaining borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(C) It is the responsibility of the financially responsible person(s) to inform the county erosion and sedimentation control program of the location and ownership of all off-site borrow and waste sites when required.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.08 OPERATION IN SURFACE WATERS.

(A) Any land-disturbing activity in connection with construction in, on, over or under any surface water, regardless of the area uncovered, shall minimize the extent and duration of the disturbance. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

(B) Devices and methods proposed to minimize the impact and disruption to the surface water must be detailed on the erosion and sedimentation control plan and clearly described in the construction sequence.

(C) These activities must be properly permitted by and conducted in accordance with all the regulations of the County Watershed Protection Ordinance, the Department's Division of Water Quality and the United States Army Corps of Engineers.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.09 EXISTING UNCOVERED AREAS.

(A) *Required action.* All uncovered areas existing on the effective date of this chapter which resulted from land-disturbing activity exceeding 20,000 square feet, which are subject to continued accelerated erosion, and which 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) *Notification.* The county may serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this chapter, a rule or order adopted or issued pursuant to the Act by the Commission or by the county. The notice to comply may be sent by registered or

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

certified mail, return receipt requested, or by any other means provided in G.S. § 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which the 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) *Plan preparation.* The county reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required.

(D) *Exceptions.* This section shall not require ground cover on cleared land forming the future basin of a planned reservoir or other areas that are temporarily uncovered, provided that the areas must comply with all other applicable sediment and erosion control requirements.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.10 EROSION AND SEDIMENTATION CONTROL PLANS.

(A) *Plan required.* An erosion and sedimentation control plan shall be prepared and submitted to the county for approval for any land-disturbing activity subject to this chapter that will uncover an area greater than 20,000 square feet.

(1) A land-disturbing activity that exceeds 20,000 square feet and that is conducted to convert any land from an existing condition into an exempt activity may require an erosion and sedimentation control plan for the transitional stage of its development.

(2) A land-disturbing activity of less than 20,000 square feet that is conducted in or near any surface water, as documented by the county, may require an erosion and sedimentation control plan.

(B) *Access and haul roads and tree removal.* The following activities shall be considered a land-disturbing activity, regardless of whether they are contiguous with an existing or proposed land-disturbing activity. These areas will be considered for purposes of determining whether an erosion and sedimentation control plan shall be required.

(1) Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity;

(2) Any privately owned land clearing and inert debris (LCID) landfill;

(3) Any tree removal and associated land disturbances, as determined by the erosion control officer on an land in anticipation of any land-disturbing activity in any phase or permitting with the county; and

(4) Any area cleared for use as waste water treatment/disposal or any associated easements.

(C) *Plan submission.* Three copies of the plan shall be filed with the county and a copy shall be simultaneously submitted to the County Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity. The county shall forward to the Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table of the tract.

(D) *Financial responsibility and ownership.*

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

- (1) Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity. The statement shall include or be accompanied by the following:
  - (a) The mailing and street address of the principal place of business for the person/entity financially responsible (a P.O. box is not acceptable);
  - (b) The mailing and street address of the principal place of business for the land owner(s) (a P.O. box is not acceptable);
  - (c) A complete list of partners, managing members and registered agents if the responsible entity or land owner is a group of individuals;
  - (d) A signed seal from a licensed state notary public; and
  - (e) A copy of the current deed for the property.
- (2) If the financially responsible person is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this chapter or rules or orders adopted or issued pursuant to this chapter.
- (3) If the financially responsible person is different from the current land owner, an agreement signed by both parties must be provided allowing the financially responsible person to conduct the land-disturbing activity on the property.

(E) *Environmental Policy Act document.* Any plan submitted for a land-disturbing activity for which an environmental document is required by the State Environmental Policy Act (G.S. §§ 113A-1 et seq.) or by a county ordinance adopted pursuant to the State Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The county shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to this chapter shall not begin until a complete environmental document is available for review.

(F) *Content of plan.*

- (1) 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 chapter. All plan submittals must also include the following content:
  - (a) A map with the location of all existing vegetation, soil classifications and rock outcrops, including a tabulation of these areas and occurrences that will be removed or disturbed as a result of the proposed land-disturbing activity;
  - (b) The location of all proposed utility improvements, including sanitary disposal systems;
  - (c) The location of all proposed dwellings, structures and other buildings;
  - (d) Profiles and cross sections of all proposed roads and all proposed cut or fill activities;

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(e) The location of proposed roads, structures, topography and erosion and sedimentation control devices and practices: and

(f) A separate map of all existing conditions, topography, structures and roads for the parcel.

(2) Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the county, on request.

(3) All plans submitted for approval must be sealed by a NC Registered Landscape Architect, NC Registered Land Surveyor or a Professional Engineer licensed by the state of North Carolina. (Ord. passed 7-15-2013)

(G) *Soil and Water Conservation District comments.* The District shall review the plan and submit any comments and recommendations to the county within 20 days after the District received the plan or within any shorter period of time as may be agreed upon by the District and the county. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(H) *Timeline for decisions on plans.* The county will review all plans submitted to them within 30 days of receipt and will, in writing, notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to review a plan within 30 days of receipt shall be deemed approval.

(I) *Approval and expiration of plans.*

(1) The county shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. The county shall condition approval of plans upon the applicant's compliance with county, state and federal water quality laws, regulations and rules.

(2) All plan approvals will expire two years from the date on the approval letter unless a land-disturbing permit has been obtained within that initial two-year period and remains in effect as provided in § 164.12(H).

(J) *Disapproval based on riparian buffers or compliance record.*

(1) The county shall disapprove a plan or draft plan if, based upon the content of the plan, the county determines that implementation of the plan would result in a violation of the rules adopted by the Environmental Management Commission or the county to protect riparian buffers adjacent to surface waters.

(2) The county may disapprove a plan upon finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

(a) 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;

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(b) 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;

(c) 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; or

(5) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

(3) For purposes of this division, an applicant's record shall be considered for only the two years prior to the application date.

(4) In the event that a plan is disapproved pursuant to this division, the county shall so notify the Director of the State Division Land Resources within ten days of the disapproval. The county shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding any other appeal provisions of this chapter, the applicant may appeal the county's disapproval of a plan directly to the State Sedimentation Control Commission.

(K) *Notice of activity initiation.* No person may initiate a land-disturbing activity before notifying the county of the date that land-disturbing activity will begin. This shall be satisfied by completing and submitting the construction notification card provided by the county with the land-disturbing permit.

(L) *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.

(M) *Required revisions.*

(1) After approving a plan, if the county, either upon review of the plan or inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the county shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved plan, the county determines that the plan is inadequate to meet the requirements of this chapter, the county may require any revision of the plan that is necessary to comply with this chapter.

(2) The financially-responsible person(s) is required to notify the county erosion and sedimentation control staff, in writing, of any revision to the approved plan during the course of construction. The county staff will determine if revised plans must be submitted, reviewed and approved.

(N) *Amendment to a plan.* Applications for amendment of a plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until a time as the amendment is approved by the county, the land-disturbing activity shall not proceed except in accordance with the plan as originally approved.

(O) *Failure to file a plan.* Any person engaged in land-disturbing activity, that exceeds 20,000 square feet, who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(P) *Deadlines for response.* When the person submitting the plan fails to respond to a disapproval letter from the erosion control division staff with either revised plans or written correspondence within 90 days, the county will assume that the application for plan approval has been abandoned. The county will give warning in writing to the person submitting the plan before terminating the review. Plan review fees are not refundable when an application is abandoned.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008) Penalty, see § 164.99

### § 164.11 BASIC CONTROL OBJECTIVES.

An erosion and sedimentation control plan may be disapproved if the plan fails to address the following control objectives or any of the requirements of this chapter:

(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 must be identified and receive special attention;

(B) *Limit time of exposure.* All land-disturbing activities must 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 off-site sedimentation damage; and

(F) *Manage stormwater runoff.* When the increase in the velocity and quantity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, the sedimentation and erosion control plan is to include measures to mitigate the increases to minimize accelerated erosion of the site and increased sedimentation/accelerated erosion of the receiving channel.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.12 PERMITS.

(A) *Issuance.* It shall be unlawful to conduct any land-disturbing activity for which an erosion and sedimentation control plan is required without first obtaining a land-disturbing permit from the county. Permits may be obtained by approval of an erosion and sedimentation control plan, completion of the land-disturbing permit application and by submitting the appropriate fees. No permit shall be issued until a time as the county is assured that the proposed land-disturbing activity will be carried out in accordance with the proposed Soil erosion and sedimentation control plan.

(B) *Planning Board approvals.* A land-disturbing permit for a project that requires approval of the County Planning Board will not be issued until the time that the Planning Board has granted construction plan approval. Documentation of the Planning Board approval must be provided to the County Erosion and Sedimentation Control Office.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(C) *Additional permits.* Land-disturbing permits for projects that require approval from the United States Army Corps of Engineers or the Department's Division of Water Quality will not be issued until the county is provided documentation of the approvals or that the project is exempt from obtaining these approvals. Other required state or federal permits may be considered in the same manner for the issuance of a land-disturbing permit.

(D) *Preconstruction meeting.* A preconstruction meeting with County Erosion and Sedimentation Control will be required prior to the issuance of any land-disturbing permit.

(E) *Additional documentation.* The county may require copies of the bid documents for the site construction after the bids have been awarded.

(F) *Limitations.* The county may deny issuance of a land-disturbing permit upon finding that an applicant, or a parent, subsidiary or other affiliate of the applicant has, since approval of the plan, engaged in any of the compliance-related conduct specified in § 164.10(J) for which the county may also disapprove a plan.

(G) *Exceptions.* No permit shall be required for a land-disturbing activity that does not require erosion and sedimentation control plan, except as provided in § 164.13.

(H) *Permit expiration and renewal.*

(1) The land-disturbing permit shall be valid for two years from the date on the permit. If no substantial construction activity has begun within that initial two-year period, the permit becomes null and void.

(2) If the land-disturbing activity has substantially begun, but a certificate of completion has not been issued within two years of the date on the permit, the permit must be renewed in order for land-disturbing activity to continue.

(3) A permit may be renewed by submitting a renewal application 30 days prior to the expiration date and the appropriate land disturbance permit renewal fee.

(4) Failure to renew the land-disturbing permit, in accordance with this section, is the same as failure to submit an erosion and sedimentation control plan in accordance with the chapter.

(5) Long term land-disturbing activities that require a permit under this chapter such as LCID sites, stockpiles, storage yards, borrow areas and the like will be required to renew the land-disturbing permit as described above until all areas are completed as per the plan and restored and stabilized as determined by the Erosion and Sedimentation Control Officer.

(I) *Self-inspection and monitoring.* All sites receiving a land-disturbing permit from the county must be inspected by the financially responsible person(s), or an agent thereof, at a minimum of once a week and within 24 hours of any rainfall of one-half inch or greater. Copies of all self-inspection reports must be provided to the County Erosion and Sedimentation Control Office within 15 days of the inspection. Self-inspection reports may be submitted in paper or electronic form. Self-inspections must be performed until a certificate of completion has been issued by the county.

(J) *Completion.* All site improvements, as shown on the approved plan, shall be completed by the expiration date of the permit and a certificate of completion obtained from the county.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

### (K) *Revocation of permit.*

(1) Whenever a person conducting a land-disturbing activity is not complying with the provisions of this chapter, the land-disturbing permit, the approved erosion and sedimentation control plan or any amendments to the plan, the Erosion and Sedimentation Control Officer may revoke the land-disturbing permit for the site.

(2) Notice of revocation may be sent to the person conducting the land-disturbing activity by registered or certified mail, return receipt requested, or by any other means provided in G.S. § 1A-1, Rule 4.

(3) Upon receipt of the revocation notice, the financially-responsible person(s) must immediately order all land-disturbing activities to stop except those which are specifically directed towards bringing the site into compliance. Once the site has been inspected and remedial work approved by the erosion control staff, the responsible party may reapply for a land-disturbing permit and pay the appropriate fee.

(4) Resumption of land-disturbing activities other than those necessary to bring the site back into compliance before the re-issuance of the land-disturbing permit will constitute a violation of this chapter.

(5) The person conducting the land-disturbing activity may appeal the revocation of a permit following procedures set out in § 164.19(A) of this chapter.  
(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008) Penalty, see § 164.99

### § 164.13 RESIDENTIAL LOT DISTURBANCE PERMITS.

(A) Any land-disturbing activity associated with the construction or placement of a single-family or multi-family residence that will uncover 25,000 or less square feet and that does not require an erosion and sedimentation control plan pursuant to § 164.10 shall require a residential lot disturbance permit. The permit will be issued upon compliance with the following requirements:

(1) Completion and submission of the financial responsibility and land-disturbing permit application forms as required for a permit under § 164.12;

(2) Compliance with a typical lot erosion and sedimentation control plan specifying a set of standard erosion and sedimentation control device details as specified in the *North Carolina Sedimentation Manual* that will be provided by the county;

(3) Submission of a lot survey showing the proposed home, septic, driveway and clearing limit location;

(4) Submission of the GIS map identifying the type of slopes on the site as required by § 164.06; and

(5) Payment of the fee for a residential lot disturbance permit, which shall be a fixed amount and not calculated per acre.

(B) (1) All land-disturbing activity associated with a residential lot disturbance permit will be subject to inspections, maintenance and other applicable sections of this chapter. The county may require the installation of additional controls as the land-disturbing activity commences to address localized site

## **CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL**

conditions. Erosion or sedimentation damage that occurs as a result of the actions subject to a residential lot disturbance permit will be subject to the enforcement actions of this chapter.

(2) Land-disturbing activity associated with a residential lot disturbance permit is subject to the applicable requirements of § 164.06.

(3) If a land-disturbing activity associated with a residential lot disturbance permit is conducted in or near any surface water, as documented by the county, a plan may be required as specified in § 164.10.

(4) A certificate of completion will be issued as specified in § 164.15(B) when the land-disturbing activity is complete and all areas associated with the disturbance are stabilized in accordance with the typical lot erosion and sedimentation control plan and this chapter. The certificate of completion will be necessary to obtain a certificate of occupancy from the county.  
(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### **§ 164.14 FEES.**

(A) The county may establish a fee schedule for the review and approval of plans, the issuance of land-disturbing permits and residential lot disturbance permits, the renewal of permits and other actions associated with the application of this chapter.

(B) In establishing the fee schedule, the county shall consider the administrative and personnel costs incurred for reviewing the plans and for related compliance activities.

(C) All fees submitted to the county for plan reviews and permits are non-refundable and non-transferable.  
(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### **§ 164.15 CERTIFICATES OF COMPLIANCE AND COMPLETION.**

(A) *Certificate of compliance.*

(1) No land alterations, clear-cutting of trees, grading, cutting or filling associated with a land-disturbing permit shall commence until erosion and sedimentation control measures have been installed and a certificate of compliance has been issued by the county.

(2) Land disturbance shall be limited to only those areas necessary to install erosion and sedimentation control devices prior to the issuance of the certificate of compliance.

(B) *Certificate of completion.*

(1) Upon completion of all land-disturbing activities and the restoration and stabilization of all areas pursuant to a land-disturbing permit or a residential lot disturbance permit, the county will issue a certificate of completion. The following requirements must also be met to be eligible for the certificate of completion:

(a) A minimum of 90% cover of vegetation established for two growing seasons (applicable only to land-disturbing permit);

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(b) All proposed structures on the approved plan must be complete and in place (applicable only to land-disturbing permit);

(c) A stable conveyance of post-construction runoff into receiving channels or waters with no visible erosion; and

(d) All outstanding violations, corrective actions and/or civil penalties assessed by the county must be settled.

(2) All temporary erosion and sedimentation control devices must be removed and the areas restored with vegetation or other acceptable ground cover.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.16 DESIGN AND PERFORMANCE STANDARDS.

All erosion and sedimentation control devices implemented in connection with a land-disturbing activity must comply with the following design and performance standards.

(A) *Temporary erosion and sedimentation control devices.* All temporary devices must be designed using the following standards or the *North Carolina Erosion and Sediment Control Planning and Design Manual*, whichever is more restrictive.

(1) *Drainage areas.* The maximum drainage area for any temporary erosion and sedimentation control device will be ten acres.

(2) *Slopes.* The maximum allowable slopes to be constructed in any temporary erosion and sedimentation control device will be two to one (2:1).

(3) *Stabilization.* All applicable temporary devices shall be stabilized with seven calendar days.

(4) *Runoff.* Runoff for all temporary devices must be calculated using the following parameters:

(a) A minimum of a 0.5 rational C value (or comparable for alternative calculation procedures);

(b) The most conservative rainfall intensity/time of concentration possible (i.e., highest intensity/shortest time of concentration); and

(c) The peak rate of runoff from the 25-year frequency storm.

(5) *Volume.* All temporary devices, which require volume calculations, used to trap or settle sediment shall be designed using a value of 3,600 cubic feet per disturbed acre.

(6) *Surface area.* All temporary devices, that require surface area calculations, used to trap or settle sediment must be designed using a minimum of 400 square feet per cubic foot per second of inflow from the design storm.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(7) *Baffles.* All temporary devices used to trap or settle sediment will utilize one row of baffles per ten feet of basin/trap design length. Under no circumstance shall any basin or trap use less than three baffles. Baffles must be constructed of porous material (no silt fence) and arranged so that all runoff entering the device passes through all baffles prior to dewatering.

(8) *Swale and ditches.*

(a) All temporary and permanent swales or ditches will be designed to convey runoff from the two- and ten-year, 24-hour storms in a stable manner. Calculations must be provided to document velocity and flow rate of a vegetated and bare soil condition. Velocity in any channel must not exceed the rates specified in the Maximum Permissible Velocities Table below.

(b) The following is a table for maximum permissible velocity for stormwater discharges in feet per second (F.P.S.) and meters per second (M.P.S.).

<i>Maximum Permissible Velocities Table</i>		
<i>Material</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Alluvial silts (colloidal)	5.0	1.5
Alluvial silts (non-colloidal)	3.5	1.1
Coarse gravel (non-colloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Fine gravel	5.0	1.5

<i>Maximum Permissible Velocities Table</i>		
<i>Material</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Fine sand (non-colloidal)	2.5	0.8
Graded, loam to cobbles (non-colloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Ordinary firm loam	3.5	1.1
Sandy loam (non-colloidal)	2.5	0.8
Shales and hard pans	6.0	1.8
Silt loam (non-colloidal)	3.0	0.9
Stiff clay (very colloidal)	5.0	1.5

**CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL**

<i>Maximum Permissible Velocities Table</i>		
<i>Material</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Source: This table has been adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowance velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels and by 0.8 for highly sinuous channels.		

(B) *Cut and fill limitations.* The county erosion and sedimentation control staff may impose limits on the amount of cut or fill of earth allowed per acre for a land-disturbing activity. The limits will be based on an evaluation of the proposed site development and existing conditions performed by the county staff. A cut-and-fill analysis may be required prior to any plan approval.

(C) *HQW zones.* The design and performance standards specified in this section shall also apply as the minimum standards for land-disturbing activity in designated high-quality water zones. (Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

**§ 164.17 ADDITIONAL MEASURES.**

Whenever the county determines that significant 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 will be required to and shall take additional protective action. (Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008) Penalty, see § 164.99

**§ 164.18 RESPONSIBILITY FOR MAINTENANCE.**

(A) 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 chapter, the Act or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(B) The financially responsible person(s) will be responsible for the installation, maintenance, removal and restoration of all erosion and sedimentation control devices and the establishment of permanent stabilization until a certificate of completion is issued by the county. If any portion of a site, including building lots, is transferred, sold or otherwise conveyed to another party prior to issuance of a certificate of completion, the financially responsible person must notify the county of this within 30 days of transfer.

(C) Items that will require ongoing maintenance until a certificate of completion is issued will include, but not be limited to:

(1) Restoration of all temporary or permanent erosion control devices to ensure proper function;

## **CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL**

(2) Removal of sediment from all temporary or permanent devices prior to accumulation becoming 50% of the design capacity; and

(3) Maintenance of ground cover including mowing, fertilizing and over-seeding.

(D) Where individual building lot construction begins before a certificate of completion is issued for a land-disturbing activity, the financial responsible person(s) for the overall site will remain responsible for site maintenance. If an agreement is created between the financially responsible person(s) for the site and the individual lot regarding maintenance of the erosion and sedimentation control measures, a copy of the agreement may be required by the county.

(E) If after a certificate of completion is issued for the overall site it is determined by the county that the land-disturbing activity associated with an individual lot that is subject to the control of this chapter is creating an erosion or sedimentation impact offsite or on the overall site, then the responsibility for maintenance or remediation will be with the individual lot owner or person in possession or control of that lot where the land-disturbing activity is occurring.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### **§ 164.19 PLAN APPEALS.**

(A) *Appeals.* Except as provided in division (B) below, the disapproval or modification by the county of any proposed plan or a land-disturbing permit shall entitle the person submitting the plan or permit to a public hearing, to appeal the decision, if the person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification.

(1) A public hearing held pursuant to this section shall be conducted by the County Board of Commissioners within 30 days after the date of the request for a hearing pursuant to procedures adopted by the county.

(2) The County Board of Commissioners will render its final decision on any plan or land-disturbing permit within 30 days of the public hearing.

(3) If the county upholds the disapproval or modification of a plan or land-disturbing permit following the public hearing, the person submitting the plan or permit is entitled to appeal the county's decision to the State Sedimentation Control Commission as provided in G.S. § 113A-61(c) and 15A NCAC 4B .0118(d).

(B) *Alternative appeals.* In the event that a plan is disapproved pursuant to § 164.10(J) or a land-disturbing permit denied pursuant to § 164.12(F), the applicant may appeal the county's disapproval of the plan directly to the State Sedimentation Control Commission.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### **§ 164.20 INSPECTIONS AND INVESTIGATIONS.**

(A) *Inspection.* Agents, officials or other qualified persons authorized by the county, will periodically inspect land-disturbing activities to ensure compliance with the approved erosion and sedimentation control plan, the Act, this chapter or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the letter of approval of each plan.

(B) *Willful resistance, delay or obstruction.* No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of the county while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(C) *Investigation.* The county shall have the power to conduct an investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, 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.

(D) *Statements and reports.* The county shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(E) *Additional measures.* If, through inspections, the county determines that significant erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of all protective practices required by the approved soil erosion and sedimentation control plan, the person conducting the land-disturbing activity will be required to take additional protective action.

(F) *Notice of violation.* If the county determines that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter or rules or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by registered or certified mail, return receipt requested, or by any other means provided in G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this chapter, or rules or orders adopted pursuant to this chapter, and inform the person of the corrective actions that need to be taken to comply with the Act, this chapter or rules or orders adopted pursuant to this chapter. 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 chapter.

(G) *Continuing notice of violation.* If the county determines that a person engaged in land-disturbing activity has failed to comply with the corrective actions required by a notice of violation, a continuing notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this chapter, or rules or orders adopted pursuant to this chapter, and inform the person of the corrective actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. 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. § 113A64 and this chapter.

(H) *Stop work order.*

(1) The county may issue a stop work order if it finds that a land-disturbing activity is being conducted in violation of this chapter or of any rule adopted or order issued pursuant to this chapter, that the violation is knowing and willful, and that either:

(a) Off-site sedimentation has eliminated or severely degraded a use in a surface water or that degradation is imminent;

(b) Off-site sedimentation has caused severe damage to adjacent land or that damage is imminent; or

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(c) The land-disturbing activity is being conducted without an approved plan.

(2) The stop work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the county pursuant to division (A) above, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop work order is in effect. A copy of this section shall be attached to the order.

(3) The stop work order shall be served by the Sheriff of the county or by some other person duly authorized by law to serve process as provided by G.S. § 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop work order in a conspicuous place at the site of the land-disturbing activity. The county shall also deliver a copy of the stop work order to any person that the county has reason to believe may be responsible for the violation.

(4) The directives of a stop work order become effective upon service of the order. Thereafter, any person notified of the stop work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in this chapter. A stop work order issued pursuant to this section may be issued for a period not to exceed five days.

(5) The county shall designate an employee to monitor compliance with the stop work order. The name of the employee so designated shall be included in the stop work order. The employee so designated, or the county, shall rescind the stop work order if all the violations for which the stop work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The county shall rescind a stop work order that is issued in error.

(6) The issuance of a stop work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to G.S. Ch. 150B, Article 4. The petition for judicial review shall be filed in the Superior Court of the county in which the land-disturbing activity is being conducted.

(7) The county shall file a cause of action to abate the violations which resulted in the issuance of a stop work order within two business days of the service of the stop work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident Superior Court Judge or any judge assigned to hear the motion for the temporary restraining order shall hear and determine the motion within two days of the filing of the complaint. The Clerk of the Superior Court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the Clerk of the Superior Court within 30 days of the filing of the complaint.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008) Penalty, see § 164.99

### § 164.21 INJUNCTIVE RELIEF.

(A) *Violation of local program.* Whenever the county has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the county, or any term, condition or provision of an approved plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the county, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of the county in which the violation is occurring or is threatened.

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(B) *Abatement of violation.* Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008) Penalty, see § 164.99

### § 164.22 RESTORATION AFTER NONCOMPLIANCE.

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

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008) Penalty, see § 164.99

### § 164.23 EFFECTIVE DATE.

This chapter became effective on January 1, 2006. This chapter has been revised on December 2, 2008

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)

### § 164.99 PENALTY.

#### (A) *Civil penalties.*

(1) *Civil penalty for a violation.* Any person who violates any of the provisions of this chapter, or a rule or order (including, but not limited to, a stop work order) adopted or issued pursuant to this chapter, 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. The maximum civil penalty amount that the county may assess per violation is \$5,000. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) *Civil penalty assessment factors.* The County Manager or his/her designee shall determine the amount of the civil penalty based upon the following factors:

- (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 chapter.

(Ord. passed 7-15-2013)

## CHAPTER 164: SOIL EROSION AND SEDIMENTATION CONTROL

(3) *Notice of civil penalty assessment.* The County Manager of his/her designee 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, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days, by filing a petition for a contested case under G.S. Ch. 150B, Article 3.

(Ord. passed 7-15-2013)

(4) *Collection.* If a person does not pay a civil penalty within 30 days after it is due, the county 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. A civil action must be filed within three 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.

(5) *Credit of civil penalties.* Civil penalties collected pursuant to the chapter shall be deposited in the county's Forfeitures Fund to be disbursed to the County Board of Education.

(B) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, 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 which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

(Ord. passed 3-21-2005; Ord. passed 1-1-2006; Ord. passed 12-2-2008)