

EVERY COUNTY SEDIMENTATION & EROSION ORDINANCE
(ADOPTED – JULY 17, 2006)

“QUICK SHEET OF CHANGES”

North Carolina Land Quality Sedimentation & Erosion Program Updates:

1. Mandatory Standard for land-disturbing activity. G.S. 113A-57, Section VII (amendment). Old Statutes: Slopes left exposed will, within thirty (30) working days or one-hundred twenty (120) calendar days of completion of any phase of grading, whichever period is shorter; be planted or otherwise provide with groundcover, devices, or structures sufficient to restrain erosion.

Fifteen (15) working days or Twenty one (21) calendar days

2. ^{or} Storm Water Discharge Permit required: N.C. Division of Water Quality
N.C.G.S. 143-215-1

*All land disturbing activities are required to obtain a NPDES: Storm-water Discharge.....Permit N.C. G 010000

3. Section XIII: Responsibility of Maintenance

✓ ➤ Require a copy of the Grading Contractor's Contract to verify responsibility of measures of installation.

4. Section VII: Mandatory Standards for Land Disturbing Activity

A. Buffer Zones:

- 1) High Quality Waters: (HQW) 35 foot undisturbed buffer for residential
And a 100 foot buffer for commercial sites.
- 2) Trout Water-C classifications for N.C. Division of Water Quality. A
25 foot buffer for residential and a 50 foot buffer for commercial sites.
- 3) Watershed Buffers: Already a part of the Watershed Ordinance
- Drinking Water: Watershed Protection Buffer

a. W.S.- II: 30 foot buffer low density 6-24% (residential- built upon)

a. continued:

100 foot buffer high density 12-30% (commercial-built upon)

- b. WS-III: 30 foot buffer low density 12-30% (residential-built upon)
100 ft. buffer high density 24-50% (commercial-built upon)
- c. WS-IV: 30 foot buffer low density 24-50% (residential-built upon)
100 ft. buffer high density 24-70% (commercial-built upon)
- d. WS-V: Determined by Avery County Trout Water-C Classification
25 foot buffer low density (residential)
50 foot buffer high density (commercial)
- e. New: No hazardous industries to be located in Water Shed area.
Hazardous Industries are determined by North Carolina
Division of Water Quality and the North Carolina discharge.
Affluent Sewage: Any and all industries must meet drinking
Water standards. Also, hazardous industries are deemed by
the North Carolina Division of Environment and Natural
Resources.
- f. Hillside Development Regulations: Hillside area definition are for
the purpose of this section, a hillside area is defined as any lot,
parcel, or tract of land which meet all of the following standards.
- 1) Is located within the Avery County Jurisdiction, exclusive of
Municipalities and their Extra-territorial Jurisdiction.
 - 2) Is defined as a commercial development site; inclusive of a
Major or minor sub-division.
 - 3) Has an average slope of its natural terrain of 18 percent or
greater.
 - 4) Average slope determination:
 - a. Contour map required, each application for a minor or major
subdivision and/or commercial site which meets the
standards set forth in the hillside definition shall include a
Contour Map which includes a scale and contour interval on
the site plan to determinè the average slope of a lot, parcel,
or tract of land in its natural state.
 - b. Calculation of natural average slope: The natural average
slope is calculated using the following formula:

$$S/A \% = 0.0023 \times I \times L$$
 Where: S = Average natural slope of parcel in percent
 I = Contour interval of map in feet with said contour
 Intervals to be established at 5 ft. intervals
 L = Total length of the contour line within the parcel
 In feet.

b. continued:

A = Area of the parcel in acres (0.0023 = Constant square feet into acres)

In addition, property owner may submit an alternate method of slope calculation for consideration by the Avery County Planning Board. These methods may include, but are not limited to the following methods: weighted average, slope mapping, other field based techniques, etc.

Once "S" or the average natural percent is calculated and rounded off to the nearest whole number. These results shall be used to determine development requirements.

C. Site Plan Requirement:

- All residential sites with an average slope greater than 25% (4 to 1) shall be required to have front, back and side elevation drawings to scale and may require a seal by a North Carolina design professional.
- All commercial sites with an average slope of greater than 15% shall be required to have front, back and side elevations drawn to scale and sealed by a North Carolina design professional.
- Maximum cut slope 12 to 14 feet in height (1) required to be terraced over 12 feet (2) Terrace/bench slopes: minimum six (6) feet
- Maximum fill slope shall not be greater than a 66% (1.5 to 1) finished slope.
- Structures placed on *fill* shall be required to have an engineered compaction test of minimum of 95% compaction. Engineered foundations may also be required at the discretion of the Avery County Building Inspection Staff.
- Structure site placement shall be in compliance with the Avery County Building Height Ordinance: Maximum 35 feet height is taken from the highest point of "natural grade".
- Areas with natural slopes over 40% shall not have fill slope of greater than 2 to 1 (50%); nor cut slopes greater than 1.5 to 1 (66%) unless designed by a geotechnical engineer.

Road and Driveway Requirements:

- Ditches under construction with slopes equal to or greater than $\geq 15\%$ shall be rip-rap solid.
- Ditches with finished slopes equal to or greater than $\geq 10\%$ shall have crossover culverts at a maximum of every 150 to 200 feet apart. Minimum 18" crossover culvert pipe size for road construction.
- Driveway pipe size: Minimum 15" pipe size

Road Grades: Slopes equal to or greater than $\geq 18\%$ must be paved; coincides with the Avery County Subdivision Ordinance.

- Consultation with a geotechnical engineer shall be required for road construction in areas of a tract in excess 1.5 to 1 (66%) natural slope; recommendations shall be submitted and reviewed.
- Road guardrails shall be required and installed to the N.C. D.O.T. Specifications.

Remedial Solution:

- North Carolina design professional/engineered retaining walls.
- North Carolina design professional/geotechnical engineered solutions.
- Terraced Slopes: Maximum 14 foot of cut slopes/Minimum 6 foot depth of benched slopes.

5. Issuance of Land Disturbing Permit: (Grading Permit)

No land disturbing permit shall be issued before a Site Plan Review and/or the Avery County Planning Board addresses concerns regarding geologic hazards, soil Stability, building-to site-relationships and/or similar characteristics and said plan has been approved by the Avery County Ordinance Administrator

No land disturbing activity is to commence until a "Grading Permit" is issued or the Ordinance Administrator allows preliminary site preparation.

✓County Work
Nancy Cook

731,100
2770881

12-4-95

AVERY COUNTY SOIL EROSION
AND SEDIMENTATION CONTROL ORDINANCE

12-4-95

Nancy Cook

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION.

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

Section I. Title

This ordinance shall be known as the Avery County Soil Erosion and Sedimentation Control Ordinance.

Section II. Purpose

This ordinance is adopted for the purposes of:

- (1) regulating certain land disturbing activities 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
- (2) establishing procedures through which these purposes can be fulfilled.

REC'D
95 DEC 11 8:33
COUNTY CLERK

Section III. Definitions

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

Accelerated Erosion--means any increase over the rate of natural erosion as a result of land disturbing activities.

Act--means 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--means one which controls the soil material within the land area under responsible control of the persons conducting the land disturbing

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

Being Conducted--means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

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

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

Commission--means the North Carolina Sedimentation Control Commission.

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

Department--means the North Carolina Department of Environment, Health, and Natural Resources.

Director--means the Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.

Discharge Point--means that point at which runoff leaves a tract of land.

District--means the Avery Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

Energy Dissipator--means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Erosion--means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

Ground Cover--means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

High Quality Waters--means those 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).

High Quality Water (HQW) Zones--means areas in the Coastal Counties that are within 575 feet of High Quality Waters, and for the remainder of the state areas that are within one mile and drain to HQW's.

Lake or Natural Watercourse--means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

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

Local Government--means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of this Act.

Natural Erosion--means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental

Parent--an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
conditions undisturbed by man.

Person--means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person Conducting Land-disturbing Activity--means any person who may be held responsible for a violation unless expressly provided otherwise by ordinance, the Act, or any order adopted pursuant to this ordinance and Act.

Person Responsible for the Violation--as used in this ordinance, and G.S. 113A-64, means:

- (a) the developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity; or
- (b) the land owner or person in possession or control of the land when he has directly or indirectly allowed the land disturbing activity or has benefitted from it or he has failed to comply with any provision of this ordinance, the Act, or any order adopted pursuant to this ordinance or the Act as imposes a duty upon him.

Phase of Grading--means one of two types of grading, rough or fine.

Plan--means erosion and sedimentation control plan.

Sediment--means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation--means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land disturbing activity or into a lake or natural water course.

Siltation--means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of a land disturbing activity; and which has been deposited, or is in suspension in water.

Storm Drainage Facilities--means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

Storm Water Runoff--means 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. from precipitation in any form. ?

Ten Year Storm--means the surface runoff resulting from a rainfall of an intensity expected to be equalled 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--means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five Year Storm--means the surface runoff resulting from a rainfall of an intensity expected to be equalled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Uncovered--means the removal of ground cover from, on or above the soil surface.

Undertaken--means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity--means the 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--means surplus materials resulting from on-site construction and disposed of at other locations.

Working Days--means days exclusive of Saturday, Sunday, and legal holidays during which weather or soil conditions permit land disturbing activity to be undertaken.

Section IV. Scope and Exclusions

2770885

This ordinance shall apply to land disturbing activities undertaken by any person, with the following exclusions:

- (1) those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton and peanuts, Christmas trees and native nursery plants; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of all such animals; bees and apiary products, fur animals; and
- (2) those undertaken on forestland for the production and harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) 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 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; and
- (3) activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- (4) land disturbing activity over which the State, by statute, has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

Section V. General Requirements

- (1) Plan Required. No person shall initiate any land disturbing activity which uncovers more than one acre without having an erosion control plan approved by Avery County.
- (2) 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.
- (3) More Restrictive Rules Shall Apply. Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

Section VI. Basic Control Objectives

An erosion and sedimentation control plan may be disapproved pursuant to Section XVII of this ordinance if the plan fails to address the following control objectives:

- (1) 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.
- (2) Limit Time of Exposure. All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) 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.
- (4) Control Surface Water. Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) Control Sedimentation. All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (6) Manage Storm Water Runoff. When the increase in the velocity of storm water runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

Section VII. 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:

- (1) Buffer Zone
 - (a) 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 Avery County 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.

- (b) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the strip disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
 - (c) The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
 - (d) Where a temporary and minimal disturbance is permitted as an exception by Section VII (1)(a) of this ordinance, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
 - (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards," in these waters.
- (2) 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 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

- (3) 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 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 VIII (2)(e) of this ordinance, provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days following completion of construction or development whichever period is shorter.
- (4) 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 Avery County.

Section VIII. Design and Performance Standards

- (1) Except as provided in Section VIII (2)(b) of this ordinance, erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed as to provide protection from the calculated maximum peak of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.
- (2) In High Quality Water (HQW) zones, the following design standards shall apply:
 - (a) 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.
 - (b) Erosion and sedimentation control measures, structures and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United

States Department of Agriculture, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

- (c) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that 2-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (d) 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.
- (e) 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 IX. Storm Water Outlet Protection

- (1) 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:
 - (a) the velocity established by the table in paragraph 4 of this section; or
 - (b) the velocity of the 10-year storm runoff in the receiving watercourse prior to development.

If conditions (a) or (b) 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%.

- (2) 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 Commission 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 are to:
 - (a) avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious,
 - (b) avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections,
 - (c) provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures,
 - (d) protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.
- (3) Exceptions. This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.
- (4) The following is a table for maximum permissible velocity for storm water discharges:

Material	Maximum Permissible Velocities	
	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (non-colloidal)	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.

Section X. Borrow and Waste Areas

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

Section XI. 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 XII. Operations in Lakes or Natural Watercourses

Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and

duration of 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 characteristics is provided.

Section XIII. 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, 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 XIV. Additional Measures

Whenever the County determines that significant sedimentation is occurring as a result of a 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.

Section XV. Existing Uncovered Areas

- (1) 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.
- (2) The County will serve upon the land owner 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.

- (3) The County reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.
- (4) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Section XVI. Permits

- (1) No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a permit therefore from the Avery County Department of Inspections, except that no permit shall be required for any land disturbing activity:
 - (a) for the purpose of fighting fires; or
 - (b) 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
 - (c) that does not exceed one acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- (2) Fees for permits may be established by the Board of Commissioners of Avery County.

Section XVII. Erosion and Sedimentation Control Plan

- (1) 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 and the Avery Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

- (2) Persons conducting land disturbing activity on a tract which covers one or more acres except as specified above shall file one copy of the erosion control plan with the County at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the County, 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 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.

- (3) Erosion control 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 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 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.
- (4) The Avery County Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the county 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 the county. Failure of the Soil and Water Conservation District to submit its comments within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.
- (5) The county 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 modifications, approved with performance reservations or disapproved. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The county must approve, approve with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the county determines that the plan is inadequate to meet the requirements of this ordinance, the county may require any revision 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 may establish an expiration date for erosion control plans approved under this ordinance.

- (6) 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 shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Section XVII(5) of this ordinance shall not begin until a complete environmental document is available for review.
- (7) 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 on request.
- (8) The county may disapprove an erosion control plan upon a 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;
 - (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;
 - (d) has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.
- For purposes of this subsection (8) an applicant's record may be considered for only the two years prior to the application date.
- (9) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the County, the land disturbing activities shall not

proceed except in accordance with the erosion control plan as originally approved.

- (10) Any person engaged in land disturbing activities who fails to file a plan in accordance with this ordinance, or who conducts a land disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this ordinance.

Section XVIII. Appeals

- (1) Except as provided in Section XVIII(2) of this ordinance, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:
 - (a) The disapproval or modification of any proposed erosion control plan by the Avery County Department of Inspections, shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modification.
 - (b) Hearings held pursuant to this section shall be conducted by the Avery County Planning Board within 30 days after the date of the appeal or request for a hearing.
 - (c) The Planning Board shall make recommendations to the Board of Commissioners of Avery County within seven (7) days after the date of the hearing on any erosion control plan.
 - (d) The Board of Commissioners shall render their final decision on any erosion control plan upon which a hearing is requested within thirty (30) days of receipt of the recommendations from the Planning Board.
 - (e) If the County 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 local government's decision to the North Carolina Sedimentation Control Commission as provided in Section 113A-61(c) of the General Statutes, and Title 15 NCAC 4B .0018 (d).
- (2) In the event that an erosion control plan is disapproved pursuant to Section XVII(8) of this ordinance, the County shall notify the Director of the Division of Land Resources of such disapproval within 10 days. The County 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 disapproval of the plan pursuant to Section XVII(8) of this ordinance directly to the Commission.

Section XIX. Inspections and Investigations

- (1) Agents, officials or other qualified persons authorized by the County will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval.
- (2) 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.
- (3) 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 G.S. 1A-1, Rule 4. The notice shall specify a date before 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. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this ordinance.
- (3) Avery County shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter, at any reasonable hour, upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activities. No person shall refuse entry or access to any authorized representative or agent of the County who requests entry for purpose of inspections, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such

representative while in the process of carrying out his official duties.

- (4) The county shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- (5) Avery County shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land disturbing activities.

Section XX. Stop Orders

Whenever land disturbing activity is being undertaken in a manner which is in violation of this ordinance, the Avery County Department of Planning and Inspections may order the work that is in violation to be immediately stopped. The stop order shall be in writing and directed to the person responsible for the violations, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Appeals from a stop order shall be made as prescribed in Section XVIII of this ordinance. Pending the ruling on the appeal, no further work may take place in violation of a stop order. Violation of a stop order constitutes a misdemeanor.

In addition, in accordance with N.C.G.S. 153A-361, Avery County's building inspectors, or other appointed agents, are authorized to issue stop orders for building permits where violations of this ordinance are taking place in connection with construction authorized by the building permit.

N.C.G.S. 153A-361. Stop Orders. Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance within five (5) days

after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance written notice of appeal, with a copy to the local inspector. The Commissioner shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and the Commissioner shall rule on the appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on an appeal, no further work may take place in violation of a stop order. Appeals from a stop order based on violations of any other local ordinance relating to buildings shall be taken to the local officials designated by that ordinance and shall be taken, heard, and decided in the same manner as prescribed herein for appeals to the Commissioner. Violation of a stop order constitutes a misdemeanor.

Section XXI. Penalties

(1) Civil Penalties.

- (a) Any person who violates any of the provisions of this ordinance, or rules or orders adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which 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 issues under G.S. 113A-65.1, or Section XX of this ordinance, is five hundred dollars (\$500.00). 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 as provided in Section XIX(3) 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 date of service of the notice of violation. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of continuing violation shall constitute a separate violation.
- (b) The Board of Commissioners 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 Board of Commissioners shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this ordinance. The notice of assessment shall be served by any means authorized under Section XIX(3) of this ordinance, and shall direct the violator to either pay the assessment or contest the assessment within 30 days after receipt of the notice of assessment, by written demand for a hearing. [A hearing on a civil penalty shall be conducted by the Board of Commissioners within 30 days after the date of receipt of the written demand for the hearing. The Board of Commissioners shall render its final decision on the civil penalty within 30 days of its first consideration of the appeal following the hearing. Appeal from the final decision of the Board of Commissioners shall be to the Superior Court of Avery County.]

- (c) If payment is not received within 30 days after demand for payment is made, 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 Avery County. Such civil actions 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.
 - (d) Civil penalties collected pursuant to this ordinance shall be credited to the general fund of the local government as nontax revenue.
- (2) 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 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000, or by both, in the discretion of the court.

Section XXII. Injunctive Relief

- (1) Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this ordinance or any rules 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, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Avery County.
- (2) 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 XXIII. Restoration of Areas Affected by Failure to Comply

The county may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure to 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 XXIV. Severability

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

Section XXV. Conflict With Other Ordinances

Whenever the provisions of this ordinance and any other ordinance impose overlapping or contradictory regulations, the ordinance which is more restrictive or imposes higher standards or requirements shall be controlling.

Section XXVI. Revisions

2770902

Avery County shall incorporate revisions required by the Commission within eight months following the receipt of the required revisions. If standards and provisions of this ordinance currently meet or exceed the required revisions the Commission shall be so notified within 90 days of their receipt.

Section XXVII. Effective Date

This ordinance shall be in full force and in effect from and after the 4th day of December, 1995.

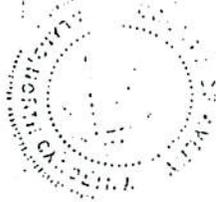
AVERY COUNTY

Dan Vance
Dan G. Vance, Chairman
Board of Commissioners

Attest:

Nancy H. Cook
Nancy H. Cook, Clerk

SEAL



2770903

STATE OF NORTH CAROLINA
COUNTY OF AVERY

The preceding Soil Erosion and Sedimentation Control Ordinance for Avery County, North Carolina, as being originally recorded in Book 240, at page 161, et. sec. and re-recorded with amendments in Book 263, at page 895, et. sec. is being re-recorded pursuant to amendments made by the Avery County Board of Commissioners on December 4, 1995 and approved by majority vote of the Board at said meeting of the Avery County Commissioners held on December 4, 1995. Action to adopt the amendments as herein presented followed a scheduled public hearing of the Board on November 6, 1995. The public hearing was duly advertised in accordance with North Carolina General Statutes.

The adopted amendments revised the following Sections of the Ordinance: Section III, IV, XVII, XVIII, XIX, XXI, XXII, and XXIII. These amendments are technical wording changes and clarifications for the administration and enforcement of the Ordinance, consistent with the State's model ordinance, which was revised 8/7/95.

Certified this 4th day of December, 1995.

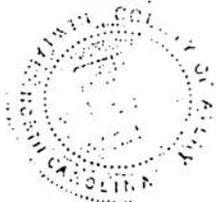
AVERY COUNTY BOARD OF COMMISSIONERS

By: Dan G. Vance
Dan G. Vance
Chairman

Attest:

Nancy H. Cook
Nancy H. Cook, Clerk

Seal:



NORTH CAROLINA } OFFICE OF REGISTER OF DEEDS
AVERY COUNTY }
THE FOREGOING CERT. OR ANNEXED CERT. OF
Mary P. Daniels N.P.
OF SAID CO., & STATE IS CERTIFIED TO BE CORRECT.
FILED FOR REGISTRATION AT 8:51 O'CLOCK AM
ON THE 15th DAY OF Dec 1995
AND REGISTERED IN THIS OFFICE IN BOOK 277
AT PAGE 881 THIS THE 15th
DAY OF December, 1995.

Jamela D. Baker
REGISTER OF DEEDS
BY Mhaxela Khalifa
ASSISTANT/DEPUTY

2770904

STATE OF NORTH CAROLINA
COUNTY OF AVERY

Before me, the undersigned, a Notary Public in and for said County and State, on this 4 day of December 1995, personally appeared Dan G. Vance, being and to me known to be the Chairman of the Board of Commissioners of the County of Avery, North Carolina, who, being by me duly sworn, says that by authority duly given by the Board of County Commissioners of said County, and as the act and deed of said Board of County Commissioners, the foregoing amendment to the Avery County Soil Erosion and Sedimentation Control Ordinance, dated as of _____, 1995, was signed by him as said Chairman of the Board of Commissioners on behalf and in the name of said County, and personally appeared, Nancy H. Cook, being and to me known to be the Clerk to the Board of County Commissioners who, being by me duly sworn, says that by authority duly given by said Board of County Commissioners she impressed the corporate seal of said County upon the foregoing Ordinance amendment in execution thereof for and on behalf of said County and that she attested the same as said Clerk to the Board of County Commissioners by affixing her signature thereon in attestation thereof, and said Dan G. Vance and Nancy H. Cook further acknowledge that said amendment is the act and deed of said Board of County Commissioners.

Witness my hand and notarial seal this the 4 day of December, 1995.

Mary B. Daniels
Notary Public

10-16-2000
My Commission Expires:

