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REGISTER OF DEEDS
BY: CHASE DELLINGER
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BK: RE 472
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RESOLUTION

RESOLUTION TO AMEND THE AVERY COUNTY SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

WHEREAS, the Avery County Inspections Department made a report to the Avery County Board of Commissioners on 3 December 2012 and recommended certain changes to the Avery County Soil Erosion and Sedimentation Control Ordinance; and

WHEREAS, the Avery County Board of Commissioners held a Public Hearing on 3 December 2012 to address the proposed changes; and

WHEREAS, Notice of Public Hearing of the Avery County Board of Commissioners was duly published prior to said Public Hearing; and

WHEREAS, on 3 December 2012 a Public Hearing was held and subsequently the Board, at a duly advertised meeting on 4 February 2013, made the below findings; and

WHEREAS, on 3 December 2012 a quorum was present and voted on by the Board of Commissioners, and a second vote was held on 4 February 2013, at which time a quorum was present;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Avery County, North Carolina, meeting in regular session on the 4th day of February 2013, makes the following findings of fact:

1. That the Ordinance was enacted in 1995 and subsequently amended;

2. That the Avery Inspections Department has recommended several technical changes to the Ordinance, to comply with the model ordinance proposed by the State of North Carolina; and

NOW, THEREFORE, BE IT RESOLVED that the Avery County Soil Erosion and Sedimentation Control Ordinance is restated and amended as shown on the attached for Soil Erosion and Sedimentation Control Ordinance for Avery County.

RE 472 1258

County of Avery

SOIL EROSION and SEDIMENTATION CONTROL ORDINANCE

Revision January 2013

SEDIMENTATION CONTROL COMMISSION

RALEIGH, NORTH CAROLINA

Submitted by:
Avery County Planning Department

County of Avery
Soil Erosion and Sedimentation Control Ordinance

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

NOW, THEREFORE, BE IT ORDAINED by the Avery County Board of Commissioners and the County of Avery hereby adopt the following ordinance.

Section 1 Title: Avery County Soil Erosion and Sedimentation Control Ordinance

Section 2 Purpose:

This ordinance is adopted for the purposes of:

(a) regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

(b) establishing the procedures through which these purposes will be fulfilled.

Section 3 Definitions

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

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

(b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

(c) Adequate Erosion Control Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

(d) Affiliate – means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

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

(t) Land-disturbing Activity - means any use of the land by any person in residential, industrial, education, 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.

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

(v) Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

(w) Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

(x) 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.

(y) Person Conducting Land-Disturbing Activity - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

(z) Person Responsible for the Violation – means:

(1) The developer or other person who has or holds himself 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 benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act

(aa) Phased Development-means: All site plans greater than 10 (ten) acres shall be submitted in **phases** and no one phase shall be greater than 10 (ten) acres. The land disturbing activity shall be limited to 2 (two) phases at one time or a maximum of 20 (twenty) acres of rough grade area open at any time. Upon completion of a site plan phase (finished grade established) then the developer may continue with the next phase to be rough graded.
*note: plan design; minimum road cross-section 200 feet.

(bb) Phase of Grading - means one of two types of grading: rough or finish.

Note: (aa) The designer shall submit each phase with a maximum of disturbed area of **10 acres.**

(t) Land-disturbing Activity - means any use of the land by any person in residential, industrial, education, 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.

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

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*note: plan design; minimum road cross-section 200 feet.

(bb) Phase of Grading - means one of two types of grading: rough or finish.

(cc) Plan - means an erosion and sedimentation control plan.

(dd) 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.

(ee) 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 watercourse.

(ff) 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.

(gg) Steep Slope - means a site with an average slope of 33% grade or greater, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

(hh) 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.

(ii) Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

(jj) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

(kk) Ten-Year Storm - means the storm water 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.

(ll) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

(mm) Twenty-five Year Storm - means the storm water 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.

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

(oo) 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.

(pp) 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.

(qq) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

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

Section 4 Scope and Exclusions

(a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the territorial jurisdiction of the County of Avery and The non-incorporated ares of Avery County. This Ordinance does not apply to Municipalities or incorporated areas in Avery County.

(b) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:

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

(i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
(ii) dairy animals and dairy products.
(iii) poultry and poultry products.
(iv) livestock, including beef cattle, sheep swine, horses, ponies, mules, and goats.
(v) bees and apiary products.
(vi) fur producing animals.
(vii) Christmas trees and Native nursery plants production.

(2) 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 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.

(3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

(4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

(5) An activity which is essential to protect human life during an emergency.

(c) Plan Approval Requirement for Land-Disturbing Activity. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval therefore from the Avery County Planning Department.

(d) 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.

(e) More Restrictive Rules Shall Apply - Whenever conflicts exists between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.

(f) Plan Approval Exceptions. Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed 43,560 square feet in surface area in rural areas and 21,780 square feet in North Carolina Division of Water Quality Watershed Protection Areas: WS-I, WS-II and WS-III. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

Section 5 Mandatory Standards for Land-Disturbing Activity

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

(a) Buffer zone

(1) Standard Buffer. 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.

(i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(ii) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(2) Trout Buffer. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Commission 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.

(i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(ii) Trout Buffer Measurement. 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 to the nearest edge of the disturbed area.

(iii) Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be disturbed 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.

(iv) Limit on Temperature Fluctuations. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh surface Water Classification and Standards."

(b) Graded Slopes and Fills Less Than 33% grade. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading,

(c) be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

(d) Fill Material. Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

(e) Ground Cover. Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 8(b)(5) of this ordinance, provisions for a ground cover sufficient to restrain erosion must be accomplished within 21 calendar days following completion of construction or development, whichever period is shorter.

(f) Prior Plan Approval. No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract; unless thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the Avery County Planning Department. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The Avery County Planning Department 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 de-watering or lowering the water table of the tract.

(g) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(h) Design Standards For Steep Slopes and Hillside Development:

Steep slopes and hillside areas are defined as follows for the purpose of this section; Steep slopes and hillside areas are any lot, parcel or tract of land which meet all of the following standards.

1) That is located in the Avery County Jurisdiction; exclusive of Municipalities and their Extra-territorial Jurisdictions.
2) That is defined as a commercial development site; inclusive of Major or Minor residential subdivision development.
3) That has and average slope of its natural terrain of 33% or greater (which is greater than or equal to three units horizontal distance to one unit of vertical distance) for the site of which is to be developed.
4) Average Slope Determination:
   a. Contour map required, each application for a major or minor residential subdivision and/or a commercial site which meets the standards set forth in the Steep Slope/Hillside definition shall include a contour map which includes a scale and contour intervals (5 foot intervals) on the site plan to determine 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 the parcel in percent
      I = Contour interval of the map in feet with said contour intervals to be established at five (5) foot intervals
      L = Total length of the contour line within the parcel in feet
      A = Area of the parcel in acres (0.0023 = constant sq. ft. into acres

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

      Once "S" or the average natural slope is calculated in a percentage and rounded off to the nearest whole number. These results shall be used to determine development requirements.
5) Road and Driveway Requirements:

a. Ditch line construction with finished grades greater than or equal 15% slopes shall have the bottom matted and rip-rap solid.
b. Ditch line construction with finished grades greater than or equal to 10% slopes shall be required to have crossover culverts a maximum of every 175. f et apart.
c. The minimum size crossover culvert for road construction is 18 inches in diameter.
d. The minimum size culvert for a driveway is 15 inches in diameter.
e. The maximum grade for a road to be constructed is 18% slope.
f. A geotechnical engineer shall be required for road construction in areas where the tract has natural slopes greater than 1.5 to 1 (66%) natural slopes, the recommendations shall be submitted to the Avery County Planning Department for review and approval.
g. When guardrails are required they shall be installed in a manner that meets N.C.D.O.T. standards.

6) Structural Retaining Walls and Boulder Wall Construction:
a. Structural retaining walls greater than 4 feet in height shall bear the seal of a design professional/structural engineer.
b. Boulder walls shall not be constructed greater than 6 feet in height or a proposed boulder walls greater than six (6) in height shall be required to have a structural engineer design and seal the plans and be required to give a letter upon completion that the boulder wall has been to constructed to the scope of the sealed plans.
   - Remedial option for boulder walls, boulder walls may built at a maximum of six (6) feet in height and then terraced with a 6 foot bench and a second six (6) foot high boulder wall may be constructed. This terracing method may be done a maximum of 5 lifts before a structural engineer will be required to design and seal the boulder wall structure.
   - All retaining wall structures: be it "structural, boulder or per-engineered" type construction is required to bare a design professional seal if any portion of the backfill is used to support footers, foundations, piers, pilasters, columns or any other structural member of a home or building to be constructed.

7) Remedial Solutions:
a. North Carolina design professional/engineer design and seal retaining wall drawings.
b. Terrace/bench slopes: Maximum of 16 feet from toe of fill slope vertical height to top of fill and terrace/bench 6 foot horizontal to toe of second cut slope or base of a second retaining wall structure.

8) Ground Cover for Steep Slopes and Hillside Development:
a. Ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a **steep slope** area within 7

working days or 14 calendar days following completion of construction or phase of development, whichever period is shorter.

Section 6 Erosion and Sedimentation Control Plan

(a) Plan Submission. A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than one acre on a tract. The plan(s) shall be submitted in **phases** with no one phase being greater than 10 (ten) acres of disturbed area, phased development shall be adhered to as defined in section 3 (aa) of this ordinance. Three (3) copies of the Plan shall be filed with the Avery County Planning Department, a copy shall be simultaneously submitted to the Avery County Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

(b) Financial Responsibility and Ownership. 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 (1) the person financially responsible, (2) the owner of the land, and (3) any 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. Except as provided in subsection (i) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

(i) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project..

(c) Environmental Policy Act Document. Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Avery County Planning Department, shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.

(d) Content. 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 Avery County Planning Department, on request.

(e) Soil and Water Conservation District Comments. The District shall review the Plan and submit any comments and recommendations to the Avery County Planning Department 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 Avery County Planning Department. 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.

(f) Timeline for Decisions on Plans. The Avery County Planning Department, 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 Plan within 30 days of receipt shall be deemed approval. The Avery County Planning Department, will review each revised Plan submitted to them and within 15 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 revised Plan within 15 days of receipt shall be deemed approval.

(g) Approval. The Avery County Planning Department shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The Avery County Planning department grant shall conditional approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. Plans approved under this ordinance shall have conditional approval for three (3) years from the date of plan approval from the Avery County Planning Department.

(h) Disapproval for Content. The Avery County Planning Department, shall disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.

(i) Other Disapprovals. The Avery County Planning Department may disapprove a Plan or draft Plans if implementation of the Plan would result in a violation of the rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Avery County Planning Department may disapprove a Plan upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

(i) 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;

(ii) 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.

(iii) 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;

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

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

In the event that a Plan is disapproved pursuant to this subsection, the Avery County Planning Department shall notify the Director of such disapproval within ten (10) days. The Avery County Planning Department shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved.

(j) Notice of Activity Initiation. No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that land-disturbing activity will begin.

(k) Preconstruction Conference. The developer or developers agent (engineer) is required to set preconstruction conference with the Avery County Planning Department's : Ordinance Administrator before any plan may be submitted for review. (the meeting is to evaluate the scope of the project for compliance with county ordinances and state and federal laws).

(l) Display of Plan Approval. A Plan approval issued under this article 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. After approving a Plan, if the Avery County Planning Department, 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 Avery County Planning Department 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 Avery County Planning Department determines that the Plan is inadequate to meet the requirements of this ordinance, the Avery County Planning Department may require any revision of the Plan that is necessary to comply with this ordinance.

(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 such time as said amendment is approved by the Avery County Planning Department, 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 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.

(p) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by Section 6 (p) of this Ordinance and G.S. 113A-54.1(e), the following apply:

(i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:
(a) all of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion

and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (1)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;

(b) the completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating acopy of the approved erosion and edimentation control plan or by completing, dating and signing an inspection report;

(c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in Sub-item (1)(e) of this Rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;

(d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and

(e) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

(ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be

included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.

(iii) The inspection shall be performed during or after each of the following phases of a plan:
(a) installation of perimeter erosion and sediment control measures;
(b) clearing and grubbing of existing ground cover;
(c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
(d) completion of storm drainage facilities;
(e) completion of construction or development; and
(f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

Section 7 Basic Control Objectives

An erosion and sedimentation control Plan may be disapproved if the Plan fails to address the following control objectives:

(a) Identify Critical Areas - On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

(b) Limit Time of Exposure - All land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time.

(c) Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(d) Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(e) Control Sedimentation - All land-disturbing activity is to be planned and

conducted so as to prevent off-site sedimentation damage.

(j) 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, a Plan is 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 8 Design and Performance Standards

(a) Except as provided in Section 8(b)(2) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

(b) HQW Zones. In High Quality Water (HQW) zones the following design standards shall apply:

(1) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five 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.

(3) Settling Efficiency. 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 millimeter) size soil particle transported into the basin by the runoff of that two 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.

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

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

SECTION 9 Storm Water Outlet Protection

(a) Intent. Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.

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

(1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or

(2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

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

Maximum Permissible Velocities Table

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

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

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

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

(1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;

(2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections:

(3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and

(5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

(d) Exceptions - This rule shall not apply where it can be demonstrated to the Avery County Planning that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

Section 10 Borrow and Waste Areas

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

Section 11 Access and Haul Roads

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

Section 12 Operations in Lakes or Natural Watercourses

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall

minimize unnecessary changes in the stream flow characteristics.

Section 13 Responsibility for Maintenance

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

Section 14 Additional Measures

Whenever the Avery County Planning Department, 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.

Section 15 Existing Uncovered Areas

(a) All uncovered areas existing on the effective date of this ordinance which resulted from land-disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(b) The Avery County Planning Department, shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the Commission or by the Avery County Planning Department. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in GS 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(c) The Avery County Planning Department, reserves the right to require preparation and approval of a Plan in any instance where extensive control measures are required.

(d) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Section 16 Permits/Fees

(a) The Avery County Board of Commissioners, may establish a fee schedule for the review and approval of Plans.

(b) In establishing the fee schedule, the Review will be set at $25.00 dollars for each site plan up to a 10 acre phase (all plans must be phased at 10 ten acres or less) and $100.00 for the site grading permit for each site plan approved.

Section 17 Plan Appeals

(a) Except as provided in Section 17(b) of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed Plan by the Avery County Planning Department, 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 modifications.

(2) A hearing held pursuant to this section shall be conducted by the Avery County Planning Board/Avery County Board of Adjustments, within 45 (forty five) days after the date of the appeal or request for a hearing.

(4) The Avery County Planning Board/Avery County Board of Adjustments conducting the hearings shall make recommendations to the Avery County Board of Commissioners, within 15 days after the date of the hearing on any Plan of which has been appealed and brought for a public hearing.

(4) The Avery County Board of Commissioners will render its final decision on any Plan within 30 days of receipt of the recommendations from the agency conducting the hearing.

(5) If the Avery County Board of Commissioners upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan may then be entitled to appeal the Superior Court of Avery County for a decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d).

Section 18 Inspections and Investigations

(a) Inspection. Agents, officials, or other qualified persons authorized by the County of Avery, 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 sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate 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 Avery County Planning Department, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(c) Notice of Violation. If it is determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance or rule, or order adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify the date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance.

(d) Investigation. 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 reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

(e) Statements and Reports. Avery 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.

(f) Stop Work Orders. Whenever a land disturbing activity is being undertaken in a manner which is in violation of this ordinance, the Avery County Planning Department may order the work that results in "continuing violation" to be immediately stop. The "Stop Work Order" shall be in writing and directed to the person (s) responsible for the continuing violations, and shall state the specific work to be stopped, the specific reason(s) for the stoppage and the conditions under which the work may be resumed. Appeals of a "Stop Work Order" may be

made as prescribed in Section 17 "Plan Appeals" of this ordinance. Pending the ruling on the appeal, no further work may take place in violation of the "Stop Work Order" issued to the project. A violation of a "Stop Work Order" shall constitute a penalty under a Class III misdemeanor.
In addition, in accordance with N.C.G.S. 153A-361, the Avery County Building Inspections Department, or other appointed agents are authorized to issue a "Stop Work Order" for building permits where violations of this ordinance are taking place in connection with construction authorized by the building permit.

Section 19 Penalties

(a) Civil Penalties

(1) Civil Penalty for a Violation. Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty.
The maximum civil penalty amount that the Avery Count may assess per violation is five thousand dollars ($5,000.00). 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 Avery County Planning Department staff shall determine the amount of the civil penalty based upon the following factors:
(i) the degree and extent of harm caused by the violation,
(ii) the cost of rectifying the damage,
(iii) the amount of money the violator saved by noncompliance,
(iv) whether the violation was committed willfully, and
(v) the prior record of the violator in complying of failing to comply with this ordinance.

(3) Notice of Civil Penalty Assessment. The Avery County Planning Department staff 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 after receipt of the notice of assessment, by filing a petition for contested case in the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes.

(4) Final Agency Decision: The final agency decision shall be made by the

County of Avery Board of Commissioners in accordance with Articles 3 and 4 of Chapter 150B of the General Statutes.

(5) Appeal of Final Decision. Appeal from the final decision of the Avery County Board of Commissioners shall be to the Superior Court of Avery County where the violation occurred. Such appeals must be made within 30 days of the final decision of the Avery Co. Board of Commissioners.

[Note: The foregoing procedures are offered as guidance to local governments, to ensure that civil penalties are accompanied by appeal procedures including hearings opportunities.]

(6) Collection. If payment is not received within 30 days after it is due, the Avery County Planning Department may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(7) Credit of Civil Penalties. Civil penalties collected pursuant to this ordinance shall be credited to the Civil Penalty collected pursuant to this ordinance shall be credited shall be credited to the general fund of the local government as not-tax revenue.

(b) Criminal Penalties. Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which 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 included a fine not to exceed $5,000 as provided in G.S. § 113A-64.

Section 20 Injunctive Relief

(a) Violation of Local Program. Whenever the governing body 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 Avery County Board of Commissioners, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the Avery County Planning Department, for injunctive relief to restrain the violation or threatened

violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(b) 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 ordinance.

Section 21 Restoration After Non-Compliance

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

Section 22 Severability

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

Section 23 Effective Date

This ordinance becomes effective on 4 February 2013

By: Kenny R Poteat — Kenny Poteat: Chairman
Avery County Board of Commissioners

By: Cindy Turbyfill — Cindy Turbyfill: Clerk
Avery County Board of Commissioners

By: Michaelle Poore — Michaelle Poore: Attorney
County of Avery

The motion to adopt this resolution was voted upon at the 3 December 2012 regular meeting, such motion made by Commissioner Martha Hicks, Seconded by Commissioner Glenn Johnson and passed by a second vote at the 4 February 2013 regular meeting of the Board of County Commissioners, with such motion made by Commissioner MH, Seconded by Commissioner GJ, and passed by a majority of those present.

Kenny Poteat, Chariman

ATTEST:

Cindy Fulbright

[Clerk/Secretary]