

CHAPTER 154: EROSION AND SEDIMENT CONTROL

Section

General Provisions

- 154.01 Definitions
- 154.02 Authority
- 154.03 Governing body
- 154.04 Purpose
- 154.05 Scope and exclusions

Requirements

- 154.20 General requirements
- 154.21 Storm water outlet protection
- 154.22 Basic control objectives
- 154.23 Design and performance standards

Plans

- 154.40 Erosion and sediment control plans
- 154.41 Responsibility for maintenance
- 154.42 Borrow and waste areas
- 154.43 Access and haul roads
- 154.44 Operations in lakes or natural watercourses

Permits

- 154.60 Permits to conduct land-disturbing activity

Administration and Enforcement

- 154.70 Inspections and investigations
- 154.71 Plan required where extensive control measures are necessary
- 154.72 Surety
- 154.73 Haywood County Sediment Control Board
- 154.99 Penalty
- 154.100 Effective Date and Revision of Original Ordinance

(Ord. passed 08-01-1988; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 7-19-21; Am. Ord. passed 03-04-2024)

GENERAL PROVISIONS

§ 154.01 Definitions -

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

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 Person conducting the land-disturbing activity.

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.

Approved Sediment Control Plan - A written course of action including maps, drawings, calculations, or assumptions, found by the Ordinance Administrator or other duly appointed agent to satisfy all requirements of this Ordinance which details the timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off-site sediment damage associated with a land-disturbing activity.

Applicant - Any person, whether the person financially responsible for the land-disturbing activity or their duly appointed agent, who submits a formal application, to the Ordinance Administrator or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this Ordinance, or who files with the Sediment Board, a motion to appeal a decision by the Ordinance Administrator or their agent as contained in this Ordinance.

Being Conducted - means a land-disturbing activity has been initiated and not deemed complete by the Ordinance Administrator.

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

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

Chapter – means this Chapter 154 of the Haywood County Code of Ordinances.

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 and permanent ground cover has been established.

Continuing Violation – means a violation of this Ordinance which occurs after the date for compliance as set forth in a Notice of Violation.

Department - means the North Carolina Department of Environmental Quality

Detention Storage - Any structure or device designed to alter the volume of storm water runoff and prevent increased storm flow as a result of a land-disturbing activity.

Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.

Discharge Point or Point of Discharge - means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

District - means the Haywood (County) Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

Disturbed Areas - Any area of land or water that is subject to a land-disturbing activity as defined in this Ordinance.

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.

Final Objective - The type of structure or use resulting from the land-disturbing activity.

Forest Lands - All land which is capable of supporting a merchantable stand of timber and is being actively used for a use which is compatible with timber growing.

Forest Practices - Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

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 02B .0224 which is incorporated herein by reference including subsequent amendments and additions.

High Quality Water (Hqw) Zones – means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining 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.

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.

Land-Disturbing Permit (sometimes “Permit”) – means the document issued by the County which allows land-disturbing activity to commence and proceed in accordance with the requirements of this Ordinance.

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.

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.

Sediment Damage - means sediment that has been transported by erosion within (“on-site”) or across the boundaries of a tract (“off-site”) containing a land-disturbing activity. “Off-site damage” includes sediment that has been deposited in any lake or natural watercourse or upon any lands public or private not owned by the person responsible for a land-disturbing activity where the sediment originated.

Ordinance Administrator – means the Haywood County Development Services Director or designee(s). The Ordinance Administrator has the power to enter all lands at reasonable times to ensure that this Ordinance is being enforced.

Parent - means an affiliate that directly, or indirectly through one or more intermediaries, controls another Person.

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 the 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.

Phase Of Grading - means those grading phases (“rough” or “fine”) defined in the North Carolina Self-Inspection requirements and this Ordinance.

Person Who Violates or Violator, as used in N.C.G.S. 113A-64, means: 1) any landowner or other Person who has financial or operational control over the land-disturbing activity, or 2) who has directly or indirectly allowed the activity, and, 3) failed to comply with any provision of the Act or this Ordinance.

Plan - means an erosion and sedimentation control plan.

Public Road - means a road or street which is maintained by the North Carolina Department of Transportation for use by the public, or roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public for use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that has been constructed and is in use.

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.

Sediment Board - means the Haywood County Sediment Control Board as organized by this Ordinance.

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.

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.

Stormwater Runoff - means the flow and volume of water resulting from precipitation in any form.

Subsidiary - means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.

Ten-Year Storm – means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Ordinance Administrator to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

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 a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Ordinance Administrator to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff for 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 land-disturbing activity as defined in this Ordinance.

Velocity - means the speed of flow of water through a cross-section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.

Violation – means any land-disturbing activity covered under the provisions of this Ordinance which is planned or carried out without regard to all the contents and responsibilities thereof or an approved erosion and sediment control plan.

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

Waste Areas – means areas used for the stockpiling or burial of surplus materials resulting from onsite construction or disposed of at other locations.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.02 AUTHORITY.

- (A) The Commissioners enact this Ordinance under the authority of N.C.G.S. Chapter 113A, Article 4, as amended and N.C.G.S. 153A-121 and 160D-101 *et seq.*
- (B) This Ordinance shall be cited as the Haywood County Erosion and Sediment Control Ordinance.

Am. Ord. passed 03042024

(C) This Ordinance shall be effective upon enactment and supersedes the prior Ordinance, originally enacted on August 1, 1988 and subsequent amendments thereto.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.03 GOVERNING BODY.

The governing body of this Ordinance is Haywood County Board of County Commissioners, acting through the Haywood County Sediment Control Board, and Haywood County Development Services Office.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.04 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 procedures through which these purposes can be fulfilled.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.05 SCOPE AND EXCLUSIONS.

(A) *Scope.*

(1) Geographical Scope of Regulated Land-Disturbing Activity. This Ordinance shall apply to land-disturbing activity within the territorial jurisdiction of Haywood County. This Ordinance also applies to those areas within the territorial or extraterritorial jurisdiction of municipalities upon adoption of an agreement between the County and such municipalities.

(a) This Ordinance shall apply to all land-disturbing activities, with the exclusions set out in this Ordinance.

(b) A Land-Disturbing Permit, contingent upon an approved plan and submission of other application documents and fees, shall be required for all land-disturbing

activities comprising one-half (21,780 square feet) or greater acres (including, for example, both temporary or permanent access and haul roads, borrow pits, waste areas, or other associated activities).

- (c) A Land-Disturbing Permit contingent upon submission of an appropriate application for land-disturbing activities of less than one-half acre (<21,780 square feet) (including, for example, both temporary and permanent access and haul roads, borrow pits, waste areas, or other associated activities). This requirement applies to commercial and residential sites obtaining a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.

(B) *Exclusions*

- (1) 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:

- (a) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

- (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, llamas, sheep, swine, horses, ponies, mules, and goats.

- (v) bees and apiary products.

- (vi) fur producing animals.

- (vii) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.

- (b) An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity

undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the tract.

- (c) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the North Carolina General Statutes.
 - (d) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in N.C.G.S. 113A-56(a).
 - (e) An activity which is essential to protect human life during an emergency.
 - (f) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- (2) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

REQUIREMENTS

§ 154.20 GENERAL REQUIREMENTS.

(A) Persons conducting land-disturbing activities.

- (1) 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.
- (2) Plan Approval Requirements for Land-Disturbing Activity. No person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining Plan approval pursuant to this Ordinance.
- (3) Responsibility and Requirements. It is the responsibility of the person conducting the land-disturbing activity or their agent to apply to the Ordinance Administrator for the appropriate permit required under this Ordinance.

- (a) If any land-disturbing activity requires a permit as defined in this Ordinance, none of the following documents or permits, where applicable, shall be issued until an erosion control plan has been approved by the Ordinance Administrator:
 - (i) A septic tank permit.
 - (ii) A building permit.
- (b) Any of the above permits may be applied for at the same time as the permit required by this Ordinance.
- (4) Permit Application. Requests for a permit to conduct land-disturbing activities shall contain an erosion and sediment control plan, such application documents as determined by the County, and application fees.
- (5) Timeframe for Submission. Applications shall be submitted at least 30 calendar days prior to the planned initiation of the land-disturbing activity.
- (6) Plan Approval Requirement. No person shall initiate any land-disturbing activity subject to the requirements of this Ordinance without having an erosion and sediment control plan approved by the Ordinance Administrator.
- (7) More Restrictive Rules Shall Apply. Whenever conflicts exist between federal, state, or local laws, ordinance(s), or rules, the more restrictive provision shall apply.
- (B) Mandatory Standards for Land-Disturbing Activity. No land-disturbing activity subject to the control this Ordinance shall be undertaken except in accordance with the following mandatory requirements:
 - (1) *Buffer zone*.
 - (a) 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.

- (b) 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."
- (2) Graded slopes and fills. 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, 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.
- (3) Fill Material. Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
- (4) Slope Ordinance Compliance. Where necessary, persons conducting land-disturbing activity are also required to comply with the Haywood County Slope Ordinance.

(5) Ground Cover. Appropriate erosion and sedimentation control devices and practices shall be installed sufficient to retain the sediment generated by the land- disturbing activity within the boundaries of the tract during construction and shall provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development.

(C) National Pollutant Discharge Elimination System (NPDES) Requirements.

Any Person conducting a land-disturbing activity of one acre or more in size is required to obtain a permit to discharge construction storm water from their site. This is a water quality issue based upon accurate control measures that are properly maintained on the site. NPDES permits are issued by NCDEQ. NPDES permits contain requirements for items such as ground cover requirements that may be stricter than the general slope requirements of this Ordinance.

(D) Prior plan approval. No Person shall initiate any land-disturbing activity that will disturb more than one-half acre or more 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 Ordinance Administrator. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The County shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

(E) Any land-disturbing activity for which a plan is required by this Ordinance shall be conducted in accordance with the approved erosion and sedimentation control plan.

(F) If, for any reason, the approved erosion and sediment control plan cannot be followed, the person financially responsible shall contact the Ordinance Administrator and either: 1) Cease the land-disturbing activity and stabilize, or effectively control, the site until a revised plan that is adequate for the conditions can be developed and approved, or, 2) Continue the activity under the on-site direction of a licensed engineer who is competent to control and oversee the activity. In either case, submission of a revised plan is still required in a timely manner. The financially responsible person shall be responsible for self-inspection of the land-disturbing activity and accommodate unforeseen circumstances that would require further design considerations.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 7-19-21; Am. Ord. passed 03-04-2024)

§ 154.21 STORM WATER OUTLET PROTECTION

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

Am. Ord. passed 03042024

(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.
- (3) 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%.

<u>Maximum Permissible Velocity Table:</u> . The following is a table for maximum permissible velocities for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):		
<u>Material</u>	<u>F.P.S.</u>	<u>M.P.S.</u>
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

--	--	--

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

(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 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 Ordinance Administrator that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(E) *Design standards.* The first one inch of rainfall shall be required to percolate on the site. This shall be accomplished through best management practices such as buffer areas, grassed swales,

filter strips, porous pavement, infiltration basins and trenches, water quality inlets, retention ponds, extended detention ponds and other measures.

(F) *Storm water drainage plan.* A storm water drainage plan is required for all developments meeting the requirements of 154.05(A)(b). It shall be prepared by a registered engineer, landscape architect or, to the extent permitted by law, a registered land surveyor and shall contain the following general elements:

- (1) A general site plan showing all impervious surfaces, the location and size of all storm water drainage structures (if any), best management practice measures, and infiltration areas.
- (2) Topographic features (finished grade).
- (3) General or typical cross-sectional drawings of all storm water drainage structures, if any.
- (4) The total number of square feet of impervious surfaces and its relative percentage of the total lot.
- (5) Any other information deemed necessary by the Ordinance Administrator.

(G) *Operation and maintenance.* It shall be the responsibility of the property owner to ensure that whatever storm water management devices or measures are installed are kept in good working order.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§154.22 BASIC CONTROL OBJECTIVES.

- (A) An erosion and sedimentation control Plan may be disapproved 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 activities are to be planned and conducted to limit exposure to the shortest time specified in N.C.G.S. 113A-57, the rules of this Ordinance, or as directed by the Ordinance Administrator.
 - (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 upgrade of exposed areas shall 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 to prevent off-site sedimentation damage.
- (6) Manage Stormwater Runoff - Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.23 DESIGN AND PERFORMANCE STANDARDS.

- (A) Except as provided in 154.23(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 latest edition of the United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering Field Handbook", 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 upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.
 - (2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be 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 latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Handbook" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
 - (3) Sediment Basin Design. Sediment basins within HQW zones shall be designed and constructed according to the following criteria:
 - (a) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre.

- (b) have a minimum of 3600 cubic feet of storage area per acre of disturbed area.
- (c) have a minimum surface area of 325 square feet per cfs of the Twenty-five Year Storm (Q25) peak flow.
- (d) have a minimum dewatering time of 48 hours.
- (e) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.
- (f) Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (B)(3)(b) through (B)(3)(e) of this sub-section, if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.
- (g) 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 forms of ditch liners proven as being effective in restraining accelerated erosion. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

PLANS

§ 154.40. EROSION AND SEDIMENT CONTROL PLANS

- (A) Plan Submission. A Plan shall be prepared for all land-disturbing activities subject to this Ordinance whenever the proposed activity will disturb one half acre or more on a tract. The Plan shall be filed with the Ordinance Administrator; a copy shall be simultaneously submitted to the Haywood Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

- (B) An erosion and sediment control plan is required for all land-disturbing activities for any residential site subject to a permit from the Haywood County Building Inspections Office (construction or placement) which is less than one-half acre in disturbed area. This requirement also applies to commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area. Plans for sites under one-half acre of disturbed area may be submitted on forms provided by the County.
- (C) Persons conducting land-disturbing activities on a tract which cover one-half or greater acres, shall file two copies of the erosion and sediment control plan with the Ordinance Administrator at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. If the Ordinance Administrator or the Ordinance Administrator, 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 Ordinance Administrator will require a revised plan. Pending the preparation of a revised plan, permits to conduct land-disturbing activities may be rescinded and work stopped, or the work may be allowed to continue under conditions outlined by the Ordinance Administrator.
- (1) Financial Responsibility and Ownership. Plans will not be approved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the Person financially responsible for the land-disturbing activity or their 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 154.40(C)(1)(a) or 154.40(C)(8), 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.
- (a) 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.
- (2) 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 (N.C.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 this Ordinance shall not begin until a complete environmental document is available for review.

- (3) Content. The Plan required by this section shall contain architectural or 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 Ordinance Administrator upon request. Additionally, application forms and technical guidance documents can be located on the County's web site.
- (4) Timeline for Decisions on Plans. The Ordinance Administrator 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, or disapproved. Failure to approve, approve with modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The Ordinance Administrator 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, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.
- (5) Approval. The Ordinance Administrator 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 County may establish an expiration date, not to exceed three (3) years, for Plans approved under this Ordinance whereby no land-disturbing activity has been undertaken.
- (6) Disapproval for Content. The Ordinance Administrator may 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.
- (7) Other Disapprovals. The Ordinance Administrator shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The County may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under 154.40(C)(8) upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:
 - (a) Is conducting or has conducted land-disturbing activity without an approved plan or has received notice of violation of a plan previously approved by the

Commission or a local government and has not complied with the notice within the time specified in the notice.

- (b) Has failed to pay a civil penalty assessed by the Commission or the Ordinance Administrator by the time the payment is due.
- (c) Has been convicted of a misdemeanor pursuant to N.C.G.S. 113A-64(b) or any criminal provision of this Ordinance.
- (d) Has failed to substantially comply with State rules or this Ordinance.

If an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Ordinance Administrator pursuant to 154.40(C)(7), then the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The Ordinance Administrator shall advise the applicant or the proposed transferee and that Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of 154.73(D), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

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

(8) Transfer of Plans. The Ordinance Administrator may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

- (a) The Ordinance Administrator may transfer a plan if all the following conditions are met:
 - (i) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
 - (ii) The Ordinance Administrator finds all the following:
 - (a) The plan holder is one of the following:
 - (i) A natural person who is deceased.
 - (ii) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - (iii) A Person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

- (iv) A Person who has sold the property on which the permitted activity is occurring or will occur.
 - (v) The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - (vi) The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - (vii) There will be no substantial change in the permitted activity.
-
- (b) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 - (c) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
 - (d) Notwithstanding changes to law made after the original issuance of the plan, the Ordinance Administrator may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Ordinance Administrator from requiring a revised plan pursuant to N.C.G.S. 113A-54.1(b).
- (9) Notice of Activity Initiation. No Person may initiate a land-disturbing activity before notifying the Ordinance Administrator of the date that land-disturbing activity will begin.
 - (10) Preconstruction Conference. When deemed necessary by the Ordinance Administrator, a preconstruction conference may be required and noted on the approved plan.
 - (11) Display of Plan Approval. A Plan approval issued under this Ordinance shall be prominently displayed until all construction is complete, all temporary measures have been removed, 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.
 - (12) Required Revisions. After approving a Plan, if the Ordinance Administrator, 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 Ordinance Administrator shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the Ordinance Administrator. If following commencement of a land-disturbing activity pursuant to an approved Plan, the Ordinance Administrator determines that the Plan is inadequate to meet the requirements of this Ordinance, the Ordinance Administrator may require any revision of the Plan that is necessary to comply with this Ordinance.

- (13) 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 Ordinance Administrator, the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.
- (14) 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.
- (15) 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 N.C.G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. 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 N.C.G.S. 113A-61.1.

Where inspections are required by 154.40(C)(15) of this Ordinance or N.C.G.S. 113A-54.1(e), the following apply:

- (a) The inspection shall be performed during or after each of the following phases of the plan:
 - (i) initial installation of erosion and sediment control measures;
 - (ii) clearing and grubbing of existing ground cover;
 - (iii) completion of any grading that requires ground cover;
 - (iv) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - (v) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new

owner or Person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.

- (b) Documentation of self-inspections performed under Item (1) of this Rule shall include:
- (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - (iii) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.
 - (iv) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. In this Ordinance, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.41 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.

Am. Ord. passed 03042024

(A) Additional Measures

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

(B) Fees

- (1) The County may establish a fee schedule for the review and approval of Plans.
- (2) Current fee schedules may be found on the County's website or obtained from the Development Services Office.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.42 BORROW AND WASTE AREAS.

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

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.43 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.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.44 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 changes in the stream flow characteristics. Persons conducting these types of activities are advised that permits/approved plans may be required by the U.S.A.C.E. and N.C.D.E.Q.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

PERMITS

§ 154.60 PERMITS TO CONDUCT LAND-DISTURBING ACTIVITIES

- (A) No person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a permit from the Ordinance Administrator except that no permit shall be required for any land-disturbing activity:
 - (1) For the purpose of fighting fires. A plan for erosion and sediment control may be required after the fire danger has passed.
 - (2) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, if sediment control measures have been utilized to protect against off-site damage.
- (B) One half-acre or more. To obtain a land-disturbing permit, the following is required for disturbed sites of one-half or more acres (21,780 square feet or more):
 - (a) the completed form of financial responsibility and ownership,
 - (b) the completed and signed erosion and sediment control plan design checklist,
 - (c) the correct plan review fee,
 - (d) an approved erosion and sediment control plan (two copies),
 - (e) the completed affidavit for land-disturbing activities.
 - (2) If the intent is to disturb one-half acre or more on a tract of land regardless of time frame, a land-disturbing permit must be obtained prior to beginning the land-disturbing activity.
- (C) Less than one half acre. A plan review-permitting fee will be charged for any residential site subject to a permit from the Haywood County Building Inspections Office (construction or placement) that is less than one-half acre in disturbed area. A plan review-permitting fee will be charged for commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area. These “Under ½ Acre of Disturbed Area” permits are obtained from the Development Services Office on pre-printed, fillable forms. The fee schedule for these permits can be obtained from Inspections, Development Services, or on the County’s web site.

(D) *Applications for permits.*

- (1) Clear lines of communication between the Ordinance Administrator and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this Ordinance, but to avoid costly delays and resubmittal of applications by the developer as well. This section outlines procedures which will ensure speedy processing of applications for permits to conduct land-disturbing activities.
- (2) The person conducting the land-disturbing activity shall submit the application to the Ordinance Administrator for review and approval at least 30 days prior to initiating any land-disturbing activity covered by this Ordinance. Applications shall be received through the website, hand delivered, or by mail. In addition, all applications must contain an erosion and sediment control plan which meets all requirements set forth in this Ordinance.
- (3) Prior to submitting a formal application for a permit, persons conducting land-disturbing activities may notify the Ordinance Administrator, briefly describing the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities, and a request for application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the Ordinance Administrator. A permit will not be issued based upon a notification of intent.
- (4) Forms, application requirements, and plan assistance are available upon request from the Development Services Office. All requests for pre-development planning, submission of plans and applications, and requests for assistance will be handled through the office of the Ordinance Administrator.
- (5) The Ordinance Administrator shall review the application and accompanying plan for completeness and compliance with this Ordinance.
 - (a) Applications found to meet all requirements of this Ordinance shall be approved, and a permit to conduct land-disturbing activities will be issued by the Ordinance Administrator within 30 days after receipt of the application.
 - (b) After review, applications which do not meet all requirements of this Ordinance shall be approved with modifications, or disapproved. The application shall be returned to the applicant in writing detailing specific areas where the standards of this Ordinance have not been met. The applicant shall be notified within 30 days after receipt by the Ordinance Administrator that the plan has been disapproved. If the application is disapproved, the applicant may resubmit the application after

performing the necessary changes, for additional review. If the application is disapproved, no permit to conduct land-disturbing activities will be issued.

- (c) For applications found to be partially complete, the Ordinance Administrator shall request specific additional information by registered mail. If sufficient information is provided and the plan meets all requirements of this Ordinance, a permit to conduct land-disturbing activities shall be issued. When deemed necessary by the Ordinance Administrator, a permit may be issued with performance reservations or approved contingent upon modifications to the plan. Under no circumstances shall the 30-day time period for approval or disapproval be extended by a request for additional information.
 - (d) Failure to approve or disapprove a complete and properly submitted application for a permit to conduct land-disturbing activities within 30 days of receipt by the Ordinance Administrator shall be deemed approval. A submitted revision to a previously disapproved application must be approved or disapproved within 15 days of receipt by the Ordinance Administrator, or it is deemed approved.
 - (e) If, following commencement of a land-disturbing activity pursuant to an approved plan, the Ordinance Administrator determines that the plan is inadequate to meet the requirements of this Ordinance and the Ordinance Administrator may require such revisions as are necessary to comply with this Ordinance.
- (6) If the submitted plan is approved by the Ordinance Administrator, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.
- (a) Permits shall be issued for the specific time frame requested or for incremental time periods if requested on the application. The permit shall lapse at the end of the time frame specified. It may be reissued by the Ordinance Administrator at the written request of the permit holder, when deemed necessary. Written request for an extension of a permit to conduct land-disturbing activities must be made in writing at least ten days prior to expiration of the existing permit.
 - (b) Permits shall be prominently displayed on the site until the project is certified complete by the Ordinance Administrator or the release of all applicable surety. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

ADMINISTRATION AND ENFORCEMENT

§ 154.70 INSPECTIONS AND INVESTIGATIONS.

- (1) Inspection. 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 sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.
- (2) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (3) Notice of Violation. If the Ordinance Administrator determines 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 N.C.G.S. Sec. 1A-1, Rule 4. The notice shall specify a date by which the Person must comply with the Act, or this Ordinance, or rules, or orders adopted pursuant to this Ordinance, and inform the Person of the actions that need to be taken to comply with the Act, this Ordinance, or rules or orders adopted pursuant to this Ordinance. Any Person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in N.C.G.S. 113A-64 and this Ordinance. If the Person engaged in the land-disturbing activity has not received a previous Notice of Violation under this section, the County shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Ordinance Administrator, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. The Notice of Violation may be served in the manner prescribed for service of process by N.C.G.S. Sec. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.
- (4) Investigation. The County shall have the power to conduct inspections and investigations as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance. If anyone associated with conducting the land-disturbing activity is on site, the Ordinance Administrator or their designee shall present appropriate credentials for the purpose of inspecting a land-disturbing activity. The Ordinance Administrator or their designee may enter at reasonable times and may inspect any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

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

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.71 PLAN REQUIRED WHERE EXTENSIVE CONTROL MEASURES ARE NECESSARY.

The Ordinance Administrator reserves the right to require the preparation and approval of an erosion and sediment control plan in any instance where extensive control measures are necessary.

(Ord. passed 8-1-88; Am. Ord. passed 03-04-2024)

§ 154.72 SURETY.

- (A) Application for a permit to disturb five or more acres shall require the posting of a security bond, with the Ordinance Administrator, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the County Attorney, in an amount of \$5000 per acre or parts of acres of disturbed area as set forth in the approved erosion and sediment control plan, to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this Ordinance. Such surety shall be valid until the land-disturbing activity is completed in accordance with the approved sediment control plan and released by the Ordinance Administrator as discussed in the following subsections.
- (B) Land-disturbing activities not in compliance with this Ordinance or an approved sediment control plan for 30 calendar days after Notice of Violation is sent, shall be subject to forfeiture of the surety.
- (C) Forfeiture of the surety shall in no way relieve responsible parties of penalties, fines, or other requirements of this Ordinance.
- (D) Forfeited surety may, but is not required to be, used to establish erosion control structures or ground covers in accordance with an approved sediment control plan. Forfeited surety funds not used to mitigate the damage caused by the violation shall be remitted to the County as a civil penalty, pursuant to section 154.99 of this Ordinance.
- (E) Upon completion of improvements as required by this Ordinance, written notice shall be given by the permit holder to the Ordinance Administrator. The Ordinance Administrator shall perform an inspection of the improvements, and if the conditions of this Ordinance are met, the County shall, within 30 calendar days of the date of notification of completion, authorize in writing the release of applicable surety.

(F) The determination of forfeiture of applicable surety shall be subject to appeal to the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 03-04-2024)

§ 154.73 HAYWOOD COUNTY SEDIMENT CONTROL BOARD.

(A) *Creation.* The Haywood County Sediment Control Board (hereafter “Sediment Board”) is created. The Sediment Board shall be a five-member board composed of the following appointees:

- (1) One supervisor from the Haywood Soil and Water Conservation District Board, nominated by that board. An additional District Supervisor may serve as an alternate.
- (2) The Chairman of the Board of County Commissioners or their designee.
- (3) One appointee of the County Commissioners from each of the following groups or organizations:
 - (i) A representative of real estate developers, home builders, or a private organization with similar functions.
 - (ii) A licensed general contractor, surveyor, engineer, real estate attorney, or similar occupation.
 - (iii) A representative of the general public.
- (4) All members shall be appointed to staggered four-year terms with all elected officials serving only during the duration of their office.
- (5) Individuals nominated for the Sediment Board shall be approved by the Haywood County Board of Commissioners, who shall make the final appointments.
- (6) In the event that qualified individuals from the designated organizations or groups are unavailable, the County Commissioners shall appoint members at large.
- (7) Prior to undertaking their duties on the Sediment Board, members shall qualify by taking an oath of office pursuant to N.C.G.S. Chapter 160D-309.

(B) *Responsibilities.* The Sediment Board shall be responsible for providing direction and policy for the sediment control program in general. In addition, the Sediment Board shall hear appeals of staff decisions by the Ordinance Administrator.

(C) Members of the Sediment Board shall not vote on any decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Board member shall not vote on any matter if the property owner or financially responsible party is a person with whom the Board member has a close familial, business, or other associational relationship.

(D) *Appeal.*

(1) The appeal of a staff decision of a Notice of Violation or a disapproval or approval with modifications of a plan shall be conducted by the Sediment Board as a quasi-judicial proceeding in accordance with N.C.G.S Sec. 160D-405 and these provisions:

(a) The applicant shall file written notice of appeal within 30 days after receipt of written Notice of Violation or plan disapproval or an approval with modifications.

(b) A hearing held pursuant to this section shall be conducted by the Sediment Board within 30 days after the date of the appeal.

(c) The Sediment Board shall issue its decision, within 15 days after the date of the hearing on any Plan or Notice of Violation.

(2) An appeal of the decision of the Sediment Board shall be made to the Superior Court of Haywood County in accordance with N.C.G.S. 160D-406 in the nature of certiorari.

(a) If the County upholds the disapproval or modification of a proposed Plan following the hearing, the Person submitting the Plan shall then be entitled to appeal the County's decision to the Commission as provided in N.C.G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

(i) A Notice of Violation for failure to maintain existing sediment-control structures or ground covers after completion of the shall be subject to appeal before the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 7-19-21; Am. Ord. passed 1-3-22; Am. Ord. passed 03-04-2024)

§ 154.99 PENALTY.

Any person conducting land-disturbing activities who does not apply for a permit as specified in this Ordinance, or who conducts land-disturbing activities except in accordance with an approved erosion and sediment control plan shall be in violation of this Ordinance and subject to applicable penalties as follows:

(A) *Civil penalties.*

- (a) 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 County 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. When the Person has not been assessed any civil penalty under this subsection for any previous violation, and that Person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- (b) Civil Penalty Assessment Factors. The Ordinance Administrator 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 or failing to comply with this ordinance.
- (c) Notice of Civil Penalty Assessment. The Ordinance Administrator 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 N.C.G.S. 1A-1, Rule 4. A notice of assessment shall direct the violator to 1) pay the assessment, 2) contest the assessment within 30 days by filing a petition for hearing with the Erosion Control Board, or 3) file a request for remission of the assessment within 30 days of receipt of the notice of assessment.
- (d) Final Decision: The final decision on contested assessments shall be made by Erosion Control Board acting as a quasi-judicial body in accordance with N.C.G.S. 160D-406.

- (e) Appeal of Final Decision. Appeal of the final decision of Erosion Control Board shall be to the Superior Court of Haywood County in accordance with the procedures of N.C.G.S. 160D-406(h). Notice of appeal shall be filed by the aggrieved party within 30 days of the final decision of Erosion Control Board.
- (f) Remission of Civil Penalties. A request for remission of a civil penalty imposed by this Ordinance may be filed with the Ordinance Administrator within 30 days of receipt of the notice of assessment. The following factors shall be considered in determining whether a civil penalty remission request will be approved by the Ordinance Administrator:
- (i) Whether one or more of the civil penalty assessment factors in N.C.G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
 - (ii) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
 - (iii) Whether the violation was inadvertent or a result of an accident.
 - (iv) Whether the petitioner had been assessed civil penalties for any previous violations.
 - (v) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
 - (vi) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.
- (g) Collection. If payment is not received within 30 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Haywood County Superior Court, or the violator's residence or where their principal place of business is located, at the option of the County. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
- (h) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with N.C.G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina

Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the County for the prior fiscal year.

- (2) Criminal Penalties. Any Person who knowingly or willfully violates any provision of 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 include a fine not to exceed \$5,000 as provided in N.C.G.S. 153A-123 or N.C.G.S. 113A-64.

(B) Injunctive Relief

- (1) Violation of Ordinance Whenever the Ordinance Administrator has reasonable cause to believe that any Person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this 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 Haywood County.
- (2) 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.

(C) Restoration After Non-Compliance

- (1) 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 N.C.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.

(D) *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.

(Ord. passed - - 88; Am. Ord. passed 6-1-90; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Am. Ord. passed 7-23-07; Am. Ord. passed 1-3-22; Am. Ord. passed 03-04-2024)

§ 154.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE

This revised Ordinance revises and supplants the Ordinance in Chapter 154 originally adopted August 1, 1988, and all subsequent amendments, and shall be effective on and after March 4, 2024.