

ORDINANCE 158: SLOPE ORDINANCE

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GENERAL PROVISIONS

§ 158.01 TITLE.

This Ordinance shall be known and cited as the Slope Ordinance of Haywood County, North Carolina, and may also be referred to as the Slope Rules or the Slope Regulations.

§ 158.02 AUTHORITY AND ENACTMENT.

This Ordinance is authorized by N. C. G.S. §153A-121(a) in order to protect the health and safety of the citizens of the County.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.03 BACKGROUND and PURPOSE.

This ordinance herein recognizes that development within the County has important, positive economic benefits to the citizens of Haywood County. However, adverse effects from improperly planned development activities can pose a threat to the well-being of residents and visitors in steeper developed areas. It is the intent of this Ordinance to implement reasonable, effective standards of construction for certain land-disturbing activities that will establish baseline levels for slope construction and slope repair, while decreasing the potential for damage to natural resources and properties adjoining tracts containing artificial slope construction.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.04 JURISDICTION.

This ordinance applies to property throughout the County located outside the corporate limits and planning and zoning jurisdictions of all municipalities. By joint resolution of any municipality and the County, this ordinance may be enforced within a municipality and its planning jurisdiction.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.05 DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms used within this ordinance, which are not herein defined, may carry the same definition as referenced in other Haywood County Ordinances, state or federal regulations or nationally accepted engineering methods, standards, or designs.

APPLICANT. Any person or entity, whether financially responsible for the artificial slope construction or repair or their agent, who submits a formal application to the Ordinance Administrator for a permit required by this ordinance to conduct artificial slope construction or repair; Includes a person or entity which files an appeal of a decision by the Ordinance Administrator.

APPROVAL. Means the approval by the Ordinance Administrator or designee for proposed slope work or completed slope work.

ARTIFICIAL SLOPE CONSTRUCTION OR REPAIR. Any land-disturbing activity that proposes to create any slope or change any slope; or any land-disturbing activity that creates or changes any slope.

Am. Ord. passed 03042024

BEDROCK. In place or “in situ” solid rock underneath top horizon soil layers.

BELOW-GRADE WALL. Any artificial grade separation constructed as a part of a building.

BENCH. A relatively level step excavated into earth material on which fill is to be placed.

ORDINANCE. This Ordinance as approved by the Haywood County Board of County Commissioners.

CIVIL ENGINEER. A professional person licensed or registered in the State of North Carolina to practice in the field of civil works.

CIVIL ENGINEERING. The application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design, and construction of civil works.

COMPACTION. The densification of an earth material by mechanical means.

CRITICAL SLOPE. Any cut slope, or fill slope, or retaining wall where mass instability (failure) is likely a hazard to life and limb or has a high probability to endanger adjoining occupied structures, or the safety and use of a public road or a natural watercourse.

CUT SLOPE. Any area of ground subject to a land-disturbing activity forming an artificial incline, expressed as the ratio of horizontal to vertical projection; an area of ground where earth material is to be or has been removed by excavation or other methods used by man, and that exposes lower horizons of earth material in situ, and where any face of the excavated area lies in repose at any angle other than a horizontal plane.

DESIGN PROFESSIONAL. A civil engineer, soils engineer, soil scientist, a licensed/registered professional land surveyor, geotechnical engineer, architect, landscape architect, or engineering geologist as currently licensed, registered or certified by the State of North Carolina.

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.

DISTURBED AREAS. Any area subject to a land-disturbing activity as defined in North Carolina General Statutes §113A-52(6).

EARTH MATERIAL. Any rock, natural soil or fill or any combination thereof.

ENGINEERING REVIEW BOARD. Also known as the Haywood County Engineering Review Board as organized by this ordinance .

EXCAVATION. The mechanical removal of earth material by artificial means, may be referred to as a cut; a land-disturbing activity.

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EXISTING GRADE. The grade prior to any land-disturbing activity.

FACTOR OF SAFETY. The results of a stability analysis normally expressed as a numerical value of a factor of safety; specifically, 1) The ratio of stabilizing forces/moments to disturbing forces/moments, or 2) The ratio of the shear strength available to the shear stress required for equilibrium of the slope.

FILL. A deposit of, or the deposition of, earth material placed by artificial means.

FILL SLOPE. Any area of placed earth material that has been or will be subject to a land-disturbing activity forming an artificial incline, expressed as the ratio of horizontal to vertical projection; an area where soil is to be or has been placed by excavation or other methods used by man, and where any face of the excavated area lies in repose at any angle other than a horizontal plane.

FINISH GRADE (FINISHED GRADE). The grade of the site at the conclusion of all grading efforts.

GRADING. An excavation or fill or combination thereof.

GROUND COVER. Any natural vegetative growth or other materials that render the soil surface stable against accelerated erosion.

KEY. A compacted fill placed in a trench excavated in earth material beneath the toe of a slope or a proposed slope.

LAND-DISTURBER. Any person who is or has been a participant in performing or helping perform a land-disturbing activity.

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

LAND-DISTURBING PERMIT. The document issued by the County which allows grading or other land-disturbing activity or operations to commence and proceed in accordance with the requirements of Chapter 154 of the Haywood County Code of Ordinances.

MAJOR SUBDIVISION. A proposed subdivision of land where eleven (11) or more lots will result after the subdivision is complete.

MASS INSTABILITY OF A SLOPE. Failure of a slope by substantial or large movements of the slope.

MECHANICALLY STABILIZED EARTH (MSE). A retaining wall that depends on internal reinforcement to resist mass instability.

MINOR SUBDIVISION. A proposed subdivision of land where four (4) to ten (10) lots will result after the subdivision is complete. One phase of planned development cannot be considered a minor subdivision unless the entire development does not exceed ten (10) lots.

NATURAL EROSION. The wearing away of the earth’s surface by water, wind, ice, gravity, or other natural agents under natural environmental conditions undisturbed by man.

ORDINANCE ADMINISTRATOR – An individual or group of individuals designated by the Haywood County Board of Commissioners and charged with upholding the provisions of this ordinance and having the power to enter all lands at reasonable times to ensure that these provisions are being carried out. Unless otherwise appointed, the Development Services Director or their designee shall be the Ordinance Administrator.

ORGANIC. Matter that exists as, relates to, or is derived from living plants, animals, or living organisms. For the purposes of this ordinance, organic things include, but are not limited to, trees, stumps, limbs of trees, bushes, leaf matter, grasses, and the like.

PERSON. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, developer, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

PERSON CONDUCTING LAND-DISTURBING ACTIVITIES. Any person responsible for the violation of this Ordinance, subject to the exceptions of this Ordinance, the exceptions of G.S. §§ 113A-50 through 113A-66 (the “Act”), as amended, or any order adopted pursuant to this ordinance or the Act.

PERSON RESPONSIBLE FOR THE VIOLATION.

(A) Any Person having financial or operational control over the slope construction or slope repair activity; and,

The landowner or person in possession or control of the land where the slope construction or slope repair activity has occurred.

PHASE OF GRADING. One of two types of grading - rough or fine. Also, this definition refers to phases of grading as are defined in the Self-Inspection requirements by the State of North Carolina.

PLAN. Slope construction plan, slope repair plan, or slope stabilization plan. This may include an erosion and sediment control plan.

PROFESSIONAL INSPECTION. An inspection required by this ordinance to be performed by a design professional. A professional inspection shall adequately address the conditions or proposed conditions of the site in question.

REINFORCED SOIL SLOPE (RSS). Any slope that depends on internal reinforcement to resist mass instability.

RETAINING WALL. Any manmade (artificial) grade separation that is not a slope. A retaining wall may also be defined as a structure or device placed on the face of a cut slope or fill slope that covers the slope face and that holds the earth material in place by use of properly designed external and internal structural components.

ROUGH GRADE. The condition of grading, excavation, or land-disturbing activity from commencement of the activity up to the point of finished grade.

SHEAR STRENGTH. The mechanical strength of an earth material. In geotechnical engineering, a stability analysis of a slope can be made using either effective stress shear strength or total stress shear strength. In effective stress analyses, the shear strength of the soil is related to the effective normal stress on the potential slip surface by means of effective stress shear strength parameters. In effective stress analyses, pore water pressures within the earth material must be known and are a part of the information required for analysis. In total stress analyses, the shear strength of the soil is related to the total normal stress on the potential slip surface by means of total stress shear strength parameters. In total stress analyses, pore water pressures within the earth material need not be known and are not required as input for analysis.

SITE. Any tract where grading, excavation, land-disturbing activity or artificial slope construction or repair is being planned, performed, permitted, or being conducted.

SLOPE. An inclined ground or earth material surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

SLOPE REPAIR APPROVAL or DEVELOPMENT APPROVAL. The Approval issued by the County which allows slope construction or repair to commence and proceed in accordance with the requirements of this ordinance.

SOIL. Naturally occurring superficial deposits of earth material overlying bedrock.

STABLE. For the purposes relating to this ordinance, “stable” shall mean adequately and reasonably resistant to change of position or condition. A stable slope shall have a factor of safety equal to or greater than that defined in Section §158.09(C)(1), Table 1.

TERRACE. A relatively long, narrow linear step or break that is excavated or built into unconsolidated earth material of a slope, which generally runs with the contour. It is built to control runoff, reduce erosion, and provide for maintenance of the slope.

UNCOVERED. The removal of ground cover from, on, or above the soil surface.

UNDERTAKEN. The initiation 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.

VIOLATION. Any slope construction or slope repair activity regulated by the provisions of this ordinance that is carried out without regard to the content of an approved slope construction permit.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

Am. Ord. passed 03042024

§ 158.06 EXCLUDED ACTIVITIES.

A Slope Construction Permit is not required for the following:

- (A) Cemetery graves.
- (B) Landfill activities controlled by other local, state, or federal agencies.
- (C) Excavations for wells or tunnels.

(D) Any mining activity subject to N.C.G.S. Title 15A, Chapter 05, Mining: Mineral Resources, providing such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.

(E) Exploratory excavations not requiring a building permit that are less than one-half acre of disturbed area under the direction of registered engineers, registered sanitarians (test pits only), or other registered professionals deemed competent by the Engineering Review Board.

(F) Land-disturbing activities which are exempt by the Sedimentation Pollution Control Act of 1973, as amended.

(G) Natural slope failures such as, but not limited to, landslides.

(H) Underground storage tanks and ditches exempt from OSHA regulations.

(I) Artificial slope construction for below grade portions of a residential or commercial structure that has a current building permit and is in compliance with all applicable local, state, and federal regulations, including but not limited to the North Carolina State Building Code as adopted and amended.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.07 SCOPE; GENERAL REQUIREMENTS.

(A) Any person who undertakes artificial slope construction or slope repair shall be responsible for adequate site assessment, planning, designing, constructing and repairing artificial slopes.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.08 SLOPE INCLINATIONS; REQUIREMENTS.

(A) References in determining stable slope inclinations are based upon guidelines used historically by the State of North Carolina and other professionals experienced in the design, construction, and repair of artificial slopes. Proper assessment of site conditions is the responsibility of the landowner or the person financially responsible for the slope activity.

(B) Site- Specific Slope Measurement:

Site-Specific Slope measurement shall be taken by the following methods:

(1) On residential lots, the average slope will be determined by triangulating the line of the highest natural elevation to the lowest natural elevation in relation to the horizontal. However, if elements of topographic condition are evident such as bulging slopes, drop-offs, or climbs, signs of failure such as but not limited to slope creep, then horizontal lines may be adjusted to more specifically describe slope in areas of concern; and,

(2) On roadwork, the average slope will be determined from the toe of the fill to the top of the cut and may include areas of concern above or below the roadwork area; and,

(3) Slope steepness may be measured by using standard engineering methods approved for use in the State of North Carolina, other methods approved by the Engineering Review Board, and to a standard approved by the Engineering Review Board.

(C) Slope Height Limitations:

Any slope or contiguous series of graded or filled slopes forty feet (40') in vertical height or taller, and steeper than 1:1 for cut slopes and / or steeper than 1.5:1 for fill slopes, shall not be allowed unless a specific authorization is issued by the Ordinance Administrator. In considering that specific authorization, the Ordinance Administrator shall consider whether other alternatives exist, slope factor of safety, stability, and likelihood of failure. Prior to the Ordinance Administrator considering the specific authorization, the Person Conducting the Land-Disturbing Activity shall obtain and submit a professional inspection.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.09 ADDITIONAL STANDARDS.

(A) The Financially Responsible Person shall provide credible evidence to the Ordinance Administrator that all minor subdivision roads and shoulders or major subdivision roads and shoulders shall be compacted by methods developed by the Engineering Review Board as standard operating procedure.

(B) Cut slopes steeper than 1:1 (h:v) or fill slopes steeper than 1.5:1 (h:v) and greater than fifteen feet (15’) in vertical height may require a professional inspection stating that slopes meet the criteria of engineering standards approved for use in the State of North Carolina, if so determined by the Ordinance Administrator.

(C) Cut slopes, Fill slopes and Retaining walls:

(1) The North Carolina Building Code contains requirements for building retaining walls. Therefore, construction of a retaining wall may require review and or permitting by the Haywood County Inspections Department.

(2) Fill slopes, cut slopes, or retaining walls subject to the requirements of this ordinance shall be designed, constructed, or repaired in such a manner that they will be stable. A stable slope or retaining wall shall have a minimum factor of safety against mass instability that is greater than or equal to the factors of safety shown in Table 1.

Table 1 – Minimum Factors of Safety Against Mass Instability

Type of Slope	Minimum Factor of Safety		
	Long-term (effective stress conditions)	End-of-Construction (total stress conditions)	Pseudo-static conditions
Critical Slope	1.5	1.2	1.2
Slope	1.3	1.1	1.1

Pseudo-static conditions are based on long-term (effective stress) conditions with the application of a pseudo-static coefficient. The pseudo-static coefficient is based on a design earthquake as one-half the peak ground acceleration (pga) from the USGS peak acceleration map for the eastern United States, with a two percent probability of exceedance in 50 years. In lieu of a site-specific value a default value of 0.15g (i.e., an acceleration of 15 percent of one standard gravity) may be used. Pseudo-static analyses should not be performed for sites evaluated with a Seismic Site Classification of “E” or “F” as defined by the North Carolina Building Code, as a more detailed assessment of seismic stability would be needed.

(3) All fill slopes shall be compacted by methods accepted by the Engineering Review Board as standard operating procedure.

(4) The Ordinance Administrator shall have the power to require written statements or the filing of reports under oath with respect to pertinent questions relating to artificial slope construction, slope stabilization, or slope repair.

(5) Refusal on the part of the landowner, the person financially responsible for the land-disturbing activity, or the land-disturber to cooperate in making requested repairs, providing professional inspections, providing engineering designs or any other officially requested information or action by the Ordinance Administrator shall constitute a violation of this Ordinance.

(6) Stabilized ditches or other methods shall be used to prevent the uncontrolled runoff of storm water over artificially constructed or repaired slopes.

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(D) Upon completion of the cut and / or fill activity, the slope plan design professional must provide verification the slope work was completed in accordance with this ordinance, the permitted plans and drawings, and criteria of engineering standards approved for use in the State of North Carolina, as well as the standard operating procedures accepted by the Engineering Review Board. Failure by the owner or person financially responsible to submit the required certification to Haywood County within sixty (60) days of work completion shall be considered a violation of this ordinance. Certification shall be site-specific in description and shall address application of methods, requirements, and criteria of engineering standards approved for use in the State of North Carolina.

(E) Subdivision plats will not be approved by the Development Services Office or recorded until all minor and major subdivision roads are completed and field verified, and compaction requirements have been achieved and the data has been checked for authenticity.

(Ord. passed 3-1-07; Am. Ord. passed 7-19-21; Am. Ord. passed 03-04-2024)

§ 158.10 TERRACES.

Fill slopes which have a slope length of forty feet (40') or greater on the face shall be constructed with terraces that are adequate to protect the slope and convey runoff in a non-erosive manner to stable outlets away from the slope face, and the terraces should be wide enough to also provide for maintenance activities. The terraces shall be stabilized.

§ 158.11 SETBACK REQUIREMENTS.

(A) The Engineering Review Board will be responsible for establishing a standard operating procedure for determining setbacks. Slope construction or slope repair shall be subject to setback requirements as determined by the Engineering Review Board, and they shall be no less than setbacks required by any local, State, or Federal agency.

(B) The Engineering Review Board will be responsible for establishing a standard operating procedure for determining setbacks. Storm water diversions within a setback should protect disturbed areas from upslope runoff and should be of sufficient width to contain measures, structures, or other devices adequate to divert and carry runoff subject to crossing the slope, over, under, through, around, or away from the slope face in a safe and non-erosive manner. All diversions shall be stabilized. Diversions intended to be permanent shall be constructed to carry the runoff from the twenty-five-year storm using calculations approximating the maximum urbanization of the watershed contributing runoff based upon runoff data contained within the North Carolina Erosion and Sediment Control Planning and Design Manual. Diverted flows should be directed to and exit upon or into stabilized areas, channels, or mitigated to the closest natural watercourse.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.12 PLAN REQUIRED.

(A) Persons conducting development on any property creating artificial slopes steeper than 1:1 cut and 1.5:1 fill and greater than fifteen feet (15') in vertical height shall submit a slope construction plan, slope repair plan or slope stabilization plan for the activity. This plan shall contain such architectural and engineering drawings, maps, assumptions, calculations, analysis, and narrative statements as needed to adequately describe the slope development, construction or repair activity, and the measures planned to comply with the requirements of this ordinance using methods, requirements, and criteria of engineering standards approved for use in the State of North Carolina. Plans submitted to Ordinance Administrator shall consider such forms or worksheets as follows:

- (1) A description of how the work will be accomplished.
- (2) A specific time schedule for various stages of the slope development or repair.
- (3) Maps showing the following site-appropriate features shall also be supplied:

(a) A true scale that is reasonable and adequate to professionally indicate and describe the work, and a contour interval not to exceed five feet. Not-to-scale maps or measures will not be acceptable.

(b) Boundaries, interior lines or easements, relation to streets, roads, or highways, proposed location, and height of all retaining walls, delineation of all cut and fill slopes, length of slope, shape of slope, steepness of slope, placement within slope of structures or appurtenances, scale and north arrow, proposed drainage easements, road locations and centerlines, as well as accurate estimates, cross-sectional views, and surface area calculations.

(c) Existing surrounding conditions including buildings, septic tank and drain field locations, driveways, creeks, or other bodies of water, wetlands, seeps, springs, culverts, bridges, road grades, areas of special environmental concern or those subject to any hazard from slope failure from the activity, or other information which may be pertinent in evaluation of the plan.

(d) Soils, soil types, soil analysis, rock types, analysis of the strike and dip of rock formations, stability and load bearing capability of rock and soil formations from the standpoint of strength of the material, compaction of fills, compacted or engineered lifts, water bearing formations and hydrology, aspect, benches, terraces, drainage patterns and topographic conditions, base preparation, other criteria as specified by the designer, proposed ground cover, proposed methods for intercepting storm water runoff, and ground water conditions so as to protect the slope from unstable saturation, the geomorphology of the area relating to soil stability and mass wasting, and any other item of consideration that may be important in addressing site-specific slope stabilization.

(e) Delineation of cut slopes and fill slopes, proposed soil densities, waste areas, ditches, measures and structures, existing and proposed ground cover.

(f) Supporting documentation, calculations, yardage estimates and proposed methods used for slope development design or slope repair plans shall be submitted as part of the plan.

(g) Nothing in this Ordinance automatically requires persons meeting threshold standards (cut slopes steeper than 1:1 and fill slopes steeper than 1.5:1 and greater than fifteen feet (15') in vertical height) to secure the services of a professional licensed engineer prior to inspection by the County, but such a requirement may be necessary if the Ordinance Administrator determines standards of this ordinance have not been met, or that site conditions warrant engineering oversight.

(B) This type of plan will be referred to as a slope stabilization plan, and the plan shall be prepared by a design professional.

(C) Each slope stabilization plan shall be site-specific for each slope subject to the conditions of this ordinance.

(D) Persons conducting regulated slope construction, stabilization, or repair activities shall file three copies of the plan with the Ordinance Administrator. If the Ordinance Administrator, either upon review of such plan or upon inspection of the job site, determines that a significant risk of failure exists, then the Ordinance Administrator will have the authority to issue an administrative order stopping work or requiring a revised plan. Pending the preparation of a revised plan, certain work may be allowed to continue under conditions set by the Ordinance Administrator.

(E) Plans for slope construction, slope stabilization, or slope repair will be disapproved unless accompanied by an authorized statement of financial responsibility and ownership, and a performance commitment approved by the County Attorney to guarantee compliance with the provisions of this Ordinance. The person financially responsible for the slope development activity or his or her attorney shall sign the statement of financial responsibility and ownership. The property owner shall also sign the statement. The statement shall include the mailing and street address of the principal place of business of the person financially responsible and of the owner of the land or the owner's registered agents.

(F) 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 noncompliance with the plan, this ordinance or rules or orders adopted or issued pursuant to this ordinance.

(G) Whenever the financially responsible person dismisses, changes, or replaces the agent or the principal land-disturber of the tract under development, the financially responsible person shall notify the Ordinance Administrator of the dismissal, change or replacement in agent or land-disturber within a reasonable timeframe. This requirement will help ensure continuity in the line of communication between the County and the person in charge of project development, avoid possible delays in construction, and maintain control of the slope development or repair activity by making sure any new person or persons have a copy of the approved plan at the job site.

(H) The Ordinance Administrator will review each complete plan submitted 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 or

disapprove a slope construction or repair plan within 30 days of receipt shall be deemed approval, except in the following condition: if the Ordinance Administrator requires additional information or certification of a design professional, then the 30-day time limit shall not begin until the submission of the additional information. If, following commencement of a slope construction or repair activity pursuant to an approved plan, Ordinance Administrator determines that the plan is inadequate to meet the requirements of this ordinance, the Ordinance Administrator may require such revisions as are necessary to comply with this ordinance and may issue an order stopping work pending the submission of revisions to the plan.

The County reserves the right to obtain other professional opinions on any plan, construction technique, or any other item required by this Ordinance.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.13 CRITICAL SLOPES.

(A) Whenever the Ordinance Administrator determines that a critical slope exists, the owner of the property upon which the critical slope is located, or other person or agent in control of said property, upon receipt of notice from the Ordinance Administrator, shall, within a time period as determined by the Ordinance Administrator, have a professional inspection performed upon the area of concern addressing the recommendations and requirements of this ordinance and provide those results to the Ordinance Administrator.

(B) After review of site conditions and any professional opinions, including the professional inspection required by paragraph (A) of this section, the Ordinance Administrator shall have the authority to require the owner of the property upon which the critical slope is located, or other person or agent in control of said property, to repair the slope to adequately eliminate the hazard in order to be in conformance with the requirements of this ordinance, within a reasonable time period. Notification to the person responsible or the landowner shall be by the same methods as those required for actual notice for a violation of this ordinance.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.14 EMERGENCY SLOPE REPAIR.

In the event a critical slope is displaying signs of failure; or further slope failure has a high probability that it may result in a negative impact to any property containing a land-disturbing activity or to any adjacent property or natural resource; or if there is a high probability that public welfare may be negatively impacted by further failure on any property containing the critical slope, emergency repairs may be performed without approval from the County provided that:

(1) A design professional is consulted on the site during the emergency repair, or as soon as possible; and,

(2) A plan is developed by a design professional for the completion, final stabilization, or endorsement of the emergency repair. In lieu of a plan submission, the design professional may submit a technical report describing the slope condition, how it was repaired, and the report should contain the design professional's adequate assessment of the slope and repair.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.15 UTILITIES IN ARTIFICIAL SLOPES.

Any pipe or conduit in a minor or major subdivision, which is designed to be in or placed in a fill slope, must be placed or constructed within stable fill slopes. A professional inspection shall be provided to the Ordinance Administrator and shall include a statement that the work has been designed and / or constructed in accordance with applicable standards of practice in western North Carolina at the time of design and / or construction. All reasonable technologies should be utilized in the design and construction of the fill slope so as to consider prevention of slope saturation resulting from a sewer line or water line leakage. The person financially responsible for the work will provide adequate certification of this installation or construction to the Ordinance Administrator within 60 calendar days of completion of the work.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.16 CONSTRUCTION OBSERVATION

Periodic observation by a design professional may be required for any land-disturbing activity in or on cut slopes steeper than 1:1 (h:v) or fill slopes steeper than 1.5:1 (h:v) and greater than fifteen feet (15') in vertical height.

§ 158.17 PERMIT EXPIRATION.

- (A) If no land-disturbing activity has been undertaken on a site, a Permit shall expire three years following the date of approval.
- (B) If the Ordinance Administrator deems complete installation of the plan as originally approved will adequately stabilize the site, renewal of a permit will be given upon payment of a fee equal to 100% of current plan review fees.
- (C) Slope construction or slope repair activity outside the original approved limits shall be a violation of this ordinance.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.18 HAYWOOD COUNTY ENGINEERING REVIEW BOARD.

A) *Creation.* The Haywood County Engineering Review Board is created. The Board shall be a seven- member board composed of the following appointees:

(1) One supervisor from the Haywood Soil and Water Conservation District Board, nominated by that board.

(2) The Chairman of the Board of County Commissioners or his or her appointee.

One appointee of the County Commissioners from each of the following groups or organizations:

(3) A licensed, registered general contractor; or an established land-disturber,

(4) A licensed, registered professional civil engineer,

(5) A licensed, registered professional land surveyor,

(6) Two persons from the following categories: geologist, soil scientist, engineering geologist, geotechnical engineer, landscape architect, engineering intern, professional engineer, or established professional environmental consultant.

B) All members shall be appointed to staggered three-year terms with all elected officials who are appointed ex-officio, serving only during the duration of their office.

C) Individuals nominated for the Engineering Review Board shall be approved by the Haywood County Board of Commissioners, who shall make the final appointments.

D) In the event that qualified individuals from the designated organizations or categories named in §158.18(A) of this ordinance are unavailable, the County Commissioners may appoint members at large who have qualifications or interests relevant to this ordinance.

E) *Responsibilities.*

(1)The Engineering Review Board shall provide recommendations as to standard operating procedures and policies and recommend changes to the County Manager and Board of County Commissioners from time to time. The Engineering Review Board shall hear appeals from the administrative decisions of the Ordinance Administrator in accordance with this ordinance. The Engineering Review Board may recommend standard operating procedures for the administration of this ordinance, including control options based upon slope classifications derived from mapping programs or other technical data, and bonding or surety requirements. The Board of County Commissioners shall establish fees associated with the administration of this ordinance.

(2)The Ordinance Administrator shall advise the applicant in writing as to reasons that a plan is disapproved or approved with modifications. The applicant may appeal the Ordinance Administrator's disapproval or approval with modifications of the plan to the Engineering

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Review Board within 30 days of the Ordinance Administrator’s written decision.

- (3) The appeal of a disapproval, or approval with modifications, of a plan shall be governed by the following provisions:
- (i) The actions of the Ordinance Administrator shall be deemed an Administrative Decision under N.C. G.S. 160D-405. The Engineering Review Board shall conduct its hearing on the appeal in accordance with N.C. G.S. 160D-406 and related provisions.
 - (ii) Only written requests for appeal received within 30 calendar days of any action by the Ordinance Administrator that qualify for appeal will be considered. Appeal hearings will be conducted within 45 calendar days after the Engineering Review Board receives written request for appeal. If the appeals hearing is not conducted within the specified time frame, the appeal is deemed upheld.
- (4) If the Engineering Review Board upholds the Administrative Decision, then the Applicant shall be entitled to the Haywood County Board of Commissioners within 30 days of the Review Board’s decision. An appeal to the Board of Commissioners shall be governed by the quasi-judicial procedures of N.C.G.S. 160D-406. Judicial review of the final action of the Haywood County Board of Commissioners shall be to the Superior Court of Haywood County, upon appeal by an aggrieved party and in accordance with the provisions of N.C. G.S. 160D-406.
- (5) Any civil penalty levied during the appeal period shall accrue and be payable so long as the violations remain. Upon conclusion of the appeals process, either the responsible party must pay all applicable civil penalties or, if the appeal is upheld, all civil penalties shall be forfeited by the county and returned to the successful appellant.

(Ord. passed 3-1-07; Am. Ord. passed 7-19-21; Am. Ord. passed 03-04-2024)

§ 158.19 PENALTY.

- A) Any violation of the provisions of this Ordinance may be enforced by the assessment of a civil penalty determined by the Ordinance Administrator.
- B) In determining the amount of the civil penalty, the Ordinance Administrator shall consider:
- (1) the nature of the violation, including its duration,
 - (2) the potential or actual effect of the violation on the health and safety of adjacent landowners,
 - (3) the potential or actual effect of the violation on the purposes of this Ordinance,
 - (4) the costs avoided by the violator in undertaking the activity without submission of or compliance with an approved Slope Construction Permit, and

(5) the costs of remediation of actions taken in violation of this Ordinance.

C) Any land-disturbing activities undertaken without a Slope Construction Permit or in violation of the terms of that permit shall subject the violator to a Stop Work order, pursuant to N.C.G.S. 160D-404(b), issued by the Ordinance Administrator. Continued activities undertaken after the receipt of a Stop Work order shall be the subject of a separate civil penalty determined by the Ordinance Administrator.

D) Each day that a violation continues shall be deemed a separate violation, subject to a separate civil penalty.

E) The civil penalties shall be due and payable within the period set by the notice from the Ordinance Administrator and shall accrue interest at the legal rate from the overdue date until paid.

F) In addition to the civil penalty, the Ordinance Administrator may seek the civil remedies of N.C. G.S. 153A-123, including injunctive relief and an order of abatement.

G) In hearing the appeal of an Administrative Decision, the Engineering Review Board shall have the authority to review and uphold, amend, or abate the civil penalty assessed by the Ordinance Administrator. Likewise, in hearing the appeal, the Board of Commissioners and Superior Court shall have the authority to uphold, amend, or abate the civil penalty amounts.

(Ord. passed 03-01-2007; Am. Ord. passed 03-04-2024)

§ 158.20 SEVERABILITY.

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

§ 158.21 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE

This revised ordinance revises and supplants Ordinance 158 which was originally adopted March 1, 2007, and all subsequent amendments, and shall be effective on and after March 4, 2024.