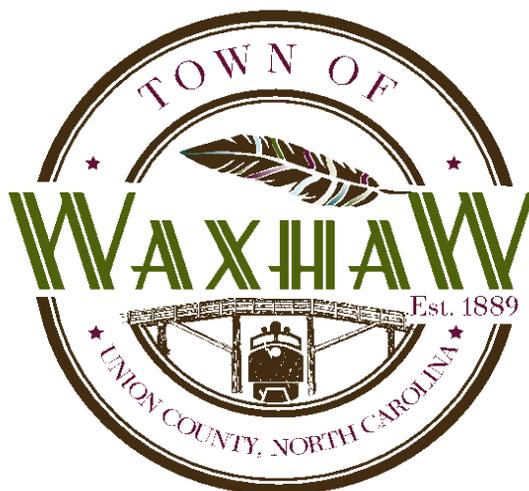


**EROSION AND SEDIMENTATION
CONTROL ORDINANCE**



December 2016

**AN ORDINANCE TO AMEND TITLE
XV OF THE TOWN OF WAXHAW
CODE OF ORDINANCES**

BE IT ORDAINED by the Board of Commissioners of the Town of Waxhaw that Title XV of the Town of Waxhaw Code of Ordinances be amended to add Chapter 159, Erosion and Sedimentation Control, as follows:

Section 1. TITLE XV, LAND USAGE

ADD:

CHAPTER 159: EROSION AND SEDIMENTATION CONTROL

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PREAMBLE

The sedimentation of streams, lakes and other waters of this State constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this Town will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this Ordinance to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this Town to continue with the least detrimental effects from pollution by sedimentation.

159.01 PURPOSE. This Ordinance is adopted for the purpose of:

- (1) 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
- (2) Establishing procedures through which these purposes can be fulfilled.

159.02 JURISDICTION.

This Ordinance is hereby adopted by the Board of Commissioners to apply to all areas within the corporate limits of the Town of Waxhaw.

The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- a. Conducted by the State.
- b. Conducted by the United States.
- c. Conducted by persons having the power of eminent domain other than a local government.
- d. Conducted by a local government.
- e. Funded in whole or in part by the State or the United States.
- f. Related to oil and gas exploration and development on the well pad site.

In addition, certain exclusions are set forth in Section 159.04.

Where a conflict exists between any limitation or requirement contained in this Ordinance and those in any other ordinance, regulation, or plan, the more restrictive limitation or requirement shall apply. Except as otherwise provided herein, this ordinance shall not repeal, abrogate, or revoke any other ordinance, regulation, or plan.

159.03 DEFINITIONS.

The words and phrases used in this Ordinance shall have the meaning assigned in this Section provided, unless the context clearly indicates otherwise. These definitions are derived from the North Carolina Sedimentation Control regulations, 15A NCAC § 4A.0105 and the Sedimentation Pollution Control Act of 1973, NCGS § 113A-52.

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

Act – means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it, as amended from time to time.

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, as such controls are specified in the Ordinance.

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

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

Board of Commissioners – means the Town of Waxhaw Board of Commissioners.

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

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

Town of Waxhaw Erosion Control Inspector/ Erosion Control Inspector/ Inspector – includes the Town of Waxhaw Development Services Director, who is principally responsible for the administration of this Section, or his duly authorized designee. This term shall also include any persons, agents or other representatives of the town as authorized by the Development Services Director.

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

Commission/NCSCC – means the North Carolina Sedimentation Control Commission.

Department - means the North Carolina Department of Environmental Quality.

Development Services Department – means the Town of Waxhaw Development Services Department

Discharge Point – means that point at which runoff leaves a tract.

District/SWCD – means the Union Soil and Water Conservation District (also referred to as the “SWCD”) created pursuant to Chapter 139 of the North Carolina Statutes.

Energy Dissipater – 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 a way of land surface by the action of wind, water, gravity, or any combination thereof.

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

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

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

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

NCSCC – means the North Carolina Sedimentation Control Commission.

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.

Parent – 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 Land-Disturbing Activity – means any person who may be held responsible for a violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

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

- (1) The developer or other person who has or holds themselves out as having financial or operational control over the land-disturbing activity; and/or
- (2) The landowner or person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

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

Plan – means a complete Erosion and Sedimentation Control Plan.

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

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

Siltation – means sediment resulting from accelerated erosion which is 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 in or is in suspension in water.

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

Storm Water Runoff – means the direct runoff of water resulting from precipitation in any form.

Subsidiary – an Affiliate that is directly or indirectly, through one or more intermediaries, controlled by another person.

SWCD/ Union SWCD – means the Union Soil and Water Conservation District.

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

Town – means Town of Waxhaw.

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

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

Two-Year Storm – means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 2 years, and of a duration which will produce the maximum peak rate of runoff, from the Watershed of interest under average antecedent wetness conditions.

Uncover(s)(ed)(ing) – means the removal of ground cover from, on, or above the soil surface.

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

Velocity(ies) – means the average speed of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Waste – means surplus materials resulting from on-site construction and disposed of at locations either on or off site other than the initial source of the materials.

Watershed – means the region drained by or contributing water to a stream, lake or other body of water.

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

159.04 EXCLUSIONS.

This Section shall not apply to the following land-disturbing activities:

- 1) 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:
 - a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - b. Dairy animals and dairy products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - e. Bees and apiary products.
 - f. Fur producing animals.
 - g. 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.
- (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.
- (3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- (4) For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- (5) 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.
- (6) 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

159.05 GENERAL REQUIREMENTS AND OBJECTIVES.

(A) Plan Required. No Person shall initiate any land-disturbing activity which uncovers more than twelve thousand (12,000) square feet of land for commercial, industrial, or subdivision

development without having a plan approved by the Erosion Control Inspector. Land-disturbing activities resulting from single-family residential development on an individual lot which disturbs one (1) acre of land or less are excluded from plan submittal and approval, provided that erosion control devices are installed in accordance with the details for residential lot development found in the Town of Waxhaw Engineering, Standards and Procedures Manual. Single-family residential development exceeding one (1) acre of land disturbed will be required to submit for plan approval. Land-disturbing activities resulting from single-family residential development on multiple contiguous lots which disturb a total of one (1) acre of land or less may conduct such activity with a single approved plan encompassing all the lots or with separate approved ESC Installation and Maintenance Agreements for each lot.

(B) ESC Installation and Maintenance Agreement Required. No person shall initiate any Land-Disturbing Activity for the purpose of new single-family residential development on an individual lot to a maximum of one (1) acre, without having an ESC Installation and Maintenance Agreement approved by the Erosion Control Inspector.

(C) 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.

(D) Basic Control Objectives. A plan may be disapproved pursuant to Section 159.16 of this Ordinance if the plan fails to address the following control objectives:

- (1) Identify Critical Areas – On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (2) Limit Time of Exposure – All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) Limit Exposed Areas – All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (4) Control Surface Water – Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) Control Sedimentation – All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (6) Manage Storm Water Runoff – When the increase in the velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

159.06 MANDATORY STANDARDS FOR LAND DISTURBING ACTIVITIES.

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

(A) Buffer Zone.

- (1) 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.
- (2) Unless otherwise provided, the width of the buffer zone begins and is measured landward from the normal pool elevation of impounded structures (lakes) to the nearest edge of the disturbed area and/ or five feet from the edge of the top of the bank of streams or rivers to the nearest edge of the disturbed area. Natural or artificial means of confining visible siltation must be placed, constructed or installed outside the undisturbed buffer zone.
- (3) For any watercourse, where more than one stream buffer width is imposed by Town of Waxhaw Code of Ordinance or other local, state or federal law(s), rule(s), or regulation(s), the greater buffer width stipulated shall apply.

(B) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 calendar days of completion of any phase of grading, be planted or otherwise be provided with ground cover, devices, or structures sufficient to restrain erosion.

(C) Ground Cover. Whenever more than one (1) acre of land is uncovered or new residential development on an individual lot is initiated, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 60 calendar days, whichever is shorter following completion of construction or development.

(D) Prior Plan Approval .No Person shall initiate any land-disturbing activity on a tract if more than one (1) acre of land is to be uncovered, excluding single- family residential development in accordance with Subsection 159.05(B), unless, thirty or more days prior to initiating the activity, a plan is filed with and approved by the Erosion Control Inspector. The Erosion Control Inspector shall forward to the North Carolina Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de watering or lowering the water table of the tract.

(E) Zoning Permits. Any person requesting a grading permit in association with a land-disturbing activity on a tract which involves the uncovering of more than twelve thousand (12,000) square feet of land or new residential development on an individual lot, shall be required to have an approved Erosion and Sedimentation Control Plan or ESC Installation and Maintenance Agreement in accordance with this Ordinance.

159.07 DESIGN AND PERFORMANCE STANDARDS.

Erosion and sedimentation control measures, structures, and devices shall be so planned,

designed, and constructed as to provide protection from the calculated maximum peak rate of storm water runoff from the ten-year storm. Storm water runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

159.08 STORMWATER OUTLET PROTECTION.

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

- (1) The velocity established in Table 159.08-1 of this Section; or
- (2) The velocity of the ten-year storm runoff in the receiving watercourse prior to the land-disturbing activity.

(B) If the conditions of Section 159.08 (A) 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 land-disturbing activity" velocity by ten percent (10%).

(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 Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives 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 runoff discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.
- (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(D) **Exceptions.** This rule shall not apply where it can be demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(E) Maximum permissible velocity for storm water discharges shall be regulated in accordance with Table 159.08-1.

Table 159.08-1 Maximum Permissible Velocities

Material	Feet/ Second	Meters/ Second
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

159.09 BORROW AND WASTE AREAS.

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

159.10 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.

159.11 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a lake, stream or other watercourse where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the lake, stream or other watercourse flow characteristics, except when justification acceptable to the Town for significant alteration to flow characteristic is provided.

159.12 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 or the Act, or any order adopted pursuant to this Ordinance or the Act. After site development, the landowner or person in possession 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.

159.13 ADDITIONAL MEASURES.

Whenever the Erosion Control Inspector determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

159.14 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on the effective date of this Ordinance which resulted from land-disturbing activity which exceed one (1) acre of land, that are subject to continued accelerated erosion and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(B) The Erosion Control Inspector will serve upon the landowner or other person in possession or control of that land a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply, and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the Erosion Control Inspector shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(C) The Erosion Control Inspector reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required.

159.15 PERMITS.

(A) No person shall undertake any land-disturbing activity subject to this Ordinance without having first obtained a Plan Certificate and Letter of Approval or ESC Installation and Maintenance Agreement Approval from the Erosion Control Inspector, except that no Plan Certificate and Letter of Approval or ESC Installation and Maintenance Agreement Approval shall be required for any Land-Disturbing Activity:

- (1) For the purpose of fighting fires; or
- (2) For the stock piling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or
- (3) That does not disturb more than one (1) acre in surface area.
In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(B) Although a Plan Certificate and Letter of Approval is not required for land-disturbing activity comprising less than one (1) acre for residential projects, such activity shall be subject to all other requirements of this Ordinance and any other applicable standards or ordinances adopted by the Town of Waxhaw.

(C) Submittals for erosion and sediment control plan approval and erosion control inspections shall be subject to any and all relevant fees as adopted by the Board of Commissioners and prescribed in the Town of Waxhaw Code of Ordinances. Fees shall accompany plan submittals, otherwise the submittal shall be determined incomplete and shall be returned to the applicant.

159.16 EROSION AND SEDIMENTATION CONTROL PLANS.

(A) Persons conducting land-disturbing activity shall be responsible for preparing a plan for all land-disturbing activities subject to this Ordinance whenever the proposed activity is to be undertaken on a tract disturbing more than one (1) acre of land, excluding single-family residential development addressed in Section 159.05 (B).

(B) Seven complete copies of the plan shall be filed with the Control Inspector in the office of the Town of Waxhaw Development Services Department at least 30 days prior to the commencement of the proposed activity. A fee, made payable to the Town of Waxhaw, shall be charged for each plan review. Such fee shall be in accordance with a fee schedule adopted by the Town of Waxhaw Board of Commissioners. No plan shall be considered complete unless accompanied by such fee and a performance bond in the form of a certified check, cash or irrevocable letter of credit, in an amount deemed sufficient by the Engineering Department to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this ordinance. The performance bond shall remain effective until work has been completed, inspected and approved by the Development Services Department.

(C) The Erosion Control Inspector shall transmit a copy of the complete plan to the Union Soil and Water Conservation District (SWCD) for their review. The SWCD shall be given up to twenty (20) days to make comment on the plan. Failure of the SWCD to submit its comments to the Erosion Control Inspector within such time period shall not delay final action on the proposed plan by the Erosion Control Inspector.

(D) The Erosion Control Inspector shall render a decision on a plan within thirty (30) days of submittal. The Erosion Control Inspector shall condition approval of a draft plan upon the applicants' compliance with local, state and federal water quality laws, regulations, ordinances and rules. Such decision shall be approval, approval with modifications, approval with performance reservations, or disapproval. Failure to approve, approve with modifications or performance reservations, or disapprove a complete plan within thirty (30) days of receipt shall be deemed approval.

(E) Any final decision made pertaining to the proposed plan shall be filed in the Town of Waxhaw Development Services Department (or as otherwise designated by the Town) and sent to the applicant by first class mail.

(F) Denial of a plan or a revised plan must specifically state in writing the reasons for disapproval. The Erosion Control Inspector must approve, approve with modifications, or disapprove a revised plan within fifteen (15) days of receipt, or it is deemed to be approved.

(G) Plan approval shall expire three (3) years following the date of approval, if no land-disturbing activity has been undertaken, or if no land-disturbing activity has occurred with three (3) years. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Erosion Control Inspector determines that the plan is inadequate to meet the requirements of this ordinance, the Erosion Control Inspector may require any revision of the plan that is necessary to comply with this ordinance.

(H) Persons conducting land-disturbing activities which are addressed by Section 159.16 shall have secured a Plan Certificate and Letter of Approval (in accordance with procedures described herein) before any land-disturbing activities commence. A copy of the approved plan and the Certificate of Plan Approval shall be maintained at the job site by the

persons conducting the land-disturbing activity. After approving the plan, if the Erosion Control Inspector, 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 Inspector may require that a revised plan be submitted. Pending the preparation and approval of the revised plan, work shall cease or shall continue under conditions outlined by the Erosion Control Inspector.

(I) A plan may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or their attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. 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.

(J) The person submitting a plan to the Erosion Control Inspector is, prior to submission of the plan, solely and exclusively responsible for determining whether the proposed land-disturbing activities require any form of state or federal environmental certification or documentation. Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for Town review. The Erosion Control Inspector, upon discovery that an environmental certification or documentation is required but was not obtained, shall promptly notify the person submitting the plan that the thirty (30) day time limit for review of the plan pursuant to Section 159.16 (D) of this Ordinance shall not begin until a complete environmental document or certificate is available for review by the Erosion Control Inspector. However, no term or condition in the Ordinance shall be interpreted to place the burden for determining the necessity for an environmental certificate or documentation upon the Erosion Control Inspector, and the person submitting the plan, as well as any other persons specified by law, rule or regulation, shall remain solely and exclusively responsible for such determination.

(K) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this Ordinance. Any erosion and sediment control measures and/or devices must be drawn to scale and contour when deemed applicable by the Erosion Control Inspector. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation shall be found in the Town of Waxhaw Engineering, Standards and Procedures Manual. The Erosion Control Inspector shall automatically disapprove a plan if it is determined that implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.

(L) A plan may be disapproved upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

- (1) 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 NCSCC or the Town pursuant to the Act and has not complied with the notice within the time specified in the notice.

- (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due.
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
- (4) Has failed to substantially comply with applicable local, State or Federal laws, regulations, rules or ordinances adopted pursuant to the Act. For purposes of this subsection 159.16 (L), an applicant's record may be considered for only the two (2) years prior to the application date.

(M) Applications for amendment of a plan in written and/or graphic form may be made at any time under the same format as the original application. Until such time as said amendment is approved by Erosion Control Inspector, land-disturbing activity shall not proceed except in accordance with the plan as originally approved.

(N) 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.

159.17 TRANSFER OF PLANS.

(A) The Town of Waxhaw may transfer a plan if all of the following conditions are met:

- (1) 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 ownership.
- (2) The local government finds all of 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.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. 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 local government 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 local government from requiring a revised plan pursuant to Section 159.16(G).

(E) Denials of transfer requests may be appealed pursuant to Section 159.22(A)

159.18 INSPECTIONS AND INVESTIGATIONS.

(A) The Erosion Control Inspector will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan. 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 159.06 (C). The person who performs the inspection shall maintain and make available a record of the 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.

(B) No person shall willfully resist, delay, or obstruct the Erosion Control Inspector, while inspecting or attempting to inspect a land-disturbing activity under this section.

(C) If it is determined that a person engaged in the land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice shall be served by registered or certified mail or by any means authorized under GS 1A-1, Rule 4. The Notice of Violation shall specify a date by which, or a cure period within which, the person must comply with this Ordinance, and inform the person of the actions that need to be taken to comply with this Ordinance. The Notice shall set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which such measures shall be completed, and warn that failure to correct the violation within the time period stated is subject to a civil penalty and other enforcement actions. However, no time period for compliance need be given for failure to submit a plan for approval, for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties, or for the penalty that may be assessed pursuant to this Ordinance for the day the violation is assessed by the Erosion Control Inspector. Any person who fails to comply within the time specified in the Notice is subject to additional civil and criminal penalties for a continuing violation as provided in this Ordinance.

If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Erosion Control Inspector shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the Erosion Control Inspector is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

(D) The Erosion Control Inspector shall have the power to conduct such investigation as may be reasonably deemed necessary to carry out duties as prescribed in this ordinance, and for this

purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to the Erosion Control Inspector who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out their official duties as provided in this Ordinance.

(E) The Erosion Control Inspector shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(F) On any tract on which five (5) or more acres are disturbed, the person conducting land-disturbing activity will be responsible for self-inspection of erosion and sedimentation control facilities at least once every seven (7) days or within 24 hours of a storm event of greater than 0.5 inches of rain per 24-hour period.

159.19 PENALTIES; STOP WORK ORDERS .

(A) Civil Penalties.

- (1) Any person who violates any of the provisions of the applicable State, Federal or local laws, rules, regulations or ordinances, including this Ordinance, or rules or orders adopted or issued pursuant to applicable State, Federal or local laws, rules, regulations or ordinances, including this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. 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).

- (2) The Erosion Control Inspector shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request a remission of the civil penalty under G.S. 113A-64.2, the date of the deadline for that person to make the remission request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subdivision (1) of this subsection. The notice of assessment shall be served by any means authorized under G.S 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Town of Waxhaw within 30 days after it is due, the Erosion Control Inspector may institute a civil action to recover the amount of the assessment. The civil action may be brought in the

superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

- (3) In determining the amount of the penalty, items which may be considered are the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by non-compliance, whether the violation was committed willfully and the prior record of the violator in complying with or failing to comply with this Ordinance.
- (4) The clear proceeds of civil penalties collected by the Town must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S 115C-457.2.

(B) Criminal Penalties. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule, regulation or order adopted or issued pursuant to this Ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00.

(C) Stop Work Orders

- (1) The Erosion Control Inspector may issue a stop-work order if he finds that a land-disturbing activity is being conducted in violation of this Section or of any rule adopted or order issued pursuant to this Section, that the violation is knowing and willful, and that either:
 - (a) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
 - (b) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.
 - (c) The land-disturbing activity is being conducted without an approved plan.
- (2) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the Town of Waxhaw pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.
- (3) The stop-work order shall be served by the sheriff of Union County or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity.

The Town of Waxhaw shall also deliver a copy of the stop-work order to any person that the Town of Waxhaw has reason to believe may be responsible for the violation.

- (4) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in Section 159.18(A). A stop-work order issued pursuant to this section may be issued for a period not to exceed five days.
- (5) The Erosion Control Inspector shall designate an employee (which may be the Erosion Control Inspector) to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the Erosion Control Inspector, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Erosion Control Inspector shall rescind a stop-work order that is issued in error.
- (6) The issuance of a stop-work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to Article 4 of Chapter 150B of the General Statutes. The petition for judicial review shall be filed in the superior court of the county in which the land-disturbing activity is being conducted.
- (7) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6.
- (8) The Attorney for the Town of Waxhaw shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two business days of the service of the stop-work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint.

159.20 INJUNCTIVE RELIEF.

(A) Whenever the Erosion Control Inspector has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any term, condition, or provision of an approved plan, he/ she may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court in Union County.

(B) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order of 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.

159.21 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The Erosion Control Inspector may require a person who engaged in a land- disturbing activity and failed to retain sediment generated by the activity as required by subsection 159.06 (C) 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.

159.22 APPEALS.

Procedures which constitute the appeals process, related to the following actions:

(A) Plan Approval With Modifications or Plan Disapproval. The appeal of an approval, approval with modifications or disapproval of a plan made by the Erosion Control Inspector with regard to this Ordinance shall be governed by the following provisions:

- (1) The order of approval, disapproval, or modification of any proposed Plan made by the Erosion Control Inspector shall entitle the Person challenging such decision to a public hearing before the Town of Waxhaw Board of Adjustment if such Person submits written demand for a hearing and completes the necessary forms and pays the required appeals fee within fifteen (15) days following the date the decision was filed in the Town of Waxhaw Development Services Department office or mailed to the applicant, whichever date is later. Such written request and completed forms shall be submitted to the Clerk of the Board of Adjustment or his designee. Forms shall be available at the Town of Waxhaw Town Hall, or as directed by the Erosion Control Inspector. A fee for such public hearing shall be in accordance with a fee schedule adopted by the Town of Waxhaw Board of Commissioners. No request shall be considered complete unless accompanied by such fee.
- (2) Notice of the Board of Adjustment public hearing shall be sent by first class mail to the applicant at least ten (10) days prior to the public hearing and to any person who has submitted written request to receive such notice at least ten (10) days prior to the date of the public hearing. The hearing shall be held no later than thirty (30) days after the date of receipt of said written request.
- (3) A hearing shall be conducted by the Board of Adjustment. A concurring vote per the Board of Adjustment’s officially adopted by-laws will be necessary to reverse any order, requirement, decision, or determination of any official charged with the enforcement of this Ordinance, or to decide in favor of an appellant any matter upon which is required to pass or to grant variance from the provisions of this Ordinance. The Town shall keep minutes of the proceedings, showing the votes of each member upon each question and the attendance of each member at such hearings. The final disposition of the Town shall be based on findings of fact.
- (4) A party dissatisfied with the decision of the Board of Adjustment following the public hearing shall appeal such decision to the NCSCC pursuant to Title 15, Chapter 4B, Section .0018(d) of the North Carolina Administrative Code and as provided by NC GS 113A-61(c).

(B) Plan Disapproval Due To Prior Violation, Unpaid Penalties, or Non-compliance. In the event that a plan is disapproved pursuant to Subsection 159.16 (L) of this Ordinance, the Town of Waxhaw Control Inspector shall notify the Director of the Division of Land Resources of such disapproval, along with the reasons therefore, within ten (10) days after the date of the

decision. The Erosion Control Inspector shall advise the applicant and the Director of the Division of Land Resources in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Erosion Control Inspector's disapproval of the plan pursuant to Subsection 159.16 (L) of this Ordinance directly to the NCSCC.

(C) Issuance of Notice of Violation, Penalties, or Order of Restoration. The appeal of Issuance of Notice of Violation, Assessment of Civil Penalty, or Order of Restoration made by the Town of Waxhaw with regard to this Ordinance shall be governed by the following provisions:

- (1) The issuance of a notice of violation, assessment of a civil penalty, or an order of restoration by the Erosion Control Inspector shall entitle the person alleged to be in violation of the Ordinance (petitioner) to appeal within thirty days by filing a petition for a contested case with the State Office of Administrative Hearings under Article 3 of Chapter 150B.

159.23 SEVERABILITY. If any section or specific provision or standard of this ordinance is found by a court to be unconstitutional or invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, or standard of these regulations, except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

159.24 EFFECTIVE DATE. This ordinance shall become effective upon approval of the North Carolina Sedimentation Control Commission.

Attest:

Melody Shuler, Town Clerk

Stephen E. Maher, Mayor