

**ADMINISTRATIVE PROCESS
FOR ARTICLE V. SOIL EROSION AND SEDIMENTATION CONTROL
OF CHAPTER 26 ENVIRONMENT
OF THE BUNCOMBE COUNTY CODE OF ORDINANCES**



**COUNTY OF BUNCOMBE
DEPARTMENT OF PLANNING AND DEVELOPMENT
EROSION CONTROL OFFICE
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JANUARY 8, 2008

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ORDINANCES

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INTRODUCTION

The intent of this manual is to acquaint those persons involved in land disturbing activities in the County of Buncombe with the administration of the Soil Erosion and Sedimentation Control Ordinance which is codified and contained within Chapter 26 Article V of the Buncombe County Code of Ordinances.

This Manual summarizes the steps necessary to acquire a land disturbing permit which include who must apply, what submittals are required, fees, etc. This manual also describes the inspection process for enforcement of the Ordinance.

Questions, comments, and suggestions concerning the Ordinance or the administration thereof may be directed to the Erosion Control Officer for the Buncombe County Department of Planning and Development at 46 Valley Street, Asheville, NC 28801. The Telephone number is (828) 250-4848.

PLEASE VISIT OUR WEB SITE for additional information and downloadable forms. Checklist, Application/Financial Responsibility Ownership, Fee Schedule, etc.

The County of Buncombe does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities.

LAND DISTURBING PERMIT ACQUISITION PROCEDURE

Once it has been determined that a land disturbing permit is required according to Section 26-210, 26-211a, 26-213 and 26-226a of the Ordinance, the acquisition procedure must be followed.

In order to obtain a land disturbing permit from the County of Buncombe, the following submittals are required according to Sections 26-226 and 26-228:

1. For disturbed sites as described in Section 26-211 of the Buncombe County Code of Ordinances.
 - A. **Copy of the approved stormwater plan, approval letter and permit.**
 - B. Completed land disturbing permit application (Statement of financial responsibility and ownership)
 - C. Completed and signed Erosion Control Plan Checklist
 - D. Plan review fee (see Fee Schedule)
 - E. Approved Erosion Control Plan according to Section 26-228 (2 copies).
 - F. CD (PDF Format) Plan, Financial Responsibility Ownership Form (Application) signed and notarized, checklist (signed) and calculations.
2. Two copies of the Erosion Control Plan shall be filed with County at least thirty (30) days prior to beginning land disturbing activity **and another copy shall be kept at the job site.**

The County will review submittal and within twenty (20) days after receipt shall notify the person submitting the plan that it has been approved, approved with modifications and/or performance reservations, or disapproved.

Should the Plan be filed, approved and a Land Disturbing Permit be issued in less than twenty (20) days, the land disturbing activity may commence.

2. Upon approval of the Erosion Control Plan, the applicant will be issued a Land Disturbing Permit and a NPDES Stormwater Discharge Permit. After issuance of a Land Disturbing Permit, a building permit may be obtained from the Permits' Office.

(NOTE: The word "approval" as used above, is meant to convey that the erosion control plans appear to comply with the Ordinance. If, following commencement of a land disturbing activity pursuant to an approved plan the County determines that the plan is inadequate to meet the requirements of this Ordinance, the County may require such revisions as are necessary to comply with this Ordinance.)

FEE SCHEDULE

Plan Review Fee:

One-quarter to less than one acre disturbed, subject to Sec. 70-68, Hillside
\$400.00

One acre or greater than one acre disturbed:
\$525.00/acre, prorated*

**Example: 1.125 acres disturbed x \$525.00 = \$590.63*

The Plan Review Fee is based on disturbed acreage. Plan review fees shall be double the normal fee when land-disturbing activities begin before a land-disturbing permit is obtained from the County.

Note: The less than one-acre requirement applies to lots with an average natural slope of 25% or greater in subdivisions approved under Sec. 70-68 Hillside Development standards. Refer to Chapter 26 Sec. 26-211.

INSPECTION AND INVESTIGATION PROCEDURES

1. INSPECTION

Agents and officials of the county will make inspections to insure the effectiveness of the installed erosion control measures (Section 26-230)

2. REPORT

The results of the inspection will indicate compliance with ordinance, whether the activity is being conducted in accordance with an approved plan, proper erosion control, problems with existing measures, need for additional measures, corrective actions and will be mailed to the financially responsible party.

3. NOTICE OF VIOLATION(S)

If it is determined, upon subsequent inspections, any person engaged in land disturbing activities is violating any provisions of the Ordinance, a Notice of Violations shall be served upon the person responsible for the violations (Section 26-230(b)). The Notice of Violations will restate the problems, corrective actions needed, completion time, and warn that failure to comply shall result in the assessment of a civil penalty (Section 26-231) or other enforcement action (Section 226-227a, 26-255 and 26-232).

4. REVOCAION OF PERMIT

Non-compliance to the terms of the notice of violation empowers the county to revoke the Land Disturbing Permit or issue a Stop Work Order. In the event that the Land Disturbing Permit is revoked, all building permits will be revoked (Section 26-227a),

5. CERTIFICATE OF COMPLIANCE

Issued to the person conducting the land disturbing activity upon satisfactory project completion.

COUNTY OF BUNCOMBE

CHECKLIST AND GUIDELINES FOR THE PREPARATION OF EROSION AND SEDIMENTATION CONTROL PLANS

FOR _____
(Name of Project)

THE FOLLOWING CHECKLIST IS TO BE COMPLETED AND SUBMITTED WITH ALL EROSION AND SEDIMENTATION CONTROL PLANS:

In completing this checklist please refer to Section 26-228 (f)

Each blank must be checked or marked Not Applicable (N/A) or yes/no and dated. Inaccurate or inadequate preparation of this form will result in, disapproval of the plan.

Date

_____ **CD (PDF Format) Plan, Financial Responsibility Ownership Form (Application) signed and notarized, checklist (signed) and calculations.**

_____ **Copy of the approved Stormwater plan, Approval letter and Permit.**

_____ Completed Financial Responsibility and Ownership Form (Application)

_____ Plan Review Fee (Based on disturbed acreage)

Lots in Subdivisions Subject to Sec. 70-68, Hillside	\$400.00 for 0.25 to <1 acre
All Properties, One Acre or Greater Disturbance	\$525.00/acre, prorated
Example: 1.125 acres disturbed x \$525.00 = 590.63	

Plan review fees shall be double the normal fee if the land disturbing activities begin prior to obtaining a permit.

_____ Two copies of the Erosion and Sedimentation Control Plan, showing the following:

Location Information

_____ Project location

_____ Roads, street

_____ North arrow

_____ Scale

_____ Adjoining lakes, streams or other major drainage

_____ Adjoining property owners

General Site Features

- _____ North arrow
- _____ Scale
- _____ Property Line
- _____ Legend
- _____ Existing contours
- _____ Limit and acreage of disturbed area (clearly designated).
- _____ Utilities (existing and purposed)
- _____ Planned and existing road locations and elevations
- _____ Lot and/or building numbers.
- _____ Land use of surrounding areas
- _____ Rock outcrops
- _____ Seeps or springs
- _____ Wetlands limits
- _____ Easements
- _____ Streams, lakes, ponds, drainage ways, dams
- _____ Trout waters
- _____ High Quality or Outstanding Resource Waters
- _____ Boundaries of the total tract.
- _____ Borrow and waste areas (If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity unless the borrow or waste activity is regulated under the Mining Act of 1971, or is a landfill regulated by the Division of Solid Waste Management. If the land- disturbing activities are not conducted by the same person, they shall be considered separate land-disturbing activities.)
- _____ Access and all roads
- _____ Construction staging area
- _____ Stockpiled topsoil or subsoil location
- _____ Road / Street profiles

Site Drainage Features

- _____ Existing and planned drainage patterns (include map of off-site areas that drain through project)
- _____ Size of Area to be disturbed (Acreage)
- _____ Size and location of culverts and sewers
- _____ Soil information (type, special characteristics)
- _____ Design calculations for peak discharges of runoff (including the construction phase and runoff coefficients of the site)
- _____ Design calculations and construction details for culverts and storm sewers
- _____ Design calculations cross-sections and method of stabilization of existing and planned channels (include temporary linings)
- _____ Design calculations and construction details of energy dissipaters below culvert and storm sewer outlets (for rip-rap aprons, include stone sizes (diameter and apron dimensions) (detention may be necessary to meet velocity reduction requirements)
- _____ Soil information below culvert storm outlets
- _____ Design calculations and construction details to control ground-water, i.e., seeps, high

water tables, etc

____ Names of receiving watercourse or name of municipal operator (only where storm water discharges are to occur)

Erosion Control Measures

____ Legend

____ Temporary and permanent Sedimentation and Erosion Control measures (locations and dimensions of gravel entrances, diversion ditches, silt fences, sediment traps (minimum volume 3600cubic feet) sediment basins, velocity dissipaters, ditch lining, retaining walls, etc.)

____ Detailed drawings (section, elevations, and perspectives of measures sufficient for construction.)

____ Construction drawing and details for temporary and permanent measures

____ Design calculations for sediment basin and other measures

____ Maintenance requirements during construction

____ Person responsible for maintenance during construction

____ Maintenance requirements and responsible person(s) of permanent measures

____ Construction sequence (permits, installation of measures, inspections and approvals, maintained of measures, ground cover, and removal of measures after stabilization)

Vegetative Stabilization

____ Areas and acreage to be vegetative stabilized

____ Planned vegetation with details of plant, seed, mulch, and fertilizer

____ Specifications for permanent and temporary vegetation

____ Method of soil preparation

Note: Should include provision for ground cover on exposed slopes within (21) calendar days of completion of any phase of grading, permanent ground cover for all disturbed Areas within (15) working days or (90) calendar days (whichever is shorter) following Completion of construction or development.

Other Requirements

____ Narrative describing construction sequence (as needed)

____ Narrative describing the nature and purpose of the construction activity

____ Bid specifications regarding erosion control

____ Construction sequence related to sedimentation and erosion control (include installation of critical measures prior to initiation of the land-disturbing activity, and removal of measures after they serve have been permanently stabilized.)

____ Corps of Engineers Permit

____ Division of Water Quality contacted for regulated work

- ___ Flood Hazard areas located and contacted flood zone Administrator.
- ___ Division of Solid Waste contacted for regulated work
- ___ Watershed and watershed administrator contacted
- ___ Zoned and contacted Zoning Administrator
- ___ D.O.T permit, encroachment and culvert tie on (must reduce velocity prior to tie on.)
- ___ Statements (concerning approval to discharge stormwater or perform off-site construction work)
- ___ Dust Control, address
- ___ Underground Utilities. (Before you dig) call 1-800-632-4949 N.C. One Call
- ___ Wildlife comments and address on plan...

___ The approval of an erosion plan is conditioned on the applicant's compliance with federal and state water quality laws, and rules. A copy of the erosion control plan for any land disturbing activity that involves the utilization of ditches for the purpose of dewatering and lowering the water table must be forwarded to the director of the division of water quality.

- ___ All design calculations shall be designed for the minimum **twenty five year** storm.
- ___ Plan designer must furnish a statement of an on site downstream evaluation for assessment of twenty-five year velocity impacts to adjoining property. Statement to include concerns, potential problems, possible solutions and additional measures temporary and permanent, your plan will address for downstream impact, and for a minimum one quarter mile (Be advised that the county is not requiring you to enter adjoining property without permission. Utilize all available resources possible to assess impacts)
- ___ A minimum of a 10' undisturbed setback is required to adjoining property at all drainage outfalls.
- ___ Subdivision plan to include a 10' easement per-section 70:66, geotechnical engineer per-section 70:68, and average slope determination.)
- ___ An NPDES Permit will be issued with the Land-Disturbing Permit. Remit copies of rain information to this office once each month. (Can be mailed, E-mail etc.) Include person responsible for maintaining and supplying this information.

The Land Disturbing Permit will be issued once the Plan has been approved.

SIGNATURE

DATE

Revised August 1, 2006

NOTE: Please do not call about reviews. Plans are reviewed on a first come first serve basis with a maximum of twenty (20) days to approve or disapprove. (Revised plan fifteen (15) days.)



FOR OFFICE USE ONLY

COUNTY OF BUNCOMBE

Department of Planning
Erosion Control Office
46 Valley Street
Asheville, NC 28801
(828) 250-4848

Review Fee: _____
Permit No.: _____
Date Issued: _____
Date Paid: _____
Check No.: _____
Rec'd By: _____

APPLICATION FOR LAND DISTURBING PERMIT **Financial Responsibility / Ownership Form**

INSTRUCTIONS: All sections must be completed. Please type or print information. Section 5 must be completed in the presence of a Notary Public.

- 1) Project Name: _____
 Project Location: Highway/ Street _____ Latitude _____ Longitude _____
 Property Identification No. (PIN): _____
 Purpose of development (residential, commercial, industrial ,etc), _____
 Total Area Disturbed (including offsite borrow and waste area): _____ acres(s).
 Amount of fee enclosed: _____

- 2) Section 26-228(b) of the Buncombe County Soil Erosion and Sedimentation Control Ordinance: "Erosion control plans shall be accompanied by a notarized statement of financial responsibility and ownership". This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The undersigned states that he/she is the person financially responsible for land disturbing activity described in this application and acknowledges receipt of a copy of the County of Buncombe Soil Erosion and Sedimentation Control Ordinance and that he/she has thereby been advised of the requirements therein as well as the penalties and resources available to the County in the event of violation of the Ordinance, including revocation of the Land Disturbing Permit and all building permits issued in connection with the project covered by the application.

Name of Business: _____
Name of Applicant: _____ Date: _____
Mailing Address: _____
Street address: _____
E-mail address: _____
Telephone No.: _____ Cell No: _____ Fax no: _____
Signature: _____

- 3) Landowner(s) of Record:
 Name: _____
 Mailing Address: _____
 Recorded in Deed Book No. _____ Page : _____

- 4) Section 26-228(b) of the Buncombe County Soil Erosion and Sedimentation Control Ordinance: "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." The person noted below is the designated North Carolina agent and is duly authorized by the financially responsible person to accept and convey correspondence regarding the aforementioned project.

Name of Agent: _____
Mailing Address: _____
E-mail Address _____
Telephone Number :(____) _____ Cell No: _____ Fax No: _____
Signature: _____

- 5) The above information is true and correct to the best of my knowledge and belief and was provided by me while under oath. (If the financially responsible person is an individual, this form must be signed by the individual or his attorney-in-fact; if the financially responsible person is not an individual, this form must be signed by an officer, director, partner, or registered agent with authority to executed instruments for the financially responsible person.)

Name: _____ Date: _____
Title: _____
Signature: _____

I, _____, a Notary Public for the County of _____,
State of _____, hereby certify that _____ personally
appeared before me this day and under oath acknowledged that the above form was executed by him and is correct to the best of his
knowledge and belief.

Witness my hand and seal, this _____ day of _____, 20_____.

Notary _____

My Commission Expires _____

The County of Buncombe does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. Requests for appropriate auxiliary aids and services, when necessary to offer a person with a disability an equal opportunity to participate in or enjoy the benefits of County services, programs, or activities, may be made by contacting Buncombe County Erosion Control, (828) 250-4848. Buncombe County's TDD number is (828) 250-4001.

ORDINANCE NO.11-06-03

ORDINANCE AMENDING CHAPTER 26, ARTICLE V OF THE BUNCOMBE COUNTY CODE OF ORDINANCES,
SOIL EROSION AND SEDIMENTATION CONTROL

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-121, the County may adopt an ordinance to regulate conditions detrimental to the health, safety, or welfare of its citizens; and

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-102, the Board of Commissioners may fix the fees and commissions charged by county officers and employees for performing services or duties permitted or required by law; and

WHEREAS, it is the Board's desire to amend these fees through the annual budget ordinance.

NOW, THEREFORE, BE IT ORDAINED BY the Board of Commissioners for the County of Buncombe as follows:

Section 1. The Buncombe County Code of Ordinances is hereby amended as follows:

Amend Sec. 26-226(d) as follows:

Fees. The county may establish fees as considered necessary to defray costs of administering this article. Plan review fees shall be double the normal fee amount when land disturbing activity begins before a land disturbing permit is obtained from the county.

An applicant shall be entitled to two plan reviews of any application without payments of an additional plan review fee. This shall be construed to mean review of the original application and review of the re-submittal of that application with or without revisions. Any re-submittal by the applicant thereafter shall be treated as a new application and must be accompanied by payment of the full plan review fee.

The county board of commissioners shall establish plan review fees, and may amend and update the fees annually during the budget process. The plan review fee charge is:

Up to and including one acre:	\$400.00
Greater than one acre, each additional acre:	

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declare that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

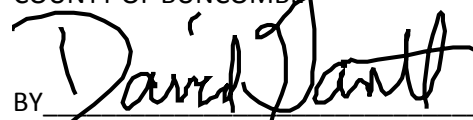
Section 4. This resolution is effective July 1, 2011.

Read, approved and adopted this 7th day of June, 2011.

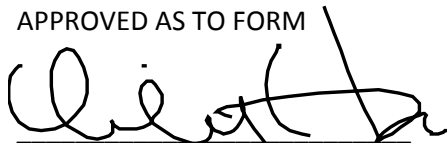
ATTEST


Kathy Hughes, Clerk

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

BY 
David Gantt, Chairman

APPROVED AS TO FORM


Michael C. Frue, County Attorney

**ARTICLE V. SOIL EROSION AND
SEDIMENTATION CONTROL***

DIVISION 1. GENERALLY

Sec. 26-206. Title and authority of article.

This article may be cited as the county soil erosion and sedimentation control ordinance, and is adopted pursuant to the authority granted in the North Carolina Sedimentation Pollution Control Act of 1973, G.S. 113A-50 et seq. (Ord. No. 20172, § 1, 2-2-93)

Sec. 26-207. Jurisdiction of article.

This article is hereby adopted by the county board of commissioners to apply to all of the county outside of the incorporated areas. Except as provided in this section, the provisions of this article shall not be applicable to and shall not be enforced within the corporate limits or jurisdiction of any municipality in the county. A municipality may come within the provisions of this ordinance at any time by mutual agreement with the county and by the adoption of an appropriate resolution by the governing body of such municipality pursuant to G.S. 153A-122 agreeing that this ordinance shall be enforced within the corporate limits or jurisdiction of the municipality. (Ord. No. 20172, § 2, 2-2-93; Ord. No. 96-8-7, § 1, 8-20-96)

Sec. 26-208. Purpose of article.

This article is adopted for the purposes 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.

(Ord. No. 20172, § 3, 2-2-93)

*Cross reference—Subdivisions, ch. 70.

State law reference—Authority to adopt rules and regulations to establish and enforce soil erosion and control programs, G.S. 113A-60.

Sec. 26-209. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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, G.S. 113A-50 et seq., and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure, or device means one which controls the soil material within the land area under responsible control of the person conducting the land disturbing activity.

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

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

Borrow means fill material which is required for onsite construction and is obtained from other locations.

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

Certificate of compliance means a certificate issued by the county indicating that the required temporary and/or permanent erosion control measures shown on the approved plan have been constructed correctly and are operating correctly and that the site has been satisfactorily stabilized except for routine maintenance requirements.

Coastal counties means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

Commission means the state sedimentation control commission.

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

Department means the state department of environment, health, and natural resources.

Detention basin means a facility constructed or modified to represent flow of storm water to a prescribed maximum rate and to concurrently detain the excess waters that accumulate behind the outlet.

Director means the director of the division of land resources of the state department of environment, health, and natural resources.

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

District means the county soil and water conservation district created pursuant to G.S. 139-1 et seq.

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

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

Erosion control officer means the county erosion control officer or his duly authorized representatives.

Forest lands means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

Forest practices means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

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

High quality water (HQW) zones means areas that are within one mile of and drain to HQWs.

High quality waters means those classified as such in 15A NCAC2B.0101(e)(5)—General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).

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

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

Land disturbing permit means the document issued by the county which allows grading operations to commence and to proceed in accordance with the requirements of this article.

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

Logging means the practice of harvesting products or timber from a tract or part of a tract of land and then perpetuating a stand of timber or forest products on the same tract of land within reasonable timeframes and accepted best management practice guidelines as recommended by the Forest Practice Guidelines Related to Water Quality pursuant to the provisions of G.S. ch. 150B.

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 means an affiliate that directly or indirectly, through one or more intermediaries, controls another person.

Person means any individual, partnership, firm, association, joint venture, public or private corpo-

ration, 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 article, the Act, or any order adopted pursuant to this article or the Act.

Person responsible for the violation means, as used in this article and G.S. 113A-64:

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

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

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

Storm drainage facilities means the system of inlets, conduits, channels, ditches, and appurte-

nances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff means the direct runoff of water resulting from precipitation in any form.

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

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

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

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

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

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

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

Waste means surplus materials resulting from onsite construction and disposed of at other locations.

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

(Ord. No. 20172, § 4, 2-2-93; Ord. No. 96-8-7, § 2, 8-20-96; Ord. No. 99-3-7, § 4, 3-16-99; Ord. No. 06-04-02, § 1, 4-4-06)

Cross reference—Definitions generally, § 1-2.

Sec. 26-210. Scope of article and exclusions from article.

(a) *Geographical scope of regulated land-disturbing activity.* This article shall apply to land-disturbing activity within the territorial jurisdiction of Buncombe County and to the extraterritorial jurisdiction of Biltmore Forest, Black Mountain, Woodfin, Weaverville, and Montreat as allowed by agreement between local governments.

(b) *Exclusions from regulated land-disturbing activity.* Notwithstanding the general applicability of this article to all land-disturbing activity, this article shall not apply to the following types of land-disturbing activity:

- (1) Activities including the breeding and grazing of livestock, 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 apiary products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 - e. Bees and dairy products.
 - f. Fur producing animals.
- (2) Activities undertaken on forestland for the production or 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 board of commissioners.

(3) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.

(4) For the duration of an emergency, activities essential to protect human life.

(5) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

(Ord. No. 20172, § 5, 2-2-93; Ord. No. 96-8-7, § 3, 8-20-96; Ord. No. 06-04-02, § 2, 4-4-06)

Sec. 26-211. General requirements.

(a) *Plan required.* No person shall initiate any land disturbing activity as defined in this section without an erosion control plan as described in section 26-228, approved by the county, and without having a land disturbing permit as described in section 26-226. For the purposes of this article, an erosion control plan shall be required for:

- (1) Any land disturbing activity which uncovers one or more acres (43,560 square feet) on a tract of land.
- (2) Reserved.
- (3) Any residential land disturbing activity which uncovers one-quarter acre or more (10,890 square feet) on a lot, parcel, or tract with an average slope of 25 percent or greater in its natural state and applies to chapter 70, Subdivisions, section 70-68.

(b) *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 activities.

(c) *More restrictive rules shall apply.* Any residential land disturbing activity which uncovers one-half acre or more (21,750 square feet) on a lot, parcel or tract with an average slope 15 to 25 percent in its natural state and applies to chapter 70, Subdivisions, section 70-68.

(Ord. No. 20172, § 6, 2-2-93; Ord. No. 96-8-7, § 4, 8-20-06; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, § 1, 8-5-03; Ord. No. 06-04-02, § 3, 4-4-06; Ord. No. 06-08-04, § 1, 8-1-06)

Sec. 26-212. Basic control objectives.

An erosion and sedimentation control plan may be disapproved pursuant to section 26-228 if the plan fails to address the following control objectives:

- (1) *Identify critical areas.* Onsite areas which are subject to severe erosion and offsite areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.
- (2) *Limit time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) *Limit exposed areas.* All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (4) *Control surface water.* Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) *Control sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent offsite sedimentation damage.
- (6) *Manage stormwater runoff.* When the increase in the velocity of stormwater 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 at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream. Plan designer must furnish a statement of an on site downstream evaluation for assessment of 25-year storm velocity impacts to adjoining property.

(Ord. No. 20172, § 7, 2-2-93; Ord. No. 06-04-02, § 3, 4-4-06)

Sec. 26-213. Forest practice guidelines.

(a) It is the intent of the board of commissioners to adopt Forest Practice Guidelines Related to Water Quality (best management practices) pur-

suant to the provisions of G.S. ch. 150B. Until forest practice guidelines are adopted, activities undertaken on forest land for the production and harvesting of timber products will be subject to this article.

(b) If land disturbing activity undertaken on forest land for the production and harvesting of timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this article shall apply to such activity and any related land disturbing activity on the tract.

Secs. 26-214—26-225. Reserved.**DIVISION 2. ADMINISTRATION AND ENFORCEMENT*****Sec. 26-226. Permits.**

(a) *Required; exceptions.* Except as provided in section 26-210, no person shall undertake any land disturbing activity subject to this article without first obtaining a permit therefor from the county, except that no permit shall be required for any land disturbing activity:

- (1) For the purpose of fighting fires;
- (2) For the stockpiling 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 offsite damage; or
- (3) Less than one acre (43,560 square feet) that does not apply to chapter 70, Subdivisions, section 70-68.
- (4) In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(b) *Requirements of applicant.* To obtain a land disturbing permit the following is required:

- (1) Completed land disturbing permit application.
- (2) Completed and signed erosion control plan checklist.

*Cross reference—Administration, ch. 2.

- (3) Plan review fee.
- (4) An approved erosion control plan (two copies).
- (5) A copy of the approved stormwater plan, approval letter and permit.

In all circumstances where a stormwater permit is required in accordance with Buncombe County ordinances, such stormwater permit must be obtained before a land disturbing permit may be issued pursuant to this section.

Note: If the intent is to disturb land, which requires a land disturbing permit, regardless of time frame, a land disturbing permit must be obtained prior to beginning the land disturbing activity.

(c) *Issuance prerequisite to building permit.* The county shall not issue any building permits for projects on sites where a land disturbing permit is required unless and until a land disturbing permit has been issued.

(d) *Fees.* The county may establish fees as considered necessary to defray costs of administering this article. Plan review fees shall be double the normal fee amount when land disturbing activity begins before a land disturbing permit is obtained from the county.

An applicant shall be entitled to two plan reviews of any application without payments of additional plan review fee. This shall be construed to mean review of the original application and review of the resubmittal of that application with or without revisions. Any re-submittal by the applicant thereafter shall be treated as a new application and must be accompanied by payment of the full plan review fee.

The plan review fee charge is:

Up to and including one acre:	\$400.00
Greater than one acre, each additional acre:	\$400.00

(e) *Display.* A land disturbing permit issued under this article shall be prominently displayed on the site until all construction is completed, all

permanent sedimentation and erosion control measures are installed and the site has been substantially stabilized, as required.

(Ord. No. 20172, § 17, 2-2-93; Ord. No. 96-6-16, §§ 1—3, 6-18-96; Ord. No. 96-8-7, § 5, 8-20-96; Ord. No. 99-4-3, § 1, 4-13-99; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, §§ 2—5, 8-5-03; Ord. No. 06-04-02, § 4, 4-4-06; Ord. No. 06-08-04, § 1, 8-1-06; Ord. No. 06-11-01, § 1, 11-7-06; Ord. No. 08-01-05, § 1, 1-8-08)

Sec. 26-227. Revocation of permits.

(a) If inspection of a site of land disturbing activity indicates that the site is not in compliance with either this article or the erosion control plan approved for the site, the county shall serve a notice of violation by registered or certified mail or by any means authorized under G.S. 1A-1, Rule 4, or other means reasonably calculated to give actual notice, upon the person conducting the land disturbing activity and, if different from that party, the property owner.

The notice shall set forth the actions necessary to achieve compliance with the plan or this section, specify a reasonable time period within which such measures must be completed, and warn that failure to correct the violation within the time period will result in one or more of the following:

- (1) Revocation of the land disturbing permit and all building permits;
- (2) The issuance of a stop work order;
- (3) The assessment of civil penalties; or
- (4) Other enforcement action.

If the site of land disturbing activity is not brought into compliance with this section or the plan within the time stated in the notice, the county shall (1) revoke the land disturbing permit and immediately revoke all building permits granted for the site pursuant to N.C.G.S. § 153A-362 or (2) issue a stop work order pursuant to N.C.G.S. § 153A-361.

(b) When work under a land disturbing permit is not begun within six months following the date of issuance of the land disturbing permit, the land disturbing permit shall be deemed to be expired.

If land disturbance has begun within six months of the date of issuance the land disturbing permit will expire five years from date of issuance. Renewal of the land disturbing permit will require a new application and new plan review fees. No grading work is to be performed until the new permit is issued.

(Ord. No. 20172, § 18, 2-2-93; Ord. No. 96-8-7, §§ 6, 7, 8-20-96; Ord. No. 99-4-3, § 2, 4-13-99; Ord. No. 06-08-04, § 1, 8-1-06)

Sec. 26-228. Erosion and sedimentation control plans.

(a) *Filing; review; revision.* Persons conducting a land disturbing activity on a tract which requires a land disturbing permit shall file two

copies of the erosion control plan with the county at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the county, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or offsite sedimentation exists, the county will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. No person may initiate a land disturbing activity before notifying the county of the date that the land disturbing activity will begin. When deemed necessary a preconstruction conference may be required.

(b) *Statement of financial responsibility and ownership.* Erosion control plans may be disapproved unless accompanied by a notarized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. This statement shall be included on the land disturbing permit application form required by this article. If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article.

(c) *Review by county soil and water conservation district.* One copy of the erosion control plan shall be forwarded by the county to the county soil and water conservation district for its review. Within 20 days of receipt, or within such additional time as may be prescribed by the county, the district shall review such plan and submit its comments and recommendations to the county. Failure of the county soil and water conservation district to submit its comments and recommendations within 20 days or within the prescribed additional time shall not delay final action on the plan.

(d) *Review by county; approval or disapproval.* The county shall review each complete plan submitted to it and within 20 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. However, the county shall make every attempt possible to complete its review of the plan within 20 days of receipt. Failure to approve or disapprove a complete erosion and sedimentation control plan within 20 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The county must approve, approve with modifications, or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land disturbing activity pursuant to an approved plan, the county determines that the plan is inadequate to meet the requirements of this article, the county may require such revisions as are necessary to comply with this article. The approval of an erosion plan is conditioned on the applicant's compliance with federal and state water quality laws, regulations, and rules. A copy of the erosion control plan for any land disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table must be forwarded to the director of the division of water quality.

(e) *Environmental document.* Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The county shall promptly notify the person submitting the plan that the 20-day time limit for review of the plan pursuant to subsection (d) of this section shall not begin until a complete environmental document is available for review.

(f) *Contents of plan* The erosion control 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 article. All erosion and sedimentation control plans shall

contain a maintenance plan addressing short-term and long-term maintenance of measures. Long-term maintenance of ground covers must be addressed in the maintenance plan. The plan may be included in the construction sequence or vegetation specifications, if appropriate. However, more detailed maintenance plans will be required where deemed appropriate. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the county on request.

(g) *Conditions for disapproval of plan.* An erosion control 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 commission or a local government 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 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 state rules or local ordinances and regulations adopted pursuant to the Act.

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

(h) *Amendment of plan.* Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as the amendment is approved by the county, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(i) *Failure to file; conducting activity without plan.* Any person engaged in land disturbing activity who fails to file a plan in accordance with this article, or who conducts a land disturbing activity, except in accordance with provisions of an approved plan, shall be deemed in violation of this article.

(j) All plans, applications and the checklist shall be accompanied by the requisite fee as established in the county fee schedule ordinance. (Ord. No. 20172, § 19, 2-2-93; Ord. No. 96-8-7, §§ 8—10, 8-20-96; Ord. No. 99-3-7, § 3, 3-16-99; Ord. No. 99-12-4, § 1, 12-7-99; Ord. No. 00-09-10, § 1, 9-12-00; Ord. No. 01-02-20; § 2, 2-20-01; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, § 6, 8-5-03)

Sec. 26-229. Appeals from disapproval or approval with modifications of plans.

(a) Except as provided in subsection (b) of this section the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

- (1) The disapproval or modification of any proposed erosion control plan by the county shall entitle the person submitting the plan to the erosion control officer to a hearing within 15 days after receipt of written notice of disapproval or modifications.
- (2) Hearings held pursuant to this section shall be conducted by a plan review committee consisting of the county engineer, director of county general services, and the director of planning and development, within 30 days after the date of the appeal or request for a hearing.
- (3) The plan review committee shall decide appeals within 15 days after the date of the hearing on any erosion control plan.
- (4) If the county plan review committee upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the local government's

decision to the state sedimentation control commission, as provided in G.S. 113A-61(c) and Title 15 N.C.A.C. 4B .0018(d).

(b) If an erosion control plan is disapproved pursuant to section 26-228(g), the county shall notify the director of the division of land resources of such disapproval within ten days. The county shall advise the applicant and the director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the county's disapproval of the plan pursuant to section 26-228(g) directly to the commission. (Ord. No. 20172, § 20, 2-2-93)

Sec. 26-230. Inspections and investigations.

(a) *Inspections required.* Agents, officials or other qualified persons authorized by the county will inspect the sites of land disturbing activity to determine compliance with the Act, this article, or rules or orders adopted or issued pursuant to this article; to determine whether the activity is being conducted in accordance with an approved plan; and whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval.

(b) *Notice of violation; compliance time period specified; enforcement.* If, through inspection, it is determined that a person engaged in land disturbing activity has failed to comply with the Act, this article, or rules or orders adopted or issued pursuant to this article, or has failed to comply with an approved plan, a notice of violation shall be served upon that person by registered or certified mail or by any means authorized under G.S. 1A-1, Rule 4. The notice shall set forth the actions necessary to achieve compliance with the plan or this article, specify a date by which the person must comply with the Act, this article, and inform the person of the actions that need to be taken to comply with the Act, this article, and warn that failure to correct the violation within the time period shall result in the assessment of a civil penalty or other enforcement action. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or inter-

fering with an authorized representative while in the process of carrying out his official duties. If the person engaged in land disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

(c) *Right of entry.* The county shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article, 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 any authorized representative or agent of the county 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 his official duties.

(d) *Requiring written statements; filing of reports.* The county shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land disturbing activity.

(e) *Certificate of compliance; issuance.* A certificate of compliance shall be issued to the person conducting the land disturbing activity upon satisfactory project completion. (Ord. No. 20172, § 21, 2-2-93; Ord. No. 96-8-7, § 11, 8-20-96; Ord. No. 06-04-02, § 5, 4-4-06)

Sec. 26-231. Penalties for violation of article.

(a) *Civil penalties.* Civil penalties may be imposed as follows:

- (1) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues a land disturbing activity for which an erosion control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation of this article is \$5,000.00. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified

mail, return receipt requested, or as provided in G.S. 113A-61-1(b), or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date the violation is detected. Refusal to accept the notice or failure to notify the county erosion control officer of a change of address shall not relieve the violator's obligation to pay such a penalty. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of a continuing violation shall constitute a separate violation. The act clarifies that a person may be assessed a one-time civil penalty of up to \$5,000.00 for the day the violation is first detected.

(2) Civil penalties shall be assessed for the violations listed below pursuant to the following schedule:

- a. For failure to submit an acceptable erosion control plan for approval as required by this article, \$100.00 per day. Any person who is subject to a civil penalty under this division may be subject to additional civil penalties for violation of other provisions of this article, or rules or orders adopted or issued pursuant to this article (section 26-228).
- b. For failure to secure from the county erosion control office a valid land disturbing permit (section 26-226) prior to conducting a land disturbing activity, \$50.00 per day.
- c. For failure to take all reasonable measures to protect public property, private property, a lake or natural watercourse, from damage caused by land disturbing activities (section 26-211), \$50.00 per day.
- d. For failure to comply with the design and performance standards for High Quality Water (HQW) zones as per section 26-247(b), \$50.00 per day.
- e. For failure to conduct a land disturbing activity in accordance with the provisions of the erosion sedimentation control plan which was approved by the county erosion control office, (section 26-228), \$50.00 per day.
- f. For failure to install sedimentation and erosion control devices sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of the tract (sections 26-211 and 26-246), \$50.00 per day.
- g. For failure to provide along trout waters an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation by natural or artificial means within 25 percent of that portion of the buffer zone nearest the land disturbing activity, whichever is the greater width (section 26-246), \$50.00 per day.
- h. For failure to maintain temporary and permanent erosion and sedimentation control measures and facilities during the development of the site (section 26-252), \$50.00 per day.
- i. For failure to maintain on graded slopes and fills an angle sufficient to retain vegetative cover or other adequate erosion control devices or structures (section 26-246), \$50.00 per day.
- j. For failure within 15 working days or 30 calendar days, whichever period is shorter, after completion of

- any phase of grading to plant or otherwise provide exposed graded slopes or fills with ground cover, devices, or structures sufficient to retain erosion (section 26-246), \$50.00 per day.
- k. For failure to plant or otherwise provide ground cover sufficient to restrain erosion within 15 working days or 90 calendar days, whichever is the shorter, following completion of construction or development (section 26-246), \$25.00 per day.
 - l. For failure to file an acceptable, revised erosion and sedimentation control plan after being notified by the county erosion control office of the need to do so (section 26-228), \$25.00 per day.
 - m. For failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity (section 26-246), \$25.00 per day.
- (3) After determining the penalty, the erosion control officer shall recommend and the county planning director assess the penalty against the person or entity deemed to be in violation of this article by mailing by registered or certified mail, return receipt requested, or by any means authorized under G.S. 1A-1, Rule 4, or other means reasonably calculated to give actual notice, to the person responsible for the violation a notice of assessment and demand for payment, which shall include therein a detailed description of the violation for which the penalty has been imposed, the amount of the penalty and the reason for assessing the penalty.
 - (4) If payment is not received or equitable settlement reached within 30 days after the notice of assessment and demand for payment has been received, the matter shall be referred to the county attorney for institution of a civil action in the appropriate division of the general courts of justice to recover the amount of the assessment. 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.
- (5) Any monies received from the collection of penalties shall be deposited in the county planning department's operating budget in order to be used to enforce the purposes and requirements of this article.
- (b) *Appeal of civil penalty assessment.*
 - (1) A person or entity assessed with a civil penalty must select one of the following options within 30 days after receipt of the notice of assessment and demand for payment:
 - a. Tender to the county planning director or county finance office full payment of the penalty; or
 - b. Submit in writing to the county planning director, a request for an administrative hearing specifying the factual or legal issues to be contested.
 - (2) Failure to request an administrative hearing as provided in subsection (1) above will be deemed a waiver of any and all rights of review, either by the board of adjustment or by the general courts of justice, of the assessment of the civil penalty.
 - (3) If the alleged violator requests an administrative hearing, no further demand for payment will be made by the erosion control officer unless a final decision is made by the board of adjustment which upholds the assessment of a penalty.
 - (4) Any person or entity who is aggrieved by a final decision by the board of adjustment is entitled to judicial review of such decision by the general court of justice, superior court division, by proceedings in the nature of certiorari; provided such petition for review is filed with the clerk of superior court within 30 days after a

written copy of the decision of the board is delivered to the aggrieved party, either by personal service or by registered or certified mail, return receipt requested, pursuant to G.S. 153A-345(e).

- (5) No provision of this section shall be construed to restrict or impair the right of the erosion control officer or the county to pursue any other remedy provided by law or equity for violations of this article, including the right to assess penalties for violations of this article occurring during the appeal process.

(c) *Criminal penalties.* Any person who knowingly or willingly violates any provision of this article, or rule or order adopted or issued pursuant to this article, or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a class 2 misdemeanor, which may include a fine not to exceed \$5,000.00, as provided by G.S. 113A-64.

(Ord. No. 20172, § 22, 2-2-93; Ord. No. 96-8-7, § 12, 8-20-96; Ord. No. 99-3-7, § 1, 3-16-99; Ord. No. 99-12-4, § 2, 12-7-99; Ord. No. 01-02-20, § 1, 2-20-01)

Sec. 26-232. Injunctive relief.

(a) Whenever the planning director or his designee has reasonable cause to believe that any person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to this article, or any term, condition, or provision of an approved erosion control plan, the planning director or his designee may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the county for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the county superior court.

(b) Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are 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 such proceedings from any civil or criminal penalty prescribed for violations of this article.

(Ord. No. 20172, § 23, 2-2-93)

Secs. 26-233—26-245. Reserved.

DIVISION 3. LAND DISTURBING ACTIVITIES

Sec. 26-246. Mandatory standards.

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

- (1) *Buffer zone.* Buffer zone standards shall be as follows:
 - a. No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. Waters that have been classified as trout waters by the state environmental management commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity, whichever is greater; provided, however, that the county may approve plans which include land disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the disturbance would be minimal. This subsection shall not apply to a land disturbing activity in connection with the construc-

- tion of facilities to be located on, over, or under a lake or natural watercourse.
- b. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land disturbing activity containing natural or artificial means of confining visible siltation.
 - c. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
 - d. Where a temporary and minimal disturbance is permitted as an exception by subsection (1)a of this section, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the director.
 - e. No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 N.C.A.C. 2B.0211 "Fresh Surface Water Classification and Standards," in these waters.
- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures and shall not have fill-slopes steeper than 2 H:1V, nor cut slopes steeper than 1.5H:1V at a maximum of 20 feet in height unless designed by a geotechnical engineer. In any event, slopes left exposed will, within 21 calendar days after completion of any phase of grading be planted or otherwise provided with temporary or permanent ground cover, devices or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints. In order to provide stabilization and maintenance of graded slopes and fills, a sufficient setback, as determined by the county erosion control officer, must be provided between all property lines and the top of graded slopes (cuts) and the toe of fills.
- (3) *Ground cover.* Whenever land disturbing activity is undertaken on a tract requiring a land disturbing permit, 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 the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within 15 working days or 90 calendar days following completion, whichever period is shorter except as provided in section 26-247(b)(5).
 - (4) *Prior plan approval.* No person shall initiate any land disturbing activity on a tract requiring a land disturbing permit unless, 20 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with the county. Should the plan be filed, approved and a land disturbing permit be issued in less than 20 days from the filing of the plan, the land disturbing activity may commence.
 - (5) *Onsite meeting.* The person conducting land disturbing activity or an agent of that party shall contact the erosion control officer at least 48 hours before commencement of the land disturbing activity

for the purpose of arranging an onsite meeting with the erosion control officer or duly authorized representative to review and discuss the approved plan and the proposed land disturbing activity.

(Ord. No. 20172, § 8, 2-2-93; Ord. No. 96-8-7, §§ 13, 14, 8-20-96; Ord. No. 99-3-7, § 2, 3-16-99; Ord. No. 00-09-10, § 2, 9-12-00; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, §§ 7, 8, 8-5-03; Ord. No. 06-04-02, § 6, 4-4-06)

Sec. 26-247. Design and performance standards.

(a) 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 runoff from the twenty-five year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

(b) In high quality water (HQW) zones the following design standards shall apply:

- (1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land disturbing activity within an HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the director.
- (2) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

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

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

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. No. 20172, § 9, 2-2-93; Ord. No. 06-04-02, § 7, 4-4-06)

Sec. 26-248. Stormwater outlet protection.

(a) *Generally.* Persons shall design and conduct land disturbing activity so that the post construction velocity of the twenty-five-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

- (1) The velocity established by the table in subsection (d) of this section; or
- (2) The velocity of the twenty-five-year storm runoff in the receiving watercourse prior to development.

Note: In any case a minimum ten-foot undisturbed setback to adjoining property at all drainage outfalls is required. Refer to subdivision ordinance for additional requirements section 70-66 general requirements.

If the condition in subsection (a)(1) or (a)(2) of this section cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the prior to development velocity by ten percent. In any case a minimum ten-foot undisturbed setback to adjoining property at all drainage outfalls is required. Refer to subdivision ordinance for additional requirements section 70-66 general requirements.

Note: Detention may be necessary and shall be sufficient to store all excess flows to twenty-five-year frequency twenty-four-hour storm. This is in excess of runoff that would occur from site left in pre-development.

(b) *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 county recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (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 stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.
- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. 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.

(c) *Exceptions.* This rule of this section shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(d) *The following is a table for maximum permissible velocity for stormwater discharges:*

Material Discharged Into	Maximum Permissible Velocities	
	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source. Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels. (Ord. No. 20172, § 10, 2-2-93; Ord. No. 06-04-02, § 8, 4-4-06)

Sec. 26-249. 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 either onsite or offsite, and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the department's division of solid waste management shall be considered as part of the land disturbing activity where the borrow 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.

(Ord. No. 20172, § 11, 2-2-93)

Sec. 26-250. Access and haul roads.

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

(Ord. No. 20172, § 12, 2-2-93)

Sec. 26-251. Operations in lakes or natural watercourses.

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided. These activities must be in accordance with all existing federal, state, and local requirements.

(Ord. No. 20172, § 13, 2-2-93)

Sec. 26-252. 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 article, the Act, or any order adopted pursuant to this article or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Ord. No. 20172, § 14, 2-2-93)

Sec. 26-253. Additional measures.

Whenever the county 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.

(Ord. No. 20172, § 15, 2-2-93)

Sec. 26-254. Existing uncovered areas.

(a) All uncovered areas existing on February 2, 1993, which resulted from land disturbing activity, exceeding one acre (43,560 square feet), are subject to continued accelerated erosion, and are causing offsite damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control offsite sedimentation.

(b) The county will serve upon the landowner, or other person in possession or control of the land, a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the county 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 county reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

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

(e) No fee shall apply to work required under this section.

(Ord. No. 20172, § 16, 2-2-93)

Sec. 26-255. Restoration of areas affected by failure to comply with sedimentation control measures.

The county may require a person who engaged in a land disturbing activity and failed to retain

sediment generated by the activity, as required by section 26-246(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this article.

Secs. 26-256—26-275. Reserved.

ARTICLE VI. JUNKED AND ABANDONED VEHICLES*

Sec. 26-276. Authority and purpose.

This article is enacted pursuant to the powers granted to Buncombe County by G.S. §§ 153A-121, 153A-132, and 153A-132.2. The purpose of this article is to protect the health, safety, natural scenic beauty, and property values of the county from potential adverse effects caused by the proliferation and improper disposal of junked motor vehicles.

(Ord. No. 98-4-3, Art. I, 4-14-98)

Sec. 26-277. Jurisdiction.

This article shall be in effect in all unincorporated portions of the county, except areas within the extra-territorial jurisdiction of municipalities; and in any municipality which chooses to adopt this article.

(Ord. No. 98-4-3, Art. II, 4-14-98)

Sec. 26-278. Administration.

The county director of general services is responsible for the administration and enforcement of the provisions of this article.

(Ord. No. 98-4-3, Art. III, 4-14-98)

State law reference—Authority to prohibit the abandonment of motor vehicles, N.C.G.S. § 153A-132.

***Editor's note**—Ord. No. 98-4-3, Arts. I—X, adopted Apr. 14, 1998, amended Art. VI in its entirety to read as herein set out. Former Art. VI, §§ 26-276—26-284, pertained to similar subject matter and derived from Ord. No. 17955, §§ 1—9, adopted July 17, 1984, and Ord. No. 18050, § 1, adopted Dec. 4, 1984.

Cross references—Solid waste management, ch. 62; traffic and vehicles, ch. 74.

State law reference—Authority to regulate, restrain or prohibit the abandonment of junk automobiles on public grounds and private property, G.S. §§ 153A-132, 153A-132.2.

Sec. 26-279. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle means a vehicle that is left:

- (1) Upon a public street or highway in violation of a law or ordinance prohibiting parking; or
- (2) On a public street or highway for longer than seven days; or
- (3) On property owned or operated by the county for longer than 24 hours; or
- (4) On private property without the consent of the owner, occupant or lessee thereof, for longer than two hours.

State law reference—Similar definition, G.S. § 153A-132(b).

Junked motor vehicle means a vehicle that does not lawfully display a current North Carolina license plate and:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move.

State law reference—Similar definition, G.S. § 153A-132(a).

Motor vehicle or *vehicle* means all machines designed or intended to travel over land (or water) by self-propulsion or while attached to any self-propelled vehicle.

Nuisance vehicle means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

- (1) A breeding ground, nest or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- (3) A point of collection of pools or ponds of water;

