

# EROSION CONTROL

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## 19.0 TOWN OF DAVIDSON SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

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### 19.1. TITLE

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This Ordinance may be cited as the “Town of Davidson Soil Erosion and Sedimentation Control Ordinance.”

### 19.2. PREAMBLE

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The Sedimentation of streams, lakes, wetlands 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. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town Board that pre-construction conferences be held among the affected parties.

## SECTIONS

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## 19.3. DEFINITIONS

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As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. **Accelerated Erosion** - Any increase over the rate of Natural Erosion as a result of Land-disturbing Activity.
- b. **Act** - The North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. **Adequate Erosion Control Measures, Structures, or Devices** - Ones that control the soil material within the land area under responsible control of the Person conducting the Land-disturbing Activity.
- d. **Affiliate** - A Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- e. **Being Conducted** - A Land-disturbing Activity has been initiated and permanent stabilization of the site has not been completed.
- f. **Borrow** - Fill material that is required for on-site construction and is obtained from other locations.
- g. **Certificate of Occupancy** - The document required by the North Carolina State Building Code certifying that a new building shall not be occupied or a change made in occupancy, nature or use of a building until after all required building and services systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the Code Enforcement Department.
- h. **Code Enforcement Department** - The Mecklenburg County, Land Use and Environmental Services Agency, Code Enforcement Department, formerly known as Building Standards.
- i. **County Engineer** - The Mecklenburg County Director of the Land Use and Environmental Services Agency or the director's duly authorized representatives.
- j. **Commission** - The North Carolina Sedimentation Control Commission.
- k. **Committee** - The Charlotte-Mecklenburg Storm Water Advisory Committee as established by the joint resolution of the Mecklenburg County Board of Commissioners and the Charlotte City Council, together with any amendments thereto.
- l. **Completion of Construction or Development** - No further Land-disturbing Activity is required on a phase of a project except that which is necessary for establishing a permanent Ground Cover.
- m. **Contractor Conducting the Land-disturbing Activity** - Any person who participates in the Land-disturbing Activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the Tract for the changing of the natural cover or topography of the Tract, or any part thereof.
- n. **Days** - Calendar days unless otherwise specified.

- o. Department** - The North Carolina Department of Environment and Natural Resources.
- p. Director** - The Director of the Division of Land Resources of the Department of Environment and Natural Resources.
- q. Discharge Point** - That point at which concentrated flow runoff leaves a Tract of land.
- r. Energy Dissipater** - 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.
- s. Erosion** - The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines** – The written directions related to water quality prepared by the Department’s Division of Forest Resources and the United States Forest Service, including but not limited to the “Forestry Best Management Practices Manual” prepared by the Department.
- u. Ground Cover** - Any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.
- v. Lake or Watercourse** - 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.
- w. Land-disturbing Activity** - Any use of the land by any Person in residential, governmental, 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.
- x. Local Government** - 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.
- y. Natural Erosion** - The wearing away of the earth’s surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- z. Parent** - An Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Performance Reservation** - The subjective evaluation that proposed measures may or may not be adequate to meet the design standard.
- bb. Permit** – The “Permit to Conduct Land-disturbing Activities” (grading permit) issued by the County Engineer after a Plan is approved.
- cc. Person(s)** - 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.

**dd. Person Responsible for the Violation** - as used in this Ordinance means:

1. The developer or other Person who has or holds himself out as having financial or operational control over the Land-disturbing Activity;
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; and/or
3. The Contractor Conducting the Land-disturbing Activity.

**ee. Phase of Grading** - One of two types of grading, rough or fine.

**ff. Plan(s)** - An erosion and Sedimentation control plan.

**gg. Sediment** - 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.

**hh. Sedimentation** - 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 Wetland, Lake or Watercourse.

**ii. Storm Drainage Facilities** - The system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.

**jj. Storm Water Runoff** - The direct runoff of water resulting from precipitation in any form.

**kk. Subsidiary** - An Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.

**ll. Ten-Year Storm** - A rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

**mm. Tract** - All land and bodies of water being disturbed, developed or to be disturbed or developed as a unit, regardless of ownership.

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

**oo. Uncovered** - The removal of Ground Cover from, on, or above the soil surface.

**pp. Undertaken** - 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.

**qq. Velocity** - The average velocity of flow through the cross section of the main channel at the peak flow of the design storm. 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.

- rr. Waste** - Surplus materials resulting from on-site construction and disposed of at other locations.
- ss. Watershed** - Any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of Mecklenburg County.
- tt. Wetland(s)** – Land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- uu. Working Days** - Days exclusive of Saturday, and Sunday and County government holidays during which weather conditions or soil conditions permit Land-disturbing Activity to be Undertaken.

## 19.4 SCOPE AND EXCLUSIONS

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This Ordinance shall regulate Land-disturbing Activity within the jurisdiction of the Town of Davidson and authorizes Mecklenburg County to enforce this ordinance in their town limit and extra-territorial jurisdiction.

This Ordinance shall not apply to the following Land-disturbing Activities:

- a. 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:
  1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
  2. Dairy animals and apiary products.
  3. Poultry and poultry products.
  4. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
  5. Bees and dairy products.
  6. Fur producing animals.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life.
- e. Land-disturbing Activity over which the State has exclusive regulatory jurisdiction as provided in GS 113A-56(a).

## 19.5 FOREST PRACTICE GUIDELINES

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- a. The Town Board adopts by reference the Forest Practice Guidelines.
- b. If Land-disturbing Activity Undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines, the provisions of this Ordinance shall apply to such activity and any related Land-disturbing Activity on the Tract.

## 19.6 GENERAL REQUIREMENTS

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- a. **Erosion and Sedimentation Control Measures** - All Land-disturbing Activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance.
- b. **Plan Required** - No Person shall initiate, direct, allow or conduct any Land-disturbing Activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site, or a Plan approved by the County Engineer with performance reservations on the job site.
  1. Uncovers one acre or more,
  2. In Borrow and Waste areas covered by Section 19.9.f, with a disturbed area greater than one acre.
- c. **Compliance** - Persons who submit a Plan to the County Engineer shall comply with the provisions of Sections 19.10 and 19.11 of this Ordinance.
- d. **Protection of Property** - Persons conducting Land-disturbing Activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.
- e. **More Restrictive Rules Shall Apply** - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

## 19.7 BASIC CONTROL OBJECTIVES

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A Plan may be disapproved pursuant to Section 19.10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. **Identify Critical Areas** - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation are to be identified and receive special attention.
- b. **Limit Time of Exposure** - All Land-disturbing Activity is to be planned and conducted to limit exposure to the shortest feasible time.

- c. **Limit Exposed Areas** - All Land-disturbing Activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- d. **Control Surface Water** - Surface water runoff originating upgrade of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.
- e. **Control Sedimentation** - All Land-disturbing Activity is to be planned and conducted so as to prevent Sedimentation damage.
- f. **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 at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

## 19.8 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY

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No Land-disturbing Activity subject to the control of this Ordinance shall be Undertaken except in accordance with the following mandatory standards:

- a. **Wetland Protection** - Additional erosion control measures structures, or devices as specified in the "Policies and Procedures" statement issued by the County Engineer shall be required to provide a higher level of protection to Wetlands from Sedimentation as specified in the "Policies and Procedures" statement issued by the County Engineer.
- 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 Measures, Structures, or Devices. In any event, slopes left exposed will, within 15 Working Days or 30 calendar Days, whichever period is shorter, after completion of any Phase of Grading, be planted or otherwise provided with permanent Ground Cover, devices, or structures sufficient to restrain Erosion.
- c. **Ground Cover** - The Person conducting the Land-disturbing Activity shall plant or otherwise provide a permanent Ground Cover sufficient to restrain Erosion after Completion of Construction or Development Provisions for a permanent Ground Cover sufficient to restrain Erosion must be accomplished within 15 Working Days or 90 calendar Days following Completion of Construction or Development whichever period is shorter. However, when construction activity has ceased in a particular area of the Tract, permanent ground cover must be accomplished within 30 Working Days or 90 calendar Days from the date of last Land-disturbing Activity, whichever period is shorter.
- d. **Prior Plan Approval** - No Person shall initiate any Land-disturbing Activity on a Tract if more than one acre is to be Uncovered unless, thirty (30) or more Days prior to initiating the activity, a Plan for such activity is filed with the County Engineer.
- e. **Pre-construction Conference** - If more than an acre is to be Uncovered, the Person(s) conducting Land-disturbing Activity or an agent of that party shall contact the County Engineer at least 48 hours before commencement of the Land-disturbing Activity. The

purpose is to arrange an on-site meeting with the County Engineer to review and discuss the approved Plan and the proposed Land-disturbing Activity.

- f. Monitoring** – The Person(s) conducting Land-disturbing Activity or an agent of that party shall inspect all Erosion and Sedimentation control measures at least once a week and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period.
  - 1.** If more than an acre is to be disturbed, a record of inspections shall be kept by the Person conducting the Land-disturbing Activity or an agent until six months after construction is completed and approved by the County Engineer. The record shall include the date and time of inspection, weather conditions, any repair or maintenance needed and the initials or signature of the person who performed the inspection. Corrective action on the repairs and maintenance indicated on the record should begin immediately and be completed as soon as possible after these inspections and the date of the completion of such repairs noted. The records of inspection shall be made available to the County Engineer upon request.
  - 2.** Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the County Engineer with a self-inspection record for the particular Tract.

## 19.9 DESIGN AND PERFORMANCE STANDARDS

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- A. Design Storm** - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Charlotte- Mecklenburg Storm Water Design Manual.
- B. Innovative Measures** - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the County Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- C. Responsibility for Maintenance** - During the development of a site, the Person conducting the Land-disturbing Activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.



- D. Additional Measures** - Whenever the County Engineer, determines that Erosion and Sedimentation will likely continue, despite installation and maintenance of protective practices, the Person conducting the Land-disturbing Activity will be required to take additional protective action.
- E. Storm Drainage Facilities Protection** - Persons shall design the Plan and conduct Land-disturbing Activity so that the post construction Velocity of the 10-year storm does not exceed the maximum non-erosive Velocity tolerated by the soil of the receiving watercourse or the soil of the receiving land.
- F. Borrow and Waste Areas** - When the Person conducting the Land-disturbing Activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the Land-disturbing Activity.
1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
  2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.
- G. 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.
- H. Operations in Lakes or Watercourses** - Land-disturbing Activity in connection with construction in, on, over, or under a Lake or Watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the Lake or Watercourse. 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.

## 19.10 EROSION AND SEDIMENTATION CONTROL PLANS

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- a. Plan Requirements** – All Plans required for Land- disturbing Activities as identified in Section 19.6.b of this Ordinance shall meet the following requirements:

Plans shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the Tract and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the County Engineer on request.

Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the Land-disturbing Activity or that Person's 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 service of process and 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 Land-disturbing Activity described in the Plan shall comply with Federal and State water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The County Engineer may require supporting documentation.

The Land-disturbing Activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.

The Land-disturbing Activity described in the Plan shall not result in a violation of any local Ordinance, law, rule or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.

If the Plan is submitted for Land-disturbing Activity for which an environmental document is required by the North Carolina Environmental Policy Act (GS 113A-1, et. seq.), such as required on Tracts involving public money or public land, a complete environmental document must be presented for review. The County Engineer's time for reviewing the Plan will not commence until a complete environmental document is available for review.

Copies of the Plan shall be filed with the County Engineer. A copy of the approved Plan shall be maintained on the job site.

Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:

- (a.) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
  - (b.) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
  - (c.) Construction sequence and construction phasing to justify the time and amount of exposure.
  - (d.) Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
  - (e.) Additional erosion control measures, structures, and devices to prevent Sedimentation.
- b. Plan Review Process** - The County Engineer will review each complete Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter "the applicant") that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Should the Plan be filed and not reviewed within the specified time frame, the Land-disturbing Activity may commence subject to the provisions of Section 19.8.e and Section 19.10.a.5, and the County Engineer will endeavor to review the plan on an expedited schedule.

In the event the Plan is disapproved, the County Engineer shall notify the applicant and, if required, the Director of such disapproval within 10 Days thereof. The County Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the County Engineer's decision as provided in Section 19.16 of this Ordinance.

Plans for which Land-disturbing Activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans** - If the County Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the County Engineer may require a revised Plan. Pending the preparation of the revised Plan, work on affected area may cease or may continue only under conditions outlined by the County Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and may be submitted at any time under the same requirements for submission of original Plans. Until such time as the County Engineer approves any amendments or revisions, the Land-disturbing Activity shall not proceed, except in accordance with the Plan as originally approved.

The County Engineer must approve, approve with modifications, approve with performance reservations, or deny a revised Plan within 30 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

- d. Grounds for Disapproval of Plans** – Any Plan that is not in accordance with the requirements set forth in subsection (a) above shall be disapproved. In addition, a Plan may be disapproved upon a finding that the financially responsible Person, or any Parent or Subsidiary thereof:

1. Is conducting or has conducted Land-disturbing Activity without an approved Plan, or has received notice of violation of is not in compliance with the provisions of 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 State rules or local ordinances and regulations adopted pursuant to the Act.

- e. Violations** - Any Person engaged in Land-disturbing Activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a Land-disturbing Activity except in accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.

## 19.11 PERMITS

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No Person shall undertake any Land-disturbing Activity subject to this Ordinance without first obtaining a Permit from the County Engineer. The only exception to this requirement is a Land-disturbing Activity that:

- a. Has been pre-approved by the County Engineer at a pre-construction conference,
- b. Is for the purpose of fighting fires,
- c. Is for the stock piling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
- d. Does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, lands being developed as a unit will be aggregated regardless of ownership. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.

## 19.12 INSPECTIONS AND INVESTIGATIONS

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- a. The County Engineer is authorized to inspect the sites of Land-disturbing Activity to determine compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, and to determine whether the activity is Being Conducted in accordance with the Ordinance and the 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 each Plan approval or issuance of the Permit.
- b. No Person shall willfully resist, delay, or obstruct the County Engineer while the County Engineer is inspecting or attempting to inspect a Land-disturbing Activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in Land-disturbing Activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the County Engineer will serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under GS1A-1, Rule 4, or other means reasonably calculated to give actual notice. A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall, if required, specify a date by which the Person must comply with this Ordinance, and advise that the Person is subject to civil penalty or that failure to correct the violation within the time specified will subject that Person to the civil penalties including those provided in Section 19.13 of this Ordinance or any other authorized enforcement action. The notice of violation need not be given for those violations identified in subsection (f) below.

- d. In determining the measures required and the time for achieving compliance, the County Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The County Engineer shall use local rainfall data approved by the County Engineer to determine whether the design storm identified in Section 19.9.a has been exceeded.
- f. Penalties may be assessed concurrently with a notice of violation for any of the following:
  1. Failure to submit a Plan.
  2. Performing Land-disturbing Activities without an approved Plan and pre-construction conference, or Permit.
  3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
  4. A repeated violation for which a notice was previously given on the same Tract and to the Person Responsible for the Violation.
  5. Willful violation of this Ordinance.
  6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 19.9.d such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.
  7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 19.9.d such that it results in off-site Sedimentation.
- g. The County Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any Land-disturbing Activity. No Person shall refuse entry or access to the County Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the County Engineer while in the process of carrying out official duties.
- h. The County Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating Land-disturbing Activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, the Code Enforcement Department shall not issue a Certificate of Occupancy where any of the following conditions exist:

There is a violation of this Ordinance with respect to the Tract.

If there remains due and payable civil penalties that have been levied against the Person conducting the Land-disturbing Activity for violation(s) of this Ordinance. If a penalty is under appeal, the County Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the

Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.

The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.

On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.

On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

- j. Notwithstanding the provisions of Section 19.12.i above, the Code Enforcement Department may issue a Temporary Certificate of Occupancy where Section 19.12.i (3) or (4) or (5) apply and where the Person conducting the Land disturbing Activity is making substantial progress towards completing the requirements of the Plan.

## 19.13 PENALTIES

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- a. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a Land-disturbing Activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation except as provided in Section 19.12.f of this Ordinance. Refusal to accept the notice or failure to notify the County Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.
- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation.
- c. The amount of the civil penalty shall be assessed pursuant to the following:
  - 1. **Violations involving conducting a Land-disturbing Activity without an approved Plan:** Any Person(s) engaged in a Land-disturbing Activity without a required approved Plan and pre-construction conference, or Permit in accordance with this Ordinance, or who initiates, directs or allows a Land-disturbing Activity without a required, approved Plan and pre-construction conference, or Permit shall be subject to a civil penalty of \$5,000.00 per day, per violation. The penalty may be decreased based on mitigating circumstances.
  - 2. **Violations resulting in Sediment entering a Wetland, Lake or Watercourse:** Violations resulting in Sediment entering a Wetland, Lake or Watercourse subjects the violator to a civil penalty of \$3,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased.

- 3. Violations resulting in off-site Sedimentation:** Violations of this Ordinance that result in off-site Sedimentation subject the violator to a civil penalty of \$1,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased. Violations of this type may include, but are not limited to, the following:
- (a.) Conducting Land-disturbing Activities beyond the limits of an existing Permit without approval of an amended Plan and Permit that results in off-site Sedimentation.
  - (b.) Failure to properly install or maintain Erosion control measures in accordance with the approved Plan or the Charlotte/Mecklenburg Land Development Standards Manual that results in off-site Sedimentation.
  - (c.) Failure to retain Sediment from leaving a Land-disturbing Activity as required by the Ordinance.
  - (d.) Failure to restore off-site areas affected by Sedimentation during the time limitation established in a Notice of Violation and as prescribed in the "Policies and Procedures" statement.
  - (e.) Any other violation of this Ordinance that results in off-site Sedimentation.
- 4. Violations of this Ordinance not resulting in off-site Sedimentation:** Violations of this Ordinance that do not result in off-site Sedimentation subject the violator to a civil penalty of \$500.00 per day, per violation. The penalty may be increased up to \$5000 per day or decreased. Violations of this type may include, but are not limited to, the following:
- (a.) Failure to provide an angle on graded slopes sufficient to retain vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. In any event, slopes left exposed will, within 15 Working Days or 30 calendar Days of completion of any Phase of Grading, be planted or otherwise provided with permanent Ground Cover, devices, or structures sufficient to restrain Erosion.
  - (b.) Failure to provide a Ground Cover sufficient to restrain Erosion within 15 Working Days or 90 calendar Days, following Completion of Construction or Development whichever period is shorter.
  - (c.) Failure to provide a Ground Cover sufficient to restrain Erosion within 30 Working Days or 90 calendar Days when construction activity has been delayed or curtailed.
  - (d.) Failure to submit to the County Engineer for approval an acceptable revised Erosion and Sedimentation control Plan after being notified by the County Engineer of the need to do so.
  - (e.) Failure to maintain Adequate Erosion Control Measures, Structures, or Devices to confine Sediment from entering a Wetland Buffer Zone if provided.
  - (f.) Failure to follow the provisions on the approved Plan.
  - (g.) Any other action or inaction that constitutes a violation of this Ordinance that did not result in off-site Sedimentation.

- d. In determining the amount of the civil penalty, the County Engineer shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this Ordinance; whether the violation was committed willfully; whether the violator reported the violation to the County Engineer; and the prior record of the violator in complying or failing to comply with this Ordinance or any other erosion and sedimentation control ordinance or law. The County Engineer is authorized to vary the amount of the per diem penalty set out in Section 19.13.c to take into account any relevant mitigating factors.
- e. Repeat violators may be charged by a multiple of the base penalty determined in Section 19.13.c of this Ordinance. The penalty for a repeat violator may be doubled for each previous time the Person Responsible for the Violation was notified of a violation of this or any other Soil Erosion and Sediment Control Ordinance or the North Carolina Act. In no case may the penalty exceed the maximum allowed by Section 19.13.b. The record of the Person Responsible for the Violation may be considered for only the two years prior to the current violation.
- f. The County Engineer 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 and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under GS 1A-1, Rule 4 and shall direct the violator to either pay the assessment or contest the assessment as specified in Section 19.16. If a violator does not pay a civil penalty assessed by the County Engineer within 30 Days after it is due, or does not request a hearing as provided in Section 19.16, the County Engineer shall request the County Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court or in any other court of competent jurisdiction.
- g. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- h. Civil penalties collected pursuant to this Ordinance shall be credited to the County's general fund as non-tax revenue.
- i. Any Person who knowingly or willfully violates any provision of this Ordinance or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to civil penalties as outlined in this section. Each day of continuing violation shall constitute a separate violation.
- j. A violation of the County Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.



## 19.14 INJUNCTIVE RELIEF

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- a. Whenever the County Engineer 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, the County Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the County Attorney to institute a civil action in the name of the Town of Davidson, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to GS 153A-123 in Mecklenburg County Superior Court
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation 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 penalty prescribed for violations of this Ordinance.

## 19.15 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY

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The County Engineer may require a Person who engaged in any Land-disturbing Activity and failed to retain Sediment generated by the activity 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 Ordinance.

## 19.16 APPEALS

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- a. **Disapproval or Modification of Proposed Plan**
  1. The disapproval or modification of any proposed Plan by the County Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
  2. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon

thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16.c of this Ordinance.

3. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15, Chapter 4B Section .0018(b) of the North Carolina Administrative Code and G.S. 113A-61(c).

**b. Issuance of a Notice of Violation with an Assessment of a Civil Penalty**

1. The issuance of a notice of violation with an assessment of a civil penalty by the County Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of violation, assessment of a civil penalty or order of restoration. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
2. Within five (5) Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 19.16.c of this Ordinance.
3. Any party aggrieved by the decision of the Committee with regard to the issuance of a notice of violation, assessment of civil penalties or order of restoration shall have thirty (30) Days from the receipt of the decision of the Committee to file a petition for review in the nature of certiorari in Superior Court with the Clerk of Mecklenburg County Superior Court.

**c. Hearing Procedure.** The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 19.16.a or 19.16.b above.

1. At the hearing, Petitioner and the County Engineer shall have the right to be present and to be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.

3. At least seven (7) Days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the County and for the Petitioner shall have the right to cross-examine witnesses.
6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.
  - (a) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the County Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, issuing a notice of violation, assessing a civil penalty or ordering restoration are true and substantiated, the Committee shall uphold the action on the part of the County Engineer.
  - (b) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the County Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the County Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the County Engineer. If the Committee finds that the violation has occurred, but that in setting the amount of a penalty the County Engineer has not considered or given appropriate weight to either mitigating or aggravating factors, the Committee shall either decrease or increase the per day civil penalty within the range allowed by this Ordinance. Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the County Engineer in setting the amount of the civil penalty levied against the Petitioner.
7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.

8. The Committee shall send a copy of its findings and decision to the Applicant/ Petitioner and the County Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
9. The decision of the Committee shall constitute a final decision.

## 19.17 SEVERABILITY

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

## 19.18 EFFECTIVE DATE

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This Ordinance shall be effective upon adoption.

## 19.19 REVISIONS

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The Town of Davidson shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Approved as to form:

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Town Attorney Clerk to the Board