

4/9/01 still has to have
state approval

SWAIN COUNTY EROSION AND SEDIMENT CONTROL ORDINANCE

Section 1. AUTHORITY

WHEREAS, soil erosion and sedimentation are considered major public problems; therefore the Commissioners of the County of Swain, North Carolina enacted the following ordinance under the authority of the appropriate State law. (Article 4, Chapter 113A as amended of the General Statutes of North Carolina).

Section 2. TITLE

This ordinance shall be cited as the Swain County Erosion and Sediment Control Ordinance.

Section 3. GOVERNING BODY

The Swain County Erosion and Sediment Control Commission, as created in Section 17, paragraphs A1-7, hereafter referred to as the Commission.

Section 4. PURPOSE

This ordinance is adopted for the purposes of:

- A. Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation.
- B. Protecting public and private lands from accelerated erosion due to increases in storm water runoff.
- C. Preventing continued accelerated erosion of existing areas which are unprotected and not in compliance with this ordinance at the time of its adoption.
- D. Establishing procedures through which these purposes can be fulfilled.

Section 5. SCOPE AND EXCLUSIONS

- A. This ordinance shall apply to all land-disturbing activities as defined in G.S. 113A-52 (6) undertaken by any person, with the exclusion of those defined in paragraphs B1-3 of this section.

In addition, a permit, contingent upon an approved sediment control plan, shall be required for all land-disturbing activities comprising one or greater acres, including both temporary or permanent access and haul roads, borrow pits, waste areas, or other associated activities, undertaken by any person within the limits of

following the requirements of this ordinance.

2. Development may not be done in phases to avoid requirements of this ordinance. In the event of additional development activity the entire project will be subject to this ordinance.
3. It is the responsibility of the person conducting the land-disturbing activity to apply to the Swain County Building Inspector or his agent for any permit required and receive said permit contingent upon an approved sediment control plan, before beginning any land-disturbing activity which uncovers one or greater acres.
4. If any land-disturbing activity requires a permit as defined in this ordinance, none of the following documents or permits, where applicable, shall be issued until an Erosion Control Plan has been approved by the Swain County Building Inspector:
 - a. A septic tank permit.
 - b. A building permit.

Any of the above permits may be applied for at the same time as the permit required by this ordinance.

5. Requests for a permit to conduct land-disturbing activities shall contain a sediment control plan.
6. Applications shall be submitted at least 30 calendar days prior to the planned initiation of the land-disturbing activity.
7. No person shall initiate any land-disturbing activity which uncovers one or greater acres without having a Sediment Control Plan approved by Swain County Sediment Control Commission.
8. Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.
9. ***Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.***

B. Mandatory Standards -

No land-disturbing activity shall be undertaken except in accordance with the following mandatory standards:

1. **Buffer Zone**

- 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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that Swain County may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.*
- B. *Approved plans assume, where applicable, compliance with the federal and state water quality laws, rules and regulations.*
- C. *A plan may be disapproved if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission.*
- D. *Unless otherwise provided, the width of a buffer zone is measured 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.*
- E. *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.*
- F. *Where a temporary and minimal disturbance has been permitted as an exception by Section 6, B.1.A of this ordinance, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.*

Swain County, North Carolina.

B. Excluded Land-Disturbing Activities

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 dairy products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
 - e. Bees and apiary products.
 - f. Fur producing animals.
2. 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 Related to Water Quality, as adopted by the Department. ***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 Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.***
3. Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
4. Land-disturbing activity over which the State has exclusive regulator jurisdiction as provided in G.S. 113A-56 (a), as amended from time to time.
5. ***For the duration of an emergency, activities essential to protect human life.***

- C. This Ordinance may apply within the incorporated areas of Bryson City upon proper resolution by the governing bodies of Bryson City and agreement by the Swain County Board of Commissioners.

Section 6. GENERAL REQUIREMENTS

- A. 1. Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and

G. *No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in these waters, and, as set forth in 15 NCAC 2B .0211 "Fresh Surface Water Classification and Standards."*

2. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within *15 working days or 30 calendar days* of completion of any phase of grading, *whichever period is shorter*, be planted or otherwise provided with a ground cover, device or structure sufficient to restrain erosion.
3. Ground Cover - Whenever land-disturbing activity is undertaken on a tract comprising one acre or greater, if one or greater acres is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 9B (5) of this ordinance, provision for a ground cover sufficient to restrain erosion must be accomplished within *15 working days or 90 calendar days* following completion of construction or development, whichever is shorter.
4. Prior Plan approval - No person shall initiate any land-disturbing activity if one or greater acres is uncovered unless a sediment control plan is filed 30 or more days prior to initiation of said activity and the plan is approved by the Commission.

Section 7. STORM WATER DRAINAGE PROTECTION

A. Statement and Purpose:

The purpose of this article is to protect the public health, safety and welfare from property damage caused by storm water runoff. To accomplish this, projects that fall under the provisions of this article shall take into consideration the following two basic objectives:

1. Protect the absorptive, purifying and retentive functions of natural systems that exist on the site of a proposed development; and

2. Provide for post development storm water runoff characteristics that resemble the conditions that existed before the site's alteration.

B. Regulations:

1. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

- (a) The velocity established by the table in paragraph (5) of this Section; or

- (b) The velocity in the receiving watercourse determined for the 10-year storm prior to development.

If conditions (a) or (b) of this paragraph cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.

2. Performance Standard - The land-disturbing activity shall be planned and conditioned such that the velocity of storm water runoff in the receiving watercourse at the point of discharge resulting from 10-year storm after development shall not exceed the greater of:

- (a) The critical velocity acceptable in the receiving watercourse as determined from paragraph 5 of this rule; or

- (b) The velocity in the receiving watercourse determined for the 10-year storm prior to development.

If conditions (a) or (b) of this paragraph cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.

3. 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. Innovative techniques and ideas will be considered and may be used when shown to have the potential for successful results.

Some alternatives are to:

- (a) avoid increase in surface water runoff volume and velocity by including measures which promote infiltration or detention and to compensate for increased runoff from areas rendered impervious.

- (b) avoid increases in storm water discharge velocities by using vegetated or roughened swales or waterways or detention storage in lieu of closed drains and high velocity paved sections.
 - (c) provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.
 - (d) protect watercourses subject to accelerated erosion by providing improved cross sections or linings resistant to erosion such as rip-rap or gabions.
4. This rule shall not apply where it can be shown that storm water discharge velocities will not create an accelerated erosion problem in the receiving watercourse.
5. The following is a table for maximum permissible velocities for storm water discharges:

Material	Maximum Permissible Velocities	
	F.P.S.	M.P.S.
Fine sand	2.5	.8
Sandy loam	2.5	.8
Silt loam	3	.9
Firm loam	3.5	1.1
Fine gravel	5	1.1
Stiff clay	5	1.5
Graded loam to cobble	5	1.5
Graded silt to cobble	5.5	1.5
Alluvial silts (non-colloidal)	3.5	1.1
Alluvial silts (colloidal)	5	1.5
Coarse gravel	6	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6	1.8

Source - adapted from recommendations by Special Committee on Irrigation Research, ASCE, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by .95 for slightly sinuous, by .9 for moderately sinuous channels, and by .8 for highly sinuous channels.

6. A Storm Water Runoff Permit is Required Where:
- (a) a Sediment and Erosion Control plan is required, and;
 - (b) the parcel is over two acres in area, and;

- (c) the impervious surface of the new construction, including buildings, roads, sidewalks, recreational facilities, etc., is over 50 percent of the acreage. For the purposes of this section, impervious surfaces include gravel, asphalt, concrete, tennis courts, etc. (Note: Wooden slated decks and the water area of a swimming pool are considered pervious.)

7. Design Standards:

The first one inch of rainfall shall be required to percolate on the site. This shall be accomplished through Best Management Practices such as buffer areas, grassed swales, filter strips, porous pavement, infiltration basins and trenches, water quality inlets, retention ponds, extended detention ponds and other measures.

8. Storm Water Drainage Plan:

A storm water drainage plan is required for all developments meeting the requirements of paragraph 6 above. It shall be prepared by a registered engineer, landscape architect or, to the extent permitted by law, a registered land surveyor and shall contain the following general elements:

- (a) a general site plan showing all impervious surfaces, the location and size of all storm water drainage structures (if any), Best Management Practice measures and infiltration areas;
- (b) topographic features (finished grade);
- (c) general or typical cross sectional drawings of all storm water drainage structures, if any;
- (d) the total number of square feet of impervious surfaces and its relative percentage of the total lot;
- (e) any other information deemed necessary by the Erosion Control Specialist.

9. Operation and Maintenance:

It shall be the responsibility of the property owner to insure that whatever storm management devices or measures are installed are kept in good working order.

Section 8. BASIC CONTROL OBJECTIVES

- A. A sedimentation control plan may be disapproved pursuant to Section 10 of this ordinance if the plan fails to address the following control objective:
1. Control Off-Site Sediment Damage - All land-disturbing activities are to be planned and conducted to confine sediment produced within the boundaries of the property upon which land-disturbing activities are being carried out.
 2. Limit the Time of Exposure - All land-disturbing activities are to be planned and conducted to limit exposure of disturbed areas to the shortest possible time. When discrete segments of the land-disturbing activity are completed, these should be stabilized quickly to avoid additional accelerated erosion hazards.
 3. Limit the Exposed Areas - All land-disturbing activities are to be planned and conducted to limit the size of the areas to be exposed at any one time.
 4. Control Surface Water - Surface water runoff originating from or upgrade of disturbed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
 5. Identify Critical Areas - On-site areas subject to severe erosion and off-site areas subject to damage from accelerated erosion and/or sedimentation are to be identified and receive special attention.
 6. Manage Storm Water Runoff - When the increase in the velocity of storm water runoff resulting from land-disturbing activities is sufficient to cause accelerated erosion in 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.

Section 9. DESIGN AND PERFORMANCE STANDARDS

- A. Except as provided in Section 9B (2) of this ordinance erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak of runoff from the 10-year storm. Runoff rates shall be calculated using 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 a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.
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 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% for the 40 micron (*0.04* mm) size soil particle transported into the basin by the runoff of that 2 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 of 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 2 horizontal to 1 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.

Section 10. EROSION AND SEDIMENT CONTROL PLANS

- A. A erosion and sediment control plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity is to be undertaken on a tract comprising one or greater acres, if one or greater acres is to be uncovered.
- B. Persons conducting land-disturbing activities on a tract which covers one or greater acres, shall file two copies of the sediment control plan with the Swain

County Building Inspector at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. The Building Inspector will forward one copy of the plan Commission upon receipt of a filed plan. If the Commission, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion on off-site sedimentation exists, the Swain County Sediment Control Commission will require a revised plan. Pending the preparation of a revised plan, permits to conduct land-disturbing activities may be rescinded and work stopped or allowed to continue under conditions outlined by the Commission.

- C. ***Erosion*** control plans may be disapproved unless accompanied by an authorized statement of financial responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street address of the principle place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, this ordinance or rules or orders adopted or issued pursuant to this ordinance.
- D. Where prior approval of an erosion control plan is required, the applicant shall submit a copy to the Swain County Building Inspector. The Inspector, within 30 days of receipt of any plan, shall notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve, approve with modification, or disapprove a complete sediment control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Inspector must approve, approve with modification, 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 Inspector determines that the plan is inadequate to meet the requirements of this ordinance, the Inspector may require such revisions as are necessary to comply with this ordinance. Failure to approve, approve with modification or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.
- E. ***The Swain Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the Inspector within 20 days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the soil and water conservation district and Swain County. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.***

- F. 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 Inspector shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Section 11.5(d) of this ordinance shall not begin until a complete environmental document is available for review.
- G. The *erosion* control plan required by this section shall contain such 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. Plans submitted to the District shall contain such forms or worksheets as supplied and approved by the District or at minimum:
1. a description of the final objective of land-disturbing activity.
 2. a specific time schedule for various stages of the land-disturbing activities
 3. maps showing the following features should also be supplied:
 - a. a true scale of not greater than 1"=200' and a contour interval of 5 feet or such interval sufficient to describe the topography. Not-to-scale sketches are not acceptable.
 - b. exact boundaries of the site including interior lines or easements, relations to nearest streets, roads, or highways, scale and north arrow, total acreage, and boundaries of the areas to be disturbed as well as accurate estimates of their size shall be shown.
 - c. existing conditions including building, creeks or other bodies of water, culverts and bridges, road grades, areas of special environmental concern or those subject to severe erosion or flooding hazard, or other information which may be pertinent in evaluation of the plan.
 - d. the location of access and haul roads, borrow pits, proposed structures, areas of cuts and fill culverts, ditches, stream relocations, sediment basins and other structural erosion control measures, and any non-vegetative ground covers such as paving, rip-rap or other surfaces.
 4. supporting documentation used for design or erosion control measures, including but not limited to:

- a. runoff and drainage calculations, soil test results, velocity and discharge computations.
 - b. specifications for establishment and maintenance of vegetative ground covers including species to be used, lime and fertilizer application rates, time and method of planting and type of mulch.
- H. 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 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.
 5. For purposes of this subsection (H), an applicant's record may be considered for only the two years prior to the application date.
- I. The Commission may require additional information from the applicant, at his or her discretion, to aid in determining the suitability of a submitted sediment control plan.
- J. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this ordinance, or conducts a land-disturbing activity except in accordance with provisions of an approved *erosion* control plan shall be deemed in violation of this ordinance.
- K. Application for an amendment to a plan may be made at any time in written or graphic form under the same conditions as the original application. Until the proposed amendment is approved by the Commission, subject to all criteria set forth in this ordinance, the permit holder may not proceed except in accordance with the original plan as approved.

When an amendment is approved, the Inspector shall issue a new permit for the remaining time on the old permit plus the additional time as requested on the amendment.

Section 11. PERMITS TO CONDUCT LAND-DISTURBING ACTIVITIES

- A. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a permit from the Inspector except that no permit shall be required for any land-disturbing activity:
1. for the purpose of fighting fires.
 2. that does not exceed 43,560 square feet in surface area. In determining the area lands under one or diverse ownership being developed as a unit will be aggregated.
 3. 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 off-site damage.
- B. The County may establish a fee if considered necessary.
- C. Applications for Permits:
1. Clear lines of communication between the Commission and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this ordinance, but to avoid costly delays and resubmittal of applications by the developer as well. This section outlines procedures which will insure speedy processing of applications for permits to conduct land-disturbing activities.
 2. Submission - the person conducting the land-disturbing activity shall submit the application to the Inspector for review and approval at least 30 days prior to initiating any land-disturbing activity covered by this ordinance. Only applications received through registered or certified mail, or hand delivered, will be accepted. In addition, all applications must contain an erosion and sediment control plan which meets all requirements set forth in Section 10 of this ordinance.
 3. Notification of Intent - prior to submitting a formal application for a permit, persons conducting land-disturbing activities may notify the Inspector, briefly describing the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities and a request for application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the Inspector. A permit will not be issued based upon a notification of intent.
 4. Form, application requirements, and plan assistance are available upon request from the Building Inspector's office and Soil Conservation Office.

All requests for predevelopment planning, submission of plans applications, and requests for assistance will be handled through the office of the Building Inspector.

5. Review - The Commission shall, within 20 days, review the application and accompanying Plan for completeness and compliance with this ordinance.
 - a. Applications found to meet all requirements of this ordinance shall be approved, and a permit to conduct land-disturbing activities will be issued by the Inspector within 30 days after receipt of the application.
 - b. After review, applications which do not meet all requirements of this ordinance shall be approved with modifications, approved with performance reservations, or disapproved. The application shall be returned to the applicant in writing detailing specific areas where the standards of this ordinance have not been met. The applicant shall be notified within 30 days after receipt by the Commission that the plan has been disapproved. If the application is disapproved, the applicant may resubmit the application, after performing the necessary changes, for additional review. If the application is disapproved, no permit to conduct land-disturbing activities will be issued.
 - c. For applications found to be partially complete, the Commission shall request specific additional information by registered mail. If sufficient information is provided and the plan meets all requirements of this ordinance, a permit to conduct land-disturbing activities shall be issued. When deemed necessary by the Commission, a permit may be issued with performance reservations or approved contingent upon modifications to the plan. Under no circumstances shall the 30 day time period for approval or disapproval be extended by a request for additional information.
 - d. Failure to approve or disapprove a properly submitted application for a permit to conduct land-disturbing activities within 30 days of receipt by the Commission shall be deemed approval. A submitted revision to a previously disapproved application must be approved or disapproved within 15 days of receipt by the Commission, or it is deemed approved.
 - e. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Commission determines that the plan is

inadequate to meet the requirements of this ordinance, he or she may require such revisions as are necessary to comply with this ordinance.

6. If the submitted Plan is approved by the Commission, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.
 - a. Permits shall be issued for the specific time frame requested or for incremental time periods if requested on the application. The permit shall lapse at the end of the time frame specified. It may be reissued by the Commission at the written request of the permit holder, when deemed necessary. Written request for an extension of a permit to conduct land-disturbing activities must be made in writing at least 10 days prior to expiration of the existing permit.
 - b. Permits shall be prominently displayed on the site until the project is certified complete by the Inspector or the release of all applicable surety. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

Section 12. PLAN REVISION AFTER INITIATION

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

If deemed appropriate by the Inspector, the person conducting the land-disturbing activities shall submit an amendment or revision within the time specified by the Commission. If an amendment or revised plan is neither approved or disapproved within 15 days after receipt by the Commission, it is deemed approved.

Section 13. INSPECTIONS AND INVESTIGATIONS

- A. The Inspector will periodically inspect the sites of land-disturbing activities to determine whether the activity is being conducted in accordance with the plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance and to determine whether the measures required by the plan are effective in controlling erosion and sediment resulting from land-disturbing activities. For this purpose, he or she may enter at reasonable times upon any property public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Notice of the right to inspect shall be included in the

certificate of approval of each erosion control plan.

- B. The Inspector shall conduct on-site inspections of the work authorized by the permit to insure that the work is done in accordance with the approved sediment control plan and meets all requirements of this ordinance. If violation of the approved plan or other requirements of this ordinance is found, the Inspector will serve upon the person responsible, by registered or certified mail or other means (including posting a notice on the site), reasonably calculated to give actual notice, a notice of violation of this ordinance and shall revoke the issued permit to conduct land-disturbing activities. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. The specific violation measures necessary to achieve compliance, and the time frame for correction of those items shall be set forth in the notice of violation. However, no time period for compliance need be given for failure to submit a sediment control plan for approval or obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. If the items are not corrected in the specified time frame, enforcement action shall be initiated or a civil and criminal penalty imposed as provided in G.S. 113A-64, effective from the date *the violation occurred*.
- C. The Inspector shall have the power to conduct such investigations 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 any authorized representative or agent of the Inspector or the Commission who requests entry for purpose of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representatives while in the process of carrying out his official duties.
- D. The Inspector shall also have the power to require written statements or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.
- E. The Commission as employed and approved by the County Commissioners, shall be responsible to and act under the authority of the County Commissioners in consultation with the Commission. The Commission shall be responsible for all inspections, plan review and approval, initiation of penalties and other responsibilities as outlined in this ordinance.

Section 14. RESPONSIBILITY FOR MAINTENANCE

The person conducting land-disturbing activities shall be responsible for maintaining and installing all temporary and permanent erosion control measures and vegetative covers as

required by an approved sediment control plan or other provision of this ordinance, the Act or orders adopted pursuant to this ordinance or Act during development of the site. After development is completed, the responsibility for installation and maintenance of all permanent erosion and sediment control measures, structures or devices shall lie with the owner or person in possession or control of the property.

A. Maintenance After Project Completion

1. Failure to properly maintain permanent erosion control measures after completion of the project constitutes a violation of this ordinance unless located within a road or street right-of-way or easement accepted for maintenance by a governmental agency.
2. If maintenance of existing structures, measures or devices are deemed inadequate by the Inspector, the landowner detailing the specific items of violation and setting a reasonable time frame for corrective action. Notices of violation shall be sent by registered or certified mail or other means. It shall further warn that failure to correct the violation in the time period specified will result in the assessment of a civil penalty or other enforcement action.

Section 15. EXISTING UNCOVERED AREAS

A. All uncovered areas existing on the effective date of this ordinance resulting from land-disturbing activities covered under this ordinance which contain one or greater acres in size, and are causing off-site sediment damage, and are subject to continued accelerated erosion shall be required to provide a ground cover or other adequate erosion control and sedimentation devices, measures, or structures sufficient to restrain accelerated erosion and control off-site sediment damage. If the person in possession or control of the property or the owner fails to comply with the provisions of this ordinance:

1. The Commission will serve upon the landowner or other person in possession or control of the land written notice of violation by registered or certified mail return receipt requested, or other means reasonably calculated to give actual notice, which shall include the specific items of violation and set a reasonable time frame for compliance. In determining the measures required and the time allowed for compliance, the economic feasibility, technology, and quantity of work required shall be considered.
2. The Commission reserves the right to require the preparation and approval of a sediment control plan in any instance where extensive control measures are required.

shall be given by the applicant, through registered or certified mail, to the County which shall perform an inspection of the improvements. If the conditions of this ordinance are met, the County shall, within 30 calendar days of the date of notification of completion, authorize in writing the release of applicable surety.

Section 16. APPEALS: THE COMMISSION

- A. In order to provide a procedure for appeals, as outlined in Paragraph C of this section, the Swain Sediment Control Commission is hereby created. The Commission shall be a five member board composed of the following appointees:
1. Two Supervisors from the District Board, nominated by that board. An additional District Supervisor shall serve as an alternate.
 2. The Chairman of the Board of County Commissioners or his appointee.
 3. One appointee of the Board of County Commissioners or his appointee.
 - a. Swain County Home Builders Association, or private organization with similar functions.
 - b. A Licensed General Contractor
 4. All members shall be appointed to staggered 4-year terms with all elected officials serving only during the duration of their office.
 5. Individuals nominated for the Commission shall be approved by the County Commissioners, who shall make the final appointments.
 6. In the event that qualified individuals from the designated organizations or groups are unavailable, the County Commissioners shall appoint members at large.
- B. In addition, consistent with this ordinance, the Commission shall be responsible for providing direction and policy for the sediment control program in general. In addition, the Commission shall make decisions in matters concerning forfeiture of surety, civil and criminal penalties, or injunctions against individuals in violation of this ordinance, after consultation with the County Attorney.
- C. Opportunities for Appeal:
1. Except as provided in Section 17C(2) of this ordinance, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

- a. The disapproval or modification of an application for a permit to conduct land-disturbing activities by the District will entitle the applicant to appeal to the Commission.
 - b. The determination of forfeiture of applicable surety shall be subject to appeal to the Commission.
 - c. *A notice for failure to maintain existing sediment control structures or ground covers after completion of the project or a notice of violation for existing uncovered areas subject to continued erosion at the time of passage of this ordinance shall be subject to appeal before the Commission.*
2. In the event that *an erosion* control plan is disapproved pursuant to Section 10H of this ordinance, the District shall notify the Director of the Division of Land Resources of such disapproval within 10 days. The District shall advise the applicant and the Director in writing as to the specific reason(s) that the plan was disapproved. The applicant may appeal the District's disapproval of the plan pursuant to Section 10H of this ordinance directly to the Commission.
- D. Appeal hearings will be conducted within 30 calendar days after written request for appeal is received by the Commission. Only written requests for appeal within 15 days of any action by the Inspector which qualify for appeal will be considered. If the appeals hearing is not conducted within the specified time frame, the appeal is deemed upheld.
- E. If the Commission upholds the action by the District in the case of disapproval or modification of a submitted sediment control plan, the person submitting the appeal shall be entitled to appeal the Commission's decision to the North Carolina Sediment Control Commission as provided by Section 113A-61 (C) of the General Statutes and Title 15 NCAC 4 (B) .0018b. Judicial review of the final action of the N.C. Sediment Control Commission shall be to the Superior Court of Swain County, upon appeal by the aggrieved party.
- F. Any fines levied during the appeal period shall accrue and be payable by the responsible individuals so long as said violations remain. Upon conclusion of the appeals process, either the responsible party must pay all applicable fines or if the appeal is upheld, all applicable fines shall be forfeited by the County and returned to the successful appellant.

Section 17. COMPLIANCE AND PENALTIES

Any person conducting land-disturbing activities who does not apply for a permit as

specified in this ordinance, or who conducts land-disturbing activities except in accordance with an approved sediment control plan shall be in violation of this ordinance and subject to applicable penalties as follows:

A. Civil Penalties

1. Any person who initiates or continues a land-disturbing activity without an approved sediment control plan, or violates any of the provisions of this ordinance or orders or rules adopted pursuant to this ordinance, or conducts land-disturbing activities except in accordance with an approved sediment control plan shall be subject to a civil penalty *of up to \$5,000*.

No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by certified or registered mail return receipt requested or other means reasonably calculated to give actual notice. Each day of a continuing violation is a separate violation and subject to an additional \$5,000 fine. No penalty shall be assessed until the person alleged to be in violation has been notified as provided in G.S. 113A-61.1(b). The notice shall describe the violation with reasonable time frames for corrective action specified, and warn that failure to correct the violations within the period specified 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 of receipt of the notice of violation. However no time period for compliance need be given for failure to submit a sediment control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.

2. If after the time specified in the notice of violation the site is not in compliance with an approved sediment control plan or all requirements of this ordinance, the Inspector shall present written demand for payment upon the person in violation. The demand for payment shall detail the specific areas where the responsible person is in violation of this ordinance.
3. The period of time set in the notice of violation, as issued by the Inspector, for the site to come into compliance with this ordinance is not exempt from accrual of civil penalties toward the person responsible for the land-disturbing activity.
4. Civil penalties collected pursuant to this ordinance shall be used or disbursed as directed by G.S. 113A-64(a), and if not otherwise provided, such penalties shall be used in the administration of this ordinance by Swain County.

B. Criminal Penalties

Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance or who knowingly or willfully initiates or continues a land-disturbing activity for which a sediment control plan is required except in accordance with the terms, conditions, and provisions of an approved sediment control plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or a fine not to exceed \$5,000, or both, in the discretion of the court.

C. Injunctive Relief

1. Whenever the Inspector has reasonable cause to believe that any person is violating or threatening to violate any provision of this ordinance or any term or condition of an approved sediment control plan, he or she may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the County for injunctive relief to restrain the violation or threatened violation. The action will be brought in the Superior Court of Swain County by the County Attorney.
2. Upon determination by the court that an alleged violation is occurring or is threatened, it will enter such orders or judgments as necessary to halt the violation or prevent the threatened violation. The institution of an action for injunctive relief will not relieve any party to such proceedings from any civil or criminal penalties prescribed for violations of this ordinance.

D. Restoration of areas affected by failure to comply
Swain County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.

Section 18. BORROW AND WASTE AREAS

When the person conducting the land-disturbing activities is also the person conducting the borrow and waste disposal activities, areas from which borrow is obtained and which are not regulated by 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 for 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.

Section 19. 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.

Section 20. OPERATIONS IN LAKES OR NATURAL WATERCOURSES

Land-disturbing activities in connection with construction 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 streamflow characteristics, except when justification for a significant alteration to flow characteristics is provided.

Section 21. SEVERABILITY

If any section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections will continue in full force and effect. When the provisions of this ordinance impose more restrictive standards than are required in any other ordinance, the regulations herein will prevail.

Section 22. EFFECTIVE DATE

This ordinance shall be effective on the 1st day of July, 2001

Appendix A. DEFINITIONS

Accelerated Erosion - any increase over the rate of natural erosion as a result of land-disturbing activities.

Access and Haul Roads - all roadways either permanent or those to be obliterated after completion of land-disturbing activities, used for private travel, construction vehicles, earth moving or heavy equipment or other machinery and constructed and used in conjunction with land-disturbing activities which require a permit under this ordinance.

Act - the N.C. Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate Sedimentation and Erosion Control Measures, Structures, or Devices - a device, structure, or measure which controls the soil material within the land area under control of the

person conducting the land-disturbing activity.

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

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

Applicant - any person, whether the person is financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the Commission or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this ordinance, or who files with the Commission, a motion to appeal a decision by the Inspector or his agent as contained in this ordinance.

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

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

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

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.

Continuing Violation - those violations of this ordinance or an approved sediment control plan which are occurring after the date for compliance as set forth in a notice of violation served upon the person responsible for a land-disturbing activity covered under this ordinance.

Department - means the North Carolina Department of Environment, Health, and Natural Resources.

Detention Storage - any structure or device which acts to retard the volume of storm water runoff and prevent increased storm flow as a result of a land-disturbing activity.

Director - means the Director of the Division of Land Resources of the Department of Environment, Health and Natural Resources.

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

Erosion and Sediment Control Commission - an individual or group of individuals designated by the County Commissioners and charged with upholding the provisions of this ordinance, and

having the power to enter all lands at reasonable times to insure that these provisions are being carried out.

Lake or Natural Watercourse - any stream, river, brook, swamp, branch, creek, run, waterway, 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 accumulations of sediment.

Land-Disturbing Activities - any use of the land by any person for 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.

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

Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Off-Site Sediment Damage - the removal or transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or any land, public or private not owned by the person responsible for the land-disturbing activity.

Ordinance - means the Swain County Erosion and Sediment Control Ordinance as approved by the governing board of the County and included townships.

Permit - a permit, as applicable under the provisions of this ordinance, to carry out land-disturbing activities.

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

Person Responsible for the Violation -

- (a) the developer or other person who has or holds themselves out as having financial or operational control over the land-disturbing activity: or
- (b) the landowner or person in possession or control of the land when he/she has directly or indirectly allowed the land-disturbing activity or has benefited from it or he/she has failed to comply with any provision of this ordinance, the Act, or any order adopted pursuant to this ordinance or the act as imposes a duty upon them.

Person Conducting Land-Disturbing Activities - any person who may be held responsible for a violation unless expressly provided otherwise in this ordinance or the Sedimentation Pollution Control Act of 1973 as amended, or any other adopted pursuant to this ordinance or the Act.

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

Plan - Sediment Control Plan

Sediment - solid particulate matter, both mineral and organic, that has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Siltation - sediment resulting from accelerated erosion which is settleable or removable by properly designed, installed and maintained erosion and sedimentation control measures and devices, and which has been transported from its point of origin within the site of a land-disturbing activity, and which has been deposited, or is in suspension in water.

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

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

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

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

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

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

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

Velocity - the average 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 the 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.

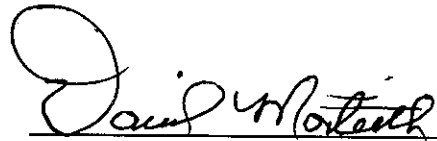
Violation - any land-disturbing activity covered under the provision of this ordinance which is planned or carried out without regard to all the contents and responsibilities thereof or an approved sediment control plan.

Waste - surplus materials resulting from on-site construction and disposed of at other locations.

Waste Area - areas used for the stockpiling or burial of surplus materials resulting from on-site construction and disposed of at other locations.

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

Adopted this the 9th day of April, 2001.



David Monteith, Vice Chair
Swain County Commissioners

Attest:



Linda Cable, Clerk to the Board
Swain County Commissioners