

Soil Erosion and Sedimentation Control Regulations

**TABLE OF CONTENTS**

§ 96.01	Title .....	2
§ 96.02	Purposes .....	2
§ 96.03	Definitions.....	2
§ 96.04	Scope and Exclusions .....	6
§ 96.05	General Requirements.....	7
§ 96.06	Objectives. ....	18
§ 96.07	Standards for Land Disturbing Activity.....	19
§ 96.08	Design and Performance Standards .....	21
§ 96.09	Storm Water Outlet Protection.....	22
§ 96.10	Borrow and Waste Areas. ....	24
§ 96.11	Access and Haul Roads.....	24
§ 96.12	Operations in Lakes or Natural Watercourses. ....	24
§ 96.13	Responsibility for Maintenance. ....	25
§ 96.14	Additional Measures. ....	25
§ 96.15	Existing Uncovered Measures. ....	25
§ 96.16	Fees. ....	26
§ 96.17	Appeals. ....	26
§ 96.18	Inspections and Investigations. ....	26
§ 96.19	Injunction Relief. ....	27
§ 96.20	Restoration of Areas Affected By Failure to Comply. ....	27
§ 96.21	Severability. ....	28
§ 96.999	Penalty.....	28

## Soil Erosion and Sedimentation Control Regulations

### § 96.01 TITLE.

This chapter may be cited as the Town of Lake Lure Soil Erosion and Sedimentation Control Regulation. (**Adopted 11/15/05**)

### § 96.02 PURPOSES.

This chapter 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; and
- (B) Establishing procedures through which these purposes can be fulfilled.

### § 96.03 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

“Accelerated Erosion.” Any increase over the rate of natural erosion as a result of land disturbing activity.

“Act.” The North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

“Adequate Erosion Control Measure, Structure, or Device.” A measure, structure or device which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity. (**Adopted 06/12/07**)

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

“Being Conducted.” A land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

“Borrow.” Fill material which is required for on-site construction and is obtained from other locations.

“Buffer Zone.” The strip of land adjacent to a lake or natural watercourse.

“Commission.” The North Carolina Sedimentation Control Commission.

### Soil Erosion and Sedimentation Control Regulations

“Completion of Construction or Development.” The point at which no further land disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

“Contractor.” Anyone performing work at the behest of a property owner, whether the contract is verbal or written.

“Department.” Means the North Carolina Department of Environment and Natural Resources.

“Director.” The Director of the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. **(Amended 5/8/18)**

“Discharge Point.” That point at which storm water runoff leaves a tract of land.

“District.” The Rutherford County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

“Energy Dissipator.” A structure or shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

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

“Erosion Control Officer.” A town official working under the auspices of the Community Development Administrator for the purpose of applying this chapter.

“Ground Cover.” Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

“High Quality Waters.” Those waters classified as such in 15A NCAC 2B.0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).

“High Quality Water (HQW) Zones.” Areas within one mile and draining to HQW’s.

“Lake or Natural Watercourse.” Any stream, river, brook, creek, run, branch, wetland, 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 accumulation of sediment.

“Land-disturbing Activity.” Any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance or other construction or maintenance activity, including chemical applications or other techniques, that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

## Soil Erosion and Sedimentation Control Regulations

“Major Erosion Control Plan” An erosion and sedimentation control plan for land disturbance of one acre or more approved by the Town of Lake Lure or the North Carolina Department of Environment and Natural Resources.

“Minor Erosion and Sedimentation Control Plan” An erosion and sedimentation control plan approved by the Town of Lake Lure for land disturbance activities taking place on less than 1 acre.

“Natural Erosion.” The wearing away of the earth’s surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

“Parent.” An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

“Permit.” Written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without such authorization.

“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 Conducting Land Disturbing Activity.” Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter or any order adopted pursuant to this chapter.

“Person Responsible for the Violation.” Any developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity; or the landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

“Phase of Grading.” One of two types of grading, rough or fine.

“Plan.” An erosion and sedimentation control plan.

“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.

“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 lake or natural watercourse.

## Soil Erosion and Sedimentation Control Regulations

“Siltation.” Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land disturbing activity; and which has been deposited, or is in suspension in water.

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

“Storm Water Runoff.” The direct runoff of water resulting from precipitation in any form.

“Subsidiary.” An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

“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 a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

“Tract.” All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

“Twenty-five Year Storm.” 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.” The removal of ground cover from, on, or above the soil surface.

“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.

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

“Waste.” 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 activity to be undertaken.

Soil Erosion and Sedimentation Control Regulations

§ 96.04 SCOPE AND EXCLUSIONS.

- (A) Geographical Scope of Regulated Land-Disturbing Activity. This chapter shall apply to all land disturbing activities, as defined, within the territorial jurisdiction of the Town of Lake Lure and to the extraterritorial jurisdiction of the Town as allowed by the agreement between local governments, the extent of annexation or other appropriate legal instrument or law.
- (B) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:
- (1) 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 North Carolina Department of Environment and Natural Resources. 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 chapter shall apply to such activity and any related land disturbing activity on the tract.
  - (2) Activities for which a permit is required under the mining Act of 1971, Article 7 of Chapter 74 of the General Statutes;
  - (3) Land disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a);
  - (4) For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5). **(Amended 5/8/18)**
  - (5) An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to, the following: **(Adopted 06/12/07)**
    - (a) forage and sod crops, grain 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;

Soil Erosion and Sedimentation Control Regulations

- (e) bees and apiary products;
  - (f) fur-producing animals.
- (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act. **(Adopted 5/8/18)**
- (7) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetland functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2 (January 1, 2014 Edition). **(Adopted 5/8/18)**
- (C) Plan Approval Requirement for Land-Disturbing Activity. No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a plan approval therefore from the Town. **(Adopted 06/12/07)**
- (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.
- (E) More Restrictive Rules Shall Apply. Whenever conflicts exists between federal, state, or local laws, chapter, or rules, the more restrictive provision shall apply.
- (F) Plan Approval Exceptions. Notwithstanding the general requirement to obtain a plan approval prior to undertaking land-disturbing activity, a plan approval shall not be required for land-disturbing activity that does not exceed the applicable threshold specified in § 96.05(A), below. In making this determination, lands under one or diverse ownership being developed as a unit will be aggregated. **(Adopted 06/12/07)**

§ 96.05 GENERAL REQUIREMENTS.

- (A) Permit Required.
- (1) A land disturbance permit approved by the Erosion Control Officer shall be required for all non-exempt land disturbing activities, except that no permit shall be required for land disturbing activity:
- (a) Where land disturbing activities are essential to protect human life and only for the duration of an emergency;
  - (b) Where land disturbing activities are within 35 feet of a lake or natural watercourse and do not exceed 100 square feet in surface area; or **(Amended 06/12/07, 5/08/18)**

## Soil Erosion and Sedimentation Control Regulations

- (c) Where land disturbing activities are not within 35 feet of a lake or natural watercourse and do not exceed 2,000 square feet in surface area. **(Adopted 06/12/07) (Amended 5/8/18)**
  - (2) Where a major erosion control plan approved by the North Carolina Department of Environment and Natural Resources is required, such plan approval shall be a prerequisite to receiving a permit from the town.
- (B) Plans Required:
  - (1) Minor Plan Submission. A minor erosion and sedimentation control plan shall be prepared for all land disturbing activities subject to this chapter whenever more than 2,000 square feet (100 square feet if land disturbing activity is within 35 feet of a lake or natural watercourse) but less than one acre of land is to be uncovered. The plan shall be filed with, and accepted for review by the Erosion Control Officer, ten or more working days prior to initiating the activity. Two (2) copies of the Plan shall be filed and upon approval, one copy, signed by the Erosion Control Officer, shall be returned to the applicant. **(Amended 5/8/18)**
  - (2) Major Plan Submission. A major erosion and sedimentation control plan shall be prepared for all land-disturbing activities subject to this chapter whenever one acre or more is to be uncovered. Three (3) copies of the Plan shall be filed with the Town, a copy shall be simultaneously submitted to the Director of the Division of Water Resources at least 30 days prior to the commencement of the proposed activity. **(Amended 5/8/18)**
  - (3) Financial Responsibility and Ownership. Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections (a) and (b) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. **(Amended 06/12/07; 5/8/18)**
    - (a) If the applicant is the owner of the land to be disturbed and the anticipated

### Soil Erosion and Sedimentation Control Regulations

land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project. **(Adopted 5/8/18)**

- (b) The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. **(Adopted 5/8/18)**
  - (i) The Town may transfer a plan if all of the following conditions are met:
    - (a) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership. **(Adopted 5/8/18)**
    - (b) The Town finds all the following:
      - (i) The plan holder is one of the following:
        - a. A natural person who is deceased. **(Adopted 5/8/18)**
        - b. A partnership, limited liability corporation, or any other business association that has been dissolved. **(Adopted 5/8/18)**
        - c. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur. **(Adopted 5/8/18)**
        - d. A person who has sold the property on which the permitted activity is occurring or will occur. **(Adopted 5/8/18)**
      - (ii) The successor-owner holds title to the property on which the permitted activity is occurring or will occur. **(Adopted 5/8/18)**

## Soil Erosion and Sedimentation Control Regulations

- (iii) The successor-owner is the sole claimant of the right to engage in the permitted activity. **(Adopted 5/8/18)**
    - (iv) There will be no substantial change in the permitted activity. **(Adopted 5/8/18)**
  - (c) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred. **(Adopted 5/8/18)**
  - (d) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred. **(Adopted 5/8/18)**
  - (e) Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions on the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. 113A-54.1(b). **(Adopted 5/8/18)**
- (4) Environmental Policy Act Document. Any Major 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 Erosion Control Officer shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.
- (5) Content. The plans required by this section shall contain specific information as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements.
  - (a) A major plan shall contain the following:
    - (i) A location map (showing and identifying nearby roads).
    - (ii) Either a certified copy of a survey or a copy of the tax maps showing the actual property which is subject to the application.
    - (iii) A site plan showing the following:

## Soil Erosion and Sedimentation Control Regulations

- a. Boundary and topographical surveys of the property including existing and proposed site conditions (buildings, streets, driveways, parking lots, utilities, grassed and landscaped areas, number of acres disturbed, water courses and other features affecting storm water runoff and management, etc.).
- b. Offsite conditions (ownership use, drainage areas, lakes, and streams).
- c. Lot lines and numbers, road names, easements, flood zones, utilities, and setbacks.
- d. Storm water systems (catch basins, inlets, culverts, swales, ditches, and channels).
- e. Borrow and waste areas, access and haul roads, construction staging areas, topsoil stockpiles.
- f. Disturbed area (clearly delineated).
- g. Stream crossings.
- h. Temporary and permanent sedimentation and erosion control measures (locations and dimensions of gravel entrances, diversion ditches, silt fences, sediment basins, velocity dissipaters, ditch lining, retaining walls, etc.).
- i. Detailed drawings (sections, elevations, and perspectives of measures sufficient for construction).
- j. Construction sequence (permits, installation of measures, inspections and approvals, maintenance of measures, ground cover, and removal of measures after stabilization).
- k. Statements concerning approval to discharge storm water or perform off-site construction work.
- l. Scale, legend, orientation (North arrow), seal and signature.
- m. Temporary and permanent seeding plans (seed bed preparation, fertilizer and lime rates, seeding schedule and rates, mulch and tack materials and rates).

## Soil Erosion and Sedimentation Control Regulations

- n. Underground utilities.
  - o. Dust control.
  - (iv) Calculations sufficient to support design for the entire storm water system including, but not limited to the following:
    - a. Temporary devices (sediment storage volumes, Q10 capacities).
    - b. Ditches, swales and channels (Q10 velocities and capacities).
    - c. Velocity dissipators (Q10 velocities).
    - d. Storm culverts and inlets (Q10 minimum).
  - (v) Such other documents as may be requested by the Erosion Control Officer to ensure compliance with this chapter.
- (b) A minor plan shall contain the following:
- (i) A location map (showing and identifying roads).
  - (ii) A sketch plan drawn to scale showing the following:
    - a. Boundaries and topography of the property including existing and proposed site conditions (buildings, streets, driveways, parking lots, utilities, setbacks, water courses and other features affecting storm water runoff and management, etc.).
    - b. Offsite conditions (ownership use, drainage areas, lakes, and streams).
    - c. Area to be disturbed (building footprint, access roads, graded surfaces, cut and fill slopes, etc.).
    - d. Storm water systems (catch basins, inlets, culverts, swales, ditches, and channels).
    - e. Stream crossings.
    - f. Temporary and permanent sedimentation and erosion control measures (locations and dimensions of gravel

## Soil Erosion and Sedimentation Control Regulations

entrances, diversion ditches, silt fences, sediment basins, velocity dissipaters, ditch lining, retaining walls, etc.).

- g. Construction sequence (permits, installation of measures, inspections and approvals, maintenance of measures, ground cover, and removal of measures after stabilization).
  - h. Temporary and permanent seeding plans (seed bed preparation, fertilizer and lime rates, seeding schedule and rates, mulch and tack materials and rates).
- (iii) Either a certified copy of a survey or a copy of the tax maps showing the actual property which is the subject of the application
  - (iv) Such other documents as may be requested by the Erosion Control Officer to ensure compliance with this chapter
- (6) Soil and Water Conservation District Comments. The District shall review the Plan and submit any comments and recommendations to the Town within 20 days after the District received the Plan, or within any shorter period of time as may be agreed upon by the District and the Town. Failure of the 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.
- (7) Timeline for Decisions on Plans. The Erosion Control Officer will review the plan and within 10 working days of receipt thereof for Minor Plans or 30 days for Major Plans, will 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 modifications, or disapprove a complete Plan within the allocated time of receipt shall be deemed approval. The Erosion Control Officer will review each revised Plan and within 5 days of receipt thereof for Minor Plans or 15 days for Major Plans, will 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 modifications, or disapprove a revised Plan within the allocated time of receipt shall be deemed approval. **(Amended 5/8/18)**
- (8) Approval. The Erosion Control Officer shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The Erosion Control Officer shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The Erosion

## Soil Erosion and Sedimentation Control Regulations

Control Officer may establish an expiration date, not to exceed 3 years, for plans approved under this ordinance.

- (9) Disapproval for Content. The Erosion Control Officer may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.
- (10) Other Disapprovals. The Erosion Control Officer may disapprove a Plan or draft Plan if implementation of the Plan would result in a violation of the rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Erosion Control Officer may disapprove a plan or disapprove a transfer of a plan under § 96.05 (B)(3) upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant **(Amended 5/8/18)**:
- (a) 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 Town or the Commission pursuant to the Act and has not complied with the notice within the time specified in the notice;
  - (b) 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;
  - (c) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act. **(Amended 06/12/07)**
  - (d) 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.

In the event that a plan or a transfer of a plan is disapproved pursuant to this subsection, the Town shall notify the Director of the Division of Energy, Mineral, and Land Resources of such disapproval within ten days. The Town shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of § 96.17, the applicant may appeal the Town's disapproval of the plan to the Commission. For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date. **(Amended 06/12/07; 5/8/18)**

- (11) Notice of Activity Initiation. No person may initiate a land-disturbing activity before notifying the Erosion Control Officer that issued the Plan approval of the date that land-disturbing activity will begin.
- (12) Preconstruction Conference. When deemed necessary by the Erosion Control Officer, a preconstruction conference may be required.

## Soil Erosion and Sedimentation Control Regulations

- (13) Display of Plan Approval. A Plan approval issued under this article shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.
- (14) Required Revisions. After approving a Plan, if the Erosion Control Officer, either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Erosion Control Officer shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the Erosion Control Officer. If following commencement of a land-disturbing activity pursuant to an approved Plan, the Erosion Control Officer determines that the Plan is inadequate to meet the requirements of this ordinance, the Erosion Control Officer may require any revision of the Plan that is necessary to comply with this ordinance.
- (15) Amendment to a Plan. Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Erosion Control Officer, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.
- (16) Failure to File a Plan. Any person engaged in land disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.
- (17) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1  
**(Adopted 5/8/18)**

Where inspections are required by § 96.05 (B)(17) of this chapter and G.S. 113A 54.1(e), the following apply: **(Adopted 5/8/18)**

## Soil Erosion and Sedimentation Control Regulations

- (a) The person who performs the inspection shall make a record of the site inspection by documenting the following items: **(Adopted 5/8/18)**
- (i) All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in sub-item (a)(v) of this rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating, and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation; **(Adopted 5/8/18)**
  - (ii) the completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating, and signing an inspection report; **(Adopted 5/8/18)**
  - (iii) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in sub-item (a)(v) of this rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report; **(Adopted 5/8/18)**

## Soil Erosion and Sedimentation Control Regulations

- (iv) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and **(Adopted 5/8/18)**
  - (v) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended. **(Adopted 5/8/18)**
- (b) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site. **(Adopted 5/8/18)**
- (c) The inspection shall be performed during or after each of the following phases of a plan: **(Adopted 5/8/18)**
  - (i) installation of perimeter erosion and sediment control measures; **(Adopted 5/8/18)**
  - (ii) clearing and grubbing of existing ground cover; **(Adopted 5/8/18)**
  - (iii) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113-57(2); **(Adopted 5/8/18)**

## Soil Erosion and Sedimentation Control Regulations

- (iv) Completion of storm drainage facilities; (**Adopted 5/8/18**)
- (v) Completion of construction or development; and (**Adopted 5/8/18**)
- (vi) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the Town has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion. (**Adopted 5/8/18**)

### § 96.06 OBJECTIVES.

It is the intent of this chapter that the following objectives shall be met in the planning, permitting and execution of all land disturbing activities:

- (A) Identify Critical Areas - On-site areas which are subject to severe erosion, off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, and areas of environmental concern must be identified and receive special attention. (**Amended 06/12/07**)
- (B) Limit Time of Exposure - All land disturbing activity must 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 must be controlled to reduce erosion and sediment loss during the period of exposure.
- (E) Control Sedimentation - All land disturbing activity must be planned and conducted so as to prevent off-site 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 must include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

## Soil Erosion and Sedimentation Control Regulations

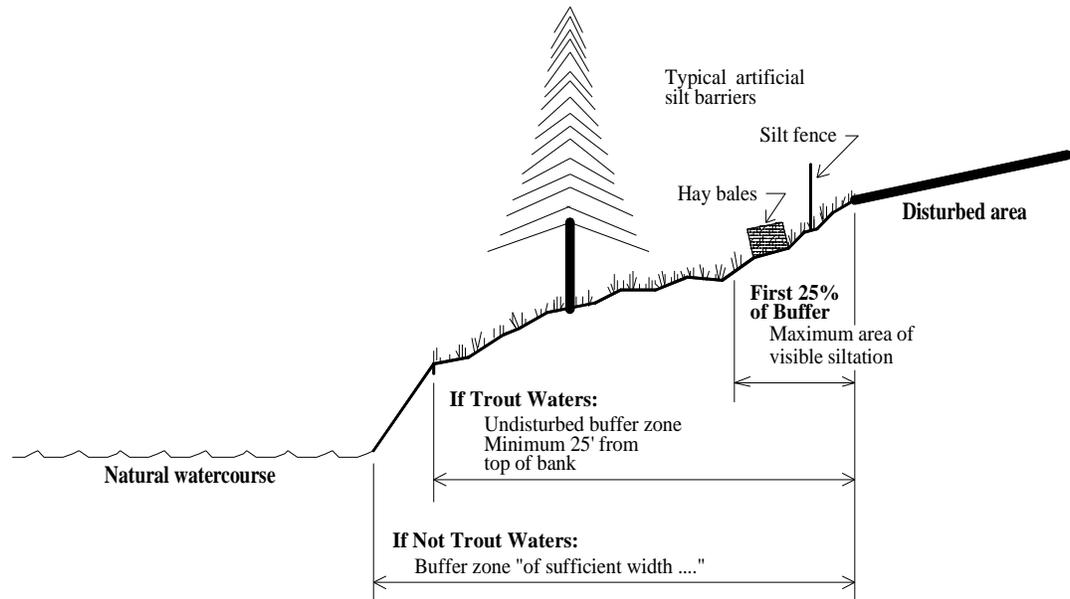
### §96.07 STANDARDS FOR LAND DISTURBING ACTIVITY

The following standards shall be met when undertaking any land disturbing activity:

(A) Buffer Zone

- (1) Standard Buffer. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. 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. The 25% of the strip nearer the land disturbing activity shall contain natural or artificial means of confining visible siltation.
- (2) Trout Buffer. 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 25% of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided however, that the Commission 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.
  - (a) Projects On, Over or Under Water. 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. **(Adopted 5/8/18)**
  - (b) Trout Buffer Measurement. 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.
  - (c) Limit on Temperature Fluctuations. Where a temporary and minimal disturbance is permitted as an exception to the trout buffer, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be disturbed such that there is no more than 100 linear feet of disturbance in each 1000 linear feet of the buffer zone. Larger areas may be disturbed with the written approval of the Director.

## Soil Erosion and Sedimentation Control Regulations



- (d) Limit on Temperature Fluctuations. No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211 “Fresh Surface Water Classification and Standards.” **(Adopted 5/8/18)**
- (B) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion upon completion of any phase of grading, within 21 calendar days. The angle for graded slopes must be demonstrated as stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints. **(Amended 5/8/18)**
- (C) Fill Material. Unless a permit from the Department’s Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other biodegradable materials, masonry, concrete, and brick in sizes exceeding 12 inches, and any materials which could cause the site to be regulated as a landfill by the State of North Carolina.

## Soil Erosion and Sedimentation Control Regulations

- (D) Ground Cover. Whenever land disturbing activity is undertaken which uncovers more than 100 square feet of land, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in §96.08 (B)(5), provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of any phase of grading, whichever period is shorter.
- (E) Prior Plan Approval. No person shall initiate any land-disturbing activity on a tract if more than 100 square feet is to be uncovered unless a Plan is filed prior to initiating the activity and approved by the Erosion Control Officer. If the area to be disturbed is one acre or less, a Minor Plan should be filed 10 or more days prior to initiating the land-disturbing activity. If the area to be disturbed is greater than one acre, a Major Plan should be filed 30 or more days prior to initiating the land-disturbing activity. The Erosion Control Officer shall forward to the Director of the Division of Water Quality a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.
- (F) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. **(Adopted 5/8/18)**

### §96.08 DESIGN AND PERFORMANCE STANDARDS.

- (A) Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm or 25-year storm when projects will discharge into a lake or natural watercourse. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures. **(Amended 06/12/07)**
- (B) HQW Zones. In High Quality Water (HQW) zones the following standards shall apply:
  - (1) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the tract. 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.

## Soil Erosion and Sedimentation Control Regulations

- (2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be 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 USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (3) Settling Efficiency. 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 millimeter) size particle transported into the basin by the runoff of that 2-yr storm which produces the maximum peak runoff as calculated according to procedures in the USDA Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (4) Grade. 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) Groundcover. 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.

### §96.09 STORM WATER OUTLET PROTECTION.

- (A) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
- (B) Performance Standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 25-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of: **(Amended 06/12/07)**
  - (1) The velocity established by the Maximum Permissible Velocities Table set out within this subsection; or

Soil Erosion and Sedimentation Control Regulations

- (2) The velocity of the 25-year storm runoff in the receiving watercourse prior to development. **(Amended 06/12/07)**

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

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

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (C) Acceptable Management Measures. Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;

## Soil Erosion and Sedimentation Control Regulations

- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
  - (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
  - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
  - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (D) Exceptions. This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

### §96.10 BORROW AND WASTE AREAS.

When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land disturbing activity. **(Amended 5/8/18)**

### §96.11 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.

### §96.12 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics. A permit from the U.S. Army Corps of Engineers and NC Division of Water Resources may be required prior to undertaking any such activity. **(Amended 06/12/07; 5/8/18)**

## Soil Erosion and Sedimentation Control Regulations

### §96.13 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 chapter or the Act or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency. **(Amended 06/12/07)**

### §96.14 ADDITIONAL MEASURES.

Whenever the Erosion Control Officer determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action. The Erosion Control Officer shall have the authority to suspend the land disturbance permit and any certificate of zoning compliance until such protective action is taken.

### §96.15 EXISTING UNCOVERED AREAS.

- (A) All uncovered areas existing on the effective date of this chapter which resulted from land disturbing activity, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- (B) The Erosion Control Officer will serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this chapter, a rule or order adopted or issued pursuant to the Act by the Commission or by the Town. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in G.S. 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the Erosion Control Officer shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.
- (C) The Town of Lake Lure reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.
- (D) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir. **(Adopted 5/8/18)**

## Soil Erosion and Sedimentation Control Regulations

### § 96.16 FEES.

- (A) The Town may establish a fee schedule for review and approval of plans.
- (B) In establishing the fee schedule, the Town shall consider the administrative and personnel costs incurred for reviewing the Plans and for related compliance activities.

### § 96.17 APPEALS.

- (A) The disapproval or modification of any proposed erosion control plan by the Erosion Control Officer may be appealed to the Town Council if the person submitting the plan submits written request for such appeal within 15 days after receipt of written notice of disapproval or modifications.
- (B) The appeal held pursuant to this section shall be heard by the Town Council within 30 days after the date of the appeal, upon which the Town Council shall render its final decision.
- (C) If the Town Council upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the Town's decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d).

### § 96.18 INSPECTIONS AND INVESTIGATIONS.

- (A) Inspection. The Erosion Control Officer or other qualified persons authorized by the Town will periodically inspect land disturbing activities to ensure compliance with the Act and this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan. **(Amended 06/12/07; 5/8/18)**
- (B) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the town while that person is inspecting or attempting to inspect a land disturbing activity under this chapter.
- (C) Notice of Violation. If it is determined that a person engaged in land disturbing activity has failed to comply with the Act or this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act or this chapter, or rules, or orders adopted pursuant thereto, and inform the person of the actions that need to be taken to comply with the Act or this chapter, or rules or orders adopted pursuant thereto.

## Soil Erosion and Sedimentation Control Regulations

However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter. **(Amended 06/12/07; 5/8/18)**

- (D) Investigation. The Erosion Control Officer shall have the power to conduct such investigation as may reasonably be deemed necessary to carry out the duties prescribed in this chapter, 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.
- (E) Statements and Reports. The Town shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

### § 96.19 INJUNCTIVE RELIEF.

- (A) Whenever the Town Council has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the Town of Lake Lure for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Rutherford County.
- (B) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

### § 96.20 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The Town Council 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 chapter.

## Soil Erosion and Sedimentation Control Regulations

### § 96.21 SEVERABILITY

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.

### § 96.999 PENALTY.

- (A) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. §160A-175.
- (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 Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.
  - (1) Failure to receive a land disturbance permit as required by this chapter for any form of land disturbance prior to commencement of said land disturbance shall subject both the owner of the property and any contractor engaged for the purpose of performing the work to a fine not to exceed \$5000. If the illegal land disturbance meets all requirements of this chapter, a permit shall be issued upon payment of the fine and submittal of a completed application, including erosion control plan, if required, and fee. If the illegal land disturbance does not meet said requirements, the disturbed property shall either be restored or be brought into compliance prior to receipt of the permit.
  - (2) Failure to comply with the provisions of a land disturbance permit and the representations submitted as part of the application for the permit, including any erosion control plan, shall be cause for the Erosion Control Officer to place a stop order on the work for which the permit was issued until such time as the land disturbance is altered to comply or until a revised land disturbance permit is approved. If the land disturbance is not brought into conformance or a revised land disturbance permit meeting the standards of this chapter, the owner of the property and the contractor shall each be subject to a fine not to exceed \$5000, assessed from the date of the violation.
  - (3) Any property owner or contractor previously found to be in violation of this chapter who is found in violation again shall be considered a repeat offender and shall be subject to a fine not to exceed \$5,000.

## Soil Erosion and Sedimentation Control Regulations

### (C) Civil Penalties.

- (1) Civil Penalty for a Violation. Any person who violates any of the provisions of this ordinance, or rule or order 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. The maximum civil penalty amount that the Town may assess per violation is \$5,000. A civil penalty may be assessed from the date of violation. Each day of a continuing violation shall constitute a separate violation.
- (2) Civil Penalty Assessment Factors. The Erosion Control Officer shall determine the amount of the civil penalty based upon the following factors: **(Amended 06/12/07)**
  - (a) The degree and extent of harm caused by the violation,
  - (b) The cost of rectifying the damage,
  - (c) The amount of money the violator saved by noncompliance,
  - (d) Whether the violation was committed willfully, and
  - (e) The prior record of the violator in complying or failing to comply with this ordinance.
- (3) Notice of Civil Penalty Assessment. The Erosion Control Officer shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, by written demand for a hearing. **(Amended 06/12/07)**
- (4) Hearing. A hearing on a civil penalty shall be conducted by the Town Council within 31 days after the date of the written demand for the hearing. The decision of the Town Council shall be final.
- (5) Appeal of Final Decision. Appeal of the final decision of the Town Council shall be to the Superior Court of Rutherford County. Such appeals must be made within 30 days of the final decision of the Town Council. **(Amended 06/12/07; 5/8/18)**
- (6) Collection. If payment is not received within 30 days after it is due, the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of Rutherford County or the location of the violator's residence or principal place of business. Such civil actions must be filed

## Soil Erosion and Sedimentation Control Regulations

within 3 years of the date the assessment is 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.

- (7) Credit of Civil Penalties. Civil penalties collected pursuant to this ordinance shall be credited to the Civil Penalty and Forfeiture Fund. Case law indicates that penalties assessed by local governments pursuant to a State delegation must be remitted to the Civil Penalty and Forfeiture Fund for the benefit of the local school boards pursuant to the State Constitution's provision on State penalties, fines, and forfeitures.
- (D) Any provision of this chapter that makes unlawful a condition existing upon or use made of any property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular. In addition to an injunction, the court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that the property shall be restored to its original condition prior to disturbance, or that any other action be taken that is necessary to bring the property into compliance with this policy or such ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, such defendant may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs to the town of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.
- (E) Except as otherwise specifically provided, each day's continuing violation of any provision of this ordinance shall be a separate and distinct offense.