

Soil Erosion and Sedimentation Control Ordinance

For

**Gaston County,
North Carolina**



**SOIL EROSION AND SEDIMENTATION
CONTROL ORDINANCE
FOR
GASTON COUNTY, NORTH CAROLINA**

the velocity at the point of discharge so as to minimize accelerated erosion of the site and to decrease sedimentation to any lake or natural watercourse.

Section 8 Mandatory Standards for Land-disturbing Activity

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

- a. Buffer Zone
 1. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a Buffer Zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land disturbing activity. The minimum width of the buffer zone shall not be less than ten feet (10'). Visible siltation must not discharge through the Buffer Zone. 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.
 2. Unless otherwise provided, the width of a Buffer Zone begins and is measured at least ten feet (10') from the edge of the top of the bank of the watercourse to the nearest edge of the disturbed area with the 25 percent of the strip nearer the land-disturbing activity containing natural and or artificial means of confining visible siltation. Natural or artificial means of confining visible siltation must be placed, constructed or installed outside the undisturbed Buffer Zone.
- b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.
- 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 degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
- d. Ground Cover - Whenever land-disturbing activity that will disturb one or more acres is undertaken on a tract 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

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completion of construction or development. Except as provided in Section 9(b) (5) of this Ordinance, provisions for a ground cover sufficient to restrain erosion must be accomplished within fifteen (15) working days or ninety (90) calendar days (whichever period is shorter), following completion of construction or development.

- e. Prior Plan Approval - No person shall initiate any land-disturbing activity that will disturb one or more acres on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with the Gaston County Natural Resources Department. Should the Plan be filed, approved and a Certificate of Approved Plan issued in less than thirty (30) days from the filing of the Plan, the land-disturbing activity may commence.
- f. Plan Compliance – The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.
- g. Self-inspections – The person(s) conducting land-disturbing activity 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. Such inspection reports shall be maintained and made available on-site. Any deviation from the plan shall be documented. Records shall be maintained until permanent groundcover has been established.
- h. The person(s) (developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity) conducting land-disturbing activity or an agent of that party shall contact the Gaston County Natural Resources Department at least 48 hours before commencement of the land-disturbing activity.
- i. The Gaston County Natural Resources Department may require an onsite meeting with the person(s) conducting land-disturbing activity, or an agent of that party, to review and discuss the approved Plan before commencement of the land-disturbing activity.

Section 9 Design and Performance Standards

- a. Except as provided in Section 9 (b) (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 rate of run-off from the ten-year storm.
Run-off rates can be calculated using the rational method, the Natural Resources Conservation Service (NRCS) peak discharge method, or other acceptable methods.
- b. In High Quality Water Zones (HQW) 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 twenty (20) acres. Only this section shall govern the portion of the land-disturbing activity within a HQW zone. Larger areas may be uncovered with the written approval of the Director.

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- d. The Gaston County Natural Resources Department shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- e. The Gaston County Natural Resources Department shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Section 22 Penalties

a. Civil Penalties

- 1. Any person who violates any of the provisions of the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which an Erosion and Sedimentation Control Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000.00). The maximum civil penalty for a violation of a stop-work order is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of continuing violation shall constitute a separate violation.
- 2. The Gaston County Natural Resources Department shall determine the amount of the civil penalty to be assessed under this subsection as set forth in the Guidelines for Assessing Civil Penalties for Violations of Gaston County's Soil Erosion and Sedimentation Control Ordinance. The Gaston Natural Resources Department shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the Natural Resources Department shall consider the degree and extent of harm caused by the damage, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Ordinance. The notice of assessment shall be served by any means authorized under North Carolina General Statute 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment, by written demand for a hearing. A hearing on a civil penalty shall be conducted by the Gaston County Environmental Review Board within thirty (30) days after the date of the written demand for the hearing. The Environmental Review Board shall render its final decision on the civil penalty at the conclusion of the hearing. Appeal from the final decision of the Environmental Review Board shall be to the Superior Court of Gaston County.
- 3. If payment is not received within thirty (30) days after demand for payment is made, the Environmental Review Board may institute a civil

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action to recover the amount of the assessment. The civil action may be brought in Gaston County Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

4. Civil penalties collected pursuant to this ordinance shall be credited to the Civil Penalty and Forfeiture Fund.

b. Final Certificate of Occupancy

With regard to the development of any tract that is subject to this Ordinance, the Code Enforcement Department shall not issue a Certificate of Occupancy where any of the following conditions exist:

1. There is a violation of this Ordinance with respect to the tract.
2. If there remains due and payable to Gaston County civil penalties that have been levied against the person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Environmental Review Board may require the amount of the fine, and any other amount that the person would be required to pay under this Ordinance if the person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
3. The requirements of the plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the tract.
4. On the tract which includes multiple buildings on a single parcel, the requirements of the plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the tract.
5. On a tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.
6. Any person conducting land-disturbing activities that has been denied a Certificate of Occupancy under the provisions in this Ordinance may make a written appeal of the decision to the Environmental Review Board.

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c. 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 willfully initiates or continues a land-disturbing activity for which an Erosion and Sedimentation Control Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed Five Thousand Dollars (\$5,000.00).

d. Stop Work Orders

Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered or repaired in violation of this Ordinance, the Enforcement Officer may order the work to be immediately stopped. The stop order shall be in writing and directed to the owner, occupant, or person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with NCGS 160A-421 or 153-361, as applicable, or the NC Building Code.

Section 23 **Injunctive Relief**

- a. Whenever the Environmental Review Board has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved Erosion and Sedimentation Control Plan, it 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 threatened violation. The action will be brought in the Superior Court of Gaston County.
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgement that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

Section 24 **Restoration of Areas Affected by Failure to Comply**

The Environmental Review Board 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.113-A-57 (3), to restore the waters and the 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.