

Ryan D. Whitson
County Manager
Thomas N. Hix
County Attorney
Anne Britton
Clerk to the Board
Assistant to Manager



Cindy Walker
Chair
Warren D. Watson
Vice-Chair
Ray D. Gasperson
Commissioner
Renée McDermott
Commissioner
Tommy W. Melton
Commissioner

June 30, 2009

State Sediment Specialist
1612 MSC
Raleigh, NC 27699-1612

Re: Polk County Soil, Erosion and Sedimentation Control Ordinance

To Whom It May Concern:

The Polk County Board of Commissioners is requesting a review and approval of the attached ordinance for a local program. The ordinance has been reviewed by the Planning Board and was voted unanimously to recommend to the Board of Commissioners (see attached letter). A public hearing was properly advertised and was conducted before the public and the Board of Commissioners on June 22, 2009 at 7:00 p.m. At the regularly scheduled Board of Commissioners meeting there was a unanimous vote in favor of implementing and adopting the Polk County Soil, Erosion and Sedimentation Control Ordinance.

The Polk County ordinance standards equal or exceed those in the Sedimentation Pollution Control Act of 1973, GS 113A.

If you have any additional questions, please don't hesitate to call.

Sincerely yours,

Cindy Walker, Chairperson
Polk County Board of Commissioners





Building Inspections
Steve Jones
Director
(828) 894-3739

Community Development

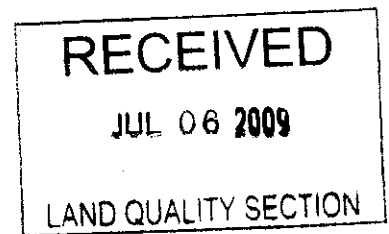
Planning/Zoning
Cathy Ruth
Planner
(828) 894-2732

To: Polk County Board of Commissioners

From: Planning Board and Staff

Date: May 18, 2009

Re: Soil Erosion and Sedimentation Control Ordinance



Action requested of the Board of Commissioners:

To consider the Soil Erosion and Sedimentation Control Ordinance.

Basic Information

The Planning Board has considered and discussed the November 22, 2008, draft of a proposed Erosion and Sedimentation Control Ordinance you asked us to review at your February 2, 2009 meeting.

Planning Board Recommendation:

As you are aware, the draft you asked us to review is essentially the somewhat rearranged text of DENR's model Soil Erosion and Sedimentation Control Ordinance (Draft Revision November 2008). You had already included two substantive changes to that model text: (1) progressively smaller minimum disturbance thresholds for submitting a control plan at increasing slopes and (2) a performance bond requirement.

Based upon our own consideration and discussions, and upon a presentation made by Henderson County officials charged with administration of its erosion and sedimentation control measures, we recommend adding one further substantive change to the model text: Provision for an informal and expedited "sketch plan" submission to and discussion with staff for all land disturbing activities requiring a building permit but not requiring a full blown plan submission. This will enable staff to provide useful guidance and a minimum of oversight in the case of small projects that also can go awry.

We have also recommended a few changes to the text we believe result in greater clarity and consistency.

These changes are incorporated in the May 14, 2009, draft of the Erosion and Sedimentation Control Ordinance that accompanies this written recommendation.

The accompanying May 14, 2009, draft serves the public interest. It will permit greater, more expeditious and more efficient control of significant land disturbing activities at the local level. It will embrace a significantly broader spectrum of land disturbing activities than is now subject to DENR oversight. It affords financial security to prevent the County from having to assume full financial responsibility for abandoned projects or failed projects where the developer or landowner involved becomes bankrupt or insolvent. And it adopts Henderson County's innovative approach to providing small landowners guidance in small projects not warranting a formal plan.

Furthermore, the accompanying May 14, 2009, draft is consistent with the County's current comprehensive plan as set forth in the Polk County Land Use Plan adopted October 4, 2004, in that it specifically implements the following recommendations in the Polk County Land Use Plan:

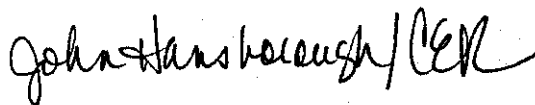
Recommendation III(A) concerning regulation of stormwater runoff in subdivisions and commercial developments; and

Recommendation III(C) concerning protection of stream quality by requiring vegetative buffers;

And finally, the accompanying May 14, 2009, draft is fully consistent with the vision statement and recommendations of the recent Polk County Visioning Committee Report accepted by the Board of Commissioners on June 16, 2008.

Accordingly, the Planning Board has unanimously recommended that the Board of Commissioners adopt the accompanying April 26, 2009, draft Erosion and Sedimentation Control Ordinance.

Sincerely yours,

A handwritten signature in black ink that reads "John Hansborough" followed by a stylized flourish or initials.

John Hansborough
Chair, Polk County Planning Board

BOC Approved 6.22.09

**POLK COUNTY SOIL EROSION AND SEDIMENTATION
CONTROL ORDINANCE**

RECEIVED
JUL 06 2009
LAND QUALITY SECTION

POLK COUNTY SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

Section 1 Title

This ordinance may be cited as the Polk County Soil Erosion and Sedimentation Control Ordinance.

Section 2 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; and
- (b) establishing procedures through which these purposes can be fulfilled.

Section 3 Definitions

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

- (a) Accelerated Erosion - means any increase over the rate of natural erosion as a result of Land-Disturbing Activity.
- (b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 (N.C. Gen Stat. §§ 113A-50 et seq.) and all rules and orders adopted by the Department or the Commission pursuant to it.
- (c) Adequate Erosion Control Measure, Structure, or Device - means one that controls the soil material within the land area under responsible control of a Person conducting a Land-Disturbing Activity.
- (d) Affiliate - means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- (e) Being Conducted - means a Land-Disturbing Activity has been initiated and permanent stabilization of the site has not been completed.

- (f) Borrow - means fill material that is required for on-site construction and is obtained from other locations.
- (g) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
- (h) Commission - means the North Carolina Sedimentation Control Commission.
- (i) 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.
- (j) Department - means the North Carolina Department of Environment and Natural Resources.
- (k) Director - means the Director of the Division of Land Resources of the Department.
- (l) Discharge Point - means that point at which Storm Water Runoff leaves a Tract.
- (m) District - means the Polk County Soil and Water Conservation District created pursuant to N. C. Gen. Stat. §§139-1 et seq..
- (n) Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity surface water flow.
- (o) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
- (p) Erosion Control Officer – means the Polk County employee designated by the Polk County Manager, from time to time, to administer and enforce this ordinance.
- (q) Erosion and Sedimentation Control Plan – means a plan prescribed by Section 7 of this ordinance.
- (r) Ground Cover - means any natural vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.
- (s) HQWs - means those high quality 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 N.C. Gen. Stat. § 150B-14(c).
- (t) HQW Zones –means areas within one mile of and draining to HQWs.

- (u) Lake or Natural Watercourse – means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- (v) Land-Disturbing Activity - means any activity or use of the land by any Person in residential, industrial, educational, institutional, or commercial development, or highway and road construction and maintenance, that results in a change in the natural cover or topography of land and that may cause or contribute to Sedimentation, excluding, however, those activities and uses of land set forth in Section 4(b) of this ordinance.
- (w) Local Government – means any county, incorporated village, town, or city, or any combination of counties, villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.
- (x) 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.
- (y) Parent – means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- (z) Person - means any individual, partnership, firm, association, joint venture, limited liability company, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (aa) Person Conducting Land-Disturbing Activity - means any Person who may be held responsible for violation unless expressly provided otherwise by this ordinance, the Act, or any order adopted pursuant to this ordinance or the Act.
- (bb) Person Responsible for the Violation - means:
 - (1) the developer or other Person who has or holds himself out as having financial or operational control over the Land-Disturbing Activity; or
 - (2) the landowner or Person in possession or control of the land who or which 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.
- (cc) Phase of Grading - means one of two types of grading: rough or fine.

- (dd) Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- (ee) Sedimentation - means the process by which Sediment resulting from Accelerated Erosion has been or is being transported off the site of the Land-Disturbing Activity or into a Lake or Natural Watercourse.
- (ff) Siltation - means Sediment resulting from Accelerated Erosion that is settleable or removable by properly designed, constructed, and maintained control measures; and that has been transported from its point of origin within the site of a Land-Disturbing Activity; and that has been deposited, or is in suspension in water.
- (gg) Sketch Plan - means a plan prescribed by Section 6 of this ordinance.
- (hh) Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.
- (ii) Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- (jj) Subsidiary - means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- (kk) Ten-Year Storm - means the Storm Water Runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (ll) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (mm) Twenty-Five Year Storm - means the Storm Water Runoff resulting from precipitation 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 for the watershed of interest under average antecedent wetness conditions.
- (nn) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (oo) Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

- (pp) **Velocity** - means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- (qq) **Waste** - means surplus materials resulting from on-site Land-Disturbing Activities and being disposed of at other locations.
- (rr) **Working Days** - means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit Land-Disturbing Activity to be undertaken.

Section 4 Scope and Exclusions

- (a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to Land-Disturbing Activity within Polk County, North Carolina, other than areas within the incorporated limits of the Towns of Columbus, Saluda and Tryon and their duly granted extraterritorial jurisdictions, if any, except as provided in Section 4(b) of this ordinance.
- (b) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance, this ordinance shall not apply to the following types of activities that might otherwise fall within the definition of Land-Disturbing Activity:
 - (1) 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:
 - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts,
 - (ii) dairy animals and dairy products,
 - (iii) poultry and poultry products,
 - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats,
 - (v) bees and apiary products, and
 - (vi) fur producing animals.
 - (2) An activity undertaken on forestland 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. However, if activity

undertaken on forestland for the production and harvesting of timber and timber products that would otherwise fall within the definition of Land-Disturbing Activity is not conducted in accordance with the best management practices set out in the Forest Practice Guidelines Related to Water Quality, then that activity shall constitute Land-Disturbing Activity and the provisions of this ordinance shall apply to that activity and any other Land-Disturbing Activity on the Tract.

- (3) An activity for which a permit is required under the Mining Act of 1971 (N.C. Gen. Stat. §§ 74-7-46 et seq.).
- (4) An activity over which the State has exclusive regulatory jurisdiction as provided in N. C. Gen. Stat. § 113A-56(a).
- (5) An activity that is essential to protect human life during an emergency.

Section 5 Mandatory Standards for Land-Disturbing Activity

No Land-Disturbing Activity shall be undertaken except in accordance with the following mandatory standards:

- (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 Lake or Natural Watercourse of sufficient width to confine visible Siltation within the 25% of the Buffer Zone nearest the Land-Disturbing Activity.
 - (i) 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.
 - (ii) Buffer Measurement. Unless otherwise provided, the width of a Buffer Zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearer the Land-Disturbing Activity containing 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 the disturbance would be temporary and the extent of the disturbance would be minimal.

- (i) 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.
 - (ii) 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 to the nearest edge of the disturbed area.
 - (iii) Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout Buffer Zone, 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 are not more than 100 linear feet of disturbance in each 1,000 linear feet of Buffer Zone. Larger areas may be disturbed with the written approval of the Director.
 - (iv) 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 in the trout waters, as set forth in 15 NCAC § 2B.0211 "Fresh Surface Water Classification and Standards."
- (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 the lesser of 15 Working days or 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. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- (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) Control Devices, Sufficient Practices and Ground Cover. The Person Conducting Land-Disturbing Activity shall install Erosion and Sedimentation control devices and adhere to practices that are sufficient to retain the Sediment generated by the Land-Disturbing Activity within the boundaries of the Tract during construction, and shall plant or otherwise provide Ground Cover sufficient to restrain Erosion after completion of construction or development. Provisions for Ground Cover sufficient to restrain Erosion must be accomplished within the lesser of 15 Working Days or 21 calendar days following completion of construction or development.
- (e) Protection of Property - Persons conducting Land-Disturbing Activity shall take all reasonable measures to protect all public and private property from damage caused by that activity.
- (f) More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state, or local laws, ordinances or rules, the more restrictive provision shall apply.

Section 6 Sketch Plans

- (a) Sketch Plan Approval Requirement for Land-Disturbing Activity. No Person shall undertake any Land-Disturbing Activity associated with new construction requiring the issuance of a building permit (but not requiring submittal of an Erosion and Sedimentation Control Plan pursuant to Section 7) without first obtaining the Erosion Control Officer's written approval of a Sketch Plan with respect to that Land Disturbing Activity.
- (b) Prior Plan Approval Required. No Person shall initiate any Land-Disturbing Activity that requires an approved Sketch Plan unless prior to initiating the activity, the proposed Sketch Plan for the activity is submitted to or prepared in cooperation with the Erosion Control Officer. If the applicant is not the owner of the land to be disturbed, the proposed Sketch Plan must include the owner's written consent for the applicant to file the proposed Sketch Plan and to conduct the anticipated Land-Disturbing Activity.
- (c) Content. The Sketch Plan shall be submitted on 8-1/2 x 11 paper or larger. It shall consist of property lines from Polk County's GIS or a survey and include the property where Land-Disturbing Activity will occur and adjacent parcels. It shall indicate existing and proposed buildings, roads, drives and trees (existing and to be removed). It shall depict all streams,

drainage ditches or other bodies of water. It shall show the proposed land disturbance area (including approximate dimensions) and indicate measures to be used to control erosion. It need not be strictly to scale.

- (d) Approval or Disapproval. The Erosion Control Officer will normally approve or Disapprove a Sketch Plan in conference with the Person submitting it at or about the time it is submitted. The Erosion Control Officer shall specifically state in writing the reasons for any disapproval.
- (e) Display of Plan Approval. A Sketch Plan approval issued under this ordinance shall be prominently displayed at the job site until all construction is complete. A copy of the approved Sketch Plan shall be kept on file at the job site.

Section 7 Erosion and Sedimentation Control Plans

- (a) Erosion and Sedimentation Control Plan Approval Requirement for Land-Disturbing Activity. No Person shall undertake any Land-Disturbing Activity exceeding:
 - (1) one acre (43,560 square feet) where the maximum slope of the Tract is less than 15%;
 - (2) one-half acre (21,780 square feet) where the maximum slope of the Tract is equal to or greater than 15% but less than 25%; or
 - (3) one-quarter acre (10,890 square feet) where the maximum slope of the Tract is equal to or greater than 25%without first obtaining the Erosion Control Officer's written approval of an Erosion and Sedimentation Control Plan with respect to that Land Disturbing Activity. The maximum slope of the Tract shall be the greatest slope on the Tract the Erosion Control Officer is able to establish using the Polk County GIS system. In determining the total area of land disturbed, lands under one or diverse ownership being developed as a unit will be aggregated.
- (b) Prior Plan Approval Required. No Person shall initiate any Land-Disturbing Activity that requires an approved Erosion and Sedimentation Control Plan unless, at least thirty (30) or more days prior to initiating that activity, a proposed Erosion and Sedimentation Control Plan for the activity is filed with the Erosion Control Officer. If the applicant is not the owner of the land to be disturbed, the proposed Erosion and Sedimentation Control Plan must include the owner's written consent for the applicant to file the proposed Erosion and Sedimentation Control Plan and to conduct the anticipated Land-Disturbing Activity. A proposed Erosion and Sedimentation Control Plan may be filed less

than 30 days prior to initiation of Land-Disturbing Activity if it is submitted under an express permit program approved by the Erosion Control Officer, and the Land-Disturbing Activity may be initiated and conducted in accordance with the Erosion and Sedimentation Control Plan once it has been approved in the manner hereinafter provided. Three (3) copies of the proposed Erosion and Sedimentation Control Plan shall be filed with the Erosion Control Officer, and an additional copy shall be simultaneously submitted to the District. The Erosion Control Officer shall forward to the Director of the Division of Water Quality a copy of each proposed Erosion and Sedimentation Control 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.

- (c) Financial Responsibility and Ownership. A proposed Erosion and Sedimentation Control Plan shall be disapproved unless accompanied by an authorized statement of financial responsibility and ownership in the form prescribed by the Erosion Control Officer. The statement of financial responsibility and ownership 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 Erosion and Sedimentation Control Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance.
- (d) Performance Guarantee. A proposed Erosion and Sedimentation Control Plan shall be disapproved unless also accompanied by an acceptable performance guarantee.
- (1) An acceptable performance guarantee must provide adequate collateral equal to 125% of the cost of implementing the proposed Erosion and Sedimentation Control Plan.
 - (2) The cost of implementing the Erosion and Sedimentation Control Plan shall normally be taken to be equal to the good faith and responsible written estimate of the contractor or contractors engaged to implement it, as set forth in a written instrument signed by the contractor or contractors accompanying the proposed Erosion and Sedimentation Control Plan.
 - (3) However, the Erosion Control Officer, in the exercise of his or her discretion, may further require the Person financially responsible for the Land-Disturbing Activity also to obtain and submit an additional written cost estimate prepared (at the expense of the Person financially responsible for the Land-Disturbing Activity) by a professional engineer

or a professional landscape architect acceptable to the Erosion Control Officer. Where such an additional written cost estimate is required, the cost of implementing the Erosion and Sedimentation Control Plan shall be the greater of the original and additional cost estimates.

- (4) The Person financially responsible for the Land-Disturbing Activity shall guarantee proper implementation of the Erosion and Sedimentation Control Plan by providing collateral in one of the following methods:
 - (i) filing a performance or surety bond or an irrevocable standby letter of credit acceptable to the Erosion Control Officer issued by an insurance company or financial institution authorized to do business in North Carolina and acceptable to the Erosion Control Officer in an amount equal to 125% of the cost of implementing the proposed Plan, or
 - (ii) depositing with the Erosion Control Officer or placing in escrow with a financial institution authorized to do business in North Carolina and acceptable to the Erosion Control Officer a certified check or cash in an amount equal to 125% of the cost of implementing the proposed Plan.

The utilization and disposition of the collateral thus provided shall be governed by the terms of a written performance guarantee agreement conforming to the requirements of this subsection and acceptable to the Erosion Control Officer executed by the Person financially responsible for the Land-Disturbing Activity and by any insurance company or financial institution involved. The Erosion Control Officer may, with the assistance of legal counsel for Polk County, establish a standardized form of written performance guarantee agreement for this purpose.

- (5) The performance guarantee agreement must remain in effect, and the collateral provided must remain in place, until the issuance by the Erosion Control Officer of the certificate of completion required by Section 7(t) of this ordinance.
- (6) The performance guarantee agreement must provide that, upon the occurrence and during continuation of any uncured failure by any Person to conduct the Land-Disturbing Activity in accordance with the approved Erosion and Sedimentation Control Plan and the requirements of this ordinance in a timely manner, or upon the occurrence and during continuation of any other uncured failure by any Person conducting that

Land-Disturbing Activity to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to the Act or this ordinance, the Erosion Control Officer may draw against the collateral to discharge the costs of (i) completing the Land-Disturbing Activity in accordance with the approved Erosion and Sedimentation Control Plan or with any required revisions or amendments under Sections 7(p) and 7(q) of this ordinance, (ii) remediating any failure by any Person to conduct the Land-Disturbing Activity in accordance with the approved Erosion and Sedimentation Control Plan and the requirements of this ordinance, or (iii) remediating any other failure by any Person conducting that Land-Disturbing Activity to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance.

- (7) The performance guarantee agreement must provide that neither the submission of an acceptable performance guarantee agreement or providing the required collateral, nor draws by the Erosion Control Officer upon that collateral, shall relieve a Person financially responsible for an approved Erosion and Sedimentation Control Plan of responsibility or liability in connection with the Land-Disturbing Activity involved, except to the extent, and only to the extent, that matters for which that Person is responsible or liable are satisfactorily cured by the use of those draws.

- (e) Environmental Policy Act Document. Any proposed Erosion and Sedimentation Control Plan submitted for a Land-Disturbing Activity for which an environmental document is required by the North Carolina Environmental Policy Act (N.C. Gen. Stat. § 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 Erosion and Sedimentation Control Plan that the 30-day time limit for review of the Erosion and Sedimentation Control Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.
- (f) Content. The proposed Erosion and Sedimentation Control Plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed adequately to describe the proposed development of the Tract and the measures planned to comply with the requirements of this ordinance. Erosion and Sedimentation Control Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Erosion and Sedimentation Control Plan preparation may be obtained from the Erosion Control Officer on request.
- (g) Soil and Water Conservation District Comments. The District shall review the proposed Erosion and Sedimentation Control Plan and submit any comments and recommendations to the Erosion Control Officer within 20 days after the District

receives the Plan, or within any shorter period of time as may be agreed upon by the District and the Erosion Control Officer. 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 proposed Erosion and Sedimentation Control Plan.

- (h) Timeline for Decisions on Plans. The Erosion Control Officer will review each complete proposed Erosion and Sedimentation Control Plan submitted to him or her and, within 30 days of receipt of the complete proposed Erosion and Sedimentation Control Plan, shall notify the Person submitting the proposed Erosion and Sedimentation Control Plan that it has been approved, approved with modifications, or disapproved. Failure by the Erosion Control Officer to approve, approve with modifications, or disapprove a complete proposed Erosion and Sedimentation Control Plan within 30 days of that receipt shall be deemed approval. The Erosion Control Officer shall review each revised proposed Erosion and Sedimentation Control Plan submitted to him or her and within 15 days of receipt, shall notify the Person submitting the proposed Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a revised proposed Erosion and Sedimentation Control Plan within 15 days of receipt shall be deemed approval.
- (i) Preconstruction Conference. When deemed necessary by the Erosion Control Officer, a preconstruction conference may be required.
- (j) Approval. The Erosion Control Officer shall approve a proposed Erosion and Sedimentation Control Plan only 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 a proposed Erosion and Sedimentation Control Plan upon the applicant's compliance with federal and state water quality laws, regulations and rules. The Erosion Control Officer may establish an expiration date, not to exceed three (3) years, for Erosion and Sedimentation Control Plans approved under this ordinance.
- (k) Disapproval for Content. The Erosion Control Officer shall disapprove a proposed Erosion and Sedimentation Control Plan based on its content. A disapproval based upon a proposed Plan's content must specifically state in writing the reasons for disapproval.
- (l) Other Disapprovals. The Erosion Control Officer may disapprove a proposed Erosion and Sedimentation Control 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 also disapprove a proposed Erosion and Sedimentation Control Plan upon 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 Erosion and Sedimentation Control Plan, or has received notice of violation of an Erosion and Sedimentation Control Plan previously approved by the Commission or a Local Government pursuant to the Act (including Polk County) 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 the payment is due.
- (3) has been convicted of a misdemeanor pursuant to G. S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
- (4) has failed substantially to comply with State rules or local ordinances and regulations adopted pursuant to the Act.

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

If an Erosion and Sedimentation Control Plan is disapproved pursuant to this subsection, the Erosion Control Officer shall notify the Director of such disapproval within 10 days. The Erosion Control Officer shall advise the applicant and the Director in writing as to the specific reasons that the Erosion and Sedimentation Control Plan was disapproved.

- (m) Notice of Activity Initiation. Before initiating a Land-Disturbing Activity pursuant to an approved Erosion and Sedimentation Control Plan, a Person Conducting Land-Disturbing Activity with respect to that Erosion and Sedimentation Control Plan shall notify the Erosion Control Officer in writing of the date upon which the Land-Disturbing Activity will begin.
- (n) The Plan Governs. The Land-Disturbing Activity shall be conducted in accordance with the approved Erosion and Sedimentation Control Plan in all cases where the Land-Disturbing Activity requires an approved Erosion and Sedimentation Control Plan.
- (o) Display of Plan Approval. An Erosion and Sedimentation Control Plan approval issued under this ordinance shall be prominently displayed at the job site 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 Erosion and Sedimentation Control Plan shall be kept on file at the job site.

- (p) Required Revisions. After approving an Erosion and Sedimentation Control Plan, if the Erosion Control Officer, either upon further review of the approved Erosion and Sedimentation Control Plan or on inspection of the job site, determines that a significant risk of Accelerated Erosion or off-site Sedimentation exists, he or she shall require a revised Erosion and Sedimentation Control Plan. Pending the preparation of the revised Erosion and Sedimentation Control 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 Erosion and Sedimentation Control Plan, the Erosion Control Officer determines that the Erosion and Sedimentation Control Plan is inadequate to meet the requirements of this ordinance, he or she may require any revision of the Erosion and Sedimentation Control Plan that is necessary to comply with this ordinance.
- (q) Amendment to a Plan. Applications for amendment of an approved Erosion and Sedimentation Control Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as the amendment is approved by the Erosion Control Officer, the Land-Disturbing Activity shall not proceed except in accordance with the Erosion and Sedimentation Control Plan as originally approved.
- (r) Self Inspections. The landowner, the financially responsible Person, or the landowner's or the financially responsible Person's agent shall perform an inspection of the area covered by an approved Erosion and Sedimentation Control Plan after each phase of the approved Erosion and Sedimentation Control Plan has been completed and after establishment of temporary Ground Cover in accordance with Section 5(b) of this ordinance. 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 and Sedimentation 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 Section 19(a) of this ordinance.
- (s) Notice of Activity Completion. Upon completion of a Land-Disturbing Activity that requires an approved Erosion and Sedimentation Control Plan, a Person Conducting Land-Disturbing Activity with respect to that Erosion and Sedimentation Control Plan shall notify the Erosion Control Officer in writing that the Land-Disturbing Activity has been completed.

- (t) Certificate of Completion. Following receipt of written notification from a Person Conducting Land-Disturbing Activity with respect to an approved Erosion and Sedimentation Control Plan that the Land-Disturbing Activity has been completed, the Erosion Control Officer shall conduct a job site inspection and, if he or she finds that the Land-Disturbing Activity has been completed in conformity with the Erosion and Sedimentation Control Plan, shall issue a written certificate of completion with respect to the Land-Disturbing Activity.
- (u) Failure to File a Plan. Any Person engaged in Land-Disturbing Activity requiring an approved Erosion and Sedimentation Control Plan who fails to file a Plan in accordance with this ordinance, or who conducts a Land-Disturbing Activity except in accordance with the provisions of an approved Plan, shall be deemed in violation of this ordinance.
- (v) Reservation of Rights. Polk County reserves the right to require preparation and approval of an Erosion and Sedimentation Control Plan in any instance in which an Erosion and Sedimentation Control Plan is not otherwise required but in which extensive control measures are needed.

Section 8 Basic Control Objectives

A proposed Sketch Plan or Erosion and Sedimentation Control Plan may be disapproved if it fails to address the following control objectives:

- (a) Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation, are to be identified and receive special attention.
- (b) Limit Time of Exposure - All Land-Disturbing Activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (c) Limit Exposed Areas - All Land-Disturbing Activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (d) Control Surface Water - Surface water runoff originating upgrate of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.
- (e) Control Sedimentation - All Land-Disturbing Activity is to be planned and conducted so as to prevent 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, a Plan shall include measures to control the Velocity to the Discharge Point so as to minimize Accelerated Erosion of the site and increased Sedimentation of the receiving watercourse.

Section 9 Design and Performance Standards

- (a) Ten-Year Storm Runoff Standard - Erosion and Sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the Ten-Year Storm, except as provided in Section 9(b)(2) of this ordinance. Runoff rates shall be calculated using the procedures in the USDA Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other calculation procedures acceptable to the Erosion Control Officer.
- (b) HQW Zones. In HQW Zones, the following design 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 Erosion Control Officer.
 - (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 Twenty-Five 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 the 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 soil particle transported into the basin by the runoff of that Twenty-Five 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 the 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 two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain Accelerated Erosion.
- (5) Ground Cover. 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 21 calendar days following completion of construction or development, whichever period is shorter.

Section 10 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 Ten-Year Storm runoff in the receiving watercourse to the Discharge Point does not exceed the greater of:
 - (1) the Velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the Velocity of the Ten-Year Storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this subsection 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.):

Material	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.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. Polk County 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;
- (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 dissipaters at outlets of storm drainage facilities to reduce flow Velocities to the Discharge Point;

- (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 Erosion Control Officer that storm water discharge Velocities will not create an Erosion problem in the receiving watercourse.

Section 11 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 that are not regulated by the provisions of the Mining Act of 1971 (N.C. Gen. Stat. §§ 74-7-46 et seq.), and Waste areas for surplus materials that are not landfills regulated by the Department's Division of Waste Management, shall be considered as part of the Land-Disturbing Activity. 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 12 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 that activity.

Section 13 Operations in Lakes or Natural Watercourses

Land-Disturbing Activity in connection with construction in, on, over, or under a Lake or Natural Watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

Section 14 Responsibility for Maintenance

During the development of a site, the Person conducting the Land-Disturbing Activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner or Person in possession or control of the land shall install and 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.

Section 15 Additional Measures

Whenever the Erosion Control Officer determines that significant Erosion and Sedimentation is occurring as a result of Land-Disturbing Activity, despite application and maintenance of protective practices, he or she shall require the Person conducting the Land-Disturbing Activity to take additional protective action, and the Person conducting the Land-Disturbing Activity shall take that additional protective action.

Section 16 Existing Uncovered Areas

- (a) All Uncovered areas existing on the effective date of this ordinance that resulted from what would have constituted Land-Disturbing Activity under this ordinance had it been in effect, that are subject to continued Accelerated Erosion, and that 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 shall serve upon the landowner or other Person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the Commission, by the Polk County Board of Commissioners or by the Erosion Control Officer. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in N.C. Gen. Stat. § 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which those 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 for compliance.
- (c) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Section 17 Fees

- (a) The Polk County Board of Commissioners may establish a fee schedule for the review and approval of Plans.
- (b) In establishing the fee schedule, the Polk County Board of Commissioners shall consider the administrative and personnel costs incurred for reviewing the Plans and for related compliance activities.

Section 18 Plan Appeals

- (a) The appeal of a disapproval or approval with modifications of a Sketch Plan or an Erosion and Sedimentation Control Plan by the Erosion Control Officer shall be governed by the following provisions, except as provided in Section 18(b) of this ordinance:
- (1) The disapproval or modification of any proposed Sketch Plan or an Erosion and Sedimentation Control Plan by the Erosion Control Officer shall entitle the Person submitting the Plan to a public hearing if that Person submits to the Erosion Control Officer a written request for a hearing within 15 days after receipt of written notice of disapproval or modifications.
 - (2) A hearing held pursuant to this section shall be conducted by the Polk County Planning Board within 40 days after the date the request for a hearing is submitted.
 - (3) The Polk County Planning Board shall make recommendations to the Polk County Board of Commissioners within 30 days after the date of the conclusion of the hearing on any appeal.
 - (4) The Polk County Board of Commissioners will render its final decision on any Sketch Plan or Erosion and Sedimentation Control Plan within 30 days of receipt of the recommendations from the Polk County Planning Board.
 - (5) If the Polk County Board of Commissioners upholds the disapproval or modification of a proposed Sketch Plan or Erosion and Sedimentation Control Plan following the hearing, the Person submitting the Plan shall then be entitled to appeal the Polk County Board of Commissioners' decision to the Commission as provided in N.C. Gen. Stat. § 113A-61(c) and 15A NCAC § 4B .0118(d)
- (b) If a Sketch Plan or Erosion and Sedimentation Control Plan is disapproved pursuant to Section 7(l) of this ordinance, the applicant may appeal the Erosion Control Officer's disapproval of the Plan directly to the Commission.

Section 19 Inspections and Investigations

- (a) Inspection. The Erosion Control Officer, or any other representative, employee, or agent of Polk County authorized by him or her, will periodically inspect Land-Disturbing Activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether

the measures required in a Sketch Plan or an Erosion and Sedimentation Control Plan are effective in controlling Erosion and Sedimentation resulting from Land-Disturbing Activity. Notice of the right to inspect shall be included in the certificate of approval of each Sketch Plan or an Erosion and Sedimentation Control Plan.

- (b) Willful Resistance, Delay or Obstruction. No Person shall willfully resist, delay, or obstruct the Erosion Control Officer, or any other authorized representative, employee, or agent of Polk County, while he or she is inspecting or attempting to inspect a Land-Disturbing Activity under this section.
- (c) Notice of Violation. If the Erosion Control Officer determines that a Person engaged in Land-Disturbing Activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that Person. The notice may be served by any means authorized under N.C. Gen. Stat. § 1A-1, Rule 4. The notice shall specify a date by which the Person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the Person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any Person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in N.C. Gen. Stat. § 113A-64 and Section 20 of this ordinance.
- (d) Investigation. The Erosion Control Officer shall have the power to conduct such investigations as he or she may reasonably deem necessary to carry out his or her 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 character or consequences of any Land-Disturbing Activity.
- (e) Statements and Reports. The Erosion Control Officer 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.

Section 20 Penalties

(a) 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 Sketch Plan or an Erosion and Sedimentation Control Plan is required except in accordance with the terms, conditions, and provisions of an approved Sketch Plan or Erosion and Sedimentation Control Plan, is

subject to a civil penalty. The maximum civil penalty amount that Polk County can assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) Civil Penalty Assessment Factors. The Polk County Board of Commissioners shall determine the amount of the civil penalty based upon the following factors:

- (i) the degree and extent of harm caused by the violation,
- (ii) the cost of rectifying the damage,
- (iii) the amount of money the violator saved by noncompliance,
- (iv) whether the violation was committed willfully, and
- (v) the prior record of the violator in complying or failing to comply with this ordinance.

(3) Notice of Civil Penalty Assessment. The Polk County Board of Commissioners 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 N.C. Gen. Stat. § 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by filing a petition for contested case in the Office of Administrative Hearing in accordance with N.C. Gen. Stat. § 150B-22 et seq.

(4) Appeal of Decision of Administrative Law Judge. The decision of the Administrative Law Judge may be appealed in writing within 10 business days after written notice of the decision. Such appeals are to be heard by the Secretary of the Department.

(5) Appeal of Final Decision. Appeal from the final decision of the Secretary of the Department shall be to the Superior Court of the county where the violation occurred. The appeal must be made within 30 days of the final decision of the Secretary of the Department.

(6) Collection. If payment is not received within 30 days after it is due, Polk County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of Polk County, or where 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.

- (b) Violation Not A Misdemeanor or Infraction. A violation for which this Section 20 prescribes a civil penalty is not a misdemeanor or infraction under N. C. Gen. Stat. §14-4.

Section 21 Injunctive Relief

- (a) Violation of Local Program. Whenever the Erosion Control Officer has reasonable cause to believe that any Person is violating or threatening to violate this ordinance, or any rule, regulation or order adopted or issued in connection with this ordinance by the Polk County Board of Commissioners or the Erosion Control Officer, or any term, condition, or provision of an approved Sketch Plan or Erosion and Sedimentation 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 Polk County for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of the county in which the violation is occurring or is threatened.
- (b) Abatement of Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court may 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 penalty prescribed for violations of this ordinance.

Section 22 Restoration After Non-Compliance

The Erosion Control Officer may require a Person who engaged in a Land-Disturbing Activity and failed to retain Sediment generated by the activity, as required by Section 5(d) of this ordinance, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by Sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this ordinance.

Section 23 Severability

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

Section 24 Effective Date

This ordinance shall become effective 30 days following the date upon which the Commission approves this ordinance pursuant to N.C. Gen. Stat. §113A-60.

BOC Approved 6.22.09

Approved this 22nd day of June, 2009, by the Polk County Board of Commissioners.

Cynthia Walker
Cynthia Walker, Chair
Polk County Board of Commissioners

(SEAL)

ATTEST: *Anne Britton*
Anne Britton, Secretary
Polk County Board Of Commissioners

APPROVED AS TO FORM:
Tom Hix
Tom Hix, Polk County Attorney