Article 28 - SOIL EROSION AND SEDIMENTATION CONTROL[[1]](#fn_49)

Sec. 17-2. - Purpose.

This article is adopted for the purposes of:

1. Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent pollution of water and other damage to lakes, wetlands, watercourses, and other public and private property by sedimentation.
2. Permitting development of the City with the least detrimental effects from pollution by erosion and sedimentation.
3. Establishing procedures through which these purposes can be fulfilled.

Sec. 17-3. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accelerated erosion* means any increase over the rate of natural erosion as a result of land disturbing activity.

*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.

*Being conducted* means a land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

*Borrow* means fill material that is required for on-site construction and is obtained from other locations.

*Certificate of occupancy* means the document required by the state building code certifying that a new building shall not be occupied or a change made in occupancy, nature or use of a building until after all required building and services systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the code enforcement department.

*City engineer* means the city engineer or the director's duly authorized representatives.

*Code enforcement department* means the city engineering and property management department, land development division.

*Commission* means the state sedimentation control commission.

*Committee* means the Charlotte-Mecklenburg Storm Water Advisory Committee as established by the joint resolution of the city council and the county board of commissioners, together with any amendments thereto.

*Competent person* means a person that has obtained and maintains in good standing an approved certification that is recognized by the city engineer.

*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.

*Contractor conducting the land disturbing activity* means any person who participates in the land disturbing activity, including, but not limited to, the general contractor and subcontractors with the responsibility for supervising the work on the tract for the changing of the natural cover or topography of the tract or any part thereof.

*Days* means calendar days unless otherwise specified.

*Discharge point* means that point at which concentrated flow runoff leaves a tract of land.

*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 flow.

*Erosion* means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

*Forest practice guidelines* means the written directions related to water quality prepared by the department's division of forest resources and the United States Forest Service, including, but not limited to, the Forestry Best Management Practices Manual prepared by the department.

*Ground cover* means any vegetative growth or other material that renders the soil surface stable against accelerated erosion.

*Lake or 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.

*Land-disturbing activity* means any use of the land by any person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the ground cover or topography and that may cause or contribute to sedimentation.

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*Permit* means the permit to conduct land disturbing activities issued by the city engineer after a plan is approved.

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

*Person responsible for the violation* means:

(1)  The developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity;

(2)  The landowner or person in possession or control of the land who has directly or indirectly allowed the land disturbing activity or has benefited from it or has failed to comply with any section of this chapter, the act, or any order adopted pursuant to this chapter or the act; and/or

(3)  The contractor with control over the tract or the contractor conducting the land-disturbing activity.

*Phase of grading* means one of two types of grading: rough or fine.

*Plan* means an erosion and sedimentation control plan.

*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.

*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 wetland, lake or watercourse.

*Storm drainage facilities* means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey stormwater through and from a given drainage area.

*Stormwater runoff* means the direct runoff of water resulting from precipitation in any form.

*Subsidiary* means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

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

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

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

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

*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.

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

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

*Watershed* means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the county.

*Wetland* means land having the vegetative, soil and hydrologic characteristics to be regulated by section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corps of Engineers.

*Working days* means days exclusive of Saturday, Sunday and county government holidays during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

Sec. 17-4. - Scope and exclusions.

(a)  The requirements of this article apply to all land disturbing activity within the corporate limits of the city the extraterritorial jurisdiction (ETJ.

(b)  This article shall not apply to the following land disturbing activities:

(1)  Activities including production and activities relating or incidental to the production of crops, grains, fruits, ornamental and flowering plants, dairy, livestock, poultry, and other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

a.  Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.

b.  Dairy animals and dairy products.

c.  Poultry and poultry products.

d.  Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules and goats.

e.  Bees and apiary products.

f.  Fur-producing animals.

g. Mulch, ornamental plants, and other horticultural products

(2)  An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this article shall apply to such activity and any related land-disturbing activity on the tract..

(3)  Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 on the North Carolina General Statutes

(4)  For the duration of an emergency, activities essential to protect human life.

(5)  Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

6. Activities undertaken to restore the wetlands functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Federal Clean Water Act

7. Activities undertaken pursuant to Federal Natural Resources Conservation Service standards to restore the wetland functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2

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(b)

ARTICLE II. - EROSION CONTROL REQUIREMENTS

Sec. 17-31. - General requirements.

(a)  *Erosion and sedimentation control measures.* All land disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with this article sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.

(b)  *Plan required.* No person shall initiate, direct, allow or conduct any land disturbing activity on a tract that meets any of the following criteria without having a copy of an approved erosion and sedimentation control plan (hereinafter referred to as the “plan”) on the job site approved by the city

(1)  Uncovers one acre or more. In determining the size of the disturbed area, lands being developed as a unit shall be aggregated regardless of ownership.

(2)  In borrow and waste areas covered by item D.6 below, with a disturbed area one acre or greater.

(c)  *Compliance.* Persons who submit a plan to the Stormwater Administrator shall comply with Section 28.4 of this article.

(d)  *Protection of property.* Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated sedimentation.

(e)  Conflicts, *Applicability of more restrictive rules.* Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Sec. 17-32. - Basic control objectives.

A plan may be disapproved pursuant to section 17-35 of this chapter if the plan fails to include adequate erosion control measures, structures, or devices to address the following control objectives:

(1)  *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.

(2)  *Limit on time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(3)  *Limit on 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.

(4)  *Control of surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(5)  *Control of sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent sedimentation damage.

(6)  *Management of stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the discharge point so as to minimize accelerated erosion of the site and to decrease sedimentation to any lake or watercourse.

Sec. 17-33. - Mandatory standards for land disturbing activity.

No land disturbing activity subject to the control of this article shall be undertaken except in accordance with the following:

(1)  *Lake, watercourse and wetland protection.* Additional erosion control measures, structures, or devices as specified in the City and Mecklenburg County Soil Erosion and Sedimentation Control Policies and Procedures statement issued by the Stormwater Administrator shall be required to provide a higher level of protection to lakes, watercourses, and wetlands from sedimentation

(2)  *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measures, structures, or devices. In any event, slopes left exposed shall, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent groundcover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills shall be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

3. Fill Material

 Materials being used as fill shall be consistent with those described in the North Carolina Administrative Code (NCAC) per 15A NCAC 13B .0562 unless the site is permitted by the North Carolina Department of Environmental Quality (hereinafter referred to as NCDEQ) Division of Waste Management to operate as a landfill. Not all materials described in 15A NCAC 13B .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly

(4)  *Groundcover.* The person conducting the land-disturbing activity shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 21 calendar days following completion of construction or development. For an area of a site that is inactive for a period of 21 calendar days or longer, temporary ground cover is required.

(5)  *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract if one acre or more is to be disturbed unless a plan for that activity has been submitted and approved in accordance with section 28.4

(6)  *Pre-construction conference.* If one acre or more is to be uncovered, the person conducting land-disturbing activity or an agent of that person shall contact the Stormwater Administrator at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Stormwater Administrator to review and discuss the approved plan and the proposed land-disturbing activity.

(7)  *Monitoring.* The person conducting land-disturbing activity or an agent of that person shall inspect all erosion and sedimentation control measures at least once a week and within 24 hours after any storm event of greater than one inch of rain per 24 hour period or more frequently if required by federal or state law. The person performing this monitoring shall have certification or commensurate training approved by the Stormwater Administrator.

a.  If one acre or more is to be disturbed, a record of inspections shall be kept by the person conducting the land-disturbing activity, or an agent of that person, until six months after construction is completed and grading permit termination is approved by the Stormwater Administrator. The record shall include all monitoring and inspection elements as required by the North Carolina General Permit, NCG01 (NCG01). Additional record keeping may be required by federal or state law and as stated on the approved plans .b. Corrective actions for repairs and maintenance indicated on the record shall be initiated within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Stormwater Administrator. The date of the completion of such repairs shall be noted. The records of inspection shall be made available to the Stormwater Administrator upon request

c.  Persons who have had a notice of violation or repeated warning about off-site sedimentation or non-maintenance of adequate erosion control measures, structures, or devices may be required to provide the Stormwater Administrator with a self-inspection record for the particular tract.

8. Sedimentation Control Buffer – No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or watercourse unless a sedimentation control buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the sedimentation control buffer zone nearest the land-disturbing activity.

1. Projects On, Over, or Under Water

This sedimentation control buffer requirement 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 watercourse.

1. Sedimentation Control Buffer Measurement

Unless otherwise provided, the width of a sedimentation control 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.

9. Adherence to Approved Plans

The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

Sec. 17-34. - Design and performance standards.

(a)  *Design storm.* Adequate erosion control measures, structures, and devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Service's (formerly Soil Conservation Service's) National Engineering Field Manual for Conservation Practices, or other acceptable calculation procedures including but not limited to the Charlotte-Mecklenburg Storm Water Design Manual.

(b)  *Innovative measures.* Erosion and sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Stormwater Administrator if it can be demonstrated that such techniques and ideas are likely to produce successful results.

(c)  *Responsibility for maintenance.* During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any section of this article, the North Carolina Sedimentation Pollution Control Act of 1973, or any order adopted pursuant to it (referred to as “Act” within this article), or any order adopted pursuant to this article or the Act. After development, the landowner or person in possession or control of the land shall install and maintain all necessary permanent erosion and sediment control measures.

(d)  *Additional measures.* Whenever the stormwater Administrator determines that erosion and sedimentation will likely continue, despite installation and maintenance of protective practices, the person conducting the land disturbing activity shall be required to take additional protective action necessary to achieve compliance with the conditions specified in this article.

(e)  *Storm drainage facilities protection.* Persons shall design the plan and conduct land disturbing activity so that the post-construction velocity of the ten-year storm does not exceed the maximum nonerosive velocity tolerated by the soil of the receiving watercourse or the soil of the receiving land.

(f)  *Borrow and waste areas.* If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, N.C.G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered by the approving authority as separate land-disturbing activities.

(g)  Temporary *Access and haul roads.* Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.

(h)  *Operations in lakes or watercourses.* Land disturbing activity in connection with construction in, on, over, or under a lake or watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disruption 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.

Sec. 17-35. - Erosion and sedimentation control plans.

(1)  *Plan requirements.* All plans required for land disturbing activities as identified in Section 28.3.A.2 shall meet the following:

(a)  Plans shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of site-specific requirements. Detailed guidelines for plan preparation may be obtained from the Stormwater Administrator.

(b)  Plans must contain an authorized statement of financial responsibility and ownership signed by the person financially responsible for the land disturbing activity or that person's attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of the state, an agent in the state must be designated in the statement for the purpose of receiving service of process and notice of compliance or noncompliance with the plan, the act, this chapter, or rules or orders adopted or issued pursuant to this article.

(c)  Except as provided in item 4 below, if the person submitting the plan (hereinafter referred to as “the applicant”) is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan shall 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.

(d)  The land-disturbing activity described in the plan shall comply with all federal, state, and local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Stormwater Administrator may require supporting documentation.

(e)  The land-disturbing activity described in the plan shall not result in a violation of rules adopted by the North Carolina Environmental Management Commission to protect riparian buffers along surface waters.

(f)  The land-disturbing activity described in the plan shall not result in a violation of any local ordinance, law, rule or regulation.

(g)  If the plan is submitted for land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et seq.), such as required on tracts involving public money or public land, a complete environmental document must be presented for review. The Stormwater Administrator’s time for reviewing the plan will not commence until a complete environmental document is available for review.

(h)  The plan shall be filed digitally with the Stormwater Administrator. A copy of the stamped, approved plan shall be maintained on the job site.

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

a.  The method of limiting the time of exposure and amount of exposed area to achieve the objectives of this chapter.

b.  A cut/fill analysis that shows where soil will be moved from one area of the tract to another as ground elevation is changed.

c.  Construction sequence and construction phasing to justify the time and amount of exposure.

d.  Techniques to be used to prevent sedimentation associated with larger disturbed areas.

e.  Additional erosion control measures, structures, and devices to prevent sedimentation.

(2)  *Plan review process.*

1. Timeline for Decisions on Plans
	1. The Stormwater Administrator shall review each complete plan submitted and within 30 days of receipt thereof shall notify the the applicant, that it has been approved, approved with modifications, , or disapproved.
		1. Should the plan be filed and not reviewed within the specified timeframe, the land disturbing activity may commence subject to section 28.3.C.6 and item A.1.e, above, and the Stormwater Administrator will endeavor to review the plan on an expedited schedule.
		2. If the plan is disapproved, the city engineer shall notify the applicant and, if required, the Director of the Division of Energy, Mineral, and Land Resources (NCDEMLR) within the NCDEQ of such disapproval within ten days thereof. The Stormwater Administrator shall advise the applicant and the Director of NCDEMLR in writing as to the specific reasons that the plan was disapproved. The applicant shall have the right to appeal the Stormwater Administrator’s decision as provided in section 37.8.B.
		3. The Stormwater Administrator will review each revised Plan submitted and within 15 days shall notify the applicant, that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.
2. Approval

The Stormwater Administrator 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 Stormwater Administrator shall condition approval of plans upon the applicant’s compliance with federal and state water quality laws, regulations, and rules. Plans for which land-disturbing activity has not commenced within three years from the initial plan approval date are void.

(c)  *Amendments to plans.*

a. City-Required Revisions

If the Stormwater Administrator, either upon review of such plan or upon inspection of the job site, determines that the plan is inadequate to meet the requirements of this article or that a significant risk of accelerated erosion or off-site sedimentation exists, a revised plan may be required. Pending the preparation of the revised plan, work on the affected area shall cease unless approved to continue under conditions outlined by the Stormwater Administrator.

1. Submission of Revisions or Amendments

Amendments or revisions to a plan must be made in written and/or graphic form and may be submitted at any time under the same requirements for submission of original plans. Until such time as the Stormwater Administrator approves any amendments or revisions, the land disturbing activity shall not proceed, except in accordance with the plan as originally approved or under conditions outlined by the Stormwater Administrator.

(d)   *Disapproval of Plans.*

i Disapproval for Content

The Stormwater Administrator may disapprove a plan based on its content. A disapproval based upon a plan’s content shall specifically state in writing the reasons for disapproval

ii Other Disapprovals

Any plan that is not in accordance with the requirements set forth in Section 28.4.A.1 above shall be disapproved. Additionally, a plan may be disapproved upon a finding that the financially responsible person or any parent or subsidiary thereof:

(1)  Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation or is not in compliance with the provisions of the notice;

(2)  Has failed to pay a civil penalty assessed pursuant to the act, or a local ordinance adopted pursuant to the act, by the time the payment is due;

(3)  Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the act; or

(4)  Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the act.

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.

4. Transfer of Plans

The Stormwater Administrator may transfer an erosion and sedimentation control plan approved pursuant to this article without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or shall occur as provided in this subsection.

* + 1. The Stormwater Administrator may transfer a plan if the following conditions are met:
			1. The successor-owner of the property submits to the City a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
			2. The Stormwater Administrator finds the following:
				1. The plan holder is one of the following:

A natural person who is deceased.

A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or shall occur.

A person who has sold the property on which the permitted activity is occurring or shall occur.

* + - * 1. The successor-owner holds title to the property on which the permitted activity is occurring or shall occur.
				2. The successor-owner is the sole claimant of the right to engage in the permitted activity.
				3. There shall be no substantial change in the permitted activity.
		1. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
		2. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
		3. Notwithstanding changes to law made after the original issuance of the plan, the Stormwater Administrator may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Stormwater Administrator from requiring a revised plan pursuant to N.C.G.S. §113A-54.1(b) or item A.3 above.

5. Display of Plan Approval

 A plan approval issued under this section shall be prominently displayed on the site until all construction is complete, all temporary sedimentation and erosion control measures are removed, the site ha been stabilized, and the grading permit has been terminated and approved by the Stormwater Administrator. A copy of the stamped plan may serve to satisfy this requirement.

(6)  *Failure to File or Follow a Plan.*

 Any person engaged in land disturbing activity who fails to file a required plan in accordance with this chapter shall be deemed in willful violation of this chapter. Any person who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in willful violation of this article

Sec. 17-36. - Permits.

1. No person shall undertake any land disturbing activity on a tract that disturbs one or more acres without obtaining the following:

a. An NCG01 permit by completing and submitting an electronic notice of intent (E-NOI) form requesting a certificate of coverage (COC) and obtaining the coverage certificate under the NCG01 Construction Site Stormwater General Permit. The letter of approval from the City shall contain a notice of the NCG01 permit requirement and the acreage approved for disturbance

b. A stamped and approved soil erosion and sedimentation control plan subject to Section 28.4.A.

c. A land disturbance permit from the Stormwater Administrator. The only exceptions to the requirement for a land disturbance permit are land disturbing activities that:

(1)  Have been preapproved by the Stormwater Administrator at a preconstruction conference for the purpose of installing erosion and sedimentation control measures indicated on the approved plan: or;

(2)  Are for the purpose of fighting fires; or

(3)  Are for the stockpiling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that sediment control measures are utilized to protect against off-site damage; or

(4)  Do not equal or exceed one acre of disturbed area. In determining the size of the disturbed area, lands being developed as a unit will be aggregated regardless of ownership. Although a plan and a permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this chapter.

28.5 Administration

 A. Appeals and variances of this article shall be subject to Article 37.

 B. Inspections and enforcement actions of this article shall be subject to Article 39

28.6 Stormwater Administrator

A. Designation

The Director of the City of Charlotte department for management of the City’s NPDES MS4 Stormwater permit has been designated as the Stormwater Administrator. The Stormwater Administrator is authorized to administer and enforce Article 28

1. Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of this Ordinance and other laws, the Stormwater Administrator shall have the following powers and duties under this article:

* 1. To review and approve or disapprove applications submitted pursuant to Article 28.
	2. To make determinations and render interpretations of Article 28**.**
	3. To establish application requirements and schedules for submittal and review of applications and appeals.
	4. To enforce Article 28 in accordance with its enforcement provisions in Article 39.
	5. To maintain records, maps, and official materials as they relate to the adoption, amendment, enforcement, or administration of Article 28.
	6. To provide expertise and technical assistance upon request to the City Council and the UDO Board of Adjustment.
	7. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
	8. To provide information and recommendations relative to variances and information as requested by the UDO Board of Adjustment in response to appeals.
	9. To prepare and make available to the public a Stormwater Regulations Administrative Manual.
	10. To take any other action necessary to administer the provisions of Article 28.

28.7 Definitions

The definitions of this section apply only to this article. Unless specifically defined in this section, other words or phrases used in this article are as defined in Article 2 for general definitions or Article 15 for use definitions. In the case of a conflict between a term defined in Article 2 or Article 15 and this article, the definition in this section controls.

**Sedimentation Control Buffer**. The strip of land adjacent to a lake or watercourse

**Day, Working**. Days exclusive of Saturday, Sunday, and City government holidays during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

**Groundcover.** Any vegetative growth or other material that renders the soil surface stable against accelerated erosion.

**Lake or Watercourse.** Any stream, river, brook, swamp, sound, bay, creek run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension and which could be damaged by accumulation of sediment.

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

**Mulch.** Horticultural products composed primarily of plant remains or mixtures of such substances.

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

**Permit.** The permit to conduct land-disturbing activities issued by the Stormwater Administrator.

**Uncovered.** The removal of groundcover 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 groundcover or topography of a tract of land.

ARTICLE III. - ADMINISTRATION, ENFORCEMENT AND APPEALS[[2]](#fn_50)

Sec. 17-66. - Inspections and investigations.

(a)  The Stormwater Administrator may, in accordance with Section 39.1.A.1, upon presentation of proper credentials, or an appropriate inspection warrant if necessary, inspect the sites of land disturbing activity at all reasonable hours to ensure compliance and determine whether the activity is being conducted in accordance with Article 28, rules or orders adopted or issued pursuant to Article 28, and the approved plan. The Stormwater Administrator may also inspect whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the notification of each plan approval or issuance of the permit. No person shall willfully resist, delay, obstruct, hamper, or interfere with the Stormwater Administrator while they are inspecting or attempting to inspect a land disturbing activity for compliance with Article 28.

(c)  If, it is determined that a person engaged in land disturbing activity has failed to comply with the North Carolina Sedimentation Pollution Control Act, the soil erosion and sedimentation control regulations in Article 28, or rules or orders adopted or issued , or has failed to comply with an approved plan, the Stormwater Administrator shall issue a written notice of violation to the property owner, the property owner’s agent, or other person in possession or control of the land, in accordance with N.C.G.S. Section 113A-61.1. The notice may be served by any means authorized under G.S. 1A-1, rule 4,. Notices of violations shall be provided to the property owner, the property owner’s agent, or other person in possession or control of the land. The notice shall, if required, specify a date by which the person shall comply with Article 28 and shall advise that the person is subject to civil penalties, and if the violation is not corrected within the time specified, may be subject to additional civil penalties, including those provided in any other authorized enforcement action.

**XX.** If the person engaged in the land-disturbing activity has not received a previous notice of violation, under Article 28 or its predecessor, the City shall offer assistance in developing corrective measures. Information on how to obtain assistance in developing corrective measures shall be included in the notice of violation. Assistance may be provided by referral to a technical assistance program on behalf of the approving authority, referral to a cooperative extension program, or by the provision of written materials such as NCDEQ guidance documents.

(d)  In determining the measures required and the time for achieving compliance, the Stormwater Administrator shall take into consideration the technology and quantity of work required and shall set reasonable and attainable time limits.

(e)  The Stormwater Administrator shall use local rainfall data approved by the Stormwater Administrator to determine whether the design storm identified in Article 28 has been exceeded.

(f)  Civil penalties may be assessed concurrently with a notice of violation for any of the following:

(1)  Failure to submit a plan.

(2)  Performing land disturbing activities without an approved plan and preconstruction conference, or permit.

(3)  Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.

(4)  A repeated violation for which a notice was previously given on the same tract or to the person responsible for the violation. For the purposes of this section (Section 39.2.F), person responsible shall mean:

 A. The developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity

 B. The landowner or person in possession or control of the land who has directly or indirectly allowed the land disturbing activity or has benefited from it or has failed to comply with any section of Article 28 or the North Carolina Sedimentation Pollution Control Act

 C. The contractor with control over the tract of the contractor conducting the land disturbing activity

(5)  Willful violation of this chapter.

(6)  Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per section 28.3.D.4 such that it results in sedimentation in a wetland, lake or watercourse, or other designated protected areas.

(7)  Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per section 28.3.D.4 such that it results in off-site sedimentation.

(g)  The Stormwater Administrator may conduct such investigation as is reasonably deemed necessary to carry out their duties as prescribed in Article 28, and enter at all reasonable hours upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activity. No person shall refuse entry or access to the Stormwater Administrator who requests entry for purpose inspection or investigation. ,

(h)  The Stormwater Administrator shall also have the power to require written statements or the filing of reports under oath as a part of investigating land disturbing activity.

(i)  With regard to the development of any tract that is subject to Article 28, the code enforcement department shall not issue a certificate of occupancy where any of the following conditions exist:

(1)  There is a violation of Article 28 with respect to the tract.

(2)  If there remains due and payable to the City, civil penalties that have been levied against the person conducting the land disturbing activity for violations of Article 28. If a penalty is under appeal, the Stormwater Administrator may require that the amount of the fine, and any other amount that the person would be required to pay under Article 28, 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.

(4)  In the instance of 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.

(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.

Sec. 17-67. - Penalties.

(a)  Any person who violates Article 28, or rules or orders adopted or issued pursuant to Article 28, or who initiates or continues a land disturbing activity for which a plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation through a notice of violation that complies with the notice requirements in Section 39.2.A.1, unless the penalty is assessed concurrently with the notice of violation Refusal to accept the notice or failure to notify the Stormwater Administrator of a change of address shall not relieve the violator's obligation to comply with Article 28 or to pay such a penalty.

(b)  The maximum civil penalty for each violation of Article 28 is $5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is $25,000.

(c)  The amount of the civil penalty shall be assessed pursuant to the following:

(1)  *Violations involving conducting a land disturbing activity without an approved plan.* Any person engaged in a land disturbing activity without a required approved plan and preconstruction conference or permit in accordance with this Article 28 or who initiates, directs or allows a land disturbing activity without a required, approved plan and preconstruction conference or permit shall be subject to a civil penalty of $5,000.00 per day, per violation. The penalty may be decreased based on mitigating circumstances located in Section 39.2.F.2.e.

(2)  *Violations resulting in sediment entering a wetland, lake or watercourse.* Violations resulting in sediment entering a wetland, lake or watercourse subjects the violator to a civil penalty of $3,000.00 per day, per violation. The penalty may be increased up to $5,000.00 per day or decreased, based on mitigating circumstances in Section 39.2.F.2.e.

(3)  *Violations resulting in off-site sedimentation.* Violations that result in off-site sedimentation subject the violator to a civil penalty of $1,000.00 per day, per violation. The penalty may be increased up to $5,000.00 per day or decreased, based on mitigating circumstances in Section 39.2.F.2.e. Violations of this type may include, but are not limited to, the following:

a.  Conducting land disturbing activities beyond the limits of an existing permit without approval of an amended plan and permit that results in off-site sedimentation.

b.  Failure to properly install or maintain erosion control measures in accordance with the approved plan or the Charlotte Land Development Standards Manual that results in off-site sedimentation.

c.  Failure to retain sediment from leaving a land disturbing activity as required by Article 28.

d.  Failure to restore off-site areas affected by sedimentation during the time limitation established in a notice of violation and as prescribed in the City of Charlotte and Mecklenburg County Policies and Procedures.

e.  Any other violation of Article 28 that results in off-site sedimentation.

(4)  *Violations of chapter not resulting in off-site sedimentation.* Violations of Article 28 that do not result in off-site sedimentation subject the violator to a civil penalty of $500.00 per day, per violation. The penalty may be increased up to $5,000.00 per day or decreased, based on mitigating circumstances in Section 39.2.F.2.e. Violations of this type may include, but are not limited to, the following:

a.  Failure to comply with the mandatory standards for land-disturbing activity as specified in section 28.3.C, except sections 28.3.C.4 and 28.3.C.5.

b.  Failure to submit to the Stormwater Administrator for approval an acceptable revised erosion and sedimentation control plan after being notified by the Stormwater Administrator of the need to do so.

c.  Failure to maintain adequate erosion control measures, structures, or devices to confine sediment.

d.  Failure to follow the provisions on the approved plan.

e.  Any other action or inaction that constitutes a violation of Article 28 that did not result in off-site sedimentation.

 v. The Stormwater Administrator is authorized to vary the amount of the per diem penalty set out in Section 39.2.F.2 to take into account any relevant aggravating or mitigating factors

(d)  In determining the amount of the civil penalty, the Stormwater Administrator shall consider any relevant mitigating and aggravating factors, including, but not limited to:

(1)  The effect, if any, of the violation.

(2)  The degree and extent of harm caused by the violation.

(3)  The cost of rectifying the damage;

(4)  Whether the violator saved money through noncompliance;

(5)  Whether the violator took reasonable measures to comply with this Article 28;

(6)  Whether the violation was committed willfully;

(7)  Whether the violator reported the violation to the Stormwater Administrator

(8)  The prior record of the violator in complying or failing to comply with Article 28 or any other erosion and sedimentation control regulations or law.

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(e)  Repeat violators may be charged by a multiple of the base penalty determined inSection 39.2.F.2. The penalty for a repeat violator may be doubled for each previous time the person responsible for the violation was notified of a violation of Article 28 or any other soil erosion and sediment control regulation or the North Carolina Sedimentation Pollution Control Act. In no case may the penalty exceed the maximum allowed Section 39.2.F.2.b

(f)  The Stormwater Administrator shall determine the amount of the civil penalty and shall notify the person responsible of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be provided in accordance with 39.2.A.1 and shall direct the violator to either pay the assessment, contest the assessment through an appeal as specified in section 37.8.B, or file with the North Carolina Sedimentation Control Commission for remission. A remission request shall be accompanied by a waiver of the right to a contested case appeal hearing pursuant to N.C.G.S. Chapter 150B and stipulation of the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Stormwater Administrator within 30 days after it is due, or does not request a hearing as provided in section 37.8.B, the Stormwater Administrator shall request the city attorney to institute a civil action in the name of the City to recover the amount of the assessment. The civil action shall be brought in the Mecklenburg County Superior Court.

(g)  A civil action shall be filed within three years of the date the assessment was due. An assessment that is not appealed is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(h)

(iii) The clear proceeds of civil penalties collected by the City under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with N.C.G.S. § 115C-457.2. Clear proceeds include the full amount of all civil penalties and fines collected, diminished only by the actual costs of the collection, not to exceed 20% of the amount collected. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis.

(i)  Any person who knowingly or willfully violates any provision of Article 28, or rule or order adopted or issued by the City of the County, 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 and may be subject to a fine not to exceed $5,000.00. This is in addition to any civil penalties that may be charged. Each day of continuing violation shall constitute a separate violation.

(j)

Sec. 17-68. - Injunctive relief.

(a)  Whenever the Stormwater Administrator has reasonable cause to believe that any person is violating or threatening to violate Article 28 or any term, condition, or provision of an approved plan, the Stormwater Administrator, with the written authorization of the City Manager, may, either before or after the institution of any other action or proceeding authorized by Article 39.2.D, authorize the City Attorney to institute a civil action in the name of the city for injunctive relief to restrain the violation or threatened violation. See Section 39.2.A.5 on injunctions. The action shall be brought pursuant to N.C.G.S. § 160A-175 in the Mecklenburg County Superior Court.

(b)  Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. See Section 39.2.A.5 for injunctions and orders of abatement. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of Article 28.

(Code 1985, § 18-34)

Sec. 17-69. - Restoration of areas affected by failure to comply.

The Stormwater Administrator may require a person who engaged in any land disturbing activity and failed to retain sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under Sections 39.2.F.2 and 39.3.F.4.

Sec. 17-70. - Appeals.

(a)

(b)  *Disapproval or modification of proposed plan.* Procedures for an appeal of the disapproval or modification of the proposed plan are as follows:

(1)  The disapproval or modification of any proposed plan by the Stormwater Administrator shall entitle the person submitting the plan (petitioner) to file a written request for an appeal with the clerk of the UDO Board of Adjustment within 30 days after receipt of the notice of disapproval or modification. Notice of the disapproval or modification sent by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The request for a hearing filed with the clerk shall be accompanied by a filing fee as established by the UDO Board of Adjustment. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under Article 28, and the committee shall have no jurisdiction to hear the appeal.

(2)  Within five days of receiving the demand for a hearing, the clerk of the UDO Board of Adjustment shall notify the Stormwater Administrator. As soon as possible after the receipt of the notice, the clerk of the UDO Board of Adjustment shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. As per N.C.G.S. § 160D-406, notices of hearings shall be mailed to: 1) the person or entity whose appeal is the subject of the hearing; 2) to the owner of the property that is the subject of the hearing, if the owner did not initiate the hearing; and 3) to the owners of all parcels of land adjacent to the parcel of land that is the subject of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the UDO Board of Adjustment, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the UDO Board of Adjustment in accordance with Section 37.8.B.9 through 37.8.B.14.

(3)  If the UDO Board of Adjustment upholds the disapproval or modification of a proposed plan following the public hearing, the petitioner shall have 30 days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to title 15, chapter 4B, section .0018(b) of the North Carolina Administrative Code and G.S. 113A-61(c). Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(c)  *Issuance of notice of violation with assessment of civil penalty.* Procedures for an appeal of the issuance of a notice of violation with an assessment of a civil penalty are as follows:

(1)  The issuance of a notice of violation with an assessment of a civil penalty by the city engineer shall entitle the person responsible for the violation of this chapter (petitioner) to a public hearing before the committee if such person submits written demand for a hearing to the clerk of the committee (clerk) within 30 days of the receipt of the notice of violation, assessment of a civil penalty or order of restoration. The demand for a hearing filed with the clerk shall be accompanied by a filing fee as established by the committee. The committee may order the refund of all or any part of the filing fee if it rules in favor of the petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this chapter, and the committee shall have no jurisdiction to hear the appeal.

(2)  Within five days of receiving the petitioner's demand for a hearing, the clerk shall notify the chairman of the committee of the request for a hearing. As soon as possible after the receipt of the notice, the chairman shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the committee from the submission of the notice, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to subsection (c) of this section.

(3)  Any party aggrieved by the decision of the committee with regard to the issuance of a notice of violation, assessment of civil penalties or order of restoration shall have 30 days from the receipt of the decision of the committee to file a petition for review in the nature of certiorari in Mecklenburg County Superior Court.

(d)