



MEMORANDUM

To: Mr. Jonathon Bivens, Chairperson, Sedimentation Control Commission
Mr. Toby Vinson, PE, Chief of Program Operations, NCDEMLR

Through: Jay Gibson, PE, General Manager

From: Ryan D. Eaves, CPESC, CFM, Stormwater and Erosion Control Division
Manager

Date: May 10, 2017

Subject: Durham City-County Unified Development Ordinance Revisions

Durham County is seeking to revise portions of the City-County Unified Development Ordinance (UDO) with respect to its Sedimentation and Erosion Control program. Many of the revisions are required to bring the UDO into compliance with recent amendments to the Sedimentation and Pollution Control Act, including hand delivery of NOV's and the addition of the remissions options for civil penalties. In addition, Durham County is seeking to remove the requirement of submission of plans to the Soil and Water Conservation District for review and comment. This is part of our ongoing process improvements across all business units of the County.

In 2015, Durham County adopted the Managing for Results (MFR) business model as a means for tracking performance data and identifying strategies for improving governmental operations. As a part of MFR, departments were asked to look closely at how their employees were allocating their time and resources. Additionally, business units and Senior Management began reviewing programs for areas of duplicated efforts. During this initial evaluation, the Soil and Water Conservation District (SWCD) identified that approximately twenty percent (20%) of one employee's time was being used on erosion control plans, while other areas – agricultural economic development in particular – were underserved. As a process improvement, erosion control plan review was identified as an activity that could be removed from the SWCD portfolio in order to free up staff time and resources for other programs and to reduce duplication of efforts.

As part of this effort, Durham County's Executive Leadership, including the County Manager and General Managers have worked to significantly strengthen the County's internal expertise in the areas of erosion control plan review and implementation. The Stormwater and Erosion

Control Division staffing now includes a Professional Engineer (PE), two Certified Professionals in Erosion and Sediment Control (CPESC), and experienced field staff. These technical professionals have in excess of 35 years of experience in reviewing, designing, and implementing erosion control plans. In addition, our staff are in the process of obtaining additional certifications in inspections and plans review practices. We continue to look for strategic opportunities to improve environmental protections while maximizing outcomes from public investment and see this request as part of our ongoing process improvement in that space.

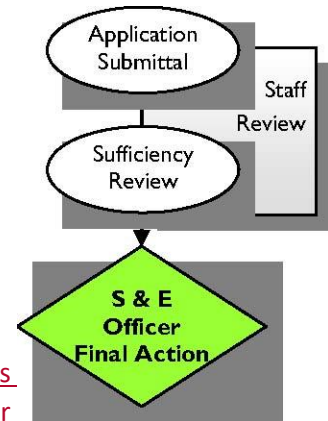
In conclusion, we ask that our partners at the State and the Sedimentation Control Commission authorize this proposed amendment so that we may continue our efforts at most prudently using our public resources towards the goal of sound environmental and economic outcomes for Durham County.

Sec. Sedimentation and Erosion Control

3.8

3.8.1 Applicability

- A. If required under Sec. 12.10, Sedimentation and Erosion Control, an approved sedimentation and erosion control plan and/or a land-disturbing permit shall be obtained before commencing land-disturbing activity.



- B. Pursuant to Sec. 113A-57(4) of the North Carolina Sedimentation Pollution Control Act of 1973, no person shall initiate any land-disturbing activity that will disturb more than one acre or requires a sedimentation and erosion control plan under Sec 12.10 unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with and approved by the County Sedimentation and Erosion Control Office.

~~Pursuant to Sec. 113A-57(4) of the North Carolina Sedimentation Pollution Control Act of 1973, land-disturbing activity that requires a sedimentation and erosion control plan under Sec. 12.10, Sedimentation and Erosion Control, shall not commence until at least 30 days after a sedimentation and erosion control plan is filed with the County Sedimentation and Erosion Control Office, regardless of when the plan is approved.~~

3.8.2 Application Requirements

A. Erosion and Sedimentation Control Plan

1. ~~Three-Two~~ copies of a sedimentation and erosion control plan and one full set of construction drawings shall be filed with the County Sedimentation and Erosion Control Office.
2. A sedimentation and erosion control plan shall contain site drawings, vicinity maps, assumptions, calculations, narrative statements, and a construction sequence as needed to adequately describe the proposed development and the measures proposed to comply with the requirements of this Article.
3. A sedimentation and erosion control plan shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, registered architect, registered land surveyor, or certified professional ~~sediment and erosion control specialist~~ erosion and sediment control. The County Sedimentation and Erosion Control Officer or designee may, however, deem such a seal and signature not necessary due to site simplicity (as the absence of sensitive geographical features and receiving watercourses) and the limited nature of the sedimentation and erosion control measures required.
4. The approval of sedimentation and erosion control plan is conditioned on the applicant's compliance with federal, state and local water quality laws, regulations, and rules.
5. An approved sedimentation and erosion control plan shall be kept on file at the job site.

B. Land-Disturbing Permit

1. A land-disturbing permit may be obtained by submitting the following:
 - a. Applicable fee;

b. Zoning compliance checkoff or written approval issued by the Durham City-County Planning Department;

c. Completed Durham County Financial Responsibility/Ownership Form With Landowner Consent Form (FRO);

d. Approved sedimentation and erosion control plan, if required;

e. Improvement security, if required;

f. Certification that tree protection fencing has been installed, if required; and

g. Approval of the proposed project by the City or County as applicable.

2. No permit shall be issued until such time as the Sedimentation and Erosion Control Officer or designee is assured that the proposed land-disturbing activity will be carried out in accordance with this section and Sec. 12.10, Sedimentation and Erosion Control, and the approved sedimentation and erosion control plan, if required. A land-disturbing permit application may be disapproved for the same reasons that a sedimentation and erosion control plan may be disapproved, as set forth in paragraph 3.8.7, Disapproval of Plan, of this Ordinance.
3. The Sedimentation and Erosion Control Officer or designee shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Officer or designee determines that the activity may result in significant off-site damage. The applicant shall file with the Officer or designee an improvement security in the form of a performance ~~or cash bond~~ or letter of credit. The amount shall be that which the Officer or designee deems sufficient to cover all costs of protection or other improvements required for conformity with standards specified in this section and Sec. 12.10, Sedimentation and Erosion Control. The security may be adjusted or released as the amount of disturbed area changes. The security shall be released when the Officer or designee has certified that all of the requirements of such sections have been met. Forfeiture of the improvement security shall not release the person conducting the land disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this section or Sec. 12.10, Sedimentation and Erosion Control, or any rule or order promulgated in furtherance thereof.
4. Prior to initiating land-disturbing activity, the permittee shall notify the Sedimentation and Erosion Control Office of the date that such activity will begin.
5. A land-disturbing permit issued shall be prominently displayed at the job site until all construction is completed, all permanent sedimentation and erosion control measures are removed, and the site has been stabilized as required.

3.8.3 Fees

The fees charged for the administration and enforcement of this Article shall be as prescribed by the Board of Commissioners.

3.8.4 Action by Sedimentation and Erosion Control Office

~~A. The County Sedimentation and Erosion Control Office shall forward a copy of each complete sedimentation and erosion control plan to the Durham Soil and Water Conservation District-~~

~~for review and comment.~~

- BA.** The County Sedimentation and Erosion Control Officer or designee shall review each complete sedimentation and erosion control plan submitted and within 30 days of receipt shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval.
- CB.** If, following commencement of a land-disturbing activity pursuant to an approved sedimentation and erosion control plan, the County Sedimentation and Erosion Control Officer or designee determines that the plan is inadequate to meet the requirements of this section or Sec. 12.10, Sedimentation and Erosion Control, the Officer or designee may require such revisions as it deems necessary to comply with such sections. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Pending approval of a revised plan, work shall cease or shall continue only as authorized by the Officer or designee.
- DC.** The County Sedimentation and Erosion Control Officer or designee shall review each permit application that does not require an approved sedimentation and erosion control plan and within 14 calendar days of receipt shall notify the person submitting the application that it has been issued or denied.

~~3.8.5 Action by Durham Soil and Water Conservation District~~

~~The Durham Soil and Water Conservation District shall review a sedimentation and erosion control plan and submit any comments and recommendations to the County Sedimentation and Erosion Control Office within 20 days of receipt, or within any shorter period of time as may be agreed upon by the District and the Office. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.~~

3.8.6-5 Preconstruction Conference

When deemed necessary by the Sedimentation and Erosion Control Officer, or designee, a preconstruction conference may be required.

3.8.6 Self Inspections

The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with Sec. 12.10. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections conducted by the Durham County Sedimentation

3.8.7 Disapproval of Plan

- A.** An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:
 - 1.** Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the North Carolina Sedimentation Control Commission or a local government pursuant to the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act) or local ordinance adopted pursuant to the Act, and has not complied with the notice within the time specified in the notice;
 - 2.** Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
 - 3.** Has been convicted of a misdemeanor pursuant to NCGS § 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.
- B.** For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.
- C.** Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Article, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this Article.

3.8.8 Amendment of Plan

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as described in this section for a new application. Until such time as such amendment is approved by the Sedimentation and Erosion Control Officer or designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

3.8.9 Appeals

- A.** Except as provided in paragraph B. of this subsection, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:
 - 1.** The disapproval or modification of any proposed erosion control plan or the refusal to issue a land-disturbing permit by the Sedimentation and Erosion Control Officer or designee shall entitle the person submitting the plan, or applying for the permit, to a hearing if such person submits written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of written notice of disapproval or modifications. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued;
 - 2.** Hearings held pursuant to this section shall be conducted by the Board of Commissioners within

15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later; and

3. If the Board of Commissioners upholds the disapproval or modification of a proposed erosion control plan or refusal to issue a permit following the public hearing, the person submitting the plan or permit application shall then be entitled to appeal the Board of Commissioners' decision to the State Sedimentation Control Commission as provided in NCGS § 113A-61(c) and Title 15 NCAC 4B.0018(d).

B. Appeals

In the event that an erosion control plan is disapproved pursuant to paragraph 3.8.7, Disapproval of Plan, the County Sedimentation and Erosion Control Office shall notify the Director of the Division of Energy, Mineral, and Land Resources (within the North Carolina Department of Environmental Quality [DEQ]) of such disapproval within ten days. The Office shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Office's disapproval of the plan pursuant to paragraph 3.8.76, Disapproval of Plan, directly to the State Sedimentation Control Commission.

3.8.10 Expiration

- A.** A land-disturbing permit shall expire at the end of:
 1. One year from the date of issuance if no land-disturbing activity has been undertaken in that period. No land-disturbing activity may take place following expiration until the person responsible has applied for, and received, a new land-disturbing permit. The fee for the new permit shall be 100% of the current applicable fee; or
 2. A two-year period, unless it is extended by the Sedimentation and Erosion Control Officer or designee upon written request of the permit holder. The request for extension shall include reasons for incompleteness of the work. After review of the original plan and an on-site inspection of the completed work, the permit may be extended effective for a period not to exceed six months from the date of expiration of the original permit. The fee for the extended permit shall be 25% of the current applicable fee. If work cannot be completed and the site permanently stabilized prior to expiration of the permit extension, then a new land-disturbing permit must be applied for and obtained as described in this section.
- B.** An approved sedimentation and erosion control plan for which no permit has been issued shall expire one year from the approval date. If a plan has been disapproved, a revised plan must be submitted within one year from the disapproval date or the file will be closed.

Sec. 12.10 Sedimentation and Erosion Control

12.10.1 Purposes

- A. This Section is adopted for the purposes of:
1. Regulating private, non-exempt 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
 2. Establishing procedures through which these purposes can be fulfilled.
- B. No person shall undertake any land-disturbing activity without first obtaining a permit from the Sedimentation and Erosion Control Officer or designee as required by this section.

12.10.2 Applicability

- A. **Exemptions.** The following activities do not require a permit under this section:
1. Land-disturbing activities for the purpose of fighting fires;
 2. ~~Land-disturbing activities for the stockpiling of raw or processed sand, stone or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage;~~
 32. Land-disturbing activities that are less than 12,000 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated. Notwithstanding this provision, an erosion control plan and/or permit may be required by the Sedimentation and Erosion Control Officer or designee when off-site damage is occurring, or if the potential for off-site damage exists. Additionally, this section may apply when the applicant, or a parent, subsidiary, or other affiliate of the applicant has engaged in any activity enumerated in paragraph 3.8.7, Disapproval of Plan;
 43. As set forth in NCGS § 113A-52.01, land-disturbing activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:
 - a. Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
 - b. Dairy animals and dairy products;
 - c. Poultry and poultry products;
 - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals;
 - e. Bees and apiary products; and
 - f. Fur animals;

g. Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.

- 54.** Land-disturbing activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of 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 Forest Practice Guidelines Related to Water Quality, the provisions of this Article shall apply to such activity and any related land-disturbing activity;
- 65.** Land-disturbing activities undertaken by persons as defined in NCGS § 113A-52(8) who are otherwise regulated by the provisions of the Mining Act of 1971, NCGS § 74-46--74-68;
- 76.** Land-disturbing activities over which the state has exclusive regulatory jurisdiction as provided in NCGS § 113A-56(a);
- 87.** Land-disturbing activities undertaken for the duration of an emergency, activities essential to protect human life; and
- 98.** This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.
- 9. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- 10. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations Sec. 12.2 (January 1, 2014 Edition)

B. Plan Required

Subject to the exemptions listed in subsection 12.10.2, a sedimentation and erosion control plan shall be required for any land-disturbing activity within the County, including the City, if more than 20,000 aggregate square feet will be disturbed, or if 12,000 or more aggregate square feet will be disturbed in a M/LR-A, M/LR-B, F/J-A, or E-A watershed protection overlay district. The Sedimentation and Erosion Control Officer or designee may also require a plan for any land-disturbing activity if it determines that off-site damage is occurring or the potential for off-site damage exists. A plan may also be required when the applicant, or a parent, subsidiary, or other affiliate of the applicant, has engaged in any activity listed in paragraph 3.8.7, Disapproval of Plan.

	Less than 12,000 s.f.	12,000 s.f. to 20,000 s.f.	More than 20,000 s.f.
Plan	MR	MR(*R)	R

Permit	MR	R	R
Plan to District			R

MR - May be required when off-site damage is occurring, the potential for off-site damage exists, or if the applicant or a parent, subsidiary, or other affiliate of the applicant has engaged in any activity enumerated in paragraph 3.8.7, Disapproval of Plan.

R - Required.

*R - Required in a Lake Michie/Little River Critical Area (M/LR-A), Lake Michie/Little River Protected Area (M/LR-B), Falls/Jordan Critical Area (F/J-A) and Eno River Critical Area (E-A).

C. 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.

D. More Restrictive Rules Shall Apply

Whenever conflicts exist between federal, State or local laws, ordinances or rules, the more restrictive provision shall apply.

12.10.4 Mandatory Standards for Land-Disturbing Activity

No land-disturbing activity shall occur except in accordance with the mandatory standards listed below. Except where more stringent standards are specified in this Ordinance, the technical standards and specifications contained in the North Carolina Erosion and Sediment Control Planning and Design Manual shall also apply.

A. Buffer Zones

Except where more stringent buffer requirements are specified in Article 8, Environmental Protection, and/or Article 9, Landscaping and Buffering, the following requirements shall apply;

1. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. This subsection 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; and
2. Unless otherwise provided, the width of a buffer zone is measured from the top of the bank 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.

B. Stabilization of Disturbed Land

The angle for disturbed land shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures.

1. **Ongoing Activity.** Land left exposed shall be planted or otherwise provided with temporary ground cover, devices, or structures sufficient to restrain erosion within the applicable time period after completion of any phase of grading or period of inactivity as follows: seven days for a steep slope; ten days for a moderate slope; 14 days for land with no slope or inclination. For purposes of this section, a moderate slope means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance; and a steep slope means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance. No other criteria apply.
2. **Completed Activity.** For any area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven days after completion of grading.

C. Stabilization of Sedimentation and Erosion Control Devices

Whenever land-disturbing activity exceeds 12,000 square feet, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of such tract, and shall plant or otherwise provide a temporary ground cover sufficient to restrain erosion generated by such devices and practices within seven days.

- D. Erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed as to provide protection from the calculated maximum peak of runoff from the 25-year storm. 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 Sedimentation and Erosion Control Officer or designee.
- E. Each sediment basin or trap in the Suburban or Rural Tier shall have a minimum volume of 3,600 cubic feet per acre of disturbed area and a minimum surface area of 435 square feet per cfs of Q_{25} (25-year storm) peak inflow. Each sediment basin or trap in the Downtown, Compact Neighborhood, or Urban Tier shall have a minimum volume of 1,800 cubic feet per acre of disturbed area and a minimum surface area of 325 square feet per cfs of Q_{25} peak inflow. A skimmer shall be used in each sediment basin or trap.
- F. Sediment basins and traps shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40-micron (0.04mm) size soil particle transported into the basin by the runoff of that two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States or any generally recognized organization or association.
- G. Sediment basins and traps shall not be installed in perennial or intermittent streams.

- H. Existing ponds and lakes shall not be used as sediment basins or traps.
- I. One party shall retain operational control of any basin or trap. Sold outparcels shall be permitted separately.
- J. Newly constructed open channels 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 steeper slopes 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.
- K. Additional areas may be added per the criteria enumerated in this section only if the basin or trap is properly installed and maintained.
- L. In high quality water (HQW) zones, uncovered areas shall be limited at any time to a maximum total area of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered with the written approval of the Director of [DENR-DEQ, Division of Energy, Mineral and Land Resources](#).

12.10.8 Operations in Lakes or Natural Watercourses

~~Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.~~

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.

12.10.10 Self-Inspections

Where inspections are required by Sec 3.8.6, the following apply:

- A. The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - 1. All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly

deviate (as defined in Sub-item (1)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;

2. The completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;

3. The location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in Sub-item (1)(e) of this Rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;

4. That maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and

5. Any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

B. The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.

C. The inspection shall be performed during or after each of the following phases of a plan:

1. Installation of perimeter erosion and sediment control measures;

2. Clearing and grubbing of existing ground cover;

3. Completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
4. Completion of storm drainage facilities;
5. Completion of construction or development; and
6. Quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

12.10.~~10~~-11 Additional Measures

Whenever the Sedimentation and Erosion Control Officer, or designee, determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take the additional protective action directed.

Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties

- 15.5.1** Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee may periodically inspect land-disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or (the Act,) or an approved sedimentation and erosion control plan and to determine whether the measures utilized or required in the plan are effective in restraining erosion and retaining sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each sedimentation and erosion control plan.
- 15.5.2** No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.
- 15.5.3** If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated. If the person engaged in the land-disturbing activity has not received a previous notice of violation as specified in this section, the Erosion Control Officer or designee shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program or cooperative extension program, or by the provision of written documents such as Department of Environmental Quality or County Sedimentation and Erosion Control Office documents. If the Erosion Control Officer or designee is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.
- 15.5.4** The Sedimentation and Erosion Control Officer, or designee shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out their duties as prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

15.5.5 The Sedimentation and Erosion Control Officer, or designee shall also have the power to require written statements, or the filing of reports under oath, with respect to land disturbing activity.

15.5.6 Revocation of Permits

- A.** The County Engineer shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer that a land-disturbing permit be revoked, the Officer or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.
- B.** Should the County Engineer determine that the land disturbing permit should be revoked, he/she shall serve the permittee or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.
- C.** The person responsible for the land-disturbing activity may appeal the revocation of a land disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.
- D.** No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer or designee has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

15.5.7 Civil Penalties

- A.** Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who initiates or continues a land-disturbing activity for which sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be subject to civil penalties. The maximum civil penalty for a violation shall be \$5,000.00, or \$5,000.00 per day for a continuing violation. Civil penalties may be imposed from the date a violation was commenced. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil

penalty under this section 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 subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.00.

- B.** The Sedimentation and Erosion Control Officer or designee shall impose the civil penalties authorized by this section. The Sedimentation and Erosion Control Officer or designee shall notify the person upon whom the civil penalties are imposed ~~of the amount and the reason for the penalties~~of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request remission of the civil penalty under Sec. 15.5.8, the date of the deadline for that person to make the remission request regarding this particular penalty, and when that person has not been assessed any civil penalty under this section for any pervious violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under this section. In determining the amount of the penalties the Sedimentation and Erosion Control Officer or designee shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan. The notice of civil penalties shall be served by any means authorized under NCGS § 1A-1, rule 4, and shall direct the violator to either pay or contest the civil penalties, within 30 days after receipt of the notice, by filing a petition for a contested case under NCGS § 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.
- C.** If payment is not received within 30 days after demand for payment is made the matter will be referred to the County Attorney's Office for initiation of a civil action to recover the amount of the civil penalties. Civil penalties that are not contested are due when the violator is served with a notice of civil penalties. Civil penalties that are contested are due at the conclusion of administrative and judicial review.

- D. The clear proceeds of civil penalties collected pursuant to this section shall be credited to the Durham Public Schools in accordance with the provisions of NCGS § 115C-437.

15.5.8 Remission of Civil Penalties

- A. A request for remission of a civil penalty imposed under Sec. 15.5 may be filed with the Sedimentation Control Commission within 60 days of receipt of the notice of assessment. Notification of a request for remission must also be filed with the County Engineer. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B, art. 3 of the General Statutes and a stipulation of the facts on which the assessment was based.
- B. The following factors shall be considered in determining whether a civil penalty remission request will be approved:
1. Whether one or more of the civil penalty assessment factors in G.S. 113A 64(a)(3) were wrongly applied to the detriment of the petitioner.
 2. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
 3. Whether the violation was inadvertent or a result of an accident.
 4. Whether the petitioner had been assessed civil penalties for any previous violations.
 5. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
 6. The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.
- C. The petitioner has the burden of providing information concerning the financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's financial hardship.
- D. The Commission may remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the civil penalty will prevent payment for necessary remedial actions.
- E. The Commission may not impose a penalty under this section that is in excess of the civil penalty imposed by the County.

15.5.8-9 Criminal Penalties

Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an

approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS § 113A-64.

15.5.9-10 Enforcement Alternatives

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under paragraph 3.8.3.

- A.** Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.
- B.** The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalties assessed under this section.
- C.** Land-disturbing activities undertaken without first obtaining a land-disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph 15.5.7, Civil Penalties.
- D.** Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.

15.5.10-11 Restoration of Areas Affected by Failure to Comply

The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § 113A-57(3) and Sec. 12.10, Sedimentation and Erosion Control, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section or the Act.



Durham County Erosion Control Program

Sedimentation Control Commission Meeting

May 18, 2017

UDO Update

- Updating the Durham City-County Unified Development Ordinance (UDO) accomplishes two things:
 1. Brings UDO into alignment with recent amendments to Sedimentation Pollution Control Act
 2. Process Improvements as part of continual Erosion Control Program updates and improvements



UDO Update

- Sedimentation Pollution Control Act Amendments
 - Hand Delivery of NOVs
 - Remissions of Civil Penalties
 - Mulch, wetland, NRCS exemptions
 - Maximum Penalty for First Time Violators
 - Self-Inspections



UDO Update

- Process Improvements
 - Clarify Language
 - Improve Submittal Process
 - Updated submittal forms, requirements to be rolled out July 1, 2017
 - Remove SWCD Review and Comment



Soil and Water Conservation District Action

- Current Action (per UDO):
 - 1 Copy of Plan to SWCD for review and comment
 - SWCD has 20 days to provide comment
 - ~20% of staff member's time used for reviews
 - Only comment on approximately 5% of plans
- Proposed UDO Amendments:
 - Remove SWCD from review process
- Sec 113A-61: “the Commission may require...to submit a copy of the erosion control plan to the appropriate soil and water conservation district...”

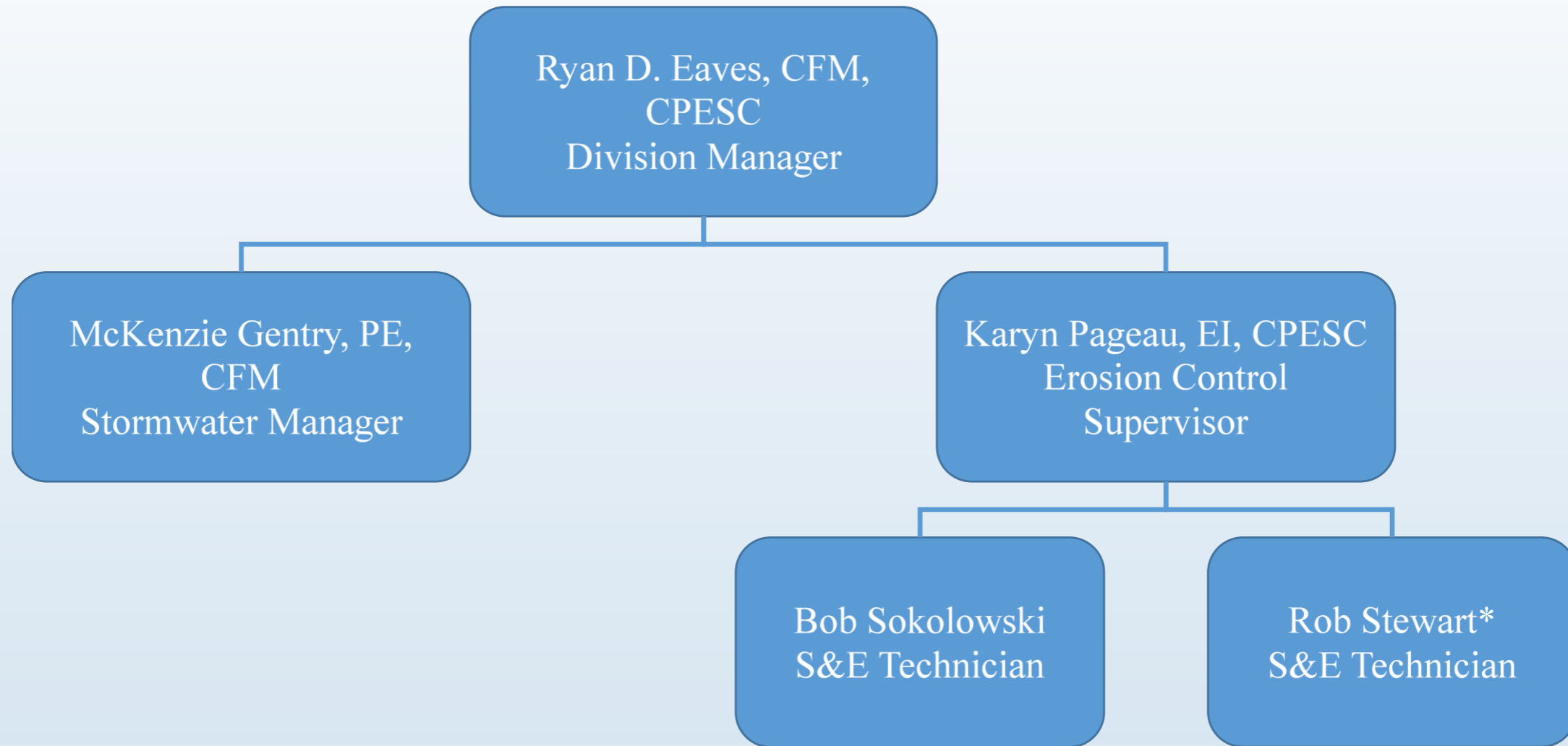


Why Remove SWCD?

- Managing for Results
 - Durham County business model
 - Identify process improvements to meet goals and results
 - 20% of staff time needed elsewhere – Agricultural Economic Development
 - Align with FY2018 Budget
- Expertise in Erosion Control Program
 - 1 PE
 - 2 CPESCs (+1 applied for exam)
 - 30+ years experience in plan review and design



Stormwater and Erosion Control Division



*Applied for CPESC exam



UDO Amendment Process

- With Sediment Control Commission's Approval, Durham County would begin the process to amend the UDO:
 - Planning Department Report
 - Staff Review
 - Joint City County Planning Committee
 - Planning Commission – public hearing
 - Durham City Council – public hearing
 - Durham County Board of Commissioners – public hearing
 - Adoption



Questions?

