

ARTICLE III. SOIL EROSION AND SEDIMENTATION CONTROL¹

Sec. 4-51. Title.

This article may be cited as the Gaston County Soil Erosion and Sedimentation Control Ordinance.

(Res. No. 2007-251, § 1, 6-28-2007; Res. No. 2010-270, § 1, 9-23-2010)

Sec. 4-52. 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 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.

(Res. No. 2007-251, § 2, 6-28-2007; Res. No. 2010-270, § 2, 9-23-2010)

Sec. 4-53. Jurisdiction.

The Gaston County Board of Commissioners hereby adopts this article. The ordinance applies to all portions of Gaston County, except for that property within the city limits of the incorporated municipalities of Gaston County. However, this article may later be adopted to also apply within other regions upon proper resolution duly adopted by the governing bodies of the respective regions and the commissioners. Wherever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

(Res. No. 2007-251, § 3, 6-28-2007; Res. No. 2010-270, § 3, 9-23-2010)

Sec. 4-54. Definitions.

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

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

¹Editor's note(s)—Res. No. 2007-251, §§ 1—24, adopted June 28, 2007 did not specifically amend the Code and at the discretion of the editor said provisions have been codified as superseding the provisions of former Art. III, §§ 4-51—4-74, which pertained to soil erosion and sedimentation control and derived from Res. No. 2003-082, §§ 1—24, adopted Mar. 13, 2003 and ordinances adopted May 8, 1986; May 11, 1989 (Res. 89-117); Sept. 10, 1992; Res. No. 2002-343, §§ 1—24, adopted Nov. 14, 2002.

Cross reference(s)—Flood damage prevention, § 4-11 et seq.; Environment, Ch. 5.1.

Act means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure, or device means one which controls the soil material within the land area under responsible control of the Person conducting the 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.

Approving authority means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the act.

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

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

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

Final certificate of occupancy means the document required by the North Carolina 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 Gaston County Code Enforcement Department.

Commission means the North Carolina Sedimentation Control Commission.

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.

Department means the North Carolina Department of Environment and Natural Resources.

Director means the Director of the Division of Land Resources of the North Carolina Department of Environment and Natural Resources.

Discharge point means that point at which run-off leaves a tract of land.

District means the Gaston Soil and Water Conservation District created pursuant to G.S. Ch. 139.

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.

Gaston County Environmental Review Board means the Gaston County Environmental Review Board.

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

High quality waters means those classified as such in 15A NCAC 2B.0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments.

High quality water (HQW) zones means areas in the coastal counties that are within five hundred seventy-five (575) feet of high quality waters and for the remainder of the state areas that are within one (1) mile and drain to HQW's.

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

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

Local government means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

May means contingent upon the discretion of the Gaston Natural Resources Department Director.

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

Parent means an affiliate that directly, or indirectly through one (1) or more intermediaries, controls another Person.

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 conducting land-disturbing activity means any Person who may be held responsible for a violation unless expressly provided otherwise by this article, the Act, or any other order adopted pursuant to this article or the Act.

Person responsible for the violation means as used in this article, and G.S. 113A-64, means:

;o1; (1) The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity; or

;o1; (2) The landowner or Person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefited from it or he has failed to comply with any provision of this article, the Act, or any order adopted pursuant to this article or the Act as imposes a duty upon that Person.

Phase of grading means one (1) or two (2) types of grading, rough or fine.

Plan means an erosion and sedimentation control plan.

Recurring violation means a violation that has not been corrected within the time specified by the Gaston Natural Resources Department, or, a reoccurrence of a violation from which a previous notice has been issued, notwithstanding natural occurrences exceeding design requirements.

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 lake or natural watercourse.

Shall means a requirement.

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

Storm water run-off means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

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

Ten-year storm means the surface run-off resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten (10) years, and of a duration which will produce the maximum peak rate of run-off, from the watershed of interest under average antecedent wetness conditions.

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

Twenty-five year storm means the surface run-off resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in twenty-five (25) years, and of a duration which will produce the maximum peak rate of run-off, 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 speed of flow through the cross-section of the main channel at the peak flow of the storm of interest. The cross-section of the main channel shall be that area defined by the geometry of the channel plus the area of the 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 land-disturbing activities and being disposed of at other locations.

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

(Res. No. 2007-251, § 4, 6-28-2007; Res. No. 2010-270, § 4, 9-23-2010)

Sec. 4-55. Scope and exclusions.

This article shall not apply to the following land-disturbing activities:

- (1) Activities, including the breeding and grazing of livestock, 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, ornamentals plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
- (2) Activities 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 "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; and
- (3) Activities for which a permit is required under the Mining Act of 1971, G.S. Ch. 74, Art. 7.

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- (4) Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a). The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:
 - a. Conducted by the State;
 - b. Conducted by the United States;
 - c. Conducted by Persons having the power of eminent domain;
 - d. Conducted by local governments; or
 - e. Funded in whole or in part by the State or the United States.
 - (5) For the duration of an emergency, activities essential to protect human life.
 - (6) Activities undertaken pursuant to Natural Resources Conservation Services standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2

(Res. No. 2007-251, § 5, 6-28-2007; Res. No. 2010-270, § 5, 9-23-2010)

Sec. 4-56. General requirements and objectives.

- (a) *Plan required.* No Person shall initiate any land-disturbing activity which uncovers one (1) acre or more, without having an erosion and sedimentation control plan approved by the Gaston County Natural Resources Department, and in borrow and waste areas covered by section 4-61 with a disturbed area one (1) acre or greater. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
 - 1. For land-disturbing activities that uncover one (1) acre or more refer to Section 4-68 of this article.
 - 2. Projects disturbing less than one acre that are part of a larger common plan of development or sale shall submit an “Erosion and Sedimentation Control Plan For Single Lot Disturbing Less Than One Acre Application” to the Gaston County Natural Resources Department.
- (b) *Compliance.* Person who submits a Plan to the Gaston County Natural Resources Department shall comply with the provisions of section 4-68 of this article.
- (c) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from sedimentation siltation 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.

(Res. No. 2007-251, § 6, 6-28-2007; Res. No. 2010-270, § 6, 9-23-2010)

Sec. 4-57. Basic control objectives.

A plan may be disapproved pursuant to section 4-68 of this article if the plan fails to address the following control objectives:

- (1) *Identify critical areas.* On-site areas, which are subject to severe erosion, and off-site areas, which are especially vulnerable to severe erosion and/or sedimentation are to be identified.
- (2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the Approving Authority.

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- (3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
 - (4) *Control surface water.* Surface water run-off originating upgradient of exposed areas shall be controlled to reduce erosion and sediment loss during the period of exposure.
 - (5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage to the extent required by the Act.
 - (6) *Manage stormwater run-off.* Plans shall be designed so that any increase in the velocity of storm water runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

(Res. No. 2007-251, § 7, 6-28-2007; Res. No. 2010-270, § 7, 9-23-2010)

Sec. 4-58. 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 mandatory standards:

- (1) *Buffer zone.*
 - a. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Refer to the latest revised edition of the North Carolina Erosion and Sediment Control Planning and Design Manual for guidance on determining the appropriate vegetated undisturbed buffer zone widths. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - b. Unless otherwise provided, the width of a Buffer Zone begins and is measured from the edge of the top of the bank of the watercourse to the nearest edge of the disturbed area with the twenty-five percent (25%) of the strip nearer the land-disturbing activity containing natural and or artificial means of confining visible siltation. Natural or artificial means of confining visible siltation must be placed, constructed or installed outside the undisturbed buffer zone.
- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within twenty-one (21) calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- (3) *Fill material.* Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
- (4) *Ground cover.* Whenever land-disturbing activity that is within the scope of this article is undertaken on a tract the Person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and

shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in section 4-69(b)(5) of this article, provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within ninety (90) calendar days following completion of construction or development.

- (5) *Prior plan approval.* No Person shall initiate any land-disturbing activity that will disturb one (1) or more acres on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with the Gaston County Natural Resources Department. Should the plan be filed, approved and a certificate of approved plan issued in less than thirty (30) days from the filing of the plan, the land-disturbing activity may commence.
- (6) *Plan compliance.* The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.
- (7) *Self-inspections* The Person(s) conducting land-disturbing activity shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover. Such inspection reports shall be maintained and made available on-site. Any deviation from the plan shall be documented. Records shall be maintained until permanent groundcover has been established. In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. Except as may be required under federal law, rule on regulation, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.
- (8) The Person(s) (developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity) conducting land-disturbing activity or an agent of that party shall contact the Gaston County Natural Resources Department at least forty-eight (48) hours before commencement of the land-disturbing activity.
- (9) The Gaston County Natural Resources Department may require an onsite meeting with the Person(s) conducting land-disturbing activity, or an agent of that party, to review and discuss the approved Plan before commencement of the land-disturbing activity.
- (10) All proposed erosion and sedimentation control measures shall be designed using the practice standards and specifications in the latest revised edition of the North Carolina Erosion and Sediment Control Planning and Design Manual.

(Res. No. 2007-251, § 8, 6-28-2007; Res. No. 2010-270, § 8, 9-23-2010)

Sec. 4-59. Design and performance standards.

- (a) Except as provided in subsection 4-59(b)(2), of this article, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of run-off from the ten-year storm. Run-off rates can be calculated using the procedures in the latest edition of the United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering Field Handbook", or other acceptable calculation procedures.
- (b) In high quality water zones (Hqw) the following design standards shall apply:
 - (1) Uncovered areas in Hqw zones shall be limited at any time to a maximum total area within the boundaries of the tract of twenty (20) acres. Only this section shall govern the portion of the land-disturbing activity within a Hqw zone. Larger areas may be uncovered with the written approval of the Director upon providing engineering justification with a construction sequence that considers phasing,

limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.

- (2) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the run-off of the twenty-five (25) year storm which produces the maximum peak rate of run-off as calculated according to procedures in the latest edition of the United States Department of Agriculture (USDA), Natural Resource Conservation Service's "National Engineering Field Handbook," or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (3) Sediment basins within HQW zones shall be designed and constructed according to the following criteria:
 - a. use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
 - b. have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
 - c. have a minimum surface area of 325 square feet per cfs of the Twenty-five Year Storm (Q25) peak flow;
 - d. have a minimum dewatering time of 48 hours;
 - e. incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(b) through (3)(e) of this subsection if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measure may include quicker applications of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

- (4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two (2) horizontal to one (1) vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other forms of ditch liners proven as being effective in restraining accelerated erosion. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
- (5) Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within sixty (60) calendar days following completion of any phase of construction or development.

(Res. No. 2007-251, § 9, 6-28-2007; Res. No. 2010-270, § 9, 9-23-2010)

Sec. 4-60. Storm water outlet protection.

- (a) Persons shall prepare a plan that designs the post construction velocity of the ten (10) year storm run-off in the receiving watercourse to the discharge point that does not exceed the greater of:

- (1) The velocity established by the table in subsection (d) of this section; or,
- (2) The velocity of the ten (10) year storm run-off in the receiving watercourse prior to development.

If conditions one (1) or two (2) of this paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by ten (10%) percent.

- (b) *Acceptable management measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. Gaston County recognizes that the management of stormwater run-off to minimize or control downstream channel and bank accelerated erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:
- (1) Avoid increases in surface run-off volume and velocity by including measures to promote infiltration to compensate for increased run-off from areas rendered impervious,
 - (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections,
 - (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures,
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.
 - (5) Upgrade or replace the receiving device, structure or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (c) *Exceptions.* This rule shall not apply where it can be demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.
- (d) The following is a table for maximum permissible velocity for storm water discharges: Units are in feet per second (FPS) and meters per second (MPS).

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

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

(Res. No. 2007-251, § 10, 6-28-2007; Res. No. 2010-270, § 10, 9-23-2010)

Sec. 4-61. Borrow and waste areas.

If the same person conducts the land-disturbing activity and any 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, 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.

(Res. No. 2007-251, § 11, 6-28-2007; Res. No. 2010-270, § 11, 9-23-2010)

Sec. 4-62. Access and haul roads.

Temporary access and haul roads, other than public or private roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

(Res. No. 2007-251, § 12, 6-28-2007; Res. No. 2010-270, § 12, 9-23-2010)

Sec. 4-63. Operations in lakes or natural watercourses.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize changes in the stream flow characteristics.

(Res. No. 2007-251, § 13, 6-28-2007; Res. No. 2010-270, § 13, 9-23-2010)

Sec. 4-64. Responsibility for maintenance.

During the development of the site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this article, the Act, or any order adopted pursuant to this article or the Act. After site development, the landowner or Person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sedimentation control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Res. No. 2007-251, § 14, 6-28-2007; Res. No. 2010-270, § 14, 9-23-2010)

Sec. 4-65. Additional measures.

Whenever the Gaston County Natural Resources Department determines that accelerated erosion and sedimentation continues despite installation of protective practices, they shall direct the Person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

(Res. No. 2007-251, § 15, 6-28-2007; Res. No. 2010-270, § 15, 9-23-2010)

Sec. 4-66. Existing uncovered areas.

- (a) All uncovered areas existing on the effective date of this article which resulted from land-disturbing activity, exceed one (1) acre, are subject to continued accelerated erosion, and are causing off-site damage from

sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

- (b) Gaston County Natural Resources Department reserves the right to require preparation and approval of an Erosion and Sedimentation Control Plan in any instance where extensive control measures are required.

(Res. No. 2007-251, § 16, 6-28-2007; Res. No. 2010-270, § 16, 9-23-2010)

Sec. 4-67. Certificate of approved plan.

No Person shall undertake any land-disturbing activity subject to this article without first obtaining a Certificate of Approved Plan from Gaston County, through its Natural Resources Department, except that no Certificate of Approved Plan shall be required for any land-disturbing activity:

- (1) For the duration of an emergency, activities essential to protect human life; or
- (2) This exclusion from Certificate of Approved Plan should allow land-disturbing activities for construction of a single-family residence on a single lot, but may not exceed one (1) acre. Despite not being required to obtain a Certificate of Approved Plan, parties engaged in land-disturbing activities of less than one-acre are subject to all portions of this article. If the erosion and sediment control measures for the development site are designed for all lot disturbances and being maintained, individual lots within the development site may be excluded.
- (3) If a party has been determined to have been in recurring violation of this article within the past two (2) years on the same property or if a land-disturbing activity requiring a plan is begun without a Certificate of Approved Plan, the Certificate of Approved Plan fee may be doubled for that party.
- (4) No Certificate of Approved Plan will be issued to any party having an outstanding recurring violation on the same property subject to this article.
- (5) This decision may be appealed to the Environmental Review Advisory Board.

(Res. No. 2007-251, § 17, 6-28-2007; Res. No. 2010-270, § 17, 9-23-2010)

Sec. 4-68. Erosion and sedimentation control plans.

- (a) A pre-submittal conference with Gaston County Natural Resources staff can be requested by the Person(s) conducting land-disturbing activity or an agent of that party to take place at least ten (10) days prior to submittal of the Plan for land-disturbing activities.
- (b) At the pre-submittal conference, Gaston County Natural Resources staff shall inform the applicant of the processes involved with Plan review and approval, issuance of a Plan Certificate and Letter of Approval, and the relationship of said Plan and Letter of Approval with zoning, building code, and other land-use regulations in effect in Gaston County. At the time of application submission, Gaston County Natural Resources staff also shall notify the applicant of the appeal process as provided in the Ordinance.
- (c) Persons conducting land-disturbing activity on a tract which covers one (1) or more acres shall file a copy of the erosion and sedimentation control plan with the Gaston County Natural Resources Department at least thirty (30) days prior to beginning such activity. A Plan approval issued under this ordinance shall be prominently displayed until all construction is complete, all temporary measures have been removed, and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site. After approving the Plan, if the Gaston County Natural Resources Department either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Gaston County Natural Resources Department will require a revised Plan. Pending the preparation

of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved Plan, the Gaston County Natural Resources Department determines that the Plan is inadequate to meet the requirements of this article, the Gaston County Natural Resources Department may require any revision of the Plan that is necessary to comply with this article.

- (d) Erosion and Sedimentation Control Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. The Person financially responsible for the land-disturbing activity or his attorney shall sign this statement 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 North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this article, or rules or orders adopted or issued pursuant to this article. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's consent for the applicant to submit a draft erosion and sedimentation control plan and conduct the anticipated land-disturbing activity. If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.
- (e) The Gaston Soil and Water Conservation District shall review the Plan and submit any comments and recommendations to Gaston County Natural Resources staff within twenty (20) days after the Gaston Soil and Water District received the Erosion and Sedimentation Control Plan, or within any shorter period of time as may be agreed upon by Gaston Soil and Water Conservation District and the Gaston County Natural Resources staff. Failure of the Gaston Soil and Water Conservation District to submit its comments and recommendations within twenty (20) days or within any agreed upon shorter period of time shall not delay final action on the Plan.
- (f) The Gaston County Natural Resources staff will review each complete Plan submitted to them and within thirty (30) days of receipt thereof will 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 Erosion and Sedimentation Control plan within thirty (30) days of receipt shall be deemed approval. Disapproval of a Plan must specifically state in writing the reasons for disapproval. The Gaston County Natural Resources Department must approve with modifications, or disapprove a revised Plan within fifteen (15) days of receipt, or it is deemed to be approved. The Gaston County Natural Resources Department shall only approve a Plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. If, following commencement of a land-disturbing activity pursuant to an approved Plan, the natural resources staff determines that the plan is inadequate to meet the requirements of this article, the Gaston County Natural Resources staff may require any revision of the Plan that is necessary to comply with this article. Failure to approve, approve with modifications, or disapprove a revised Erosion and Sedimentation Control Plan within fifteen (15) days of receipt shall be deemed approval. The approved Erosion and Sedimentation Control Plan shall expire one (1) year following the date of approval, if no land-disturbing activity has been undertaken.
- (g) Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Gaston Natural Resources Department shall promptly notify the Person submitting the Plan that the thirty (30) day time limit for review of the Plan pursuant to section 4-68(f) of this article shall not begin until a complete environmental document is available to review. The Person submitting a Plan to the Gaston County Natural Resources Department, prior to submission of the Plan, is solely and exclusively responsible for determining whether the proposed land-disturbing activities require any form of state or federal environmental certification or documentation. The Gaston

County Natural Resources Department shall condition approval of an Erosion and Sedimentation Control Plan upon the applicant's compliance with federal and state water quality laws, regulations and rules; and shall disapprove an Erosion and Sedimentation Control Plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.

- (h) Any Plan required by this section 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 specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Gaston County Natural Resources Department on request.
- (i) The Gaston County Natural Resources Department shall disapprove an Erosion and Sedimentation Control Plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Gaston County Natural Resources Department may disapprove an Erosion and Sedimentation Control Plan upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:
 - (1) Is conducting land-disturbing activity without an approved Plan, or has received notice of violation of a Plan previously approved by the Commission or a local government 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 and is not currently being appealed.
 - (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-G4(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 (i) an applicant's record may be considered for only the two (2) years prior to the application date.
 - (5) Is in violation of Federal, State, or local laws, rules, regulations or ordinances pertaining to a different phase of the same tract and/or development
- (j) Transfer of Plans. The Gaston County Natural Resources Department administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.
 - (1) The Gaston County Natural Resources Department may transfer a plan if all of the following conditions are met:
 - a. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
 - b. The Gaston County Natural Resources Department finds all of the following:
 - 1. The plan holder is one of the following:
 - a. A natural person who is deceased.
 - b. A partnership, limited liability corporation, corporation, or any other business association that has dissolved.
 - c. A Person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

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- d. A Person who has sold the property on which the permitted activity is occurring or will occur.
 - 2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - 3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - 4. There will be no substantial change in the permitted activity.
- (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 - (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
 - (4) Notwithstanding changes to law made after the original issuance of the plan, the Gaston County Natural Resources Department 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 Gaston County Natural Resources Department from requiring a revised plan pursuant to G.S. 113A-54.1(b).
- (k) Applications for amendment of an Erosion and Sedimentation Control Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Gaston County Natural Resources Department, the land-disturbing activity shall not proceed except in accordance with the Erosion and Sedimentation Control Plan as originally approved.
 - (l) 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.
 - (m) Any Person engaged in land-disturbing activity who is required by this article to file an Erosion and Sedimentation Control Plan shall pay a plan review fee to the County in an amount to be determined by the Gaston County Board of Commissioners.

(Res. No. 2007-251, § 18, 6-28-2007; Res. No. 2010-270, § 18, 9-23-2010)

Sec. 4-69. Environmental Review Advisory Board.

- (a) *Creation.* There is hereby created in Gaston County, the Environmental Review Advisory Board which is charged with the duties as provided for in this article. The Environmental Review Advisory Board shall consist of the following members:
 - (1) One Person appointed by a participating municipality as outlined in the Environmental Review Advisory Board's Policies and Procedures,
 - (2) One (1) member of the Gaston County Home Builders Association, and two other developers nominated by the Gaston County Home Builders Association for a total of three (3) individuals;
 - (3) Chairman of the Gaston County Soil and Water Conservation District or his/her designee;
 - (4) Chairman of the Gaston County Quality of Natural Resources Commission or his/her designee;
 - (5) A member of the Gaston County Chamber of Commerce or his/her designee;
 - (6) One township representative appointed by the Gaston County Board of Commissioners; and
 - (7) A professional engineer registered under the provisions of G.S. Ch. 89C, appointed by the Gaston County Board of Commissioners.

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- (b) *Appointments.* The Environmental Review Advisory Board members appointed by the Gaston County Board of Commissioners shall serve terms of office of three (3) years and until their successors are appointed and duly qualified.
 - (c) *Fees.* The Environmental Review Advisory Board shall make fee recommendations to the Gaston County Board of Commissioners.
 - (d) *Other duties and responsibilities.* The Environmental Review Advisory Board shall hear and decide appeals from any decision or determination made by the Gaston Natural Resources Department in the enforcement of this article and other duties as directed by the Gaston County Board of Commissioners.

(Res. No. 2007-251, § 19, 6-28-2007; Res. No. 2010-270, § 19, 9-23-2010)

Sec. 4-70. Appeals.

- (a) Except as provided in section 4-68(b) of this article 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 and Sedimentation Control Plan by the Gaston County Natural Resources Department shall entitle the Person submitting the Plan to a public hearing if such Person submits written demand for a hearing within fifteen (15) days after receipt of written notice of disapproval or modifications.
 - (2) Hearings held pursuant to this section shall be conducted by the Gaston County Environmental Review Advisory Board, within thirty (30) days after the date of the appeal or request for a hearing.
 - (3) The Environmental Review Advisory Board will render its final decision on any Erosion and Sedimentation Control Plan following completion of the hearings.
 - (4) If the Environmental Review Advisory Board upholds the disapproval or modification of a proposed Soil Erosion and Sedimentation Control Plan following the hearing, the Person submitting the plan shall then be entitled to appeal the local government's decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(c) and Title 15A NCAC 4B .0018(d).
- (b) In the event that an Erosion and Sedimentation Control Plan is disapproved pursuant to section 4-68(i) of this article, the Gaston County Natural Resources Department shall notify the Director of Land Resources of such disapproval within ten (10) days. The Department shall also advise the applicant and the Director in writing as to the specific reasons the Plan was disapproved. The applicant may appeal the Department's disapproval of the Plan pursuant to section 4-68(i) of this article directly to the North Carolina Sediment Control Commission.

(Res. No. 2007-251, § 20, 6-28-2007; Res. No. 2010-270, § 20, 9-23-2010)

Sec. 4-71. Inspections and investigations.

- (a) Agents, officials, or other qualified persons authorized by Gaston County will periodically inspect land-disturbing activities to ensure compliance with the Act, this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the measures required in the Plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the Certificate of Approval of each Erosion and Sedimentation Control Plan. A list of authorized agents and officials shall be provided or listed at the Gaston County Natural Resources Department.

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- (b) No Person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
 - (c) If, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this article, or rules, or orders adopted or issued pursuant to this article, a notice of violation shall immediately be served upon that Person. The notice may be served by any means under G.S. 1A-1, Rule 4. The notice shall specify a date by which the Person must comply with the Act, this article, or rules, or orders adopted pursuant to this article, and inform the Person of the actions that need to be taken to comply with the Act, this article, or rules or orders adopted pursuant to this article. Any Person who fails to comply in the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in this article. If the Person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Gaston County Natural Resources Department shall offer assistance in developing corrective measures. 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 provision of written materials such as Department guidance documents. 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.
 - (d) The Gaston County Natural Resources Department shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this article, and who presents appropriate credentials for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
 - (e) The Gaston County Natural Resources Department shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(Res. No. 2007-251, § 21, 6-28-2007; Res. No. 2010-270, § 21, 9-23-2010)

Sec. 4-72. Penalties.

(a) *Civil Penalties.*

- (1) Any person who violates any of the provisions of the Act, this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues a land-disturbing activity for which an Erosion and Sedimentation Control Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000.00). The maximum civil penalty for a violation of a stop-work order is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of continuing violation shall constitute a separate violation. 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 one hundred eighty (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 twenty-five thousand dollars (\$25,000.00).
- (2) The Gaston County Natural Resources Department shall determine the amount of the civil penalty to be assessed under this subsection as set forth in the Guidelines for Assessing Civil Penalties for Violations of Gaston County's Soil Erosion and Sedimentation Control Ordinance. The Gaston Natural Resources Department shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty, the Gaston County Natural Resources Department shall consider the degree and extent of harm caused by the damage, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or

failing to comply with this article. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment, contest the assessment within thirty (30) days by written demand for a local hearing, or file a request with the Gaston County Natural Resources Department for remission of the assessment within thirty (30) days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to G.S. Ch. 150B, and a stipulation of the facts on which the assessment was based. A local hearing on a civil penalty/contested assessment shall be conducted by the Gaston County Environmental Review Advisory Board within thirty (30) days after the date of the written demand for the hearing. The Environmental Review Advisory Board shall render its final decision on the civil penalty/contested assessment at the conclusion of the hearing. Appeal from the final decision of the Environmental Review Advisory Board shall be to the Superior Court of Gaston County.

- (3) If payment is not received within thirty (30) days after it is due, the Environmental Review Advisory Board may institute a civil action to recover the amount of the assessment. The civil action may be brought in Gaston County Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
 - (4) Civil penalties collected pursuant to this article shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the county may be diminished only by the actual cost of collection. 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, based upon the computation of actual collection costs by the County for the prior fiscal year. [The collection cost percentage shall not exceed twenty percent (20) of penalties collected.]
- (b) *Final certificate of occupancy.* With regard to the development of any tract that is subject to this article, the Code Enforcement Department shall not issue a Certificate of Occupancy where any of the following conditions exist:
- (1) There is a violation of this article with respect to the tract.
 - (2) If there remains due and payable to Gaston County civil penalties that have been levied against the person conducting the land-disturbing activity for violation(s) of this article. If a penalty is under appeal, the Environmental Review Advisory Board may require the amount of the fine, and any other amount that the Person would be required to pay under this article if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
 - (3) The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the tract.
 - (4) On the tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the tract.
 - (5) On a tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.
 - (6) Any Person conducting land-disturbing activities that has been denied a Certificate of Occupancy under the provisions in this article may make a written appeal of the decision to the Environmental Review Advisory Board.

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- (c) *Criminal penalties.* Any Person who knowingly or willfully violates any provision of this article, or rule or order adopted or issued pursuant to this article, or who willfully initiates or continues a land-disturbing activity for which an Erosion and Sedimentation Control Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed five thousand dollars (\$5,000.00).
- (d) *Stop work orders.* Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered or repaired in violation of this article, the Enforcement Officer may order the work to be immediately stopped. The stop order shall be in writing and directed to the owner, occupant, or Person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with G.S. 160A-421 or 153-361, as applicable, or the NC Building Code.

(Res. No. 2007-251, § 22, 6-28-2007; Res. No. 2010-270, § 22, 9-23-2010; Res. No. 2019-079, 3-26-2019)

Sec. 4-73. Injunctive relief.

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

(Res. No. 2007-251, § 23, 6-28-2007; Res. No. 2010-270, § 23, 9-23-2010)

Sec. 4-74. Restoration of areas affected by failure to comply.

The Environmental Review Advisory Board may require a Person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113-A-57(3), to restore the waters and the land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this article.

(Res. No. 2007-251, § 24, 6-28-2007; Res. No. 2010-270, § 24, 9-23-2010)

Secs. 4-75—4-80. Reserved.