SECTION 7
Erosion and Sediment Control

7.1 Short Title

This article shall be known as the "Erosion and Sediment Control Ordinance" for the Town of Wake Forest, North Carolina.

7.2 Jurisdiction

a. The erosion and sedimentation control regulations of this article are hereby adopted by the Town of Wake Forest Board of Commissioners to apply to all of the Town of Wake Forest within the territorial jurisdiction of the Town and to the extra-territorial jurisdiction as allowed by agreement between local governments, the extent of annexation, or other appropriate legal instrument or law.

b. Notwithstanding the provisions of G.S. 113A-56(a)(4) and Sec. 7.6.1.e, the Town of Wake Forest Board of Commissioners hereby declares the intent that all the Departments and agencies of the Town and its contractors and subcontractors must comply with the regulations of this article when they are more restrictive than similar regulations of the North Carolina Sediment Control Commission.

c. The Engineering Department is responsible for approval, issuance of permits related to, and enforcement of erosion and sedimentation control plans.

7.3 Purposes

This erosion and sedimentation control regulations of this article are Ordinance adopted for the purposes of:

a. regulating certain land-disturbing activities to control accelerated erosion and sedimentation in order that water pollution from sedimentation may be controlled; that the accelerated erosion and sedimentation of lakes and natural watercourses and damage to public and private property by sedimentation be inhibited; and

b. establishing procedures through which these purposes can be fulfilled.

7.4 Definitions

Unless the context otherwise clearly indicates, the definitions of this section are to be used in interpreting and administering the Erosion and Sedimentation Control provisions of this article.

1. **Accelerated Erosion:** Any increase over the rate of natural erosion as a result of land-disturbing activities.

2. **Act:** The North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

3. **Active Construction:** Activities that contribute directly to the building of facilities including land-disturbing activities for roads, parking lots, footings, etc.

4. **Adequate Erosion Control Measure, Structure, or Device:** A measure, structure or device that controls the soil material within the land areas under responsible control of the person conducting the land-disturbing activity.

5. **Affiliate:** A person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of another person.

6. **Being Conducted:** A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

7. **Best Management Practices (BMP):** Management and structural practices designed to reduce the quantities of pollutants washed by rain and snow melt into nearby waters.

8. **Borrow:** Fill material that is required for on-site construction and is obtained from other locations.

9. **Buffer Zone:** A strip of land adjacent to a lake or natural watercourse.

10. **Cease Order:** See “Stop Work Order.”

11. **Certificate of Completion for Soil Erosion and Sedimentation Control:** A certificate issued by the Town of Wake Forest Engineering Department indicating that the permittee has achieved acceptable stabilization in accordance with the approved plan and has completed all work necessary on the site related to soil erosion. All land-disturbance shown on the approved plan is stabilized with permanent ground cover, permanent armor, or impervious surface. All proposed roads, utilities, permanent erosion control devices, and other infrastructure are installed as per approved plans. All temporary sediment control devices required by the approved plan are removed.

12. **Certificate of Compliance for Preliminary Soil Erosion and Sedimentation Control.** A certificate issued by the Town of Wake Forest

Engineering Department indicating that the erosion control devices shown on the approved plan have been constructed correctly and are operating correctly.

13. **Commission:** The North Carolina Sedimentation Control Commission (SCC).

14. **Commissioners:** The Town of Wake Forest Board of Commissioners.

15. **Complete Plan:** A plan that includes, but is not limited to, all items on the Town of Wake Forest Soil Erosion & Sedimentation Control Checklist.

16. **Completion of Construction or Development:** No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

17. **Denuded:** The removal of ground cover from, on, or above the soil surface.

18. **Department:** The North Carolina Department of Environment and Natural Resources (DENR).

19. **Director of Engineering:** The Town of Wake Forest official charged with administration and enforcement of the sedimentation and erosion control regulations of this article this ordinance, including the official's duly authorized agent or delegate.

20. **Director of Land Resources:** The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

21. **Discharge Point:** That point at which stormwater runoff leaves a tract of land.

22. **District:** The Wake Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

23. **Drainage Easement:** A 20' wide minimum strip of land reserved for conveyance of stormwater required when the total drainage area exceeds 4 lots or 4 acres, whichever is less, generally located along rear or side lot lines, but may cross lots at such points that will not pose a hazard to persons or property.

24. **Energy Dissipater:** A structure or 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.

25. **Established Farm:** Means an ongoing agricultural operation as described in Sec. 7.6.1.a, including all such operations that qualify for the agricultural use value tax rate.

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

27. **Ground Cover:** Any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.

28. **High Quality Waters (HQW):** Those classified as such in 15A NCAC 2B.0101(e)(5) -General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14 (c).

29. **High Quality Water Zones:** Areas that are within one mile and drain to HQWs.

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

31. **Land-Disturbing Activity:** 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.

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

33. **Neuse Buffer Rule:** The purpose of this rule is to protect and preserve existing riparian buffers in the Neuse River Basin to maintain their natural nutrient removal functions, per 15A NCAC 2B .0233. Additional information can be found in Sec 7.12.

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

35. **Permit:** The approval document allowing land-disturbing activities to be initiated. A project may be developed in phases with separate permits for each phase.

36. **Person:** 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.

37. **Person Conducting Land-Disturbing Activity:** Any person who may be held responsible for a violation unless expressly provided otherwise by the erosion and sedimentation control regulations of this article, the Act, or any order adopted pursuant to these regulations or the Act.

38. **Person Responsible for the Violation:**

a. The developer or other person who has or holds himself out as having financial or operational control over the land –disturbing activity; and/or

b. 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 the erosion and sedimentation control regulations of this article, the Act, or any order adopted pursuant to these regulations or the Act as imposes a duty upon him; and/or

c. The contractor or subcontractor who is authorized to perform land-disturbing work for the landowner.

39. **Phase of Grading:** One of two types of grading, rough or fine.

40. **Plan:** Erosion and sedimentation control plan.

41. **Protective Cover:** Natural or artificial ground cover of grass, trees, shrubs, or mulch sufficient to reduce erosion potential.

42. **Sediment:** 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.

43. **Sedimentation:** 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.

44. **Siltation:** Sediment resulting from accelerated erosion which can be settled or removed by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land -disturbing activity; and which has been deposited, or is in suspension in water.

45. **Spoils:** Refuse material removed from an excavation.

46. **Stabilization:** The process of restoring a site with ground cover or armor to resist soil erosion from the forces of air, wind, or water.

47. **Stop Work Order:** A written order to stop work, issued by the Director of Engineering, upon determining that work is being conducted in violation of this ordinance.

48. **Storm Drainage Facilities:** The system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

49. **Stormwater Runoff:** The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting..

50. **Subsidiary:** An affiliate that is, directly or indirectly, through one or more intermediaries, controlled by another person.

51. **Ten-year Storm:** This means the storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

52. **Tract:** All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

53. **Twenty-Five Year Storm:** This the storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

54. **Uncovered:** The removal of ground cover from, on, or above the soil surface.

55. **Undertaken:** 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.

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

57. **Town of Wake Forest Soil Erosion & Sedimentation Control Checklist:** A form containing the list of items required in order for a plan to be considered complete for review.

58. **Waste:** Surplus soil or earth materials resulting from on-site construction and disposed of at other locations.

59. **Working Days:** Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

7.5 Scope and Exclusions

7.5.1. The erosion and sedimentation control regulations of this article apply to land-disturbing activities undertaken by any person, with the following exclusions:

a. Land-disturbing activities undertaken on established farms for the production of plants and animals useful to man by not limited to: forage and

sod crops, grain and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including the breeding and grazing of any or all such animals; bees and apiary products; and fur animals.

b. Land-disturbing activities undertaken on forestland for the production and harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) as adopted by the Department. 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 apply to such activity on the tract.

c. Where new land disturbing activities are undertaken on agricultural land for the production of plants and animals useful to man; or an activity which is essential to protect human life during an emergency, the owner of the property may be required to file an application for exemption and an affidavit stating the use of the property. The Application for Exemption must be filed with the Town of Wake Forest Board of Commissioners. The Engineering Department, must forward any pertinent information regarding the Application to the Board. The Board must review and grant or deny the Application within 15 working days. The Board must provide its decision in writing to the Applicant and the Director of Engineering or their designee. The applicant has 30 days after the date of approval to file a soil erosion and sediment control plan with the Board. Copies of the plan must be provided to the applicant and the Director of Engineering, or their designee. The erosion and sediment control plan must be implemented according to schedule. Failure to meet the conditions of the exemption constitutes a violation of the erosion and sedimentation control regulations of this article and will be retroactive to the granted date of the original exemption.

d. Land-Disturbing activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

e. Land-Disturbing activities over which the State has exclusive regulatory jurisdiction as provided in G.S. 113-56(a). Such activities include:

1. Land-Disturbing activities conducted by the State.

2. Land-Disturbing activities conducted by the United States.

3. Land-Disturbing activities conducted by persons having the power of eminent domain.

4. Land-Disturbing activities conducted by local governments.

5. Land-Disturbing activities funded in whole or in part by the State or United States.

7.5.2. The erosion and sedimentation control regulations of this article expressly apply to the following land-disturbing activities:

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

b. When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department of Environment, and Natural Resources, Division of Solid Waste Management, or the Town of Wake Forest, will be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining borrow and/or disposing of the waste, these areas are considered a separate land-disturbing activity.

c. Land-Disturbing activities connected with utility construction over which the State does not have exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

7.6 Approval of Plans

7.6.1 No person may initiate any land-disturbing activity that will disturb half an acre (21,780 sf) or greater on a tract without having an approved erosion control plan and a Land-Disturbance Permit issued by the Town. No person may initiate any land-disturbing activity that will disturb half an acre (21,780 sf) or greater on a tract unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan is filed with the Town in accordance with Sec. 7.6 and Sec. 7.7. The Town of Wake Forest must forward to the Director of NCDENR Division of Water Quality a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract. However, this provision does not restrict the initiation of land-disturbing activities when the plan is approved and the permit issued in less than 30 days from the initial submission.

7.6.2 Persons conducting land-disturbing activities that will disturb half an acre (21,780 sf) or greater on a tract must file the appropriate number of copies of an Erosion Control Plan with Town of Wake Forest, at least 30 days prior to the anticipated date for initiating such activity. Once plans are approved, the appropriate number of copies of the plan and a digital copy (Adobe or CAD/dwg file) will need to be provided to the Town of Wake Forest, one of these signed copies will be required to be on the job site until the project is closed out.

7.6.3 The plan required by this section must contain at least all of the items specified on the Town of Wake Forest Erosion and Sedimentation Control Checklist, including administrative fees, engineering drawings, maps, one set of calculations, 401/404 application for Permits if required, and narrative statements as needed to adequately describe the proposed development of the tract and the

measures planned to comply with the erosion and sedimentation control regulations 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 Town of Wake Forest Engineering Department upon request.

a. Any plan submitted for a land-disturbing activity for which the North Carolina Environmental Policy Act requires an environmental document must be deemed incomplete until a complete environmental document is available for review. The Director of Engineering or designee must promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant Sec. 7.6.5 will not begin until a complete environmental document is available for review.

b. An authorized statement of financial responsibility and ownership must be submitted with erosion control plans. The financially responsible party for the land-disturbing activity or party's authorized agent must sign this statement. The statement must include the mailing and street addresses of the principal place of business of (1) the financially responsible party (2) the owner of the land and (3) any registered agents. A post office box is not an acceptable mailing address. If the financially responsible party is not a resident of Wake County, a Wake County agent must be designated in the statement for the purpose of receiving a notice of compliance or non-compliance with the plan, this article, or rules, or orders adopted issued pursuant to the erosion and sedimentation control regulations of 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 written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

7.6.4 An erosion and sedimentation control plan may be disapproved if the plan fails to adequately address the following control objectives:

a. Identify Critical Areas - On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

c. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

d. Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

f. Manage Stormwater Runoff - When the increase in the velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

7.6.5 The Town of Wake Forest Department of Engineering, within 30 days of receipt of each complete soil erosion and sedimentation control plan, must notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. No plan may be approved unless and until it complies with all applicable State and Town regulations for soil erosion and sediment control. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt constitutes an action of approval. Denial of the plan must specifically state in writing the reasons for denial. Upon resubmission, the Town must approve or deny the revised plan within 15 days of receipt, or it is deemed approved. If a plan has been disapproved, the applicant has twelve (12) months to submit revised plans addressing the reasons for disapproval or the plan is deemed null and void.

7.6.6 An erosion control plan may be disapproved upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

a. Is conducting or has conducted land-disturbing activity without an approved plan, or has received a notice of violation on a plan previously approved and has not complied with the notice within the time specified in the notice.

b. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act which is due and for which no appeal is pending.

c. Has been convicted of a misdemeanor pursuant to a G.S. 113A- 64(b) or any criminal provision of a local ordinance adopted pursuant to the Act (An applicant's criminal record may be considered for only the 2 years prior to the application date); or

d. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

7.6.7 In the event that a Plan is disapproved pursuant to Section 7.6.6, , the Town of Wake Forest shall notify the Director of Land Resources of such disapproval within ten (10) days. The Town of Wake Forest shall advise the applicant and the Director of Land Resources in writing as to the specific reasons that the Plan was disapproved.

7.6.8 The approved construction plan must be prominently displayed onsite until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan must be kept on file at the job site.

7.6.9 Application for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as the Town of Wake Forest Engineering Department approves the said amendment, the land-disturbing activities may not proceed except in accordance with the erosion control plan as originally approved.

7.6.10 If the Town, whether upon review of a plan or upon inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, or the plan is inadequate to meet the requirements of this article, the Town may require a revised plan. Pending the preparation of the revised plan, work must stop or continue only under conditions outlined by the appropriate authority.

7.6.11 The Town may require preparation and approval of an erosion control plan for land-disturbing activities that are less than half an acre (21,780 sf) in surface area where sediment control measures are needed to protect against off-site damages.

7.6.12 All land-disturbance less than half an acre (21,780 sf), not requiring a permit, is required to have silt fence on the low side of the lot and a construction entrance measuring 10 feet wide by 30 feet long in accordance with Sec. 7.9.7.

7.6.13 The Town may require preparation and approval of an erosion control plan for land-disturbing activities applying for an Application for Exemption where sediment control measures are needed to protect against off-site damages as documented by the Town's authorized representative.

7.6.14 Any person engaged in land-disturbing activity, who fails to file a plan in accordance with the erosion and sedimentation control regulations of this article, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan will be deemed in violation of the erosion and sedimentation control regulations of this article.

7.6.15 No person may initiate a land-disturbing activity until notifying the agency that issued the Plan Approval of the date that the land-disturbing activity will begin.

7.6.16 The approving authority requires a pre-construction conference prior to issuance of the land-disturbing permit.

7.6.17 The North Carolina Sedimentation Control Commission may require Town of Wake Forest to submit a copy of an Erosion and Sedimentation Control Plan to the Wake County Soil & Water Conservation District.

7.7 Permits

7.7.1 Except as provided in Sec. 7.6, it is unlawful to conduct any land-disturbing activity without first obtaining a permit from the Town. Permits may be obtained upon submitting a soil erosion and sedimentation control plan, application, fees and financial responsibility statement prescribed by the Town

and by obtaining approval of the proposed construction plan which includes the soil erosion and sedimentation control plan. No permit may be issued until such time as the Town is assured that the proposed land-disturbing activity will be carried out in accordance with the proposed soil erosion and sedimentation control plan. No permit will be issued on neighboring property owned by the same individual, corporation, etc. that is in violation of the erosion and sedimentation control regulations of this article until that violation is corrected.

7.7.2 No permit is required for the following land-disturbing activities:

a. An activity which is essential to protect human life during an emergency.

b. Land-disturbing activities by any person or persons that do not exceed half an acre (21,780 sf) in surface area except as required by Section 7.6.11.

7.7.3 An approved plan is valid for 2 calendar years. If the land-disturbing permit has not been obtained within the 2 year period, the approval becomes null and void.

7.7.4 The land-disturbing permit is valid for 2 calendar years. If no construction activity has begun within the 2 year period, the permit becomes null and void. If construction activity has begun but the Certificate of Completion has not been issued within the 2 years, the permit must be renewed.

7.7.5 The land-disturbing permit may be renewed in 1 year increments by submitting a request for a permit extension 30 days prior to the expiration date. The applicant must address any code or ordinance revisions on the plans and render any permit fees that were originally paid. Any change of ownership must be reflected in a revised financial responsibility form.

7.7.6 Failure to renew the permit, in accordance with this section, is the same as failure to submit an erosion control plan in accordance with Sec. 7.7.1 and may be subject to a civil penalty of up to $5,000 per day. Any person who is subject to civil penalty under this subsection may be subject to additional civil penalties for violation of any other provisions of this article, or rules or orders adopted or issued pursuant to the erosion and sedimentation control regulations of this article this Ordinance.

7.7.7 All site improvements, as shown on the approved plan, must be completed by the end of the 1 year renewal period and before the Certificate of Completion is issued, if the permit is not renewed for an additional one (1) year period as per Sec. 7.7.5. Any person who fails to meet the conditions of the renewal will be subject to a civil penalty as set forth in Sec. 7.7.6.

7.7.8 If the property associated with the approved plan is sold in whole or in part before all conditions of the approved plan are met, the permit holder must provide notice to the new owner/s of conditions of the land disturbance permit and provide the Town of Wake Forest with revised financial responsibility forms.

7.8 Fees

The Town of Wake Forest Board of Commissioners is authorized to establish fees to be charged by the Town for the administration of these erosion and sedimentation control regulations.

7.9 Inspections

7.9.1 Agents and officials of the Town will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, 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 sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.

7.9.2 If the Town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall be issued by the Director of Engineering and shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance.

7.9.3 The Town has the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article, 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. No person may refuse entry or access to any authorized representative or agent for the Town who requests entry for purposes of inspections, and presents appropriate credentials, nor may any person obstruct, hamper, or interfere with any such representatives while in the process of carrying out their official duties.

7.9.4 A Certificate of Compliance for Preliminary Soil Erosion and Sedimentation Control must be issued indicating that initial soil erosion and sedimentation controls have been installed. This certificate must be issued prior to the approval by the Town of an application for building construction in the Town, in any of the incorporated areas of the Town, or extraterritorial jurisdictional areas of the Town subject to the erosion and sedimentation control regulations of this article.

7.9.5 A Certificate of Completion must be issued when inspections indicate that all conditions of the approved land disturbance permit are met and all disturbed areas are stabilized with permanent ground cover, permanent armor, or impervious surface. All proposed roads, utilities, permanent erosion control devices, and other infrastructure has been installed as per approved plans. All

temporary sediment control devices required by the approved plan are removed. Individual building lots that involve disturbing less than half an acre (21,780 sf) are governed by Sec. 7.10.6.

7.9.6 Once a Certification of Completion is issued on an approved plan involving a proposed public road dedication and a petition for North Carolina Department of Transportation acceptance is submitted to Town of Wake Forest Department of Engineering, notification must be mailed to the North Carolina Division of Highways District 1 Office detailing that the project has been issued a Certification of Completion. This notification should describe the project in detail with publicly dedicated streets described by name and approximate length.

7.9.7 Any land disturbing activity will be the responsibility of the individual building lot owners, and failure to control project against off site damage as documented by the Town's authorized representative will be deemed a violation of the erosion and sedimentation control regulations of this article. A driveway with a minimum 10 foot wide by 30 foot long gravel construction pad or equal will be required, in addition to the installation of silt fence on the low sides of the lot, for each building lot when the initial footing inspection is conducted by the Building Inspections Division of the Planning Department. The Town of Wake Forest Department of Engineering will approve the type of silt fence that will be accepted. Seeding and mulching of any applicable disturbed area is required. Areas within 25 feet of the edge of pavement or gravel of the road must be stabilized before the issuance of a Certificate of Occupancy.

7.9.8 The Town may require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

7.9.9 If through inspections the Town determines that significant erosion or sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective, the person conducting the land-disturbing activity will be required by the Director of Engineering or authorized representative to take additional protective action.

7.10 Standards

More Restrictive Rules Shall Apply - Whenever conflicts exists between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.

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

(a) Buffer zone

(1) Standard Buffer. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine

visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.

(i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(ii) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(b) Fill Material. Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

Whenever land-disturbing activity that will disturb more than a half acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that 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

If the Town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance.

7.10.1 Persons conducting land-disturbing activities must take all reasonable measures to protect all public and private property from damage caused by such activities. All uncovered areas existing on March 21, 2006 which resulted from land-disturbing activities, and exceed half an acre (21,780 sf), and are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, must be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation. The Town will serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the Commission or by the Town of Wake Forest. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided

in GS 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. The notice must also state that if the person engaged in the land-disturbing activities fails to comply within the time specified, enforcement action may be initiated. In determining the measures required and the time allowed for compliance, the Director of Engineering or designee must take into consideration the economical feasibility, technology, and quantity of work required, and must set reasonable and attainable time limits for compliance. Absence of the landowner from the area or country is not a mitigating factor for failure to comply within the time frame specified. The Town reserves the right to require preparation and approval of an erosion control plan in any instance wherein extensive control measures are required.

7.10.2 Land disturbing activities of half an acre (21,780 sf) or greater will require an approved plan and a land disturbance permit as per Sec. 7.7.

7.10.3 Developer or builders conducting land-disturbing activities on individual lots of less than half an acre (21,780 sf) during the development process must take all reasonable measures to protect all public and private property from damage caused by such activities. All uncovered areas existing on the effective date of this Ordinance [3/21/06] which resulted from land-disturbing activities, and are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, must be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation. The property owner or agent must be given notice of responsibility of compliance at the issuance of a building permit for said lot. The Town will serve upon the landowner and/or person responsible for the violation a written notice of violation by registered or certified mail, return receipt requested, or other means provided in GS 1A-1, Rule 4. The notice must be issued by the Director of Engineering or authorized agent and must set forth the measures necessary to achieve compliance with the erosion and sedimentation control regulations of this article.

7.10.4 Except as otherwise expressly provided in this article, all areas uncovered after March 21, 2006 must be provided with protective cover within 60 days after commencement of land-disturbing activities, unless an extension of time is granted, provided that in no instance may the establishment of protective cover be delayed 21 calendar days, whichever period is shorter after the completion of any disturbance of land upon which further active construction is not being undertaken. All slopes must be provided with protective cover within 21 calendar days after completion of any phase or grading.

7.10.5 During construction, the planned soil erosion and sedimentation control practices and devices must be employed to restrict sedimentation soil losses from each land-disturbing site in accordance with plans approved by the Town of Wake Forest Engineering Department. Such erosion and sedimentation control measures, structures, and devices must be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates must be calculated using the procedures in the USDA Natural Resources Conservation Services “National

Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

7.10.6 All soil erosion and sedimentation control plans and measures must conform to the minimum applicable standards specified in North Carolina's Erosion and Sedimentation Control Planning and Design Manual. Erosion control devices must be installed to prevent any offsite sedimentation for any construction site regardless of the size of the land disturbance.

7.10.7 Land-disturbing activities to be conducted in Sensitive Watersheds as designated by the North Carolina Department of Environment and Natural Resources, Division of Water Quality will be designed as follows:

a. Uncovered areas in High Quality Water (HQW) zones must be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone is governed by this rule. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director of the Division of Land Resources.

b. Erosion and sedimentation control measures, structures, and devices within HQW zones must be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agricultural, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

c. Sediment basins within HQW zones must 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 2-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Natural Resources Conservation Services "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or in the United States or any generally recognized organization or association.

d. Newly constructed open channels in HQW zones must be designed and constructed with side slopes no steeper than 2 horizontal to 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 acceptable ditch liners. In any event, the angle for side slopes must be sufficient to restrain accelerated erosion.

e. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 21 calendar days following completion of construction or development, whichever period is shorter. It is recommended that tree and brush debris be chipped and distributed as mulch on site to further stabilize the project during construction.

Application rates must be at a rate of 6 to 9 tons per acre and distributed in layers of 1/2 to 1-1/2 inches thick. Care should be taken to keep the chipped material 250 feet away from any water body, including wellheads.

7.10.8 The angle for graded slopes and fills may not be greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase or grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

7.11 Stormwater Outlet Protection

Intent. Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.

7.11.1 All land -disturbing activities must be planned and conducted such that the velocity of stormwater runoff in the receiving watercourse at the point of discharge resulting from a 10-year storm after development may not exceed the greater of:

(a) The velocity as determined from the table of Sec. 7.11.4, or

(b) The velocity in the receiving watercourse determined for the 10- year storm prior to development.

7.11.2 If conditions (a) or (b) of Sec. 7.11.1 cannot be met, then the receiving watercourse to and including the discharge point must be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

7.11.3 This rule does not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

7.11.4 The following is a table for maximum permissible velocity for stormwater discharges:

	Maximum Stormwater Discharge Velocities	
Material	feet per second	meters per second
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary film loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.5
Alluvial silts (noncolloidal)	3.5	1.7

Alluvial silts (colloidal)	5.0	1.1
Coarse gravel (noncolloidal)	6.0	1.5
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

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.

7.11.5 Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives include:

a. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious.

b. Avoid increases in surface runoff volume and velocity using vegetated or roughened swales or waterways in lieu of closed drains and high velocity paved sections.

c. Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities at the point of discharge. These may range from simple rip rapped sections to complex structures.

d. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

e. 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.

7.12 Special Neuse River Regulations

7.12.1 15 A NCAC 2B.0233 has been adopted with changes as published 12:6 NCR 462-479 (Subchapter 2b - Surface Water And Wetlands Standards, Monitoring Section .0200 – Classifications And Water Quality Standards Applicable To Surface Waters And Wetlands of North Carolina .0233 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection And Maintenance of Riparian Areas With Existing Forest Vegetation).

7.12.2 The following is the management strategy for maintaining and protecting riparian areas in the Neuse River Basin (all plans must meet the requirements of this management strategy or receive and exemption from North Carolina Department of Environment and Natural Resources, Division of Water Quality):

a. Riparian areas must be protected and maintained in accordance with the Neuse River regulations of this section on all side of surface waters in the

Neuse River Basin (intermittent streams, perennial streams, lakes, ponds, and estuaries) as indicated on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps or other site-specific evidence. The regulations of this section only apply to riparian areas where forest vegetation is established in Zone 1 as of July 22, 1997. Forest vegetation, as defined in 15A NCAC2B. 0202, of any width in Zone 1 must be protected and maintained in accordance with the Neuse River regulations of this section. The Neuse River regulations of this section does not establish new buffers in riparian areas. Exceptions to the Neuse River regulations for riparian areas are described in 10-11-2(B)(1–8). Maintenance of the riparian areas should be such that, to the maximum extent possible, sheet flow of surface water is achieved. The Neuse River regulations of this section specify requirements that must be implemented in riparian areas to ensure that the pollutant removal functions of the riparian area are protected and maintained.

b. The following water bodies and land uses are exempt from the riparian area protection requirements:

1. Ditches and manmade conveyances other than modified natural streams;

2. Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps where no perennial water body, intermittent water body, or lake, pond or estuary actually exists on the ground;

3. Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way this is classified in accordance with 15A NCAC 2B.0100;

4. Water dependent structures as defined in 15A NCAC2B.0202, provided that they are located, designed, constructed and maintained to provide maximum nutrient removal, to have the least adverse effects on aquatic life and habitat and to protect quality;

5. The following uses may be allowed where no practical alternative exists. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters. Also, these structures must be located, designed, constructed, and maintained to have minimal disturbance, to provide maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices.

a. Road crossings, railroad crossings, bridges, airport facilities, and utility crossings may be allowed if conditions specified in Sec. 7.12.2.b.5 are met.

b. Stormwater management facilities and ponds, and utility construction and maintenance corridors for utilities such as water, sewer or gas, may be allowed in Zone 2 of the riparian area as long as the conditions specified in Sec. 32-472-2(b)(5) are met and they are located at least 30 feet from the top of bank or man high water line. Additional requirements for utility construction and maintenance corridors are listed in Sec. 7.12.2.b.6.

6. A corridor for the construction and maintenance of utility lines, such as water, sewer or gas, (including access roads and stockpiling of materials) may run parallel to the stream and may be located within Zone 2 of the riparian area, as long as no practical alternative exists and they are located at least 30 feet from the top of bank or mean high water line and best management practices are installed to minimize runoff and maximize water quality protection to the maximum extent practicable. Permanent, maintained access corridors must be restricted to the minimum width practicable and may not exceed 10 feet in width except at manhole locations. A 10 feet perpendicular vehicle turnaround is allowed provided they are spaced at least 500 feet apart along the riparian area.

7. Stream restoration projects, scientific studies, stream gauging, water wells, passive recreation facilities such as boardwalks, trails, pathways, historic preservation and archaeological activities are allowed, provided that they are located in Zone 2 and are least 30 feet from the top of bank or mean high water line and are designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices. Activities that must cross the stream or be located within Zone 1 are allowed as long as all other requirements of this subsection are met.

8. Stream crossings associated with timber harvesting are allowed if performed in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J.0201- 0209).

7.12.3 The protected riparian area has two zones as follows:

a. Zone 1 is intended to be an undisturbed area of forest vegetation. Any forest vegetation, as defined in Rule .0202 of 15A NCAC 2B, in Zone 1 as of July 22, 1997 must be maintained and protected in accordance with this section.

1. Location of Zone 1: Zone 1 begins at the top of bank for intermittent streams and perennial streams and extends landward a distance of 30 feet on all sides of the water body, measured horizontally on a line perpendicular to the water body. For all other water bodies, Zone 1

begins at the top of bank or mean high water line and extends landward a distance of 30 feet, measured horizontally on a line perpendicular to the water body.

2. The following practices and activities are allowed in Zone 1:

a. Natural regeneration of forest vegetation and planting vegetation to enhance the riparian area if disturbance is minimized, provided that any plantings should primarily consist of locally native trees and shrubs.

b. Selective cutting of individual trees of high value in the outer 20 feet of Zone 1, provided that the basal area (measured at 12-inch diameter at breast height) remains at or above 0.52 square feet per running feet of the over 20 feet of Zone 1, as measured along the bank of the stream or water body. Limited mechanized equipment is allowed in this area.

c. Horticultural or silvicultural practices to maintain the health of individual trees.

d. Removal of individual trees that are in danger of causing damage to dwellings, other structures or the stream channel.

e. Removal of dead trees and other timber cutting techniques necessary to prevent extensive pest or disease infestation if recommended by the Director, Division of Forest Resources and approved by the Director, Division of Water Quality.

f. Ongoing agricultural operations provided that existing forest vegetation is protected and requirements in Rules .0236 and .0238 of 15A NCAC 2B are followed.

3. The following practices are not allowed in Zone 1:

a. Land-disturbing activities and placement of fill and other materials, other that those allowed in Sec. 7.12.2.b and Sec. 7.12.3.a, that would disturb forest vegetation, as defined in Rule.0200 of 15A NCAC 2B;

b. New development, except as provided in Sec. 7.12.2.b.4, Sec. 7.12.2.b.5 and Sec7.12.2.b.6;

c. New on-site sanitary sewage systems that use ground adsorption;

d. The application of fertilizer; and

e. Any activity that threatens the health and function of the vegetation including, but not limited to, application of chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any areas with bare soil.

b. Vegetation in Zone 2 must consist of a dense ground cover composed of herbaceous or woody species that provides for diffusion and infiltration of runoff and filtering of pollutants.

1. Location of Zone 2: Zone 2 begins at the outer edge of Zone 1 and extends landward a minimum of 20 feet as measured horizontally on a line perpendicular to the water body. The combined minimum width of Zones 1 and 2 must be at least 50 feet on all sides of the water body.

2. The following practices and activities are allowed in Zone 2 in addition to those allowed in Zone 1:

a. Periodic moving and removal of plant products such as timber, nuts, and fruit is allowed on a periodic basis provided the intended purpose of the riparian area is not compromised by harvesting, disturbance, or loss of forest or herbaceous ground cover.

b. Forest vegetation in Zone 2 may be managed to minimize shading on adjacent land outside the riparian area if the water quality function of the riparian area is not compromised.

c. On-going agricultural operations are allowed provided that requirements of Rules .0236 and .0238 of 15A NCAC 2B are followed.

3. The following practices and activities are not allowed in Zone 2:

a. Land disturbing activities and placement of fill and other materials, other than those allowed in Sec. 7.12.2.b and Sec. 7.12.3.b;

b. New development, except as provided in Sec. 7.12.2.b.5 and Sec. 7.12.2.b.6;

c. New on-site sanitary sewage that use ground adsorption;

d. The application of fertilizer; and

e. Any activity that threatens the health and function of the vegetation including, but not limited to, application of chemicals in amounts exceeding the manufacture's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any area with bare soil.

4. Timber removal and skidding of trees must be directed away from the watercourse or water body. Skidding must be done in a manner to prevent the creation of ephemeral channels perpendicular to the water body. Any tree removal must be performed in a manner that does not compromise the intended purpose of the riparian area and is in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC IJ .0201-.0209).

5. Maintenance of sheet flow in Zones 1 and 2 is required in accordance with this subsection.

a. Sheet flow must be maintained to the maximum extent practical through dispersing concentrated flow and/or re-establishment of vegetation to maintain the effectiveness of the riparian area.

b. Concentrated runoff from new ditches and manmade conveyances must be dispersed into sheet flow before the runoff enters Zone 2 of the riparian area. Existing ditches and manmade conveyances, as specified in Sec. 7.12.2.b.1, are exempt from this requirement; however, care should be taken to minimize pollutant loading through these existing ditches and manmade conveyances from fertilizer application or erosion.

c. Periodic corrective action to restore sheet flow should be taken by the landowner if necessary to impede the formation of erosion gullies which allow concentrated flow to bypass treatment in the riparian area.

6. Periodic maintenance of modified natural streams such as canals is allowed provided that disturbance is minimized and the structure and function of the riparian area is not compromised. A grassed travel way is allowed on one side of the water body when alternative forms of maintenance access are not practical. The width and specifications of the travel way must be limited to only that needed for equipment access and operation. The travel way must be located to maximize stream shading.

7. If a local government has been issued a Municipal Separate Stormwater Sewer System (MS4) permit or has been delegated to implement a local stormwater program, then the local government must ensure that the riparian areas to be protected are, as a standard practice, recorded on new or modified plats.

8. Where the standards and management requirements for riparian areas, are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erosive soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, development in Coastal Area Management Act Areas of Environmental Concern, or other environmental protection areas, the more protective applies.

9. Where application of the regulations of this section would prevent all reasonable uses of a lot platted and recorded before June 3, 1974, a variance may be granted by the Environmental Management Commission if it finds that:

a. Practical difficulties or unnecessary hardships would result in strict application of applicable regulations.

b. Such difficulties or hardships result from conditions which are peculiar to the property involved; and

c. The general purpose and intent of the regulations would be preserved, water quality would be protected and substantial justice would be done if the variance were granted.

7.13 Responsibility for Maintenance

7.13.1 During the development of a site, the person conducting the land-disturbing activity must 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 the erosion and sedimentation control regulations of this article or the Act. After site development, the land owner or person in possession or control of the land must install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

7.13.2 It is a violation of the erosion and sedimentation control regulations of this article for any persons, companies or corporations leave mud, dirt, dust or other material upon the streets, sidewalks, greenways, or other travel ways as a result of the use of trucks, construction equipment, or machinery that is considered to be a hazard to public safety or determined to be unreasonably muddy.

7.14 Operation in Lakes or Natural Watercourses

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

7.15 Appeals

7.15.1 If any proposed erosion control plan is disapproved or modified by the Town the person submitting the plan is entitled to a public hearing before the Director of Engineering if such person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification.

7.15.2 Any hearing held pursuant to Sec. 7.15.1 must be conducted within 30 days after receipt of the request. Notice of such hearing must be published, at least once, in a local newspaper not less than 7 days before the date of the hearing.

7.15.3 The Director of Engineering must make their recommendations to the Town of Wake Forest Board of Commissioners within 5 days after the date of the hearing.

7.15.4 The Board must render its decision on any erosion control plan for which a hearing has been held at its next regular meeting.

7.15.5 The person submitting the request for appeal has 15 days following the Town of Wake Forest Board of Commissioners' decision to appeal the Boards' decision to the N.C. Sedimentation Control Commission or its successor pursuant to NCAC 4B.0018(b).

7.15.6 In the event that request for appeal is disapproved pursuant to Sec. 7.15.5, the Director of Engineering must notify the Director of the Division of Land Resources of such disapproval within 10 days. The Director of Engineering must advise the applicant and the Director of the Division of Land Resources in writing as to the specific reasons that the request was disapproved.

7.16 Enforcement and Penalties

7.16.1 Civil Penalties

a. Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a 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 amount that the Town may assess per violation is five thousand dollars ($5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

The Director of Engineering is authorized to assess the penalty. Fines will be determined by considering the nature of the harm caused by the violation, the money saved by the violator by non-compliance, whether the violation was willful, and the prior record of the violator.

b. No time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his/her official duties.

c. The person conducting the land-disturbing activity may appeal the assessment of civil penalties to the Director of Engineering or designee and who must consider any and all extenuating or mitigating circumstances.

d. The Director of Engineering must make written demand, by certified mail or other means reasonably calculated to give actual notice, for payment upon the person in violation, and must set forth, in detail, a description of the violation for which the penalty has been imposed. If the payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter must be referred to the Town Attorney for institution of a civil action in the name of the Town, in the appropriate division of the General Court of Justice in Wake County for recovery of the penalty. Any sums recovered must be used to carry out the purposes and requirement of this article.

e. Stop Work Order, Permit revocation for nonperformance. If the Town, upon site inspection determines that due care for plan implementation is inadequate to meet the requirements of this article the Town may issue a Stop Work Order in accordance with Sec. 7.6.4(a–f). Upon the issuance of a Stop Work Order, the Director of Engineering must require that all provisions of Sec. 7.6 thru 7.9 be met.

f. Any person or companies determined in violation of Sec. 7.9.7 will be charged for road cleaning at the rate of $300.00 per hour for the first hour or part of hour and $200.00 per hour or part of hour thereafter until work is competed as specified by the Town of Wake Forest's authorized agent.

7.16.2 **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 knowingly or willfully initiates or continues a land-disturbing activity for which an erosion plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is guilty of a class 2 misdemeanor.

7.17 Injunctive Relief

7.17.1 Whenever the Director of the Engineering or designee has reasonable cause to believe that any person is violating or threatening to violate this article or any rule to order adopted or issued pursuant to this article, or any term, condition, or provision of an approved erosion control plan, he may, either before or after the institution of any other action or proceeding authorized by the erosion and sedimentation control regulations of this article, institute a civil action in the name of the Town for injunctive relief to restrain the violation or threatened violation. The action must be brought in the Superior Court of Wake County.

7.17.2 Upon determination by a court that an alleged violation is occurring or is threatened, it must enter such order or judgments, as are necessary, to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section does not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of the erosion and sedimentation control regulations of this article.

7.18 Civil Relief

7.18.1 Any person injured by a violation of this article, or of any rule, regulation, or order duly adopted by the Commissioners of the Town of Wake Forest, or by the initiation or continuation of a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation. The action may seek:

a. Injunctive relief;

b. An order enforcing the erosion and sedimentation control regulations of this article or rule, regulation, order or erosion control plan violated; or

c. Damages caused by the violation; or

d. Both damages and injunctive relief; or

e. Both damages and enforcement order.

7.18.2 Civil action under this section (Sec. 7.18) may be brought in the Superior Court of Wake County. The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security with the amount of such bond or security to be determined by the court.

7.18.3 Nothing in this section (Sec. 7.18) restricts any right, that any person (or class of persons) may have under any statute or common law, to seek injunctive or other relief.

Restoration After Non-Compliance

The Town 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. 113A-57 (3), 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 ordinance.

Severability

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