

**Soil Erosion and  
Sedimentation Control  
Ordinance  
for  
Kings Mountain,  
North Carolina**

**SOIL EROSION AND SEDIMENTATION  
CONTROL ORDINANCE  
FOR  
KINGS MOUNTAIN, NORTH CAROLINA**

**Section 1 Title**

This Ordinance may be cited as the Kings Mountain Soil Erosion and Sedimentation Control Ordinance.

**Section 2 Purpose**

This ordinance is adopted for the purposes of:

- a. Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- b. Establishing procedures through which these purposes can be fulfilled.

**Section 3 Jurisdiction**

The Kings Mountain City Council hereby adopts this Ordinance. The ordinance applies to all portions of Kings Mountain, . However, this Ordinance may later be adopted to also apply within other regions upon proper resolution duly adopted . Wherever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

**Section 4 Definitions**

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

- a. Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

- c. 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.
- d. Affiliate - a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material, which is required for on-site construction and is obtained from other locations.
- g. Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
- h. 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 Kings Mountain Code Enforcement Department.
- i. Commission - means the North Carolina Sedimentation Control Commission.
- j. 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.
- k. Department - means the North Carolina Department of Environment and Natural Resources.
- l. Director - means the Director of the Division of Land Resources of the North Carolina Department of Environment and Natural Resources.
- m. Discharge Point - means that point at which run-off leaves a tract of land.
- n. District - means the Kings Mountain Storm Water District created pursuant to Chapter 139, North Carolina General Statutes.
- o. 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.
- p. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- q. Kings Mountain Environmental Review Board - means the Kings Mountain, North Carolina Soil Erosion & Sedimentation Control Ordinance Environmental Review Board.

- r. Ground Cover - means any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.
- s. High Quality Waters - means those waters classified as such in 15A NCAC 2B.0101 (e) (5) - General Procedures, which is incorporated herein, by reference, to include further amendments.
- t. High Quality Water (HQW) Zones - means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile and drain to HQW's.
- u. Lake or Natural Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.
- v. Land-Disturbing Activity - means any 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.
- w. Local Government means- The City of Kings Mountain.
- x. May – means contingent upon the discretion of the Storm Water Division Director.
- y. 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.
- z. Parent - an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- aa. 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.
- bb. Person Conducting Land-Disturbing Activity - means any person who may be held responsible for a violation unless expressly provided otherwise by this Ordinance, the Act, or any other order adopted pursuant to this Ordinance or the Act.
- cc. Person Responsible for the Violation - as used in this Ordinance, and G.S. 113A-64, means:
1. the developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or Kings Mountain, North Carolina Soil Erosion & Sedimentation Control Ordinance
  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 Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act as imposes a duty upon him.

dd. Phase of Grading - means one or two types of grading, rough or fine.

ee. Plan - means an Erosion and Sedimentation Control Plan.

ff. Recurring Violation – means a violation that has not been corrected within the time specified by the Storm Water Division , or, a reoccurrence of a violation from which a previous notice has been issued, notwithstanding natural occurrences exceeding design requirements.

gg. 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.

hh. 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.

ii. Shall – means a requirement.

jj. 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.

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

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

mm. 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.

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

oo. 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 runoff, from the watershed of interest under average antecedent wetness conditions.

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

qq. 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.

rr. 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.

ss. Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

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

## **Section 5 Scope and Exclusions**

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

a. 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:

1. forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
2. dairy animals and dairy products.
3. poultry and poultry products.
4. livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
5. bees and apiary products.
6. fur producing animals

b. activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with Best Management Practices set out in "*Forest Practice Guidelines Related to Water Quality*," as adopted by the Department. 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 Ordinance shall apply to such activity and any related land-disturbing activity on the tract; and

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

d. 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 Kings Mountain, North Carolina Soil Erosion & Sedimentation Control Ordinance that are:

- (1) conducted by the State;
- (2) conducted by the United States;
- (3) conducted by persons having the power of eminent domain;
- (4) conducted by local governments; or
- (5) funded in whole or in part by the State or the United States.

e. for the duration of an emergency; activities essential to protect human life.

### **Section 6 General Requirements and Objectives**

a. Plan Required - No person shall initiate any land-disturbing activity which uncovers one (1) acre or more, or projects less than one acre that are part of a larger common plan of development or sale, without having an Erosion and Sedimentation Control Plan approved by the Kings Mountain Storm Water Division, and in borrow and waste areas covered by Section 11 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.

b. Compliance - Person who submits a Plan to the Kings Mountain Storm Water Division shall comply with the provisions of Section 18 of this Ordinance.

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.

### **Section 7 Basic Control Objectives**

A Plan may be disapproved pursuant to Section 18 of this Ordinance if the Plan fails to 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 severe erosion and/or sedimentation are to be identified.

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 time.

d. Control Surface Water- Surface water run-off originating upgrade of exposed areas shall 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 to the extent required by the Act.

f. Manage Storm Water Run-off - When the increase in the velocity of storm water run-off resulting from a land-disturbing activity is sufficient to cause accelerate 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 to decrease sedimentation to any lake or natural watercourse.

### **Section 8 Mandatory Standards for Land-disturbing Activity**

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. 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. The minimum width of the buffer zone shall not be less than ten feet (10'). Visible siltation must not discharge through the Buffer Zone. 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.

2. Unless otherwise provided, the width of a Buffer Zone begins and is measured at least ten feet (10') from the edge of the top of the bank of the watercourse to the nearest edge of the disturbed area with the 25 percent 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.

b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 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.

c. Fill Material. Unless a permit from the Department's Division of Waste

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

d. Ground Cover - Whenever land-disturbing activity that will disturb one or more acres 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 9(b) (5) of this Ordinance, provisions for a ground cover sufficient to restrain erosion must be accomplished within fifteen (15) working days or ninety (90) calendar days (whichever period is shorter), following completion of construction or development.

e. Prior Plan Approval - No person shall initiate any land-disturbing activity that will disturb one 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 Kings Mountain Storm Water Division. 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.

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

g. 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.

h. 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 Kings Mountain Storm Water Division at least 48 hours before commencement of the land-disturbing activity.

i. The Kings Mountain Storm Water Division 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.

## Section 9 Design and Performance Standards

a. Except as provided in Section 9 (b) (2) of this Ordinance, 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 runoff from the ten-year storm. Run-off rates can be calculated using the rational method, the Natural Resources Conservation Service (NRCS) peak discharge method, or other acceptable methods.

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.

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 USDA, Natural Resource 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.

3. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least seventy (70%) percent for the 40 micron (0.04 mm) size soil particle transported into the basin by the run-off of that two-year storm which produces the maximum peak rate of run-off as calculated according to the procedures in the USDA, 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.

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 or other acceptable ditch liners. 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 fifteen (15) working days or sixty (60) calendar days following completion of any phase of construction or development, whichever period is shorter.

## **Section 10 Storm Water Outlet Protection**

a. Persons shall prepare a Plan that designs the post construction velocity of the 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 Paragraph (d) of this section; or,
2. The velocity of the 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. The Commission recognizes that the management of storm water 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 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).

<b>Material</b>	<b>Maximum Permissible Velocity</b>	
	<b>F.P.S.</b>	<b>M.P.S.</b>
Fine sand (non-colloidal)	2.5	0.08
Sandy loam (non-colloidal)	2.5	0.08
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
Shale 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.*

### **Section 11 Borrow and Waste Areas**

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained 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's Division of Waste Management, shall 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 conducting the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

### **Section 12 Access and Haul Roads**

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

### **Section 13 Operations in Lakes or Natural Watercourses**

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

## **Section 14 Responsibility for Maintenance**

During the development of 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 Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After site development, the landowner or person in possession or control of the land shall install and/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.

## **Section 15 Additional Measures**

Whenever the Kings Mountain Storm Water Division determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

## **Section 16 Existing Uncovered Areas**

a. All uncovered areas existing on the effective date of this Ordinance which resulted from land-disturbing activity, exceed one 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 . Kings Mountain Storm Water Division reserves the right to require preparation and approval of an Erosion and Sedimentation Control Plan in any instance where extensive control measures are required.

## **Section 17 Certificate of Approved Plan**

No person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Certificate of Approved Plan from Kings Mountain, through its Kings Mountain Storm Water Division, 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 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 Ordinance. If the erosion and

sediment control measures for the development site are designed for all lot disturbances and being Kings Mountain, North Carolina, Soil Erosion & Sedimentation Control Ordinance 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 Ordinance 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 Ordinance.

5. This decision may be appealed to the Environmental Review Board.

### **Section 18 Erosion and Sedimentation Control Plans**

a. A pre-submittal conference with Storm Water 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, 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 Kings Mountain. At the time of application submission, Storm Water 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 or more acres shall file two (2) copies of the Erosion and Sedimentation Control Plan with the Kings Mountain Storm Water Division at least thirty (30) days prior to beginning such activity and shall keep another copy of the Plan on file at the job site. After approving the Plan, if the Kings Mountain Storm Water Division 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, Storm Water Division 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.

d. Erosion and Sedimentation Control Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and 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 Ordinance, or rules or orders adopted or issued pursuant

to this Ordinance. 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.

e. The Kings Mountain Storm Water Division shall review the Plan and submit any comments and recommendations to Codes Department staff within twenty (20) days after the Storm Water Division received the Erosion and Sedimentation Control Plan, recommendations within twenty (20) days or within any agreed upon shorter period of time shall not delay final action on the Plan.

f. The Storm Water 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, approved with performance reservations, 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 Storm Water Division must approve with modifications, or disapprove a revised Plan within fifteen (15) days of receipt, or it is deemed to be approved. The Kings Mountain Storm Water Division 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 Storm Water staff determines that the Plan is inadequate to meet the requirements of this Ordinance, the Storm Water staff may require any revision of the Plan that is necessary to comply with this Ordinance. 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 Storm Water Division shall promptly notify the person submitting the Plan that the thirty (30) day time limit for review of the Plan pursuant to Section 18(f) of this Ordinance shall not begin until a complete environmental document is available to review. The person submitting a Plan to the Kings Mountain Storm Water Division, 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 Kings Mountain Storm Water Division 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 Kings Mountain, North Carolina Soil Erosion & Sedimentation Control Ordinance 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 Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Kings Mountain Storm Water Division on request.

i. the Kings Mountain Storm Water Division 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. 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 Kings Mountain Storm Water Division, the land-disturbing activity shall not proceed except in accordance with the Erosion and Sedimentation Control Plan as originally approved.

k. Any person engaged in land-disturbing activity who fails to file a Plan in accordance with this Ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan, shall be deemed in violation of this Ordinance.

l. Any person engaged in land-disturbing activity that is required by this Ordinance to file an Erosion and Sedimentation Control Plan shall pay a plan review fee to Kings Mountain, Storm Water Division in an amount to be determined by the Kings Mountain City Council.

## **Section 19 Environmental Review Board**

a. Creation \_ There is hereby created in Kings Mountain, the Environmental Review Board which is charged with the duties as provided for in this Ordinance. The Environmental Review Board shall consist of the following members:

1. One person appointed by the participating municipality as outlined in the Environmental Review Board's Policies and Procedures,
2. President of the Kings Mountain Home Builders Association or his/her designee,
3. A member of the Kings Mountain Chamber of Commerce or his/her designee,
4. One township representative appointed by the Kings Mountain City Council.
5. A professional engineer registered under the provisions of Chapter 89C of the General Statutes of North Carolina.

b. Appointments \_ The Environmental Review Board members appointed by the Kings Mountain City council shall serve terms of office of three (3) years and until their successors are appointed and duly qualified.

c. Fees \_ The Environmental Review Board shall make fee recommendations to the Kings Mountain City Council.

d. Other duties and responsibilities \_ The Environmental Review Board shall hear and decide appeals from any decision or determination made by the Storm Water Division in the enforcement of this Ordinance and other duties as directed by the Kings Mountain City Council.

## **Section 20 Appeals**

a. Except as provided in Section 18 (b) of this Ordinance 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 Storm Water Division. 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 Environmental Review Board, within thirty (30) days after the date of the appeal or request for a hearing.
3. The Environmental Review Board will render its final decision on any Erosion and Sedimentation Control Plan following completion of the hearings.

4. If the Environmental Review 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 Section 113A-61 (c) of the General Statutes and Title 15A NCAC 4B .0018 (d).

b. In the event that an Erosion and Sedimentation Control Plan is disapproved pursuant to Section 18 (i) of this Ordinance, the Kings Mountain Storm Water Division shall notify within ten (10) days. The applicant 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 18(i) of this Ordinance directly to the North Carolina Sediment Control Commission.

### **Section 21 Inspections and Investigations**

a. Agents, officials, or other qualified persons authorized by Kings Mountain will periodically inspect land-disturbing activities to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, and to determine whether the measures required in 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 Kings Mountain Storm Water Division.

b. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the City 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 Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, a notice of violation shall immediately be served upon that person. The notice may be served by any means under GS 1A-1, Rule 4.

The notice shall specify a date, by which the person must comply with the Act, 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 in the time specified is subject to additional civil and criminal actions. Penalties for a continuing violation are provided in this Ordinance.

d. The Kings Mountain Storm Water Department shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

e. The Kings Mountain Storm Water 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.

## **Section 22 Penalties**

### **a. Civil Penalties**

1. Any person who violates any of the provisions of the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, 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.

2. The Kings Mountain Storm Water 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 Kings Mountain's Soil Erosion and Sedimentation Control Ordinance. The Kings Mountain Storm Water Division 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 Storm Water Division 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 Ordinance. The notice of assessment shall be served by any means authorized under North Carolina General Statute 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment, by written demand for a hearing. A hearing on a civil penalty shall be conducted by the Kings Mountain Environmental Review Board within thirty (30) days after the date of the written demand for the hearing. The Environmental Review Board shall render its final decision on the civil penalty at the conclusion of the hearing. Appeal from the final decision of the Environmental Review Board shall be to the Superior Court of Cleveland County, North Carolina

3. If payment is not received within thirty (30) days after demand for payment is made, the Environmental Review Board may institute a civil action to recover the amount of the assessment. The civil action may be brought in 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 is due at the conclusion of the administrative and judicial review of the assessment.

4. Civil penalties collected pursuant to this ordinance shall be credited to the Civil Penalty and Forfeiture Fund.

b. Final Certificate of Occupancy With regard to the development of any tract that is subject to this Ordinance, 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 Ordinance with respect to the tract.

2. If there remains due and payable to Kings Mountain civil penalties that have been levied against the person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the may require the amount of the fine, and any other amount that the person would be required to pay under this Ordinance 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 Ordinance may make a written appeal of the decision to the Environmental Review Board.

c. Criminal Penalties

Any person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this Ordinance, 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 Ordinance, 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 NCGS 160A-421 or 153-361, as applicable, or the NC Building Code.

### **Section 23 Injunctive Relief**

a. Whenever the Environmental Review Board has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, 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 Ordinance, 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 Cleveland County, North Carolina.

b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

### **Section 24 Restoration of Areas Affected by Failure to Comply**

The Environmental Review 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 Ordinance.

### **Section 25 Severability**

If any 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.

### **Section 26 Effective Date**

This ordinance shall become effective upon adoption.