

## **ARTICLE III**

### **Soil Erosion And Sedimentation Control**

#### **DIVISION 1**

##### **Generally**

###### **§ 20-61. Definitions. [Ord. No. 92-4, art. IX, § 1, 3-18-1992]**

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

**APPLICANT** — Any person, corporation or public or private organization proposing a development which would involve disturbance to the natural terrain.

**COASTAL FEATURES** — Includes but is not limited to coastal beaches and dunes, barrier beaches, coastal wetlands, coastal cliffs, bluffs and banks, rocky shores and manmade shorelines.

**CUT** — An excavation; the difference between a point on the original ground and a designed point of lower elevation on the final grade; also, the material removed in excavation.

**DEVELOPMENT PROJECT** — Any construction, reconstruction, demolition or removal of structures, roadway, parking or other paved areas, utilities or other similar facilities, including any action requiring a building permit by the Town.

**EROSION** — The removal of mineral and organic matter by the action of wind, water and gravity.

**EXCAVATE** — Any act by which earth, sand, gravel, rock or any other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed and includes the condition resulting therefrom.

**FILL** — Any act by which earth, sand or other material is placed or moved to a new location aboveground. The fill is also the difference in elevation between a point of existing undisturbed ground and a designated point of higher elevation of the final grade.

**LAND DISTURBING ACTIVITY** — Any physical land development activity which includes such actions as clearing vegetation, moving or filling land, or excavating soil or mineral resources or similar activity.

**RUNOFF** — The surface water discharge or rate of discharge of a given watershed after a fall of rain or snow and including seepage flows that do not enter the soil but run off the surface of the land; also, the portion of water that is not absorbed by the soil, but runs off the land surface.

**SEDIMENT** — Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by wind, water or gravity as a product of erosion.

**SOIL EROSION AND SEDIMENT CONTROL PLAN** — The approved document required before any person may cause a disturbance to the natural terrain within the

Town; also referred to as erosion and sediment control plan or approved plan.

**VEGETATION AND SOILS** — The same as defined by the United States Geological Services of the United States Department of Commerce.

**WATERCOURSE** — Any tidewater or coastal wetland at its mean high-water level, and any freshwater at its seasonal high-water level, including but not limited to any river, stream, brook, pond, lake, swamp, marsh, bog, fen, wet meadow or any other standing or flowing body of water. The edge of the watercourse shall be used for delineation purposes.

**§ 20-62. Findings and purpose. [Ord. No. 92-4, art. I, § 1, 3-18-1992]**

- (a) The Town Council finds that excessive quantities of soil are eroding from certain areas that are undergoing development for certain nonagricultural uses such as housing developments, industrial areas, gravel removal operations, recreation facilities, commercial facilities and roads. Erosion occurring in these areas makes costly repairs necessary to gullies, washed out fills, roads and embankments. The resulting sediment clogs storm sewers, road ditches, roils streams, and deposits silt in ponds and reservoirs. In some of the Town's waters, silt resulting from erosion has become a major water pollutant and threatens the water supply as well as the recreational, aesthetic and wildlife habitat values associated with these waters. The Town finds that certain agricultural lands also experience extensive erosion and sedimentation.
- (b) The purpose of this article is to prevent soil erosion and sedimentation from occurring as a result of nonagricultural development within the Town by requiring proper provisions for water disposal and the soil surfaces during and after construction, in order to promote the safety, public health and general welfare of the residents of the Town.

**§ 20-63. Authority of Building Official. [Ord. No. 92-4, art. I, § 2, 3-18-1992]**

The Town Council authorizes the Building Official to administer the provisions of this article under G.L. 1956, §§ 45-46-1, 45-46-4 and 45-46-5, and may designate all enforcement responsibilities to the Building Official's designee.

**§ 20-64. Qualifications of Building Official. [Ord. No. 92-4, art. II, § 1, 3-18-1992]**

- (a) The Building Official or his appointed agent reviewing soil erosion and sediment control plans shall have the following qualifications:
  - (1) Be a registered engineer, surveyor or landscape architect or Soil and Water Conservation Society certified erosion and sediment control specialist; or
  - (2) Shall have attended a soil erosion and sediment control training session sponsored by the United States Department of Agriculture Soil Conservation Service and Conservation Districts.
- (b) The Building Official or his appointed agent shall be granted the authority

necessary to administer this article, including entry onto private property when necessary for periodic inspections to ensure compliance with provisions of the approved soil erosion and sediment control plan.

**§ 20-65. Applicability of article. [Ord. No. 92-4, art. II, § 2, 3-18-1992]**

This article shall be applicable to any situation involving any disturbance to the terrain, topsoil or vegetative ground cover upon any property within the Town, after determination of applicability by the Building Official or his appointed agent, based upon criteria outlined in § 20-87. Compliance with the requirements as described in this article shall not be construed to relieve the owner or applicant of any obligations to obtain necessary state, Town or federal permits otherwise required by appropriate statute or regulation appertaining thereto.

**§ 20-66. Performance bond. [Ord. No. 92-4, art. VI, § 1, 3-18-1992]**

(a) Required.

- (1) Before approving an erosion and sediment control plan, the Building Official or his appointed agent shall require the applicant or owner to file a surety company performance bond or a deposit of money or negotiable securities or other method of surety, as specified by the Building Official or his appointed agent. This may be waived by the Building Official or his agent for good cause. When any land disturbing activity is to take place within 100 feet of any watercourse or coastal feature or within an identified hazard district or on slopes in excess of 10%, the filing of a performance bond shall be required. The amount of the bond, as determined by the public works department or, in its absence, the Building Official or his appointed agent, shall be sufficient to cover the cost of implementing all erosion and sediment control measures as shown on the plan. The performance bond shall be reviewed and may be required to be increased by the Building Official or his agent on the annual anniversary date thereof.
- (2) The bond or negotiable security filed by the applicant shall be subject to approval of the form, content, amount and manner of execution by the public works director.
- (3) A performance bond for an erosion sediment control plan for a subdivision may be included in the performance bond of the subdivision. The posting of the bond, as part of the subdivision performance bond does not, however, relieve the owner of any requirement of this article.

(b) Notice of default on performance secured by bond.

- (1) Whenever the Building Official or his appointed agent shall find that a default has occurred in the performance of any term or condition of the bond or in the implementation of measures secured by the bond, written notice thereof shall be made to the applicant and to the surety of the bond by the Town Solicitor. The notice shall state the nature of the default, work to be done, the estimated

cost thereof and the period of time deemed by the Building Official or his appointed agent to be reasonably necessary for the completion of the work.

- (2) Failure of the applicant to acknowledge a default notice within five days and to comply with the provisions and deadlines outlined in such notice of default shall mean the institution, by the Town Solicitor, without further notice of proceedings whatever, of appropriate measures to utilize the performance bond to cause the required work to be completed by the Town, by contract or by other appropriate means as determined by the Town Solicitor.
- (c) Notice of default on performance secured by cash or negotiable securities deposits. If a certified check or negotiable securities deposit has been posted by the applicant, notice and procedure shall be the same as provided in Subsection (b) of this section.
- (d) Release from performance bond conditions. The performance bond shall remain in full force and effect for 12 months following completion of the project or longer if deemed necessary by the Building Official or his appointed agent. The Building Official shall consider the appropriateness of growing seasons as a time frame.

**§ 20-67. Penalties. [Ord. No. 92-4, art. VIII, § 2, 3-18-1992]**

- (a) Revocation or suspension of approval. The approval of an erosion and sediment control plan under this article may be revoked or suspended by the Building Official and all work on the project halted for an indefinite time period by the Building Official or his appointed agent after written notification is transmitted by the Building Official or his appointed agent to the developer for one or more of the following reasons:
  - (1) Violation of any condition of the approved plan or specifications pertaining thereto.
  - (2) Violation of any provision of this article or any other applicable law, ordinance, rule or regulation related to the work or site of work.
  - (3) The existence of any condition or the performance of any act constituting or creating a nuisance, hazard or endangerment to human life or the property of others or contrary to the spirit or intent of this article.
- (b) Other penalties; lien. In addition to the penalties in Subsection (a) of this section, whenever there is a failure to comply with the provisions of this article, the Town shall have the right to notify the applicant or owner that he has 10 days from receipt of notice to temporarily correct the violation and 30 days from receipt of notice to permanently correct the violation. Should the applicant or owner fail to take the temporary corrective measures within the ten-day period and the permanent corrective measures within the thirty-day period, the Town shall have the right to take whatever actions it deems necessary to correct the violation and to assert a lien on the subject property in an amount equal to the costs of remedial actions. The lien shall be enforced in the manner provided or authorized by law for the enforcement of common law liens on personal property. The lien shall be recorded with the

records of land evidence of the Town in the office of the Town Clerk, and the lien shall incur legal interest from the date of recording. The imposition of any penalty shall not exempt the offender from compliance with the provisions of this article, including revocation of the performance bond or assessment of a lien on the property by the Town.

**§ 20-68. Expiration of approval; renewal. [Ord. No. 92-4, art. VI, § 2, 3-18-1992]**

- (a) Every approval granted in this article shall expire at the end of the time period set forth in the conditions of the approval. The developer shall fully perform and complete all of the work required within the specified time period.
- (b) If the developer is unable to complete the work within the designated time period, he shall, at least 30 days prior to the expiration date, submit a written request for an extension of time to the Building Official or his appointed agent, setting forth the reasons underlying the requested time extension. If the extension is warranted, the Building Official or his appointed agent may grant an extension of time up to a maximum of one year from the date of the original deadline. Subsequent extensions under the same conditions may be granted at the discretion of the Building Official.

**§ 20-69. Maintenance of devices. [Ord. No. 92-4, art. VI, § 3, 3-18-1992]**

Maintenance of all erosion and sediment control devices under this article shall be the responsibility of the owner. The erosion and sediment control devices shall be maintained in good condition and working order on a continuing basis. Watercourses originating and located completely on private property shall be the responsibility of the owner to their point of open discharge at the property line or at a communal watercourse within the property.

**§ 20-70. Liability. [Ord. No. 92-4, art. VI, § 4, 3-18-1992]**

Neither approval of an erosion and sediment control plan nor compliance with any condition of this article shall relieve the owner or applicant from any responsibility for damage to persons or property or impose any liability upon the Town for damages to persons or property.

**§ 20-71. Inspections. [Ord. No. 92-4, art. VII, § 1, 3-18-1992]**

- (a) Periodic inspection. The provisions of this article shall be administered and enforced by the Building Official or his appointed agent. All work shall be subject to periodic inspections by the Building Official or his appointed agent. All work shall be performed in accordance with an inspection and construction control schedule approved by the Building Official or his appointed agent, who shall maintain a permanent file on all of his inspections. Upon completion of the work, the developer or owner shall notify the Building Official or his appointed agent that all grading, drainage, erosion and sediment control measures and devices and vegetation and ground cover planting have been completed in conformance with the approval, all attached plans, specifications, conditions and other applicable

provisions of this article.

(b) Final inspection.

- (1) Upon notification of the completion by the owner, the Building Official or his appointed agent shall make a final inspection of the site in question and shall prepare a final summary inspection report of his finding which shall be retained in the department of inspections and in the permanent inspection file of the department of public works. A copy of such report shall be sent to the developer and property owner.
- (2) The applicant or owner may request the release of his performance bond from the Building Official or his appointed agent 12 months or two growing seasons after the final site inspection has been completed and approved. If the performance bond has been posted with the recording of a final subdivision, the bond shall be released a minimum of 12 months after the Building Official or his appointed agent has been notified by the Planning Board of successful completion of all plat improvements by the applicant or owner.

**§ 20-72. through § 20-85. (Reserved)**

**DIVISION 2**  
**Determination of Applicability**

**§ 20-86. Required. [Ord. No. 92-4, art. III, § 1(I), 3-18-1992]**

It shall be unlawful for any person to disturb any existing vegetation, grade and contour of land in a manner which may increase the potential for soil erosion without first applying for a determination of applicability from the Building Official or his appointed agent. Upon determination of applicability, the owner or applicant shall submit within 60 days a soil erosion and sediment control plan for approval by the Building Official or his appointed agent, as provided in § 20-101.

**§ 20-87. Application; considerations for making determination. [Ord. No. 92-4, art. III, § 1(I), 3-18-1992]**

- (a) The application for determination of applicability shall describe the location, nature, character and time schedule of the proposed land disturbing activity in sufficient detail to allow the Building Official or his appointed agent to determine the potential for soil erosion and sedimentation resulting from the proposed project.
- (b) In determining the applicability of this article to a particular land disturbing activity, the Building Official or his appointed agent shall consider site topography, drainage patterns, soil types according to the United States Geological Service, proximity to watercourses or wetlands and other such information as deemed appropriate by the Building Official or his appointed agent. A particular land disturbing activity shall not be subject to the requirements of this article if the Building Official or his appointed agent finds that erosion resulting from the land disturbing activity is insignificant and represents no threat to adjacent properties or to the quality of any coastal feature, watercourse wetland or drinking water source. The current Rhode Island Soil Erosion and Sediment Control Handbook, prepared by the U.S. Department of Agriculture Soil Conservation Service, state department of environmental management and state conservation committee, shall be consulted in making this determination.

**§ 20-88. Exemptions. [Ord. No. 92-4, art. III, § 1(II), 3-18-1992]**

No determination of applicability shall be required for the following:

- (1) Construction, alteration or use of any additions to single-family or duplex homes or related structures, provided the ground coverage of such addition is less than 1,000 square feet, and such construction, alteration and use does not occur within 100 feet of any watercourse or wetland and the slopes at the site of land disturbance do not exceed 10%.
- (2) Use of a home garden as permitted in a residential use zone by the provisions of the zoning ordinance and certified by the Building Official in association with on-site residential use.
- (3) Accepted agricultural management practices such as seasonal tilling and harvest

activities associated with property utilized for private or commercial agricultural or silvicultural purposes, except within drinking water watersheds.

- (4) Excavations for an improvement other than those described in Subsection (1) of this section which exhibit all of the following characteristics:
  - a. Does not result in total displacement of more than 50 cubic yards of material;
  - b. Has no slope steeper than 10 feet vertical in 100 feet horizontal or approximately 10%; and
  - c. Has all disturbed surface areas promptly and effectively protected to prevent soil erosion and sedimentation as determined by the Building Officials in the best interest of the public.
- (5) Grading, as a maintenance measure, or for landscaping purposes on existing developed land parcels or lots, provided that all bare surface is immediately seeded, sodded or otherwise protected from erosive action and all of the following are met:
  - a. The aggregate area of such activity does not exceed 2,000 square feet;
  - b. The change of elevation does not exceed two feet at any point; and
  - c. The grading does not involve a quantity of fill greater than 18 cubic yards, except where fill is excavated from another portion of the same parcel and the quantity does not exceed 50 cubic yards.
- (6) Grading, filling, removing or excavating activities and operations undertaken by the Town under the direction and supervision of the director of public works for work on streets, roads or rights-of-way dedicated to public use; provided, however, that adequate and acceptable erosion and sediment controls are incorporated in engineering plans and specifications as employed. Appropriate controls shall apply during construction as well as after the completion of these activities. All such work shall be undertaken in accordance with the performance principles provided for in § 20-104 and such standards and definitions as may be adopted to implement such performance principles.

**§ 20-89. through § 20-100. (Reserved)**

**DIVISION 3**  
**Plans**

**§ 20-101. Filing procedures. [Ord. No. 92-4, art. IV, § 1(a), 3-18-1992]**

- (a) Generally. To obtain approval for a land disturbing activity as found applicable by the Building Official or his appointed agent under § 20-86, an applicant shall first file an erosion and sediment control plan signed by the owner of the property or authorized agent, on which property the work subject to approval is to be performed. The plan or drawings, as described in this division, shall include proposed erosion and sediment control measures to be employed by the applicant or the applicant's agent;
- (b) State freshwater wetlands permit. Where any portion of a proposed development requires approval under the state Freshwater Wetlands Act (G.L. 1956, § 2-1-15 et seq.), and where the approval contains provisions for soil erosion and sediment controls, that approved plan shall be a component of the overall soil erosion and sediment control plan required under this article for the development.

**§ 20-102. Preparation, submission. [Ord. No. 92-4, art. V, § 1(a), 3-18-1992]**

The erosion and sediment control plan shall be prepared by a registered engineer or landscape architect or a Soil and Water Conservation Society certified erosion and sediment control specialist, and five copies of the plan shall be submitted to the Building Official or his appointed agent.

**§ 20-103. Contents. [Ord. No. 92-4, art. V, § 1(b), 3-18-1992]**

The erosion and sediment control plan shall include sufficient information about the proposed activities and land parcel to form a clear basis for discussion and review and to ensure compliance with all applicable requirements of this article. The plan shall be consistent with the data collection, data analysis and plan preparation guidelines in the current Rhode Island Soil Erosion and Sediment Control Handbook, prepared by the United States Department of Agriculture Soil Conservation Service, state department of environmental management and state conservation committee, and at a minimum shall contain the following:

- (1) A narrative describing the proposed land disturbing activity and the soil erosion and sediment control measures and stormwater management measures to be installed to control erosion that could result from the proposed activity. Supporting documentation, such as a drainage area map, existing site map and soil maps shall be provided as required by the Building Official or his appointed agent. Recent photographs of the site are very helpful.
- (2) Construction drawing illustrating in detail existing and proposed contours, drainage features and vegetation; limits of clearing and grading, the location of soil erosion and sediment control and stormwater management measures, detail drawing of measures; stockpiles and borrow areas; sequence and staging of land disturbing activities; cross sections; and other such information needed for construction.

(3) Other information or construction plans and details as deemed necessary by the Building Official or his appointed agent for thorough review of the plan prior to action being taken as prescribed in this article such as locus maps. Withholding or delaying such information may be reason for the building inspector or his appointed agent to judge the application as incomplete and grounds for disapproval.

**§ 20-104. Performance principles. [Ord. No. 92-4, art. V, § 1(c), 3-18-1992]**

The contents of the erosion and sediment control plan shall clearly demonstrate how the performance principles, outlined as follows, have been met in the design and are to be accomplished by the proposed development project:

- (1) The site selected shall show due regard for natural drainage characteristics, topography and vegetation.
- (2) To the extent possible, steep slopes shall be avoided.
- (3) The grade of slopes created shall be minimized.
- (4) Postdevelopment runoff rates shall not exceed predevelopment rates, consistent with other stormwater requirements which may be in effect. Any increase in stormwater runoff shall be retained and recharged as close as feasible to its place of origin by means of detention ponds or basins, seepage areas, subsurface drains or similar techniques.
- (5) Original boundaries, alignment and slope of watercourses within the project locus shall be preserved to the greatest extent feasible.
- (6) In general, drainage shall be directed away from structures intended for human occupancy or municipal or utility use or similar structures.
- (7) All drainage provisions shall be of such a design and capacity to adequately handle stormwater runoff, including runoff from tributary upstream areas which may be outside the locus of the project. Plans shall also identify the storm level being addressed in the plan, i.e., ten-year storm, twenty-five-year storm or one-hundred-year storm as a minimum.
- (8) Drainage facilities shall be installed as early as feasible during construction, prior to site clearance if possible.
- (9) No fill shall be located adjacent to a watercourse.
- (10) Temporary vegetation or mulching shall be used to protect bare areas and stockpiles from erosion during construction; the smallest areas feasible shall be exposed at any one time; disturbed areas shall be protected during the nongrowing months, November through March.
- (11) Permanent vegetation shall be placed immediately following final grading.
- (12) Trees and other existing vegetation shall be retained whenever feasible; the area within the dripline shall be fenced or roped off to protect trees from construction

equipment.

(13) All areas damaged during construction shall be resodded, reseeded or otherwise restored. Monitoring and maintenance schedules, where required, shall be predetermined.

**§ 20-105. Fee schedule for applications. [Ord. No. 92-4, art. IV, § 1(b), 3-18-1992]**

An application for review of soil erosion and sediment control plans submitted under this division shall require a nonrefundable filing fee paid to the Town. Such fees shall be according to the schedule established from time to time by the Town Council and on file in the Town Clerk's office.

**§ 20-106. Review. [Ord. No. 92-4, art. IV, § 1(c), 3-18-1992]**

(a) Within 10 working days of the receipt of a completed soil erosion and sediment control plan, five copies of which shall be submitted, the Building Official or his appointed agent shall send a copy of the plan to the reviewing authorities which may include the public works department, Planning Board, department of planning and community development and conservation commission, for the purpose of review and comment. The Building Official or his appointed agent may also, within the time frame established in this division, submit copies of the plan to other local departments or agencies, including the conservation district that services the county, in order to better achieve the purpose of this article. Failure of such reviewing authorities to respond within 21 days of their receipt of the plan shall be deemed as no objection to the plan as submitted.

(b) The time allowed for plan review shall be commensurate within the proposed development project and shall be done simultaneously with other reviews.

**§ 20-107. Approval. [Ord. No. 92-4, art. IV, § 1(d), 3-18-1992]**

(a) The Building Official or his appointed agent shall take action, in writing, either approving or disapproving the soil erosion and sediment control plan with reasons stated within 10 days after the Building Official or his appointed agent has received the written opinion of the review authorities mentioned in § 20-106.

(b) In approving a plan, the Building Official or his appointed agent may attach such conditions deemed reasonably necessary by such review authorities to further the purposes of this article. The conditions pertaining to erosion and sediment control measures and devices may include but are not limited to restoration; the erection of walls, dams and structures; planting vegetation, trees and shrubs; furnishing necessary easements and specifying a method of performing various kinds of work and the sequence or timing thereof. The applicant or owner shall notify the Building Official or his appointed agent at least 72 hours in advance of his intent to begin clearing and construction work described in the erosion and sediment control plan on the site during grading and construction.

**§ 20-108. Notice of noncompliance. [Ord. No. 92-4, art. VIII, § 1(a), 3-18-1992]**

If, at any stage, the work in progress or work completed under the terms of an approved erosion and sediment control plan does not conform to the plan, a written notice from the Building Official or his designee to comply shall be transmitted by certified mail to the owner. The notice shall set forth the nature of the temporary and permanent corrections required and the time limit within which corrections shall be completed as set forth in § 20-67. Failure to comply with the required corrections within the specified time limit shall be considered in violation of this article, in which case the performance bond or cash or negotiable securities deposit shall be subject to notice of default in accordance with § 20-66.

**§ 20-109. Appeals. [Ord. No. 92-4, art. IV, § 1(e), 3-18-1992]**

## (a) Administrative procedures.

- (1) If the ruling on the soil erosion and sediment control plan by the building inspector or his appointed agent is unsatisfactory to the applicant or owner, the applicant or owner may file a written appeal. The appeal of plans for soil erosion and sediment control shall be to the Planning Board.
- (2) Appeal procedures shall follow the requirement for appeal to the Planning Board.
- (3) During the period in which the request for appeal is filed and until such time as a final decision is rendered on the appeal, the decision of the Building Official or his appointed agent shall remain in effect.

(b) Expert opinion. The Building Official or his appointed agent or the Planning Board may seek technical assistance on any erosion and sediment control plan. The expert opinion must be made available in the office of the Building Official or his appointed agent as a public record prior to the appeal hearing. The cost of securing such expert opinion shall be borne equally by the Town and the developer proposing the alteration.