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<b>State:</b>	North Carolina
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<b>Year (adopted, written, etc.):</b>	2004
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<b>Title:</b>	State of North Carolina Erosion & Sedimentation Control Ordinances
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### ***Abstract***

Under the Conservation and Historic Preservation Agreements Act, found at Article 4 within Chapter 121, local governments have the authority to acquire conservation easements and other interests in property for the purpose of preventing activities that are detrimental to erosion control or soil conservation. § 121-35(1)(vii), § 121-37. (See Conservation Easements, above.) North Carolina gives primary responsibility for erosion and sedimentation control to the Department of Environment and Natural Resource's Sedimentation Control Commission, pursuant to Article 4, Chapter 113A; and to water and soil conservation districts, pursuant to Chapter 139 (see below). Under § 113A-60, however, a city or county may enact a sedimentation control program upon approval by the Sedimentation Control Commission. The Commission may require a local government administering such a program to require that applicants for land-disturbing activities submit an erosion and sedimentation control plan to the appropriate soil and water district, as well as to the local government. § 160A-61(a). The local government's approval of any draft erosion and sedimentation control plan must be conditioned on the applicant's "compliance with federal and state water quality laws, regulations, and rules." § 113A-61(b1)

North Carolina's Soil Conservation Districts Law, found at Chapter 139, is based largely on the model State Soil Conservation Districts law drafted by Franklin D. Roosevelt's administration in 1937. (Indeed, a North Carolina farmer was one of the primary advocates of the model law, and the citizens of Anson County, North Carolina formed the first soil conservation district in the nation.). Under this law, water and soil conservation districts, rather than local governments, have primary authority to deal with erosion and sedimentation. However, a county may gain the powers of soil and water conservation districts in connection with watershed improvement programs (see Watershed Planning, Counties, below) if a majority of its voters approves a watershed improvement tax. § 139-41, § 139-39. These powers include the ability to conduct surveys and investigations; to carry out preventative and control measures and works of

improvement; to enter into agreements; to obtain rights to property and to maintain and/or sell any such property; to provide landowners with material or equipment that will help them in their conservation efforts; to undertake public works, including watershed improvements and projects; to develop comprehensive plans for conservation, utilization and disposal of water and development of water resources; to act as an agent for the United States in connection with these activities; and to require land occupiers to enter into agreements in exchange for certain benefits. § 139-8. There is no similar provision for cities.

## ***Resource***

### § 121-35. Definitions

Subject to any additional definitions contained in this Article, or unless the context otherwise requires:

(1) A "conservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas.

(2) "Holder" means any public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing, any agency, department, or instrumentality of the United States, any nonprofit corporation or trust, or any private corporation or business entity whose purposes include any of those stated in (1) and (3), covering the purposes of preservation and conservation agreements.

(3) A "preservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant, condition or otherwise, in any deed, will or other instrument executed by or on behalf of the owner of the land or any improvement thereon, or in any other [order] of taking, appropriate to preservation of a structure or site historically significant for its architecture, archaeology or historical associations, to forbid

or limit any or all (i) alteration, (ii) alterations in exterior or interior features of the structure, (iii) changes in appearance or condition of the site, (iv) uses not historically appropriate, or (v) other acts or uses supportive of or detrimental to appropriate preservation of the structure or site.

#### § 121-37. Acquisition and approval of conservation and preservation agreements

Subject to the conditions stated in this Article, any holder may, in any manner, acquire, receive or become a party of a conservation agreement or a preservation agreement.

#### § 113A-60. Local erosion and sedimentation control programs

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

#### § 113A-61. Local approval of erosion and sedimentation control plans

(a) For those land-disturbing activities for which prior approval of an erosion and sedimentation control plan is required, the Commission may require that a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 require the applicant to submit a copy of the erosion and sedimentation

control plan to the appropriate soil and water conservation district or districts at the same time the applicant submits the erosion and sedimentation control plan to the local government for approval. The soil and water conservation district or districts shall review the plan and submit any comments and recommendations to the local government within 20 days after the soil and water conservation district received the erosion and sedimentation control plan or within any shorter period of time as may be agreed upon by the soil and water conservation district and the local government. Failure of a soil and water conservation district to submit comments and recommendations within 20 days or within agreed upon shorter period of time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion and sedimentation control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control.

(b1) A local government shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. A local government shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion and sedimentation control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article 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 this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(b2) In the event that an erosion and sedimentation control plan is disapproved by a local government pursuant to subsection (b1) of this section, the local government shall so notify the Director of the Division of Land Resources within 10 days of the disapproval. The local government shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant may appeal the local government's disapproval of the plan directly to the Commission. For purposes of this subsection and subsection (b1) of this

section, an applicant's record may be considered for only the two years prior to the application date.

(c) The disapproval or modification of any proposed erosion and sedimentation control plan by a local government shall entitle the person submitting the plan to a public hearing if the person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion and sedimentation control plan following the public hearing, the person submitting the erosion and sedimentation control plan is entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion and sedimentation control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion and sedimentation control plans to designated employees of the Department, the Commission shall designate an erosion and sedimentation control plan review committee consisting of three members of the Commission. The person submitting the erosion and sedimentation control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion and sedimentation control plan to the erosion and sedimentation control plan review committee of the Commission. Judicial review of the final action of the erosion and sedimentation control plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

#### § 139-41. Powers of county commissioners

(a) If the majority of the qualified voters voting in such election favor the levying of such tax, then and in that event, the board of county commissioners shall have all powers of soil and water conservation districts as set forth in subdivisions (1), (2), (3), (4), (5), (6), (7), (8) and (10) of G.S. 139-8 (subject to the limitations set forth in subdivision (12) of such section) concerning flood prevention, development of water resources, floodwater and sediment damages, and conservation, utilization and disposal of water. It is the intention of the General Assembly that such powers shall normally be exercised within all or parts of one or more single watersheds, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases; provided, however, it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(b) The board of county commissioners may itself exercise such powers or, for that purpose, may create a watershed improvement commission to be composed of three members appointed by the board. The terms of office of the members of the commission shall be six years, with the exception of the first two years of existence of the commission, in which one member shall be appointed to serve for a period of two years, one for a period of four years, and one for a period of six years; thereafter all members shall be appointed

for six years, and shall serve until their successors have been appointed and qualified. Vacancies in the membership of the commission occurring otherwise than by expiration of term shall be filled by appointment to the unexpired term by the board of county commissioners. The commission shall hold its first meeting within 30 days after its appointment as provided for in this Article, and the beginning date of all terms of office of commissioners shall be the date on which the commission holds its first meeting. The commission at its first meeting shall select a chair, vice-chair, and secretary-treasurer to serve two-year terms. All acts done by the commission shall be entered in a book of minutes to be kept by the secretary-treasurer. A majority of the membership of the commission shall constitute a quorum. The commission shall meet in regular session at least quarterly and may meet specially upon the call of the chair or any members, and upon at least three-day notice of the time, place, and purpose of the meeting. The commission shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30.

(c) The board of county commissioners may create a single watershed improvement commission for the entire county or may create separate commissions for individual projects or watersheds.

(d) The board of county commissioners, as an alternative to itself exercising the powers set forth in subsection (a) of this section or to creating a watershed improvement commission for that purpose, may by resolution designate the soil and water conservation district having jurisdiction in the county to exercise authority for the board of county commissioners in carrying out the county watershed improvement program. The soil and water conservation district shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30.

(e) Repealed by Session Laws 1981, c. 326, s. 5.

(f) Any industry or private water user, the State of North Carolina, the United States or any of its agencies, any municipality, any other county, or any other political subdivision may participate in county watershed improvement programs hereunder in the same manner and to the same extent as provided by G.S. 139-37 with respect to participation in watershed improvement district programs.

(g) The board of county commissioners may provide for county watershed improvement programs and any or all other related activities (such as water supply systems, sewerage systems, water resources programs, beach erosion control programs, and conservation programs) to be coordinated, to be jointly undertaken by two or more local agencies, or to be assigned to a single county agency designated by such name and organized in such manner as the board deems appropriate.

(h) A Watershed Improvement Commission created pursuant to subsection (b) of this section or a soil and water conservation district designated pursuant to subsection (d) of this section may employ such officers, agents, consultants, and other employees as they may require; shall determine their qualifications, duties, and compensation; shall provide for the execution of surety bonds for the secretary-treasurer and such other officers, agents, and employees as shall be entrusted with funds or property, and shall provide for making and publication of an annual audit of the accounts of receipts and disbursements of the watershed improvement program.

(i) District supervisors and watershed improvement commissioners shall receive a per diem allowance of seven dollars (\$ 7.00) and necessary expenses while engaged in the discharge of official duties pursuant to subsections (b) and (d) of this section. Claims for per diem and expenses for any duty except attendance upon a meeting shall be paid only after approval of the commission or the Board of Supervisors respectively.

#### § 139-39. Alternative method of financing watershed improvement programs by special county tax

The board of county commissioners in any county is authorized to call a special election to determine whether it be the will of the qualified voters of the county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed twenty-five cents (25 cent(s)) on each one hundred dollars (\$ 100.00) valuation of property in said county, to be known as a "Watershed Improvement Tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the prevention of flood water and sediment damages, and for furthering the conservation, utilization and disposal of water and the development of water resources.

#### § 139-8. Powers of districts and supervisors

(a) A soil and water conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter:

(1) To conduct surveys and investigations relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, utilization, and disposal of water, the development of water resources, and the preventive and control measures and works of improvement needed, to publish the results of such surveys and investigations, and to disseminate information concerning such preventive and control measures and works of improvement.

(2) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures

listed in subsection (a), subdivision (3) of G.S. 139-2, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands.

(3) To cooperate, or enter into agreements with, and within the limits or appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupiers of land within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this Chapter.

(4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this Chapter; and to sell, lease, or otherwise dispose of its property or interests therein in furtherance of the purposes and the provisions of this Chapter.

(5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water and the development of water resources.

(6) To construct, improve, operate, and maintain such structures, works and projects as may be necessary or convenient for the performance of any of the operations authorized in this Chapter, including watershed improvement structures, works, and projects as well as any other structures, works, and projects which the district is authorized to undertake.

(7) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, utilization and disposal of water and development of water resources, within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within



its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the Department of Environment and Natural Resources in cooperation with the United States Department of Agriculture.

(9) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Chapter, to carry into effect its purposes and powers.

(10) As a condition to the extending of any benefits under this Chapter to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages therein.

(11) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

(12) Nothing contained in this Chapter shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State.

(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of Environment and Natural Resources by providing technical assistance, allocating available grant monies, and providing any other assistance that may be required or authorized by any provision of federal or State law.

(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission.