

RESOLUTION SPONSORS:  Ron French   Mike Lewis

RESOLUTION NO.  09-03-004

**A RESOLUTION ADOPTING REGULATIONS TO PROTECT WATER QUALITY IN THE URBANIZED AREA OF BLOUNT COUNTY BY PROHIBITING, SUPPRESSING, AND PREVENTING THE CONTAMINATION OF STORM WATER BY GRADING, EROSION, AND SEDIMENTATION.**

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**WHEREAS**, Tenn. Code Ann. § 5-1-118© authorizes counties, by adoption of a resolution by two-thirds (2/3) vote of their respective legislative bodies, to exercise those powers granted to all or certain municipalities by Tenn. Code Ann. § 6-2-201(22) and (23), with specified exceptions; and

**WHEREAS**, on September 21, 2000, the Board of County Commissioners of Blount County, Tennessee, by a vote of 20 in favor, 0 opposed, and 1 absent adopted Resolution No. 00-09-01 authorizing Blount County to exercise said powers granted to all or certain municipalities; and

**WHEREAS**, upon the adoption of said Resolution No. 00-09-01 and pursuant to Tenn. Code Ann. § 6-2-201(22), Blount County became authorized to define, prohibit, abate, suppress, prevent, and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property and all other things whatsoever detrimental, or liable to be detrimental, to unincorporated areas of the county and to exercise general police powers; and

**WHEREAS**, Tenn. Code Ann. § 68-221-1101-1106 authorizes counties to adopt regulations for storm water discharges and contaminates in order to protect water quality in their respective unincorporated areas; and

**WHEREAS**, on December 16, 2004, the Board of County Commissioners of Blount County, Tennessee, adopted Resolution No. 04-12-016 authorizing Blount County to exercise said powers granted within the unincorporated areas of Blount County; and

**WHEREAS**, pursuant to the authority of Tenn. Code Ann. § 5-1-118(c), 6-2-201(22) and 68-221-1101-1106 and Resolution No. 00-09-01, Blount County desires to revise the previously adopted regulations hereinafter set forth to protect water quality in the urbanized area by prohibiting, suppressing, and preventing the contamination of storm water by grading, erosion, and sedimentation.

**NOW, THEREFORE, BE IT RESOLVED** the Board of County Commissioners of Blount County, Tennessee, meeting in regular session assembled this 19<sup>th</sup> day of March, 2009, that the following regulations to protect water quality in the urbanized area by prohibiting, suppressing, and preventing the contamination of storm water by grading, erosion, and sedimentation are hereby adopted to wit:

**Section 1. Rules applying to resolution.** For the purpose of this resolution, certain rules of construction shall apply as follows:

- A. Words used in the present tense shall include the future tense, and the singular includes the plural, unless otherwise indicated in the text.
- B. The terms "shall" and "must" are always mandatory and not discretionary; the words "may" and "should" are permissive.
- C. Except as herein provided, all words used in this resolution shall have their common dictionary definition.

**Section 2. Definitions.**

- A. "Applicant." Person submitting the application for a grading permit. Typically, this is the owner or developer of the land-disturbing activity.
- B. "Blount County Board of Zoning Appeals." The body which has the authority to hear appeals by any person (see *infra* definition Y) or permit holder who has been assessed a civil penalty under the provisions of this resolution, or by any person who has been denied a grading permit under the provisions of this resolution, or by any person who has been aggrieved by any decision or interpretation of the provisions of this resolution by the Inspector.
- C. "Construction related waste." Waste that is generated through construction, land development and land-disturbing activities that may cause adverse impacts to water quality. Construction related waste includes, but is not limited to, discarded building materials, concrete truck washout, chemicals, litter, hazardous materials, oil and sanitary waste at the construction site.
- D. "County." Blount County, Tennessee.
- E. "Cut." Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface.
- F. "Developer." The person (*see infra* definition Y) authorized to carry out the development of land.
- G. "Development." The process of grading, clearing, filling, quarrying, construction, or reconstruction to improved or unimproved land or other similar activities when not excluded by exemptions from this resolution.
- H. "Drainage structure." A device composed of a virtually non-erodible material such as concrete, steel, plastic, or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point of storm water management drainage control or flood control purposes.
- I. "Erosion." The wearing away of land by action of wind, water, ice, or gravity.

- J. "Erosion and sediment control plan." A plan for the control of erosion and sediment resulting from land-disturbing activity (*see infra* definition U). The plan shall be reviewed and approved before a grading permit may be issued. *See* "final plan," *infra* definition O. The plan may be included as part of a preliminary plan required by any Blount County resolution or regulation, including zoning, building codes and safety, subdivision regulations, or a separate plan following the specifications set out in this resolution.
- K. "Excavation." *See* "cut," *supra* definition E.
- L. "Existing grade." The slope or elevation of existing land surface prior to cutting or filling.
- M. "Fill." Portion of surface or area of land to which soil, rock or other materials have been or will be added; height above original land surface after the material has been or will be added.
- N. "Final grade." The final slope or elevation of land surface after cutting or filling and conforming to the final plan (*see infra* definition O).
- O. "Final plan." The approved erosion and sediment control plan. The final plan may differ from the submitted erosion and sediment control plan if adjustments or amendments are required by the Inspector.
- P. "Finished grade." *See* "final grade," *supra* definition N.
- Q. "Formal plan." An erosion and sediment control plan required for land-disturbing activity equal to or greater than one (1) acre in size.
- R. "Grading." Any operation or occurrence by which the existing elevations of land are changed by cutting, filling, borrowing, stock piling, or where any ground cover, natural or man-made, is removed, or any buildings or other structures are removed or any water course or body of water, either natural or man-made, is relocated thereby creating an unprotected area. "Grading" shall be synonymous with "land-disturbing activity" (*see infra* definition U).
- S. "Grading permit." A permit issued by the Inspector to authorize grading (*see supra* definition R) to be performed under the provisions of this resolution.
- T. "Inspector." The person designated by the County Mayor as the Storm Water Administrator, or his/her designee, who shall issue grading permits and carry out inspections and enforcement as provided hereunder.
- U. "Land-disturbing activity." Any activity on land that may result in soil erosion and/or movement of sediment. Land disturbing activities include, but are not limited to, development, re-development, construction, re-construction, clearing, grading, excavating, demolition of structures, landscaping, transporting and filling.
- V. "Mulching." The application of plant or other suitable materials on the soil surface to conserve moisture, reduce erosion, and aid in establishing plant cover.

- W. "NPDES." National Pollutant Discharge Elimination System.
- X. "Owner." The legal owner of land at the time of application for a grading permit. The person ultimately responsible for adhering to the provisions of this resolution.
- Y. "Person." Any and all persons, natural or artificial, including any individual, firm, partnership, entity, or association, and any municipal or private corporation organized or existing under the laws of this or any other state.
- Z. "Priority construction activity." Any land-disturbing activity that is one (1) acre or greater that discharges into, or upstream of, waters the State of Tennessee recognizes as impaired for siltation or high quality waters. Also, priority construction activities can include land-disturbing activities of any size that, in the judgment of the Inspector, require coordination with adjacent construction activities or have conditions that indicate a higher than normal risk for discharge of sediment or other construction related wastes.
- AA. "Project." The entire proposed development regardless of the size of the area of land to be disturbed.
- BB. "Redevelopment." The improvement of a lot or lots that have been previously developed.
- CC. "Responsible person." A specific individual designated to be responsible for erosion and sediment control practices and maintenance of same on each site where land-disturbing activity takes place.
- DD. "Sediment." Solid material, both inorganic (mineral) and organic, that is in suspension, is being transported, or has been moved from the site of origin by wind, water, gravity, or ice as a product of erosion.
- EE. "Sedimentation." The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
- FF. "Sediment basin, trap, barrier or perimeter dike." A barrier or dam built across a waterway or water course, or at other locations, to retain sediment.
- GG. "Slope." The degree of deviation of a surface from the horizontal, usually expressed in percent or degrees.
- HH. "Soil stabilization." Measures which protect soil from erosion.
- II. "Stabilizing slopes." The utilization of adequate structural and/or vegetative erosion and sediment control practices (see *infra* definitions MM and QQ) for preventing erosion from occurring on an incline.
- JJ. "Waters of the state." Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon

Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters. These waters include, but are not limited to the following: rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, and wells.

KK. "Stripping." Any activity which removes or significantly disturbs the vegetative surface cover including clearing and grubbing operations.

LL. "Structural erosion and sediment control practices." Measures for the stabilization of erodible or sediment producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of land or storing, regulating, or disposing of runoff to prevent excess sediment loss. Examples are silt fence, structural diversions, grade stabilization structures, sediments traps and land grading, etc. Such measures can be found in the publication Tennessee Erosion and Sediment Control Handbook, latest edition.

MM. "Unstable." The tendency for land surface to change due to lack of structural and/or vegetative erosion and sediment control (see *infra* definitions MM and QQ) support.

NN. "Variance." A grant of relief from the requirements of this resolution that permits construction or activity in a manner otherwise prohibited by this resolution where strict enforcement would result in unnecessary hardship.

OO. "Vegetative buffer." The area of land adjacent to waters of the state in a condition of vegetation which facilitates the protection of water quality and aquatic habitat.

PP. "Vegetative erosion and sediment control practices." Measures for the stabilization of erodible or sediment producing areas by covering the soil with:

1. Permanent seeding, sprigging or planting, producing long-term vegetative cover;
2. Temporary seeding, producing short-term vegetative cover; or
3. Sodding, covering areas with turf or perennial sod-forming grass.

QQ. "Watercourse." Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows either continuously or intermittently and which has a defined channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

**Section 3. Existing eroding areas.** Upon written notification from the Inspector, the owner of land which exhibits unstable or eroding soil conditions shall correct such conditions within thirty (30) calendar days. The Inspector may extend this period upon request if conditions warrant. Minimum correction measures shall include stabilizing slopes and vegetating all exposed soil surfaces. Before

commencing corrective measures, the owner shall consult with the Inspector to determine an acceptable method of correction.

**Section 4. Grading permit required.** Except as provided in Section 5, no person shall engage in any land-disturbing activity within the urbanized area of Blount County without obtaining a grading permit issued by the Inspector in accordance with the requirements set forth below:

Any development or redevelopment that will result in a land-disturbing activity equal to or greater than one (1) acre in size requires:

1. Application with two (2) copies of legible engineering drawings of a formal plan
2. Appropriate fee
3. Engineering review by the Inspector and/or County Engineer
4. Site inspection
5. Grading permit
6. Ongoing (monthly at a minimum) and final inspection
7. After final inspection and permit compliance, certificate of completion from the Stormwater Department.

All development activities which require right-of-way cuts or excavation within the development site and shown on a formal plan shall be subject to all applicable fees. Grading activities which involve no construction or right-of-way cuts shall be subject to the grading permit fee schedule only.

All exceptions to this resolution which are outlined in Section 5 will be required to use, maintain and follow the minimum requirements for controlling erosion and sediment set forth in Section 9. If unstable or eroding soil conditions exist during land-disturbing activities exempted in Section 5, then Section 3 shall prevail.

The person engaging in land-disturbing activities not exempted in Section 5 of this resolution must obtain from the Tennessee Department of Environment and Conservation (TDEC) a Notice of Coverage (NOC) under the State of Tennessee General NPDES Permit for Discharge of Stormwater Associated with Construction Activities, or documentation that the land-disturbing activity does not require coverage under the State permit, prior to obtaining a grading permit. A copy of the NOC and the associated Stormwater Pollution Prevention Plan (SWPPP) or documentation that the site does not require coverage under the State permit must be submitted with the formal plan.

**Section 5. Exemptions.** Grading permits shall not be required for the following types of land-disturbing activity:

A. Installation, maintenance and repair of any underground public utility line when such activity has a land-disturbance less than one (1) acre, occurs on an existing right-of-way, and a cut or excavation permit has been obtained from the Blount County Road Superintendent, unless the activity is within fifty (50) feet of any waters of the state, in which event a grading permit is required.

B. Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture.

C. Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, farm ponds, dairy operations, livestock and poultry management practices, and forestry land management practices including harvesting.

D. Emergency work to protect life or property. Upon completion of emergency work, the disturbed area shall be shaped and stabilized in accordance with this resolution. The Inspector must be notified of the incident within seventy-two (72) hours thereof.

The owner or developer whose land-disturbing activity has been exempted from the requirements for a grading permit shall nevertheless be responsible for otherwise conducting such activity in accordance with the provisions of this resolution and other applicable laws including responsibility for controlling erosion, sedimentation, and runoff.

**Section 6. Application and plan review.** No grading permit shall be issued until a formal plan has been approved by the Inspector. Such plan shall comply, at a minimum, with the requirements set forth in Section 9 of this resolution.

All applications for grading permits shall be filed with the Inspector at least ten (10) days prior to the commencement of the proposed land-disturbing activity. All applications shall include a formal plan.

**Formal plan.** No person shall initiate land-disturbing activity equal to or greater than one (1) acre (43, 560 ft<sup>2</sup>) in size unless a formal erosion and sediment control plan for such activity is filed with and approved by the Inspector. Any formal plan shall require a pre-construction conference. The formal plan shall include, but not be limited to, the following:

1. Property boundaries
2. Two (2) ft. topographic contours – existing and proposed for slopes greater than fifteen percent (15%) or five (5) ft. intervals may be allowed
3. Site conditions prior to development and as they will be upon completion of the development
4. Proposed final groundcover within disturbed areas
5. All structural and/or vegetative erosion and sediment control practices proposed to be installed
6. Finished elevations of buildings, streets, roads, drives, stormwater utilities, sanitary sewer utilities and other related appurtenances within the proposed development
7. Volumetric and velocity rates of stormwater runoff
8. Watercourses, sinkholes, bodies of water and other similar features affecting runoff on or adjacent to the proposed development

9. Stream designated as impaired by the state's most current 303(d) report
10. Indication of fill material used or deposited and where it is located
11. Name, address and telephone number of the owner or developer of the land
12. Brief project description
13. Clearing and grading limits
14. Location of existing trees
15. Trees to be removed
16. Location of site relevant to highways, municipalities, or other prominent landmarks
17. Recognition of priority construction activity if applicable
18. TDEC Level 1 certification - Fundamentals of Erosion Prevention and Sediment Control Workshop as of June 17, 2007

All formal plans shall be prepared by a licensed, qualified professional engineer and shall include a time schedule for completion and periodic maintenance after completion, details of structural and/or vegetative erosion and sediment control practices, daily clean-up and site control practices and any other information needed to accurately depict erosion and sediment control practices unique to the development. Additionally, any legally protected state or federally listed threatened or endangered species and/or critical habitat located in the area of the land-disturbing activities (if any) shall be identified in the formal plan. If such species are identified in the formal plan or by the county, then the formal plan shall also include written documentation from the United State Fish and Wildlife Service that indicates:

- (a) approval of the best management practices (BMPs) that will be utilized to eliminate potential impacts to legally protected state or federally listed threatened or endangered species and/or critical habitat. Said BMPs shall also be included on the formal plan; or,
- (b) a finding of no potential impact as a result of the proposed land-disturbing activity.

Formal plans should be prepared to meet the Tennessee Construction General Permit, latest edition, requirements. These requirements include, but are not limited to the following:

- (a) Necessity of an erosion prevention and sediment control/pollution prevention plan.
- (b) Erosion and sediment control measures shall be designed to control the rainfall and runoff from a 2 year, 24 hour storm, as a minimum.
- (c) For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2 year, 24 hour storm and runoff coefficient from each disturbed acre drained, or equivalent control measures, shall be provided until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet

of storage per acre drained, or equivalent control measures, shall be provided until final stabilization of the site.

The Inspector shall review all formal plans with necessary staff and make a determination with respect to the sufficiency thereof within ten (10) working days from submittal of the plan. If a plan is determined insufficient, the Inspector shall inform the owner or developer of the plan's deficiencies by written notification. The applicant shall then revise the plan to comply with this resolution and submit a revised plan to the Inspector, or the applicant may submit documentation to substantiate the validity of the original plan. If the Inspector finds corrections and additions to the plan acceptable, the Inspector will then notify the applicant of approval and a grading permit shall be issued. Grading permits shall expire one (1) year from the date of issuance unless extended by the Inspector. After one (1) year, the grading permit will become null and void and the plan must be resubmitted for approval.

The inspector may request that additional information be submitted as necessary to allow a thorough review of the site conditions and proposed erosion prevention and sediment control measures.

Attendance at a pre-construction meeting with the inspector and other associated county departments prior to issuance of a grading permit is required for owners and developers of developments and redevelopments that will be engaging in land-disturbing activity equal to or greater than one (1) acre in size and/or a priority construction activity, as defined in this resolution.

If the land is to be developed in phases, then a separate grading permit shall be required for each phase.

A grading permit issued by the Inspector may specify any condition under which the land-disturbing activity shall be undertaken. The issuance of a grading permit does not authorize the discharge of hazardous substances or oil resulting from a spill that occurs on the site of the land-disturbing activity. The issuance of a grading permit does not relieve the permit holder of any obligation or responsibility of complying with the provisions of any other law or rules and regulations of any federal, state or additional local authority.

#### **Section 7. Inspection and enforcement.**

A. After the grading permit is issued, the Inspector shall inspect the site to determine whether structural and/or vegetative erosion and sediment control practices have been installed according to the formal plan submitted, and whether the practices are adequate for erosion and sediment control and are otherwise in compliance with this resolution.

For applications submitted with a formal plan, if the site inspection indicates the structural and/or vegetative erosion and sediment control practices have been installed according to the plan submitted and if the technical review of the plan by the Inspector indicates compliance with this resolution, the Inspector shall allow work to commence.

B. The requirements of this resolution shall be enforced by the Inspector, who shall inspect the work, grading or construction involved. If the Inspector finds any person has engaged in land disturbing activity without having obtained a required grading permit, the following shall occur:

1. First offense - A stop work order and a notice of violation shall be issued by the Inspector.
2. If work continues - Assessment of a civil penalty by the Inspector for each day work continues without a permit.

C. If the Inspector finds that the grading permit holder has failed to properly install, maintain or use proper structural and/or vegetative erosion and sediment control practices as specified in the final plan, the following shall occur:

1. First offense – Written warning issued by the Inspector (maximum of two (2) days for compliance); if conditions warrant, a stop work order shall be issued immediately by the Inspector.
2. Second offense – Notice of violation issued, issuance of stop work order by the Inspector, suspension of all building until violation corrected, and notification to TDEC of violation.
3. Third offense – Assessment of a civil penalty by the Inspector for each day work continues.
4. Each additional offense – Assessment of a civil penalty by the Inspector for each day work continues and suspension of the issuance of subsequent grading permits.
5. Failure to clean up site – Permit holder liable for three (3) times the cost of clean-up starting with the first offense (see *infra* subsection G).

D. If the Inspector determines that significant erosion and/or sedimentation is occurring on a graded site despite approved structural and/or vegetative erosion and sediment control practices, he shall require the permit holder to take additional corrective action to protect the adversely affected area. The additional corrective action required shall be part of an amended erosion and sediment control plan.

E. All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Notice of a stop work order shall be in writing and shall be given by the Inspector to the owner or developer of the land, an agent of the owner or developer or the responsible person or shall be conspicuously posted by the Inspector at the project and shall state the necessary corrective action with a completion date before other activity can resume. Notice given to the owner or developer, an agent of the owner or developer or the responsible person may be given by first class U. S. Mail mailed to the address shown on the application for the grading permit, or if there is no application, to any address known by the Inspector for such owner or developer, agent of the owner or developer or responsible person, and it will be presumed that the notice is received by the addressee if it is not returned to the Inspector by the U. S. Postal Service.

F. All persons conducting land-disturbing activities which requires a grading permit shall keep a copy of the grading permit along with the approved plan at a central location on-site at all times for the use of the inspector and all of those identified as having responsibilities under the plan whenever they are on the site of the land-disturbing activity.

G. If, upon inspection, the Inspector finds that a person engaged in land-disturbing activity has failed to comply with a final plan and/or this resolution, the Inspector shall serve a written notice to comply upon that person in the same manner as provided in subsection E of this section. The notice shall identify the violation, set forth the corrective action necessary to achieve compliance, and shall state the time within which such corrective action must be complete. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this resolution and in addition to other penalties, shall forfeit any security provided under the provisions of Section 8 of this resolution. The County may use the proceeds of the security to employ a contractor to stabilize the site of the land-disturbing activity, including clean-up of the site, and bring the site into compliance with this resolution.

H. Any responsible person who receives three (3) related written notices under subsection G of this section will be required to retake the Level I - Fundamentals of Erosion Prevention and Sediment Control Workshop sponsored by TDEC or an approved equivalent course. If after completing the course, the same person receives another written notice under subsection G of this section within three (3) years of completing the course, subsequent requests for grading permits shall be denied to that person. Such person may appeal the denial of a grading permit to the Blount County Board of Zoning Appeals by requesting a hearing within thirty (30) days of the denial.

I. Any uncovered area existing on the effective date of this resolution which resulted from land-disturbing activity and which is subject to continued accelerated erosion and which is causing off-site damage from sedimentation, shall be provided with structural and/or vegetative erosion and sediment control practices to prevent erosion and control off-site sedimentation.

1. The Inspector shall give a written notice to comply to the owner or developer of land where any such uncovered area existed on the effective date of this resolution in the same manner as provided in subsection E of this section. The notice will set forth the corrective action necessary to achieve compliance with this resolution and shall state the time within which such corrective action must be completed. In determining the structural and/or vegetative erosion and sediment control practices required and the time allowed for compliance, the Inspector shall take into consideration the economic feasibility, technology and quantity of work required and shall set reasonable and attainable time limits for compliance.

2. An erosion and sediment control plan may be required by the Inspector where extensive structural and/or vegetative erosion and sediment control practices are necessary.

**Section 8. Security requirements and fees.**

A. Prior to the issuance of a grading permit, the owner or developer may be required to provide security in the form of a cash deposit, letter of credit or other acceptable form of security for the work to be completed or any portion thereof pursuant to the final plan. When reviewing any application for a grading permit, the Inspector shall consider the past record of the applicant in complying with any previous permits and/or this resolution. The Inspector may require the applicant to provide acceptable security in a minimum amount of three thousand dollars (\$3,000.00) per acre or fraction thereof for the proposed land-disturbing activity prior to issuing the permit. If an applicant has had three (3) or more violations of previous permits or this resolution within three (3) years prior to the date of filing the application under consideration, the Inspector shall require security. If the owner or developer does not comply with this resolution or with the conditions of the permit after issuance, the security shall be forfeited, and the County may use the proceeds of the security to employ a contractor to stabilize the site of the land-disturbing activity and bring the site into compliance with this resolution.

B. Security in the form of a cash deposit, letter of credit or other acceptable form of security must be provided for the following conditions:

1. Rough grading, site development, large residential development or commercial development when there is land-disturbing activity of an area equal to or greater than five (5) acres.
2. A potential for runoff, erosion and/or sedimentation to adversely impact public right-of-ways, other property or waters of the state.
3. When a site drains into sinkholes or when the site is used for a borrow pit or waste area.

C. With regard to potential runoff, erosion and/or sedimentation which would adversely impact public right-of-ways, the actual amount of the security shall be based on a remediation and completion estimate for the disturbed area as determined by the Blount County Road Superintendent, with a minimum amount of three thousand dollars (\$3,000.00) per acre or fraction thereof of land-disturbing activity. The Road Superintendent may refuse any proffered security based upon past performance, ratings of the permit holder and/or surety of the security or other appropriate sources of reference information.

D. Within sixty (60) days of the completion and acceptance of all requirements of the final plan, the security shall be refunded or terminated.

E. The Board of County Commissioners of Blount County, Tennessee, shall set fees for obtaining grading permits by resolution.

**Section 9. General criteria.** The following general criteria are minimum requirements for controlling pollutants, erosion, and sedimentation from land-disturbing activity and shall be incorporated into all erosion and sediment control plans as determined by the Inspector and/or County Engineer. All soil

erosion and sediment control measures and practices shall conform to the requirements of this resolution. The measures and practices shall apply to all features of the site including street and utility installations, drainage facilities and other temporary and permanent improvements. Practices shall be implemented to prevent or control erosion and sedimentation during all stages of any land-disturbing activity. No grading permit issued using the following General Criteria is intended to restrict the use of other innovative practices or modifications to the specified practices if such practices are thoroughly described and detailed and approved as part of or a supplement to the final plan prior to installation.

A. Minimum requirements for land disturbing activity. The minimum requirements for controlling erosion and sedimentation from land disturbing activity shall be as set forth in the Tennessee Erosion and Sediment Control Handbook, latest edition.

B. Requirements for best management practices. Owners and developers of land-disturbing activities shall implement appropriate erosion prevention and sediment control best management practices (BMPs). BMPs shall be maintained and repaired by the permittee or his/her designee as often as necessary to maintain compliance with the approved plan and this resolution.

C. Technical design criteria. The design of erosion prevention, sediment, and pollution management controls, including BMPs, stabilization practices and structural practices, shall be performed in accordance with criteria and requirements stated in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, except where more stringent criteria are set forth in this resolution or are required by the Inspector. All controls must be properly selected, installed, and maintained in accordance with the manufacturer's specifications (where applicable) and good engineering practices. Measures selected for erosion prevention and sediment control must be able to slow runoff so that rill and gully formation is prevented. When steep slopes and/or fine particle soils are present at the site, additional physical or chemical treatment of stormwater runoff may be required, and must be fully described on the formal plan if required.

D. Priority construction activities. Additional design, installation, inspection, inspection certification, and buffer zone requirements for discharges into impaired or high quality waters that are included in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities shall be implemented for all priority construction activities, as defined in this resolution.

E. Stabilization of disturbed areas and soil stockpiles. Temporary or permanent soil stabilization measures must be applied to areas subject to land-disturbing activity when and where deemed necessary by the Inspector for the purpose of good soil stabilization practices. Soil stabilization refers to measures which protect soil from the erosive forces of wind, raindrop impact and flowing water, and include, but are not necessarily limited to, the growing of vegetative cover, sod, application of straw, mulching, fabric mats and early application of gravel base on areas to be

paved. Soil stabilization measures should be selected to be appropriate for the time of year, site conditions, and estimated duration of use.

Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased, except in the following two situations:

1. where the initiation of stabilization measures by the fourteenth day is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable; or

2. where construction activity on a portion of the site has temporarily ceased and land-disturbing activity will be resumed within fifteen (15) days, temporary stabilization measures do not have to be initiated on that portion of the site. Soil stockpiles not stabilized by vegetation must be stabilized or protected with sediment trapping measures to prevent soil loss.

F. Establishment of permanent vegetation. A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved which, in the opinion of the Inspector, is mature enough to control soil erosion satisfactorily and to survive seasonal weather conditions.

G. Protection of adjacent properties. Properties adjacent to the site of land-disturbing activity shall be protected from sedimentation. This may be accomplished by preserving a well-vegetated buffer strip around the lower perimeter of the land-disturbing activity, by installing perimeter controls such as sediment barriers, filters, dikes, sediment basins, or by a combination of such measures.

H. Timing and stabilization of sediment trapping measures. Sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to trap sediment on site must be constructed as a first step in grading and be made functional before upslope land-disturbing activity takes place. Earthen structures such as dams, dikes, and diversions must be seeded and mulched within seven (7) days of installation. These measures must be maintained in good working order and must remain in place until such time as the Inspector finds that the area is stabilized.

I. Sediment basins. Stormwater runoff from drainage areas with five (5) acres or greater of area subject to land-disturbing activity must pass through a sediment basin or other suitable sediment trapping facility with equivalent or greater storage capacity as specified in the Tennessee Erosion and Sediment Control Handbook, latest edition. Sediment basins or traps for smaller areas subject to land-disturbing activity may be required where deemed necessary. The sediment basin requirement may also be waived by the Inspector if site conditions do not warrant its construction. Vegetative measures must be installed from the permanent pool elevation to the top of the berm.

J. Sodding detention ponds, ditches and drainage swales. Sod shall be used on detention ponds, ditches and drainage swales or if velocities warrant stabilization.

Stabilization methods other than sod may be approved by the Inspector and/or County Engineer. The owner or developer shall maintain sodded areas until they become established.

K. Cut and fill slopes. Cut and fill slopes must be designed and constructed in a manner which will minimize erosion. Consideration must be given to the length and steepness of the slope, the soil type, upslope drainage area, groundwater conditions and other applicable factors. Slopes which are found to be eroding excessively within one (1) year of project completion must be provided with additional slope stabilizing measures until the erosion is corrected. The following guidelines are provided to aid in developing an adequate design for slopes:

1. Topsoil for the area should be stockpiled and then used for replacement on the graded area.
2. Roughened soil surfaces are generally preferred to smooth surfaces on slopes.
3. Diversions should be constructed at the top of long steep slopes which have significant drainage areas above the slope. Diversions or terraces may also be used to reduce slope length.
4. Concentrated storm water should not be allowed to flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.
5. Wherever a slope face crosses a water seepage plane which endangers the stability of the slope, adequate drainage or other protection should be provided.
6. Slopes 2:1 or greater shall be stabilized with erosion control matting or other method(s) approved by the Inspector. The owner or developer shall maintain matted areas until permanent vegetation is established.

L. Protection of storm sewer inlets. All existing storm sewer inlets and/or inlets which are made operable during construction shall be protected so that sediment-laden water will not enter the conveyance system without first being filtered or otherwise treated to remove sediment. All new storm sewer inlets should be properly manufactured with precast warnings as to not allow any draining of chemicals, toxic, or hazardous substances due to draining to waters of the state.

M. Working in or crossing watercourses. Construction vehicles shall be kept out of watercourses. The channel (including bed and banks) must always be stabilized immediately after in-channel work is completed. Where a live (wet) watercourse must be crossed by construction vehicles regularly during construction, a temporary stream crossing must be provided, the design of which must be approved by the Inspector and the State of Tennessee, where appropriate.

N Underground utility construction. The construction of underground utility lines shall be subject to the following criteria:

1. Where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches.

2. Trench dewatering devices shall discharge in a manner which will not adversely affect flowing streams, drainage systems or off-site property.

O. Temporary stone construction entrance. Wherever construction access routes intersect paved public roads, provisions must be made to minimize the transport of sediment (e.g., mud) by runoff or vehicle tracking onto the paved surface by clearing the area at the entrance of all vegetation, roots and other objectionable material and placing a TDOT #1 or #2 (1.5” to 3.5” diameter) aggregate stone layer at least six (6) inches thick underlain with filter fabric for a minimum of fifty (50) feet from the edge of the hard surface public road. This entrance shall be a minimum of twenty (20) feet in width and shall be maintained for the duration of the project or until a permanent access drive is constructed. The stone layer shall be replaced or overlain with new stone when necessary to ensure that sediment is not transported off the site. If sediment is transported onto a public road surface, the roads shall be cleaned thoroughly at the end of each day or more often if deemed necessary. Sediment shall be removed from roads by shoveling or sweeping and be transported to a sediment-controlled disposal area. Street washing shall be allowed only after sediment is removed in this manner.

P. Disposition of temporary practices. All temporary erosion and sediment control practices shall be disposed of within 30 days after final site stabilization is achieved or after the temporary practices are no longer needed, unless otherwise directed by the Inspector. Trapped sediment and other disturbed soft areas resulting from the disposition of temporary practices shall be properly disposed of and/or permanently stabilized to prevent further erosion and sedimentation.

Q. Control measure construction and maintenance standards. The installation and maintenance of erosion prevention and sediment control practices, stabilization practices and structural practices shall be performed in accordance with the standards provided in the Tennessee Sediment and Erosion Control Handbook, latest edition, except where more stringent standards are set forth in this resolution or are required by the Inspector. If periodic inspections or other information indicate that a control measure has been used inappropriately, or incorrectly, the owner or developer must replace or modify the control for relevant site situations. All temporary and permanent erosion and sediment control practices shall be maintained and repaired as needed to insure continued performance of their intended function.

R. Erosion control before grading begins. Erosion and sediment control practices and measures for the control of other construction related wastes shall be in place and functional before land-disturbing activity begins and shall be constructed and maintained during the entire construction period. Temporary measures may be removed at the beginning of the work day, but must be replaced at the end of the work day.

S. Responsible person. A specific individual shall be designated to be responsible for erosion and sediment control on each site. This individual shall have a minimum training of the Level I - Fundamentals of Erosion Prevention and Sediment Control Workshop sponsored by TDEC or an approved equivalent course. The responsible person must possess a valid certificate of completion.

T. Inspections. The permit holder shall perform inspections of erosion and sediment control practices weekly in dry periods, before anticipated storm events (or a series of storm events as intermittent showers over one (1) or more days) and within twenty-four (24) hours after any rainfall of one-half (1/2) inch or greater within a twenty-four (24) hour period. During prolonged rainfall, daily inspections shall be performed. Erosion and sediment control shall be repaired as necessary. The permit-holder shall maintain on-site a record of such inspections and repairs.

U. Storm water discharge. There shall be no distinctly visible floating scum, oil, or other matter contained in the storm water discharge. The storm water discharge must not cause the receiving stream to change color.

V. Control of other construction related wastes. Owners and developers of land-disturbing activities shall control other construction related wastes, as defined in this resolution, in accordance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, except where more stringent criteria are set forth in this resolution or are required by the Inspector. The discharge of such wastes in stormwater discharges from a land-disturbing activity shall be prevented or minimized in accordance with the formal plan for the site of the activity.

W. Vegetative buffers during construction. An undisturbed vegetative buffer of a minimum of twenty-five (25) feet (as measured from the top-of-bank) shall be maintained adjacent to all free-flowing waters of the state during construction. For bodies of water such as ponds, lakes, etc., an undisturbed vegetative barrier of at least twenty-five (25) feet shall be maintained during construction. The Inspector may allow a variance with mitigation that is at least as protective of natural resources and the environment or where drainage structures and road crossings must be constructed, provided that adequate erosion control measures are incorporated in the submitted plans. The following requirements shall apply to any such buffer:

1. No land-disturbing activity shall be conducted within the buffer, and the buffer shall remain in its undisturbed state of vegetation until all land-disturbing activity on the site is complete and all disturbed areas on the site are stabilized.
2. Nothing contained in this section shall prevent the County from adopting rules and regulations or resolutions that contain requirements that exceed the minimum requirements in this section.

X. Stripping, cleaning and grading to be minimized. Stripping of vegetation, grading, and other development activities shall be conducted so as to minimize erosion. Clearing and grubbing must be held to a minimum necessary for grading and equipment operation. Preconstruction vegetative cover shall not be destroyed, removed or disturbed more than ten (10) calendar days prior to grading or earth moving. Construction must be sequenced to minimize the exposure time of cleared surface areas.

**Section 10. Variances.** The Inspector may waive or modify any of the General Criteria which are deemed inappropriate or too restrictive for site conditions by granting a variance. Variances may be granted in writing under the following conditions:

A. At the time of plan submission, an applicant may request a variance(s) to become part of the final plan. The applicant must set forth the reasons for requesting a variance(s) in writing. Specific variance(s) must be documented on the final plan.

B. During construction, the permit holder may request amendments to the final plan. The amended plan shall be reviewed pursuant to the procedures set forth in Section 6. Until such time as the amended plan is approved by the Inspector, the land-disturbing activity shall not proceed except in accordance with the original final plan. A response in writing for plan review approving or disapproving such request shall be given within ten (10) working days. Without written approval, no amendment shall be considered valid.

**Section 11. Right of Entry.** The Inspector may enter upon any property which discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system; stream; natural drainage way; or other stormwater system during reasonable hours to monitor, remove foreign objects or blockages, and to inspect for compliance with the provisions of this resolution.

**Section 12. Final inspection and certification of completion.** Upon completion of the work specified in the final plan, the permit holder shall request a final inspection. Final inspection shall occur within five (5) working days of the request. If upon final inspection, the Inspector finds that the permit holder has complied with the requirements of the final plan and that the project has been completed, the Inspector shall issue a certificate of completion and close the grading permit. Should the Inspector find that there has not been compliance; the Inspector shall notify the permit holder of the reason(s) therefore. The permit holder shall then correct any deficiency(ies) and request a final inspection and issuance of a certificate of completion, or the permit holder shall submit security in the form of a cash deposit, letter of credit or other acceptable form of security guaranteeing completion of the work by a certain date. If the permit holder does not comply with the requirements of the final plan and complete the project, such security shall be forfeited, and the County may use the proceeds of the security to employ a contractor to bring the site into compliance with the requirements of the final plan. Should the Inspector conduct three (3) requested final inspections for the same permit without a certificate of completion being issued, the permit holder shall pay to the county a fee of fifty dollars (\$50.00) for each additional inspection conducted by the Inspector thereafter.

**Section 13. Appeals.** Any applicant or permit holder may appeal any decision or interpretation of the provisions of this resolution by the Inspector to the Blount County Board of Zoning Appeals by filing a petition for review with the board within thirty (30) days of such decision or interpretation. Any person aggrieved by a final decision of the board may seek review by a court of competent jurisdiction.

**Section 14. Civil penalty.**

A. Any person or permit holder who violates any provision of this resolution or any permit condition or limitation or who fails to comply with any order issued by the Inspector shall be liable for a civil penalty of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000.00) per violation and/or failure to comply. Each day during which the violation and/or failure to comply continues shall constitute a separate offense. *See* Tenn. Code Ann. § 68-221-1106(a).

B. The following minimum penalties shall apply to land-disturbing activity which violates any provision of this resolution or any permit condition or limitation:

1. There shall be a minimum penalty of fifty dollars (\$50.00) per day for each violation involving residential construction; and
2. There shall be a minimum penalty of two hundred and fifty dollars (\$250.00) per day for each violation involving land-disturbing activity other than provided in sub-subsection 1. of this subsection B.

C. The Inspector is authorized and empowered to assess a civil penalty against any person or permit holder who violates any provision of this resolution or any permit condition or limitation or who fails to comply with any order issued by the Inspector. Notice of such assessment shall be served upon the person or permit holder incurring the civil penalty in any manner authorized by law.

D. Any person or permit holder incurring a civil penalty may seek review thereof by filing a petition for review with the Blount County Board of Zoning Appeals. If a petition for review of a civil penalty is not filed within thirty (30) days after notice of the civil penalty is served upon the person or permit holder incurring the civil penalty in any manner authorized by law, such person or permit holder shall be deemed to have consented to the civil penalty, and it shall become final. A decision of the Blount County Board of Zoning Appeals may be appealed pursuant to the provisions of title 27, chapter 8 of the Tennessee Code Annotated. *See* Tenn. Code Ann. § 68-221-1106(d).

E. Whenever any civil penalty has become final, the county may apply to the chancery court for the county for a judgment and seek execution on such judgment. Failure to seek review of and/or to appeal a civil penalty shall be treated as a confession of judgment. *See* Tenn. Code Ann. § 68-221-1106(e).

F. In assessing a civil penalty, the Inspector may consider the following factors:

1. The harm done to the public health or the environment;
2. Whether the civil penalty imposed will be a substantial economic deterrent to the prohibited activity;
3. The amount of effort put forth by the person or permit holder incurring the civil penalty to remedy the violation;
4. Any unusual or extraordinary enforcement costs incurred by the County;
5. The amount of penalty established by resolution for specific categories of violations;

