

**GREEN TOWNSHIP
COUNTY OF SUSSEX**

ORDINANCE 2012-07

**AN ORDINANCE TO AMEND CHAPTER XXVI – SOIL AND SOIL REMOVAL
OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF
GREEN, BY REPLACING CHAPTER XXVI IN ITS ENTIRETY**

BE IT ORDAINED, by the Township Committee of the Township of Green in the County of Sussex and the State of New Jersey, as follows:

SECTION 1: The following Chapter XXVI entitled “Soil and Soil Removal” shall be replaced in its entirety as follows:

CHAPTER XXVI

SOIL AND SOIL REMOVAL

Article I

Soil Erosion and Sediment Control

26-1 SHORT TITLE.

This article shall be known as the "Soil Erosion and Sediment Control Regulations of the Township of Green".

26-2 PURPOSE.

The purpose of this article is to control soil erosion and sediment damages and related environmental damage by requiring adequate provisions for surface water retention and drainage and for the protection of exposed soil surfaces in order to promote the safety, public health, convenience and general welfare of the community.

26-3 DEFINITIONS.

As used in this article:

Act shall mean the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-39 et seq.

Appeal shall mean a request for a review of Township or District action.

Agriculture and horticulture shall mean the cultivation of land for the production of food, fiber, animals and related activities customary to agricultural production and operations.

Applicant shall mean a person, partnership, corporation or public agency requesting permission to engage in land disturbance activity or seeking site plan, subdivision or variance approval from the Planning Board and/or Zoning Board of Adjustment and/or a building or land disturbance permit.

Certified plan shall mean a plan and any revisions thereto reviewed and approved by the Township or District as conforming to the standards promulgated by the State Soil Conservation Committee.

Complete application shall mean an application and all required items as set forth in N.J.A.C. 2:90-1.4 for soil erosion and sediment control plan certification and that are administratively and technically sufficient for Township or District Certification.

Critical area shall mean sediment-producing, highly erodible or severely eroded area, as well as ten (10%) percent hydric soils or waterfront soils. The Township Engineer, or his/her agent, Sussex County Soil Conservation District, shall be the authority determining critical areas.

Demolition shall mean the demolition of one or more structures including the disturbance of all land area necessary to accomplish the work.

District shall mean the Sussex County Soil Conservation District.

Erosion shall mean detachment and movement of soil or rock fragments by water, wind, ice and gravity.

Erosion and sediment control plan shall mean a plan which fully indicates necessary land treatment measures, including a schedule of the timing for their installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the State Soil Conservation Committee. An erosion and sediment control plan upon approval by the Green Township Municipal Engineer, or his/her authorized agent, Sussex County Soil Conservation District, will become a certified plan. All references in these regulations to certified plan shall mean the soil erosion and sediment control plan approved by the Green Township Municipal Engineer or his/her authorized agent, Sussex County Soil Conservation District.

Excavation or cut shall mean any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

Farm conservation plan shall mean a plan which provides for use of land, within its capabilities, and treatment, within practical limits, according to chosen use to prevent further deterioration of soil and water resources.

Hearing body shall mean the Planning Board or Zoning Board of Adjustment.

Land shall mean any ground, soil or earth, including marshes, swamps, drainageways and areas not permanently covered by water, within the Municipality.

Land disturbance shall mean any activity involving the clearing, grading, transporting, and filling of land, and any other activity which causes land to be exposed to the danger of erosion.

Major revision shall mean modifications to the soil erosion and sediment control plan which require the Township or District to reevaluate the adequacy of erosion controls for the project and compare the plan to the standards.

Minor revision shall mean modifications which require minimal examination of the submittal and do not impact the integrity of the previously certified soil erosion control measures as determined by the Township or District.

Mulching shall mean the application of plant residue or other suitable materials to the land surface to conserve moisture, hold soil in place and aid in establishing plant cover.

Permit shall mean a certificate issued to perform work under this article.

Sediment shall mean solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water or gravity as a product of erosion.

Sediment basin shall mean a barrier or dam built at a suitable location to retain soil, rock, sand, gravel, silt or other material.

Sequence of construction or sequence shall mean a site specific chronology of proposed erosion control plan components including temporary and permanent soil erosion and sediment control measures, integrated with site development related land disturbances that minimizes erosion and sedimentation.

Site shall mean any plot, parcel or parcels of land.

Soil shall mean all unconsolidated mineral and organic material of any origin.

State Soil Conservation Committee shall mean an agency of the State established in accordance with the provisions of N.J.S. 4:24.

Stripping shall mean any activity which significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grading operations.

Tacking shall mean anchoring of mulch, also known as tacking. This is a technique which is applied immediately after mulching to prevent loss by wind or rain. The method used to anchor mulch will depend on size of area, steepness of slope and cost. The various methods of anchoring mulch are described in the Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the State Soil Conservation Committee.

Township Engineer shall mean the duly appointed current Township Engineer of the Township of Green.

Withdrawn Plan shall mean a plan for soil erosion and sediment control which the applicant or their agent has rescinded from further action by the Township or District.

26-4 GENERAL RESTRICTIONS.

26-4.1 Conformance with Standards. No land shall be disturbed by any person, partnership, corporation or public agency until such time as a plan for soil erosion and sediment control in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, adopted by the State Soil Conservation Committee, has been certified by the Green Township Municipal Engineer, or his/her authorized agent, Sussex County Soil Conservation District, and a valid land disturbance permit, if required, has been issued by the Township Committee after the appropriate performance surety has been provided to the Township and/or a building permit has been issued by the Municipal Construction Official. The land disturbance permit requirements are detailed in Section 30-14i, and are applicable for all subdivisions and site plans. All public facility projects shall be submitted to the Sussex County Conservation District for review, certification and enforcement.

26-4.2 Submission of Plans. No subdivision, site plan, land development plan or building construction which disturbs more than five thousand (5,000) square feet shall be approved unless it includes a soil erosion and sediment control plan in accordance with the provisions of this section.

26-5 PROCEDURE.

26-5.1 Application Information. On all site plans, minor subdivisions, preliminary major subdivision plots or other applications requiring Planning Board or Zoning Board of Adjustment approval and involving land disturbance, there shall be submitted to the Planning Board or Zoning Board of Adjustment, whichever Board the application is filed with, a soil erosion and sediment control plan, which shall be approved and certified by the Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District. The approved certified soil erosion and sediment control plan shall be filed with and become a part of the preliminary major subdivision, minor subdivision, site plan or other application.

26-5.2 Certified Soil Erosion and Sediment Control Plan Required.

a. A certified soil erosion and sediment control plan shall be required for all new construction which:

1. Disturbs five thousand (5,000) square feet or more of land, or
2. For the operation of all soil removal, mining or quarrying activities regardless of proposed or actual related agricultural or horticultural use. Mining or quarrying activities shall include the extraction and removal of soil and/or sediment, as defined in N.J.S.A. 4:24-41, from the proposed site, or

3. Any demolition of one or more structures and any associated new disturbance activity involving more than 5,000 square feet in size including the construction of one single-family dwelling or other project shall obtain soil erosion and sediment control plan certification, or

4. Involves construction and land disturbance on land of average slopes of ten (10%) percent or more, as determined by the topography on the map, or

5. For land disturbance of any size, which the Township Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, has determined has the potential to affect environmentally sensitive areas, such as open waters, streams, ponds, wetlands, wetland buffers, swamps, intermittent streams, which are regulated by NJDEP Freshwater Wetlands Regulations, or

6. Any land determined to be sensitive to erosion by the Township Committee, Planning Board, Zoning Board or Township, Planning or Zoning Board Engineer, such as drainage easements, detention basins or other drainage facilities, or

7. Clearing or grading of land.

(a) Except as provided in (b) and (c) below, a person proposing to engage in or who is engaging in clearing or grading of more than 5,000 square feet of land shall be subject to this ordinance and the act unless such land disturbance is for agricultural or horticultural purposes. To demonstrate to the Township that such activity is related to proposed agricultural or horticultural activities, the owner shall provide proof that the land is enrolled in a farmland preservation program, eligible for farmland assessment, qualifies for right-to-farm protection, or possesses a farm conservation plan or forest management plan, timber harvest sale contract or other proofs deemed appropriate by the Township. The Township shall determine if the proofs demonstrate an agricultural or horticultural activity or is subject to the act and this subchapter.

(b) Certification of a soil erosion and sediment control plan shall be required for the construction of agricultural structures, involving the disturbance of greater than 5,000 square feet of land unless the disturbance is incorporated into a farm conservation plan approved by the Sussex County soil Conservation District as conforming to the United States Department of Agriculture, June 1, 2005 Field Office Technical Guide, which is hereby adopted and incorporated by reference, as amended and supplemented.

1. Copies of the New Jersey Field Office Technical Guide are available from the NRCS Field Offices and the State Office at 220 Davidson Ave., 4th Floor, Somerset, NJ 08873.
2. An electronic copy of the New Jersey Field Office Technical Guide available at <http://www.nrcs.usda.gov/technical/efotg/>.

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3. A copy of this document is on file in the NJDA Office of the Director, Division of Agricultural and Natural Resources, Health and Agricultural Building, Market and Warren Streets, Trenton, NJ 08625.

(c) Disturbances on agricultural land greater than 5,000 square feet in size other than for agricultural or horticultural purposes may be subject to the act and this ordinance or may be incorporated into the farm conservation plan when so determined by the Sussex County Soil Conservation District.

b. Prior to the issuance of a building permit for any construction not requiring Planning or Zoning Board approval and prior to the issuance of a land disturbance permit, if required, the Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, shall determine whether or not a soil erosion and sediment control plan is necessary in order to promote the public health, safety, convenience and general welfare of the community. The applicant shall furnish such information as is required by the Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, to make this determination.

c. If the Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, determines that a soil erosion and sediment control plan is required, such plan shall be submitted to and reviewed and certified by the Municipal Engineer or the Township's authorized agent, Sussex County Soil Conservation District.

d. The Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, shall grant approval or denial of the plan within a period of thirty (30) days of submission of a complete application, unless this period is extended by a mutual agreement in writing for an additional thirty (30) day period. Failure of the municipality or the District to make a decision within such period or such extension thereof shall constitute certification. If a plan is determined to be deficient, the applicant is notified in writing of the deficiencies. The thirty (30) day review time clock is stopped. Upon the receipt of the revised plan and supporting documentation, the time clock shall resume at 0:00 and an additional thirty (30) days review period shall commence.

e. Applicants must obtain a Stormwater Construction Permit (5G3-NJ0088323) Requests for Authorization (RFA) for proposed land disturbances of one acre or larger. This program is administered by the Sussex County Soil Conservation District. Upon Township certification of Soil Erosion and Sediment Control Plan, permittees are required to submit RFA application and payment electronically on-line utilizing NJDEP's Stormwater Construction Activity E-Permitting System. Instructions will be provided to applicant with certification.

26-5.3 Submission of Soil Erosion and Sediment Control Plan; Revisions to Plan.

a. The applicant shall submit a soil erosion and sediment control plan for each noncontiguous site. Such plan shall be in accordance with the latest Standards for Soil Erosion and Sediment Control in New Jersey.

b. All proposed revisions shall be submitted to the Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, for review and recertification prior to implementation.

26-6 GENERAL DESIGN PRINCIPLES.

26-6.1 Control Measures. Control measures shall apply to all aspects of the proposed land disturbance and shall be in operation during all stages of the disturbance activity. The following principles shall apply to the certified plan:

a. Prior to commencement of any land or soil disturbance, a preconstruction meeting shall be held with the Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District.

b. Stripping of vegetation, grading or other soil disturbance shall be done in a manner which will minimize soil erosion.

c. Whenever feasible, natural vegetation shall be retained and protected.

d. The extent of the disturbed area and the duration of its exposure shall be kept to an absolute minimum. Land disturbance shall be phased and unless otherwise approved, limited to a maximum of five (5) acres per phase.

e. Either temporary seeding, mulching or other suitable stabilization measures shall be used to protect exposed critical areas during construction or other land disturbance.

f. Drainage provisions shall accommodate increased runoff resulting from modified soil and surface conditions during and after development or disturbance.

g. Water runoff shall be minimized and detained on site whenever possible to control soil loss.

h. Sediment shall be retained on site.

i. Unless otherwise approved by Municipal Engineer, diversions, sediment basins, and similar required structures shall be installed prior to any other on-site grading or disturbance.

j. All erosion control measures shall be established at the start of construction and as directed by the Municipal Engineer's inspector, or the Township's authorized agent, Sussex County Soil Conservation District, during construction. Temporary stabilization of all disturbed soil area not under active construction is required within thirty (30) days. All cut and fill slope areas, where slope is greater than 3:1 must be stabilized immediately.

26-7 INSPECTION AND ENFORCEMENT.

26-7.1 Enforcement; Failure to Comply.

a. The requirements of Article I shall be enforced by the Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District. All Soil Erosion and Sediment Control Plan approvals grant access to the site for site inspections for enforcement and compliance to the Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District.

b. The Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, shall be notified, in writing, by the applicant at least seventy-two (72) hours prior to the start of any project.

c. The Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, may require necessary measures to be promptly installed and may require modifications to the plan when, in his judgment, such are necessary to properly control erosion and sediment.

d. In the event of failure to comply with the requirements of Article I, the Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District, may issue a stop-work order. The Municipal Construction Official may revoke building permits and refuse to issue further building permits based on stop-work orders.

e. No approval for occupancy of any building shall be granted unless all needed soil erosion and sediment control measures have been completed or substantially provided for in accordance with this Article. Prior to obtaining a Certificate of Occupancy, a Report of Compliance (ROC) must be obtained from the Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District. Conditional Report of Compliance (CROC) is issued when conditions prevent permanent stabilization. Temporary stabilization measures or erosion controls may be required. The Green Township Municipal Engineer, or his/her authorized agent, Sussex County Soil Conservation District, may elect to secure a cash performance guarantee to guarantee completion of the permanent stabilization work. The period for holding performance guarantees is determined by the Township Committee.

f. The applicant shall be required to have the certified plan on-site during construction.

g. The applicant shall bear the final responsibility for the installation and construction of all required soil erosion and sediment control measures.

26-8 FEES.

26-8.1 Fees; Soil Erosion and Sedimentation Control. Fees for application are as follows:

a. Soil erosion and sediment control plans reviewed and certified by the Sussex County Soil Conservation District fees are set by the District and approved by the State Soil Conservation Committee.

b. Soil erosion and sediment control plans reviewed and certified by the Green Township Municipal Engineer are set by the Green Township Fee Schedule.

c. Ordinary fees: reasonable fees shall be set by the Township Committee based on the costs for providing services. The Township Committee shall establish fee categories based on the types and sizes of construction projects as per Section 33-3 (f). Any person aggrieved on the set fee may appeal to the Township Committee as per Section 26-8.1 (d)

d. *Appeals to Green Township Planning Board or Zoning Board.* Application Fee—two hundred (\$200.00) dollars; escrow fee—five hundred (\$500.00) dollars. The Planning Board or Zoning Board is the authority to handle appeals regarding an approval or denial of the application. The Township Committee is the authority to handle application fee or escrow fee disputes.

e. Extraordinary fees: The Township fee schedule shall include the assessment of fees for reimbursement of extraordinary expenses resulting from enforcement actions taken. The township may seek reimbursement for litigation expenses including court costs and attorney's fees from the adverse party as part of a negotiated settlement agreement or where the Township prevails in any litigation action.

26-9 EXEMPTIONS.

26-9.1 Exemptions Enumerated. All requests for exemptions from this ordinance for a land disturbance activity shall be submitted to the Township by the owner or their authorized representative. Exemption requests shall be in writing and include a plot or site plan, resolution from the Township or other suitable documentation indicating the date the lot was created. Hardship exemptions or waivers shall not be authorized. The following activities shall be considered exempt:

- a. Land disturbance activities 5,000 square feet or less; and
- b. Single-family dwelling lots not regulated under the following:
 1. An application for a construction permit for any single-family dwelling unit, on any lot that has arisen from a subdivision approved after January 1, 1976 comprising two or more contiguous or non-contiguous single-family dwelling lots, the construction of which would disturb greater than 5,000 square feet is subject to the act, and the applicant/owner shall secure certification of a soil erosion and sediment control plan. The act shall also apply if any lots in the subdivision are conveyed to separate owners or if construction is by the same or a separate applicant, owner, builder, or contractor.
 2. The concurrent construction of two or more contiguous or noncontiguous single-family dwelling units, by the same applicant, owner, builder or contractor on lots which were part of a preexisting subdivision approved prior to

January 1, 1976, shall be subject to the act and this subchapter provided that the proposed cumulative land disturbance is greater than

5,000 square feet.

3. Land disturbance unless as otherwise defined in subsection 26-5.2.
- c. Use of land for gardening primarily for home consumption.
- d. Agricultural use of lands when operated in accordance with a farm conservation plan approved by the Green Township Municipal Engineer, or the Township's authorized agent, Sussex County Soil Conservation District.
- e. Land disturbance associated with any alteration or construction requiring a permit will automatically include soil removal if less than five thousand (5,000) square feet of land or area is disturbed.

26-10 APPEALS.

26-10.1 Appeals Procedure. Any person aggrieved by any decision or action of the Green Township Municipal Engineer, under Article I may appeal to the Planning Board (unless the Zoning Board of Adjustment has administered an application for the property, in which case the Zoning Board of Adjustment shall hear the appeal). Such appeal shall be made in writing and filed with the appropriate Board Secretary within ten (10) days from the date of such decision or action, along with the appropriate fees as set forth in subsection 26-8.1d. The appellant shall be entitled to a hearing before the Planning Board/Zoning Board of Adjustment within thirty-five (35) days from the date of the complete application of appeal with accompanying paperwork and fees, unless additional time is mutually agreed upon by the Board and the aggrieved party. All such proceeding shall be memorialized in the Board's minutes. Appeals from actions of the District may be taken to the District Board of Supervisors or the State Soil Conservation Committee. Application/Escrow fee disputes are filed with the Township Committee and they will set their own hearing date.

26-11 PENALTIES.

26-11.1 Violations and Penalties. If any person violates any of the provisions of this Article I, any standard promulgated pursuant to the provisions of this Act, or fails to comply with the provisions of a certified plan the Municipality, or its authorized agent, Sussex County Soil Conservation District, may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations and the court may proceed in a summary manner. Any person who violates any of the provisions of this Act, any standard promulgated pursuant to this Act or fails to comply with the provisions of a certified plan shall be liable to a penalty of not less than twenty-five (\$25.00) dollars nor more than three thousand (\$3,000.00) dollars to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.). The Superior Court, County Court, County District Court and Municipal Court shall have jurisdiction to enforce the Penalty Enforcement Law. If the violation is of a continuing

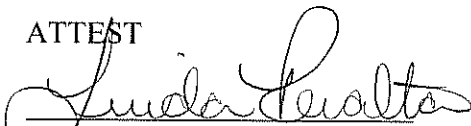
nature, each day during which it continues shall constitute an additional separate and distinct offense..

SECTION 3: If any section, subsection, paragraph, sentence or any part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

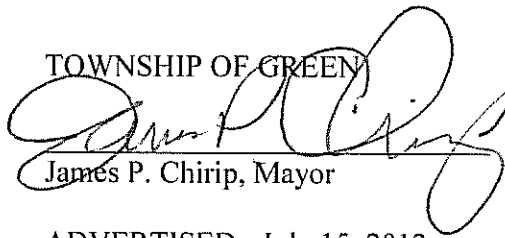
SECTION 4: All Ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5: This ordinance shall take effect after final passage and publication as prescribed by law.

ATTEST


Linda Peralta, Clerk

TOWNSHIP OF GREEN


James P. Chirip, Mayor

INTRODUCED: July 9, 2012
PUBLIC HEARING: August 6, 2012
ADVERTISED: 08/10/2012

ADVERTISED: July 15, 2012
ADOPTED: 08/06/2012

Vote on Adoption of Ordinance No. 2012-07:

	AYE	NAY	ABSTAIN	ABSENT
Mr. Bilik	✓			
Mr. Conkling	✓			
Mr. Michaud				✓
Mrs. Phillips	✓			
Mr. Chirip	✓			