

CHAPTER 23A

SOIL EROSION AND SEDIMENTATION CONTROL

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Councilman Clem Seifert introduced the following Ordinance which was seconded by Councilman J. Henry Banks and read:

**AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION (AMENDING CHAPTER 23A OF THE CITY CODE)**

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Henderson that the text of Chapter 23A of the City Code be rewritten to read as follows:

"Sec. 23A-1. Title

This ordinance may be cited as the City of Henderson Soil Erosion and Sedimentation Control Ordinance.

Sec. 23A-2. Purposes

This ordinance is adopted for the purposes of:

11-2-94

- a. Regulating certain land-disturbing activity to control

accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

b. Establishing procedures through which these purposes can be fulfilled.

Sec. 23A-3. Definitions

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

a. Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.

b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

c. Adequate Erosion Control Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

d. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

e. Borrow - means fill material which is required for on-site construction and is obtained from other locations.

f. Buffer zone - means the strip of land adjacent to a lake or natural watercourse.

g. Coastal Counties - means the following counties, Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrell and Washington.

h. Commission - means the North Carolina Sedimentation Control Commission.

i. Completion of Construction or Development - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

j. Department - means the North Carolina Department of Environment, Health, and Natural Resources.

k. Director - Means the Director of the Division of Land

Resources of the Department of Environment, Health, and Natural Resources.

l. Discharge Point - means that point at which runoff leaves a tract of land.

m. District - means the Vance Soil and Water Conservation District created pursuant to Chapter 139 North Carolina General Statutes.

n. Energy Dissipator - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

o. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

p. Ground cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

q. High Quality Waters - means those classified as such in 15A NCAC 2B.0101(e) (5) - General Procedure which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).

r. High Quality Water(HQW) Zones - means area in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile and drain to HQW's.

s. Lake or Natural Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

t. Land Disturbing Activity - means any use of the land by person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

u. Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provision of the Act.

v. Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural

environmental conditions undisturbed by man.

w. Person - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

y. Person Responsible for the Violation - as used in this Ordinance and G.S. 113A-64, means:

(a) the developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity or

(b) the landowner or person in possession or control of the land when has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of the Ordinance, The Act, or any order adopted pursuant to this Ordinance or The Act as imposes a duty upon him.

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

aa. Plan - means an erosion and sedimentation control plan.

bb. Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

cc. Sedimentation - means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

dd. Siltation - means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

ee. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey storm water through and from a given drainage area.

ff. Storm Water Runoff - means the direct runoff of water resulting from precipitation in any form.

gg. Ten-year Storm - means the surface runoff resulting from

a rainfall of an intensity expected to be equalled or exceeded, on the average once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

hh. Tract - means all contiguous land and bodies of water

ii. Twenty-five year storm - means the surface runoff resulting from a rainfall of an intensity expected to be equalled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

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

kk. Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

ll. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

mm. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.

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

#### SEC. 23A-4. Scope and Exclusions

This ordinance shall apply to land-disturbing activities undertaken by any person, with the following exclusions:

a. Those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton and peanuts; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals; bees and apiary products, fur animals; and

b. Those undertaken on forestland for the production and

harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) as adopted by the Department. If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract; and

c. Activity undertaken by persons as defined in G.S. 113A-52(8) who are otherwise regulated by the provisions of the Mining Act of 1971, G.S. 74-46 through G.S. 74-68; and

d. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

#### SEC. 23A-5. General Requirements

a. Plan Required - No person shall initiate any land-disturbing activity which uncovers more than one-half acre (or more than one acre if only a single family residence is involved) without having an erosion control plan approved by the City Engineer.

b. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

c. More restrictive Rules Shall Apply - Whenever conflicts exist between federal state, or local laws, ordinance, or rules, the more restriction provision shall apply.

#### SEC. 23A-6. Basic Control Objectives.

An erosion and sedimentation control plan may be disapproved pursuant to Section 17 of this Ordinance if the plan fails to address the following control objectives;

a. Identify Critical Areas - On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

c. Limit Exposed Areas - All land-disturbing activity is to

be planned and conducted to minimize the size of the area to be exposed at any one time.

d. Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

f. Manage Storm Water Runoff - When the increase in the velocity of storm water runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increase sedimentation of the stream.

SEC. 23A-7. Mandatory Standards for Land-Disturbing Activity.

No land disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

a. Buffer Zone

1. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the City Engineer may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

2. Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with 25 percent of the strip

nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

3. The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

4. Where a temporary and minimal disturbance is permitted as an exception by Section 7 (a) (1) of this ordinance, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

5. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards", in these waters.

b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

c. Ground Cover - When land-disturbing activity is undertaken on a tract comprising more than one-half acre, if more than one-half acre (or more than one acre if only a single family residence is involved) is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 8 (b) (5) of this ordinance, provisions for a ground cover sufficient to restrain erosion must be accompanied within 30 working days or 120 calendar days following completion of construction or development whichever period is shorter.

d. Prior Plan Approval - No person shall initiate any land-disturbing activity on a tract if more than one-half acre (or more than one acre if a single family residence is involved) is to be uncovered unless thirty or more days prior to

initiating the activity, an erosion and sedimentation control plan for such activity if filed with and approved by the City Engineer.

SEC. 23A-8. Design and Performance Standards.

a. Except as provided in Section 23A-8 (b) (2) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's National Engineering Field Manual for Conservation Practices, or other acceptable calculation procedures.

b. In High Quality Water (HQW) zones the following design standards shall apply:

1. Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

2. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed, and constructed to provide protection from the runoff of the 25 year storm which produces the maximum peak rate of run off as calculated according to procedures in the United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this State or the United States or any generally recognized organization or association.

3. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that 2 year storm transported into the basin by the runoff of that 2 year storm which produces the maximum peak rate of runoff as calculated according to procedures i the United States Department of Agriculture Soil Conservation Services "Nation Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state of the United States or any generally recognized organization or association.

4. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 1 vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle from side slopes shall be sufficient to restrain the accelerated erosion.

5. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

SEC. 23A-9. Storm Water Outlet Protection

a. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10 year storm run off in the receiving watercourse to the discharge point does not exceed the greater of:

1. The velocity established by the table in Paragraph (d) of this Section; or
2. The velocity of the 10 year storm runoff in the receiving watercourse prior to development.

If conditions (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

b. Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectional secondary consequences.

The Commission recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (1) avoid increase in surface runoff volume and velocity by including measures to promote infiltration to compensate for increase runoff from areas rendered impervious.
- (2) Avoid increases in stormwater discharge velocities

by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved section.

(3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped section to complex structures.

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

c. Exceptions - This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

d. The following is a table for maximum permissible velocity for storm water discharges:

MAXIMUM PERMISSIBLE VELOCITIES

MATERIAL	F.P.S.	M.P.S.
Fine Sand(noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts(collodial)	5.0	1.5
Coarse gravel(noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard plans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels and by 0.8 for highly sinuous channels.

Sec. 23A-10. Borrow and Waste Areas.

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Departments Division of Solid Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

Sec. 23A-11. Access and Haul Roads.

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

Sec. 23A-12. Operations in Lakes or Natural Watercourses.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration

of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

Sec. 23A-13. Responsibility for Maintenance.

During the development of a site, the persons conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved Plan or any provision of this Ordinance, The Act, or any order adopted pursuant to this Ordinance or The Act. After site development, the land owner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except these measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

Sec. 23A-14. Additional Measures.

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

Sec. 23A-15. Existing uncovered Areas.

a. All uncovered areas existing on the effective date of this ordinance which resulted from land-disturbing activity, exceed one-half acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

b. The City Engineer will serve upon the landowner or other person in possession or control of the land a written notice of violation by Registered or Certified Mail, Return Receipt Requested or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

c. The City Engineer reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

d. This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Sec. 23A-16. Permits.

a. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a permit therefore from the City Engineer, except that no permit shall be required for any land-disturbing activity:

(1) for the purposes of fighting fires; or

(2) for the stock piling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or

(3) That does not exceed one-half acre (or more than one acre if only a single family residence is involved) in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

b. The applicant shall pay the City the sum of one hundred (\$100.00) to cover administrative and other costs, at the time the permit is applied for.

Sec. 23A-17. Erosion and Sedimentation Control Plans.

a. An erosion control plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity is to be undertaken on a tract comprising more than one-half acre, if more than one-half acre is to be uncovered (or more than one acre if only a single family residence is involved).

The plan shall be filed with the City Engineer and the Vance Soil and Water Conservation District, at least 30 days prior to the commencement of the proposed activity.

b. Persons conducting land-disturbing activity on a tract which covers one-half or more acres shall file three (3) copies of the Erosion Control Plan with the City Engineer at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the City Engineer either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the City Engineer will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

c. Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, The Act, this ordinance, or rules or orders adopted or issued pursuant to this Ordinance.

d. The Vance Soil and Water Conservation District within 20 days of receipt of any plan, or (within such additional time as may be prescribed by the City Engineer) shall review such plan and submit this comments and recommendations to the City Engineer. Failure of the Soil and Water Conservation District to submit it comments and recommendations within 20 days or within the prescribed additional time will not delay final action on the plan.

e. The City Engineer will review each complete plan submitted to him and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve or disapprove a complete erosion sedimentation control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The City Engineer must approve or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If following commencement of a land-disturbing activity pursuant to an approved plan, the City Engineer determines that the plan is inadequate to meet the requirements of this ordinance, the City Engineer may require such revisions as are necessary to comply with this ordinance.

f. Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et. seq.) shall be deemed incomplete until a complete environmental document is available for review. The City Engineer shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Section 23A-17(e) of this ordinance shall not begin until a complete environmental document is available for review.

g. The plan required by this section shall contain

architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the City Engineer on request.

h. An erosion control plan may be disapproved upon a finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(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 The Act and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to The Act or a local ordinance adopted pursuant to The Act which is due and for which no appeal is pending.

(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 The Act or:

(4) Has failed to substantially comply with State rules or local ordinance and regulations adopted pursuant to The Act.

For purposes of this subsection (h) an applicants record may be considered for only the two years prior to the application date.

i. Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application/. Until such time as said amendment is approved by the City Engineer, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

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

Sec. 23A-18. Appeals.

a. Except as provided in Section 18 (b) of this ordinance the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

1. The disapproval or modifications of any proposed erosion control plan by the City Engineer shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.

2. Hearings held pursuant to this section shall be conducted by the Henderson Board of Adjustment within 45 days after the date of the appeal or request for a hearing.

3. At such hearing, each side shall have an opportunity to present evidence (in person or through witnesses, exhibits or affidavits); strict rules of evidence and judicial procedure need not be followed so long as the Board of Adjustment deems the evidence worthy of consideration. All hearings shall be open to the public.

4. The Board of Adjustment of the City of Henderson, will render its final decision on any erosion control plan upon which a hearing is requested within 10 days of the date of the hearings.

5. If the Board of Adjustment, upholds the disapproval or modifications of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the local government's decision to the North Carolina Sedimentation Control Commission as provided in Section 113A-61 (c) of the General Statutes and Title 15 NCAC 4B .0018(d).

b. In the event that an erosion control plan is disapproved pursuant to Section 23A-17(h) of this ordinance, the City Engineer shall notify the Director of the Division of Land Resources of such disapproval within 10 days. The City Engineer shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the City Engineer's disapproval of the plan pursuant to Section 23A-17 (h) of this ordinance directly to the Commission.

Sec. 23A-19. Inspections and Investigations.

a. Agents or officials of the City Engineering Department shall provide for inspection of land-disturbing activities to ensure compliance with The Act, this ordinance, or rules or ordered adopted or issued pursuant to this ordinance, and to determine whether the activity is being conducted in accordance with an approved plan and whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval.

b. No person shall willfully resist, delay, or obstruct a authorized representative of the commission, an authorized representative of a local government, or an employee or an agent of the department while the representative, employee, or agent is inspecting or attempting to inspect a land-disturbing activity under this section.

c. If, through inspection it is determined that a person engaged in land-disturbing activity has failed to comply with The Act, this Ordinance, or rules, or orders adopted or issued pursuant to this ordinance, or has failed to comply with an approved plan, a notice of violation shall be served upon that person by registered or certified mail or other means reasonably calculated to give actual notice. The notice shall set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which such measures must be completed, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

d. The City shall have the power to conduct such investigation as it may reasonably deems necessary to carry out is duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

No person shall refuse entry or access to any authorized representative or agent of the City, who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out of his official duties.

e. The City Engineer (and also the Board of Adjustment, upon appeal) shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

#### Sec. 23A-20. Penalties.

a. Civil Penalties.

(1) Any person who violates any of the provisions of this ordinance, or rules or orders adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than \$500, except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (3) of this subsection. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by Registered or Certified Mail Return Receipt Requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of the receipt of the Notice of Violation. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstruction, hampering, or interfering with an authorized representative while in the process of carrying out his official duties. Each day of continuing violation shall constitute a separate violation. Notice of the assessment shall be by registered or certified mail or other means reasonably calculated to give actual notice.

(2) The City Council of the City of Henderson shall determine the amount of civil penalty to be assessed under this subsection and shall make written demand for payment upon the person in violation, and shall set forth in detail a description of the violation for which the penalty has been imposed. In determining the amount of the penalty the City Council shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Notice of the assessment shall be by registered or certified mail or other means reasonably calculated to give actual notice.

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the City Attorney for institution of a civil action in the name of the City in the appropriate division of the General Courts of Justice for recovery of the penalty. Such civil actions must be filed within three (3) years of the date the final decision was served on the violator.

(3) Civil penalties collected pursuant to this ordinance

shall be used or disbursed as directed by G.S. 113A-64(a).

b. Criminal Penalties

Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues an land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000. or both, in the discretion of the court.

Sec. 23A-21. Injunctive Relief.

a. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this ordinance, or any rule or order adopted or issued pursuant to this ordinance, or any term, condition, or provision of an approved erosion control plan, it may, either before to after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the City for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Vance County.

b. Upon determination by a court than an alleged violation is occurring or is threatened, it shall enter such orders or judgements as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

Sec 23A-22. "City Engineer" defined.

As used in this chapter the "City Engineer" shall be defined to include the City Engineer or the duly authorized assistant City Engineer, or any other person or persons to whom the City Manger has delegated the enforcement of this Chapter.

Sec 23A-23. Severability.

If any section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect".

Sec 23A-24. Revisions.

The City shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions. If

standards and provision of this ordinance currently meet or exceed the required revisions the Commission shall be so notified within 90 days of their receipt.

The foregoing Ordinance shall be in full force and effect from and after August 14, 1995.

The foregoing Ordinance having been submitted to a roll call vote, received the following votes:

AYES	NOES	ABSENT
Ernest Terry		
Clem Seifert		
Glenn W. Powers		
James D. O'Geary		
John P. Wester		
Henry Banks		
J. Edwin Fisher		