

October 23, 2000

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Monday, October 23, 2000

7:00 P.M. Regular Session

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman MaryAnn E. Black, Vice-Chairman Ellen W. Reckhow, and Commissioners William V. Bell, Joe W. Bowser, and Becky M. Heron

Absent: None

Presider: Chairman Black

Opening of Regular Session

Chairman Black called the Regular Session to order with the Pledge of Allegiance.

Agenda Adjustments

Commissioner Heron announced that the Veterans Association would be having a celebration in honor of our veterans on November 11, 2000 at the courthouse.

Interim County Manager Carolyn P. Titus requested agenda item No. 10, "Presentation on Educational Tours by Cooperative Extension for Durham's Elected Officials," be removed from the agenda. This item will be placed on the November worksession agenda.

Commissioner Bowser announced that the local chapter of the NAACP would hold its Annual Freedom Fund Banquet on Saturday, October 28, 2000. Dr. Charles Johnson and Dr. Evelyn Schmidt would be honored this year.

Chairman Black gave each Commissioner a tag to wear on December 2, 2000 for "Light Up Durham."

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Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve the September 11 and the September 25, 2000 Regular Session Minutes of the Board as submitted.

The motion carried unanimously.

City of Medicine Program—High School Awards

Chairman MaryAnn E. Black requested the winners and runners-up of the City of Medicine High School Awards be placed on the agenda so the Commissioners could recognize the accomplishments of the four seniors.

Dr. William Anlyan, Chairman of the City of Medicine Board of Directors, introduced the winners in the categories of medical specialist and allied health and the runners-up in the two categories. The winners received \$2,000 and \$1,000 was given to the runners-up.

The winner in the medical specialist category was Racquel Foster of Southern High School. The allied health winner was Mary Corrington of Riverside High School. The runner-up in the medical specialist category was Tamrah Parker of Southern High School. Rebecca McIlmoyle of Southern High School was the runner-up in the allied health category.

Dr. Anlyan also introduced Ms. Barbara Baker, Chair of the Selection Committee.

No official action was taken on this agenda item.

Proclamation for “United Nations Day”

Vice Chairman Ellen W. Reckhow asked that a proclamation commemorating United Nations Day be issued in observance of the 55th anniversary of the United Nations Charter coming into force. Jerrold Berke, President of the West Triangle Chapter of the United Nations Association, received the proclamation with words of appreciation.

County Manager's Recommendation: Present the proclamation to Mr. Jerrold Berke and representatives of the United Nations Association.

Vice-Chairman Reckhow read the proclamation into the record:

PROCLAMATION

WHEREAS, in 1945 the United Nations was founded with the objectives of saving succeeding generations from the scourge of war and promoting the advancement of international law, social programs, and a better standard of living in larger freedom; and

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WHEREAS, the United States was a founding member of the United Nations and continues to be a leader in the world supporting democratic values and the peaceful resolution of conflict; and

WHEREAS, if the United Nations is to continue its important work in the advancement of human rights, the promotion of better standards of living everywhere, particularly in the poorest countries and counties of the world, the protection of the environment, preventing and resolving conflict, and promoting humane and democratic values, it must have support from the United States government and American citizens; and

WHEREAS, the anniversary of the U. N.'s founding is observed as U. N. Day each year on October 24th :

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Durham County Board of Commissioners, do hereby proclaim October 24, 2000 as

UNITED NATIONS DAY

in Durham County and urge all citizens to rededicate themselves to the peaceful resolution of the world's problems through the United Nations, and to take an active part in the events and activities being conducted to commemorate the founding of the United Nations.

This the 23rd day of October, 2000.

Consent Agenda

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve the following consent agenda items:

- * (a) Budget Amendment No. 00BCC000018 to Recognize Grant Money for the Durham County Teen Court "Let's Talk" Victim Offender Mediation Program (approve the budget amendment);
- * (b) Property Tax Releases and Refunds (August 2000) (accept the property tax release and refund report as presented and authorize the Tax Administrator to adjust the tax records as outlined by the report);
- * (c) Property Tax Releases and Refunds (September 2000) (accept the property tax release and refund report as presented and authorize the Tax Administrator to adjust the tax records as outlined by the report);
- * (d) Street Annexation Petition—Royal Oaks Drive (Mason Woods Subdivision) (adopt the resolution to approve the addition of Royal Oaks Drive [Mason Woods Subdivision] to

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the state's road maintenance system subject to the certification of eligibility by the appropriate officials of the NC Department of Transportation);

- * (e) Amendments to the Sedimentation and Erosion Control Ordinance (approve the ordinance as amended);
- * (f) Amendments to the Animal Control Ordinance (approve the ordinance as amended); and
- * (g) Budget Amendment No. 00BCC000017 Durham Public Schools Request for Capital Funds (approve the budget transfer from the County's Human Services function to Education in the amount of \$500,000 to provide the capital match for Durham Public Schools).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda 6(a). Budget Amendment No. 00BCC000018 to Recognize Grant Money for the Durham County Teen Court "Let's Talk" Victim Offender Mediation Program (approve the budget amendment).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2000-01 Budget Ordinance
Amendment No. 01BCC000018

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2000-01 Budget Ordinance is hereby amended to reflect budget adjustments for the Youth Coordinating Board.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Human Services	\$233,629,234	\$29,152		\$233,658,386
<u>Revenues</u>				
Intergovernmental	\$196,732,453	\$29,152		\$196,761,605

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 23rd day of October, 2000.

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(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda 6(b). Property Tax Releases and Refunds (August 2000) (accept the property tax release and refund report as presented and authorize the Tax Administrator to adjust the tax records as outlined by the report).

Due to property valuation adjustments for over assessments, listing discrepancies, duplicate listings, and clerical errors, etc., the report details tax releases and refunds for the month of August 2000.

Releases & Refunds for 2000 Taxes:

Personal	\$ 1,194.54
Registered Vehicles	\$35,364.47
Vehicles Fees	<u>\$ 665.00</u>
Total for 2000 Taxes and Fees	\$37,224.01

Prior Years (1993-1999) releases and refunds for August 2000 are in the amount of \$42,917.73.

Total Current Year and Prior Year Releases and Refunds \$80,141.74

(Recorded in Appendix A in the Permanent Supplement of the October 23, 2000 Minutes of the Board.)

Consent Agenda 6(c). Property Tax Releases and Refunds (September 2000) (accept the property tax release and refund report as presented and authorize the Tax Administrator to adjust the tax records as outlined by the report).

Due to property valuation adjustments for over assessments, listing discrepancies, duplicate listings, and clerical errors, etc., the report details tax releases and refunds for the month of September 2000.

Releases & Refunds for 2000 Taxes:

Real	\$22,834.37
Personal	\$36,242.74
Registered Vehicles	\$23,456.77
Vehicles Fees	\$ 315.00
Solid Waste Fees	<u>\$ 1,430.00</u>
Total for 2000 Taxes and Fees	\$84,278.88

Prior Years (1983-1999) releases and refunds for September 2000 are in the amount of \$94,386.51.

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Total Current Year and Prior Year Releases and Refunds \$178,665.39

(Recorded in Appendix B in the Permanent Supplement of the October 23, 2000 Minutes of the Board.)

Consent Agenda 6(d). Street Annexation Petition—Royal Oaks Drive (Mason Woods Subdivision) (adopt the resolution to approve the addition of Royal Oaks Drive [Mason Woods Subdivision] to the state's road maintenance system subject to the certification of eligibility by the appropriate officials of the NC Department of Transportation).

The resolution follows:

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NORTH CAROLINA STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR ADDITION OF STATE MAINTAINED
SECONDARY ROAD SYSTEM

North Carolina

County of Durham

Road Description: Royal Oaks Drive (Mason Woods Subdivision)--0.1 miles north of the intersection of Route SR 1002 and Route SR 1461

WHEREAS, the attached petition has been filed with the Durham Board of County Commissioners requesting that the above described road, the location of which has been indicated in red on the attached map,* be added to the secondary road system; and

WHEREAS, the Board of County Commissioners is of the opinion that the above described road should be added to the secondary road system, if the road meets minimum standards and criteria established by the Division of Highways of the Department of Transportation for the addition of roads to the system:

NOW, THEREFORE, BE IT RESOLVED by the Durham Board of County Commissioners that the Division of Highways is hereby requested to review the above described road, and to take over the road for maintenance if it meets established standards and criteria.

CERTIFICATE

The foregoing resolution was duly adopted by the Durham Board of County Commissioners at a meeting on the 23rd day of October, 2000.

Witness my hand and official seal this the 24th day of October, 2000.

/s/ Garry E. Umstead

Clerk, Board of Commissioners
County of Durham

*In the office of the Clerk to the Board.

Consent Agenda 6(e). Amendments to the Sedimentation and Erosion Control Ordinance (approve the ordinance as amended) follow:

**ORDINANCE AMENDING THE DURHAM CITY/COUNTY SEDIMENTATION AND
EROSION CONTROL PROGRAM**

WHEREAS, the North Carolina Legislature has, through Article 4 of Chapter 113A of the North Carolina General Statutes established a Sedimentation Pollution Control Act and

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vested the North Carolina Department of Environment and Natural Resources with the authority to promulgate regulations further defining same which are set forth at Subchapter 4 of Title 15A of the North Carolina Administrative Code; and,

WHEREAS, the North Carolina Legislature has, through N.C.G.S. §113A-60 authorized local governments, acting individually, or jointly, to establish local programs which meet or exceed the requirements of that Act; and,

WHEREAS, the City and County of Durham have established a joint program which is administered by the County of Durham; and,

WHEREAS, the North Carolina Legislature has amended certain provisions of the Act, and upon review it has been determined that those and other changes should be made to the previously enacted Article III, of Chapter 14 of the Durham County Code of Ordinances; and,

WHEREAS, the North Carolina Legislature has, through N.C.G.S. §§ 113A-60, 153A-102, 153A-121, and 153A-123, vested the Board of County Commissioners with the authority to make these amendments to that Article.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH ORDAIN:

1) That Article III of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 14-51. Purposes.

This article is adopted for the purposes of:

- (1) 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
- (2) Establishing procedures through which these purposes can be fulfilled.

Sec. 14-52. Definitions.

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

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

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Act means the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it.

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.

Affiliate means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

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

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

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

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, Tyrrell, and Washington.

Commission means the state sedimentation control commission.

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.

Department means the state Department of Environment and Natural Resources.

Director means the director of the division of land resources of the Department of Environment and Natural Resources.

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

District means the Durham Soil and Water Conservation District created pursuant to G.S. ch. 139, and as amended.

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.

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

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

High quality water (HQW) zones means areas 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.

High quality waters means those classified as such in 15A NCAC 2B.0101(e)(5) – General Procedures, which is incorporated herein by reference to include further amendments pursuant to N.C.G.S. § 150b-14(c).

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.

Land-disturbing activity means any use of the land by any 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.

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 provisions of the Act. The Durham County Engineering Department, Sedimentation and Erosion Control Office, is the action agent for purposes of taking action under this article, which implements the joint program established by the City and County of Durham. Wherein this article specifies action will be taken by the local government, that is the intended office, except where the context clearly indicates otherwise.

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.

Parent means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Permit means a land-disturbing authorization issued by the sedimentation and erosion control office in accordance with this article.

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Person means an 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.

Person conducting land-disturbing activity means any person who may be held responsible for a violation of the Act or this article unless expressly provided otherwise by this article, the Act, or any order adopted pursuant to this article or the Act.

Person responsible for the violation, as used in this article and N.C.G.S. § 113A-64, means:

- (1) The developer or other person who has, or holds himself out as having, financial or operational control over the land-disturbing activity; or
- (2) The landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefited from it or he has failed to comply with any provision of this article, the Act, or any order adopted pursuant to this article or the Act which imposes a duty upon him.

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

Plan means an erosion and sedimentation control plan.

Protective cover. See "Ground cover."

Receiving watercourse means a lake, natural watercourse or other natural or manmade area into which stormwater runoff flows from a land-disturbing activity.

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.

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.

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.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

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Stormwater runoff means the direct runoff of water resulting from precipitation in any from.

Subsidiary means an affiliate that is directly or indirectly through one or more intermediaries, controlled by another person.

Ten-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled 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.

Tract or site means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled 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.

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

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.

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.

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

Working days means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken, as determined by the Sedimentation and Erosion Control Officer, or their designee, except where the context clearly indicates otherwise.

Sec. 14-53. Scope and exclusions.

This article shall apply to land-disturbing activities undertaken by any person within the planning jurisdictions of the County and City of Durham, with the following exclusions:

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- (1) Those undertaken on agricultural land for the production of plants and animals useful to man, as set forth in N.C.G.S. § 113A-52.01, including but not limited to:
 - a) Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
 - b) Dairy animals and dairy products;
 - c) Poultry and poultry products;
 - d) Livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals;
 - e) Bees and apiary products;
 - f) Fur animals;
- (2) Those undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, 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 article shall apply to such activity and any related land-disturbing activity on the tract;
- (3) Activity undertaken by persons as defined in N.C.G.S. § 113A-52(8) who are otherwise regulated by the provisions of The Mining Act of 1971, N.C.G.S. § 74-46—74-68;
- (4) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in N.C.G.S. § 113A-56(a); and
- (5) For the duration of an emergency, activities essential to protect human life.

Sec. 14-54. General requirements.

(a) *Plan required.* No person shall initiate any land-disturbing activity which uncovers more than one acre without having an erosion control plan approved by the county and city sedimentation and erosion control office.

(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.

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(c) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

Sec. 14-55. Basic control objectives.

An erosion and sedimentation control plan may be disapproved pursuant to section 14-66 if the plan fails to address the following control objectives:

- (1) *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.
- (2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (2) *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.
- (3) *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.
- (4) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (5) *Manage stormwater runoff.* When the increase in the velocity of stormwater 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 increased sedimentation of the stream.

Sec. 14-56. Mandatory standards for land-disturbing activity.

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

- (1) *Buffer zones.* Except where more stringent buffer requirements are specified in the Durham City/County Zoning Ordinance, the following requirements shall apply.
 - a) 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 25 percent of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout

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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 25 percent of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the county may approve plans which include land disturbing activity along trout waters when the duration of such disturbance would be temporary and the extent of such disturbance would be minimal. This subsection 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.

- b) 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 the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
 - c) 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.
 - d) Where a temporary and minimal disturbance is permitted as an exception by subsection (1)a. of this section, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Sedimentation and Erosion Control Officer.
 - e) 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.
- (2) *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 other adequate erosion control devices or structures. In any event, slopes left exposed will, within 15 working days or 30 calendar days, whichever period is shorter, of completion of any phase or grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion.
- (3) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract comprising more than 12,000 square feet, if more than 12,000 square feet is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain

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the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of such 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 subsection 14-57(b)(5) of this article, provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 30 calendar days following completion of construction or development, whichever is shorter.

- (4) *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract for which an erosion and sedimentation control plan is required by section 14-66 of this article unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the county and city sedimentation and erosion control office.
- (5) *Commencement of activity.* Prior to initiating land-disturbing activity, the person conducting such activity must notify the sedimentation and erosion control office of the date that such activity will begin.

Sec. 14-57. Design and performance standards.

- (a) Except as provided in subsection (b)(2) of this section, erosion and sedimentation control measures, structures, and devices shall be so planned, designed and constructed as to provide protection from the calculated maximum peak of runoff from the ten-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 calculation procedures acceptable to the Sedimentation and Erosion Control Officer, or their designee.
- (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, to 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 runoff as calculated according to the United States Department of Agriculture Soil Conservation Service's "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.

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- (3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40-micron (0.04mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "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.
- (4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one 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 for side slopes shall be sufficient to restrain accelerated erosion.
- (5) Ground cover sufficient to restrain erosion must be provided for any portion of land-disturbing activity in a HQW zone within 15 working days or 30 calendar days following completion of construction or development, whichever period is shorter.

Sec. 14-58. Permanent downstream protection of stream banks, channels and slopes.

(a) *Intent.* Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

(b) *Performance standard.* The land-disturbing activity shall be planned and conducted such that the velocity of stormwater runoff in the receiving watercourse at the point of discharge resulting from a ten-year storm after development shall not exceed the greater of:

- (1) The velocity specified according to the soil type in Table I, for a point of discharge into a receiving watercourse with bare soil or rock banks or bed;
- (2) The velocity specified according to the type of vegetation and depth of flow in Table II, for a point of discharge into a vegetated receiving watercourse; or
- (3) The velocity in the receiving watercourse determined for the ten-year storm prior to development.

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If the conditions enumerated in subsection (1), (2), or (3) of this subsection cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.

(c) *Slope protection.* When soils with slopes as indicated in Table III occur between a point of stormwater discharge and the next confluence of concentrated stormwater runoff, such areas, on- or off-site, shall be protected from accelerated erosion by diverting the stormwater discharge from those soil surfaces. Diversion may include the provision of piped, paved or armored storm drainage facilities.

(d) *Acceptable management measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable 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 increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased 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 sections.
- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities at the point of discharge. These may range from simple rip-rapped sections to complex structures.
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(e) *Exceptions.* This section shall not apply where it can be demonstrated, to the Sedimentation and Erosion Control Officer's satisfaction, that stormwater discharge velocities will not create an erosion problem in the receiving watercourses.

Sec. 14-59. 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 department's division of solid waste management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from

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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. 14-60. 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. 14-61. 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 alternation to flow characteristic is provided.

Sec. 14-62. Responsibility for maintenance.

During the development of a site, the person 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 article, the Act or any order adopted pursuant to this article or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

Sec. 14-63. Additional measures.

Whenever the Sedimentation and Erosion Control Officer, or their designee, 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 the additional protective action directed.

Sec. 14-64. Existing uncovered areas.

(a) All uncovered areas existing on the effective date of this article which resulted from land-disturbing activity, exceed 12,000 square feet, 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.

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(b) The Sedimentation and Erosion Control Officer, or their designee, 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 Sedimentation and Erosion Control Officer, or their designee, 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. 14-65. Permits.

(a) No person shall undertake any land-disturbing activity subject to this article without first obtaining a permit therefor from the Sedimentation and Erosion Control Officer, or their designee, except that no permit shall be required for any land-disturbing activity:

- (1) For the purpose of fighting fires;
- (2) For the stockpiling 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 is less than 12,000 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(b) A land-disturbing permit may be obtained upon submitting the fee, zoning compliance checkoff issued by the Durham City-County Planning Department, statement of financial responsibility and ownership, approved sedimentation and erosion control plan, if required, security deposit, if required, certification that tree protection fencing has been installed, if required, by obtaining approval of the proposed project by the city or county as necessary. The applicant shall submit three (03) copies of the plan, if required, to the Sedimentation and Erosion Control Officer, or their designee, at least 30 days prior to commencement of the proposed activity. The Sedimentation and Erosion Control Officer, or their designee, shall review permit applications for land disturbing activities of one acre or less and, within 14 calendar days of receipt thereof, shall notify the person submitting the application that it has been approved, approved with modifications, or disapproved. No permit shall be issued until such time as the local government is assured that the proposed land-disturbing activity will be carried out in accordance with this article and the approved sedimentation and erosion control plan, if

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required. A land-disturbing permit application may be disapproved for the same reasons that an erosion control plan may be disapproved, as set forth in section 14-66(i) of this ordinance.

(c) The fees charged for the administration and enforcement of this article shall be as prescribed by the county board of commissioners.

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

(e) When deemed necessary by the Sedimentation and Erosion Control Officer, or his designee, a preconstruction conference may be required.

(f) Land-disturbing activities exceeding 12,000 square feet undertaken without first obtaining a land-disturbing permit, but which are required by this article to obtain a land-disturbing permit, shall be subject to a permit fee of 200 percent of the current applicable fee, in addition to any civil penalty assigned per section 14-69.

(g) Display of permit. A land-disturbing permit issued under this article shall be prominently displayed until all construction is completed and all permanent sedimentation and erosion control measures are installed and the site has been substantially stabilized, as required.

(h) Improvement security. The Sedimentation and Erosion Control Officer, or their designee, shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Sedimentation and Erosion Control Officer determines the activity may result in significant off-site damage. The applicant shall be required to file with the local government an improvement security in the form of a performance bond or performance guarantee(s) approved by the County Attorney. The amount shall be deemed sufficient by the Sedimentation and Erosion Control Officer, or their designee, to cover all costs of protection or other improvements required for conformity with standards specified in this article. The security shall be released when the Sedimentation and Erosion Control Officer, or their designee, has certified that all of the requirements of this article have been met. Forfeiture of the improvement security shall not release the person conducting the land disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this article, the Act, or any rule or order promulgated in furtherance thereof.

(i) Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under this article until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer, or their designee.

(j) To encourage the use of larger, more efficient sediment trapping riser-type basins, the Sedimentation and Erosion Control Officer, or their designee, is authorized to charge a reduced

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fee for all land disturbing in excess of ten acres on a given project. To qualify for the reduced fee, which shall be as prescribed by the Board of County Commissioners, the project or development must meet the following criteria:

- (1) Fee reduction areas must be tributary to the basin.
- (2) Basin shall be designed to settle the 40-micron particle with minimum settling efficiency of 70 percent during the two-year storm event and design must be based on all up stream disturbed areas and tributary drainage area.
- (3) Basin may not be installed in a live stream.
- (4) Existing ponds and lakes may not be used as a sediment basin.
- (5) One party must retain operational control of the basin and all land qualified for fee reduction. Sold outparcels must be permitted separately. Sale of land between the basin and other disturbed areas disqualifies upstream areas for the reduced fees.
- (6) Performance bond may be adjusted as the amount of disturbed area changes.
- (7) Additional areas may be added per the criteria enumerated in this subsection only as long as the basin is properly installed and maintained.

Permit revocation and/or other enforcement activity for failure to maintain the basin will affect all upstream land-disturbing activities.

Sec. 14-66. Erosion and sedimentation control plans.

(a) An erosion control plan shall be prepared for all land-disturbing activities subject to this article whenever the proposed activity is to be undertaken on a tract comprising more than one acre, if more than one acre is to be uncovered; or on a tract comprising 12,000 square feet or more in water quality critical and/or water quality basin areas, as defined in the Durham City-County Zoning Ordinance, if 12,000 square feet or more are to be uncovered. The Sedimentation and Erosion Control Officer, or their designee, may require an erosion control plan for any land-disturbing activity when off-site damage is occurring, or if the potential for significant off-site damage exists. Additionally, a plan and permit may be required when the applicant, or a parent, subsidiary, or other affiliate of the applicant, has engaged in the activities enumerated in Section 14-66(i).

	<i>Less than 12,000 square feet</i>	<i>12,000 square feet- 1 acre</i>	<i>More than 1 acre</i>
Plan	MR	MR(*R)	R
Permit	MR	R	R

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Plan to District

R

MR—May be required when off-site damage is occurring or if the potential for significant off-site damage exists, or if a parent, subsidiary, or other affiliate of the applicant, has engaged in the activities enumerated in section 14-66(i).

R—Required

*R—Required in water quality critical area (WQCA), and water quality basin area (WQBA), Lake Michie/Little River Critical Area (M/LR-A), Lake Michie/Little River Basin/Protected Area (M/LR-B), Falls and Jordan Critical Area (F/J-A) and Eno Critical Area (E-A).

(b) Three copies of the plan shall be filed at least 30 days prior to the commencement of the proposed activity with the county and city sedimentation and erosion control office, which will forward it to the Durham Soil and Water Conservation District. A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the Director of the State Division of Water Quality. One copy of the approved plan shall be kept on file at the job site. After approving the plan, if the Sedimentation and Erosion Control Officer, or their designee, upon inspection of the job site, determines that a significant risk of off-site sedimentation exists, the Sedimentation and Erosion Control Officer, or their designee, will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Sedimentation and Erosion Control Officer, or their designee.

(1) The approval of an erosion control plan is conditioned on the applicant's compliance with federal, state and local water quality laws, regulations, and rules.

(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 principle 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 this state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article.

(d) The Durham Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the county and city sedimentation and erosion control office within 20 days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the soil and water conservation district and the county and city sedimentation and erosion control office. Failure of

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the soil and water conservation district to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(e) The county and city sedimentation and erosion control office will review each complete plan submitted to it 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 and sedimentation control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The Sedimentation and Erosion Control Officer, or their designee, must approve, approve with modifications, or disapprove 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 Sedimentation and Erosion Control Officer, or their designee, determines that the plan is inadequate to meet the requirements of this article, the Sedimentation and Erosion Control Officer or their designee, may require such revisions as are necessary to comply with this article. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. Plans for which no permit has been issued shall expire one year from the approval date.

(f) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (N.C.G.S. §113A-1 *et seq.*) shall be deemed incomplete until a complete environmental document is available for review. The county and city sedimentation and erosion control office shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to subsection (e) of this section shall not begin until a complete environmental document is available for review.

(g) The plan required by this article 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 article. Plan content may vary to meet the needs of specific site requirements.

Detailed guidelines for plan preparation may be obtained from the Sedimentation and Erosion Control Officer, or their designee, on request.

(h) Sedimentation and erosion control plans shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, registered architect, registered land surveyor, or certified professional sediment and erosion control specialist. The Sedimentation and Erosion Control Officer, or their designee, may deem such a seal and signature is not necessary due to simplicity of some sites (as the absence of sensitive geographical features and receiving watercourses) and the limited nature of the erosion control measures required.

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(i) An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to 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 by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to N.C.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 ordinances and regulations adopted pursuant to the Act.

For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.

(j) 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 described in this section. Until such time as such amendment is approved by the Sedimentation and Erosion Control Officer, or their designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

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

Sec. 14-67. Appeals.

(a) Except as provided in subsection (b) of this section, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

- (1) The disapproval or modification of any proposed erosion control plan or the refusal to issue a land-disturbing permit by the Sedimentation and Erosion Control Officer, or their designee, shall entitle the person submitting the plan, or applying for the permit, to a hearing if such person submits written demand to the Clerk to the Board for a hearing within 15 days after receipt of written notice of disapproval or modifications. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.

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- (2) Hearings held pursuant to this section shall be conducted by the Board of County Commissioners within 15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later.
- (3) If the Board of County Commissioners upholds the disapproval or modification of a proposed erosion and sedimentation control plan or refusal to issue a permit following the public hearing, the person submitting the plan or permit application shall then be entitled to appeal the Board of County Commissioners' decision to the state sedimentation control commission as provided in G.S. § 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 subsection 14-66(i) the county and city sedimentation and erosion control office shall notify the director of the division of land resources of such disapproval within ten (10) days. The county and city sedimentation and erosion control office shall advise the applicant and the director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the county and city sedimentation and erosion control office's disapproval of the plan pursuant to subsection 14-66(i) directly to the commission.

Sec. 14-68. Inspections and investigations.

(a) Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer may periodically inspect land-disturbing activities to ensure compliance with the Act, this article or rules or orders adopted or issued pursuant to this article, and to determine 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 of each erosion control plan.

(b) No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.

(c) If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this article, or rules or orders adopted or issued pursuant to them, or has failed to obtain a land-disturbing permit or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, this article, or rules, or orders adopted pursuant to this article and inform the person of the actions that need to be taken to comply with the Act, this article, or rules or orders adopted pursuant to this article. 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

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engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

(d) The Sedimentation and Erosion Control Officer, or their designee, shall have the power to conduct such investigations as it may reasonably deem necessary to carry out their duties as prescribed in this article, 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.

(e) The Sedimentation and Erosion Control Officer, or their designee, 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. 14-69. Penalties.

(a) *Revocation of permits.*

- (1) The County Engineer shall have the power to revoke land-disturbing permits issued pursuant to this article. When the Sedimentation and Erosion Control Officer, or their designee, proposes to the County Engineer that they revoke a land-disturbing permit, the Sedimentation and Erosion Control Officer, or their designee, shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing
- (2) Should the County Engineer determine that the land-disturbing permit should be revoked then they shall serve the permittee, or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.
- (3) The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of County Commissioners by submitting a written demand to the Clerk to the Board for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.
- (4) No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice

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and before reissuance of a land-disturbing permit or decision of the Board of County Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer, or their designee, has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100 percent of the current application fee.

(b) *Civil penalties.*

- (1) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article or who initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit shall be subject to a civil penalty. The maximum civil penalty for a violation shall be \$5,000.00. A civil penalty may be imposed from the date the violation was detected. Each day of continuing violation shall constitute a separate violation.
- (2) The Sedimentation and Erosion Control Officer shall impose the civil penalty authorized by this section. The Sedimentation and Erosion Control Officer shall notify the person upon whom the civil penalty is imposed, of the amount of the penalty and the reason for the penalty. In determining the amount of the penalty the Sedimentation and Erosion Control Officer shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation has committed willfully, and the prior record of the violator in complying or failing to comply with this article, the Act, and rules promulgated in furtherance thereof. The notice of civil penalty shall be served by any means authorized under G.S. §1A-1, Rule 4, and shall direct the violator to either pay the civil penalty or contest the civil penalty, within 30 days after receipt of the notice of civil penalty, by-filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The Administrative Law Judge hearing the matter shall make a recommended decision to the Board of County Commissioners. If either party wishes to challenge the recommended decision they must file with the Clerk to the Board, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within thirty (30) days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision will be reviewed by the Board of County Commissioners within ninety (90) days after the official record in this matter is served upon the Clerk to the Board by the Office of Administrative Hearings. The Board of

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County Commissioners shall adopt or modify the recommended decision consistent with the provisions of N.C.G.S. § 150B-36. Appeal of the decision of the Board of County Commissioners shall be in accordance with Article 4 of Chapter 150B of the General Statutes.

(3) Repealed.

(4) If payment is not received within 30 days after demand for payment is made the matter will be referred to the county attorney's office for initiation of a civil action to recover the amount of the civil penalty. A civil penalty that is not contested is due when the violator is served with a notice of civil penalty. A civil penalty that is contested is due at the conclusion of the administrative and judicial review of the civil penalty.

(5) The clear proceeds of civil penalties collected pursuant to this article shall be credited to the Durham Public Schools in accordance with the provisions of N.C.G.S. § 115C-437.

(c) *Criminal penalties.* Any person who knowingly or willfully violates any provision of the Act, this article, or rule or order adopted or issued pursuant to the Act or this article, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in N.C.G.S. §113A-64.

(d) *Enforcement alternatives.* Violation of any provision of this article shall result in forfeiture of any applicable security or portion thereof required under subsection 14-65(g).

Sec. 14-70. Injunctive relief.

(a) Whenever there is reasonable cause to believe that any person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to the Act, this article, or any term, condition or provision of an approved erosion control plan, the county attorney may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action as provided in Section 1-6 of this Code of Ordinances, above, for injunctive relief to restrain the violation or threatened violation in superior court.

(b) 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 article, or the Act.

Sec. 14-71. Restoration of areas affected by failure to comply.

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The Sedimentation and Erosion Control Officer may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by N.C.G.S. §113A-57(3) and Section 14-56(3) of this article, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this article, or the Act.

2) The attached Tables, I, II, and III, which are referenced in section 14-58 of the Ordinance are incorporated into and a part of this Article.

3) The Article, as amended, is effective upon enactment.

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Table No. I

<u>Material</u>		<u>Maximum Permissible Velocities</u>	
		FPS	MPS
Fine Sand	(noncolloidal) - Cecil fine sandy loam, Pinkston fine sandy loam	2.5	0.8
Sand Loam	(noncolloidal) - Appling sandy loam, Creedmoor sandy loam, Helena sandy loam, Mayodan sandy loam, Wedowee sandy loam, Wilkes sandy loam, White Store sandy loam	2.5	0.8
Silt Loam	(noncolloidal) - Georgeville silt loam, Herndon silt loam, Lignum silt loam, Roanoke silt loam	3.0	0.9
Ordinary Firm Loam	- Iredell loam, Mecklenburg loam, Wahee loam, Davidson clay loam, White Store clay loam-eroded	3.5	1.1
Fine Gravel	-	5.0	1.5
Stiff Clay	(very colloidal) - Iredell-Urban land complex, White Store-Urban land complex, Mayodan-Urban land complex	5.0	1.5
Graded, Loam to Cobbles	(noncolloidal) - Tatum gravelly silt loam, Nason stony silt loam, Goldston slaty (channery) silt loam	5.0	1.5
Graded, Silt to Cobbles	(colloidal) -	5.5	1.7
Alluvial Silts	(noncolloidal) - Wehadkee silt loam. Congaree silt loam, Chewacla silt loam Cartecay silt loam	3.5	1.1
Alluvial Silts	(colloidal) -	5.0	1.5
Coarse Gravel	(noncolloidal) -	6.0	1.8
Cobbles and shingles	-	5.5	1.7
Shales and Hard Pans	-	6.0	1.8
Gullied Land and Urban Land	- These soil types are variable with respect to texture, both colloidal and noncolloidal. The amount of cut, fill		

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and grading into the original soil could
effect velocity. Average velocity is 3.0 0.9
3.0.

Table No. II

Vegetatively Protected Watercourses
And
Point of Storm Water Discharge

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<u>Group No.</u>	<u>Vegetation</u>	<u>Depth of Flow</u>	<u>Maximum Permissible Velocity</u>
1	Bermudagrass	< 1'	4
		> 1'	6
2	Tall fescue	< 1'	3
	Reed canarygrass	> 1'	6
	Kentucky bluegrass		
3	Grass and legumes, mixed	< 1'	3
	Weeping lovegrass	> 1'	4
4	Lespedeza, sericea	< 1'	2.5
	Red fescue	> 1'	2.5
	Red Top		
5	Annuals:		2.5
	Annual lespedeza (KOBE)	< 1'	2.5
	Sudangrass	> 1'	
	Small grain: (Rye, Oats, barley)		
	Ryegrass		

Do not use vegetative protection on longitudinal parallel to flow slopes steeper than ten percent (10%), except for side slopes.

Annuals - Use only as temporary protection until permanent cover is established.

< = less than

> = greater than

Table No. III

Critical Soils of Durham County

ApC	-	Appling sandy loam	-	6 to 10 percent slopes
CfC	-	Cecil fine sandy loam	-	6 to 10 percent slopes

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CrC	-	Creedmoor sandy loam	-	6 to 10 percent slopes
DaD	-	Davidson clay loam	-	6 to 10 percent slopes
GeC	-	Georgeville silt loam	-	6 to 10 percent slopes
GeD	-	Georgeville silt loam	-	10 to 15 percent slopes
GIE	-	Goldston slaty silt loam	-	10 to 25 percent slopes
GIF	-	Goldston slaty silt loam	-	25 to 45 percent slopes
GrC	-	Granville sandy loam	-	6 to 10 percent slopes
Gu	-	Gullied land	-	Clayey materials
HeC	-	Helena sandy loam	-	6 to 10 percent slopes
HrC	-	Herndon silt loam	-	6 to 10 percent slopes
HsC	-	Herndon stony silt loam	-	2 to 10 percent slopes
IrC	-	Iredell loam	-	6 to 10 percent slopes
IyC	-	Iredell-Urban land complex	-	6 to 10 percent slopes
MfC	-	Mayodan sandy loam	-	6 to 10 percent slopes
MfD	-	Mayodan sandy loam	-	10 to 15 percent slopes
MfE	-	Mayodan sandy loam	-	15 to 25 percent slopes
MrC	-	Mayodan-Urban land complex	-	0 to 10 percent slopes
MrD	-	Mayodan-Urban land complex	-	10 to 15 percent slopes
MuC	-	Mecklenburg loam	-	6 to 10 percent slopes
NaD	-	Nason silt loam	-	10 to 15 percent slopes
NaE	-	Nason silt loam	-	15 to 25 percent slopes
NoD	-	Nason stony silt loam	-	10 to 15 percent slopes
PfC	-	Pinkston fine sandy loam	-	2 to 10 percent slopes
PfE	-	Pinkston fine sandy loam	-	10 to 25 percent slopes
TaE	-	Tatum gravelly silt loam	-	15 to 25 percent slopes
Ur	-	Urban land		
WmD	-	Wedowee sandy loam	-	10 to 15 percent slopes
WmE	-	Wedowee sandy loam	-	15 to 25 percent slopes
WsC	-	White Store sandy loam	-	6 to 10 percent slopes
WsE	-	White Store sandy loam	-	10 to 25 percent slopes
WvC2	-	White Store clay loam	-	2 to 10 percent slopes, eroded
WvE2	-	White Store clay loam	-	10 to 25 percent slopes, eroded
WwC	-	White Store-Urban land	-	0 to 10 percent slopes
WwE	-	White Store-Urban land	-	10 to 25 percent slopes
WxE	-	Wilkes sandy loam	-	10 to 25 percent slopes

(The amendments to the Sedimentation and Erosion Control Ordinance are recorded in Ordinance Book _____, page _____.)

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Consent Agenda 6(f). Amendments to the Animal Control Ordinance (approve the ordinance as amended) follow:

ORDINANCE AMENDING THE DURHAM COUNTY ANIMAL CONTROL ORDINANCE

WHEREAS, the North Carolina Legislature has, through Article 6 of Chapter 153A of the North Carolina General Statutes, delegated to counties the power to regulate by ordinance, acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the county; and,

WHEREAS, the Commissioners of the County of Durham, pursuant to their authority granted under Article 6 of Chapter 153A of the North Carolina General Statutes, enacted an Animal Control Ordinance to regulate acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the county; and,

WHEREAS, Chapter 4, Article I, Section 4-13 of the Durham County Code of Ordinances does not allow dogs to be unrestrained in a designated dog park.

WHEREAS, Chapter 4, Article I, Section 4-13 of the Durham County Code of Ordinances does not include an exception for law enforcement canines.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOTH ORDAIN:

- 1) That Chapter 4, Article I, Section 4-13 of the Durham County Code of Ordinances is hereby amended to read as follows:
 - (4) *At large* means any animal found off of the property of its owner and not under restraint, or any animal that has been the subject of a previous at large complaint when found unrestrained whether on or off of the property of its owner, or any animal previously determined to be dangerous or potentially dangerous that is not confined to a secure enclosure while on the property of its owner. *This definition shall exclude any dog which is in a dog park. This definition shall exclude any dog being used by a law enforcement officer while carrying out the law enforcement officer's official duties.*
- 2) That Chapter 4, Article I, Section 4-13 of the Durham County Code of Ordinances is hereby amended to read as follows:
 - (34) *Dog Park* means an area or tract designated by the owner of the property to be a place in which a dog or dogs are not required to be under restraint. The area or tract designated by the owner of the property must be a secured enclosure. The owner of the property shall post in a conspicuous place and

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manner a sign on the outside of the enclosure which designates the area or tract as a dog park.

3) The Chapter as amended is effective upon enactment.

(The amendments to the Animal Control Ordinance recorded in Ordinance Book _____, page _____.)

Consent Agenda 6(g). Budget Amendment No. 00BCC000017 Durham Public Schools Request for Capital Funds (approve the budget transfer from the County's Human Services function to Education in the amount of \$500,000 to provide the capital match for Durham Public Schools).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2000-01 Budget Ordinance
Amendment No. 01BCC000017

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2000-01 Budget Ordinance is hereby amended to reflect budget adjustments for Durham Public Schools.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Human Services	\$234,129,234		\$500,000	\$233,629,234
Education	\$ 71,507,661	\$500,000		\$ 72,007,661

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 23rd day of October, 2000.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Appointment of Board of Elections Director

Ron Gregory, Chairman of the Board of Elections, and Terry McCabe, Secretary of the Board of Elections, introduced the newly-appointed Board of Elections Director Mike Ashe to the County Commissioners.

Resource Person(s): Mr. Ron Gregory, Chairman of the Board of Elections

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County Manager's Recommendation: The Manager's recommendation is that the Board, upon the recommendation of the Elections Board Chairman, set the salary of the new Elections Director and welcome him to Durham County.

Jackye Knight, Human Resources Director, spoke to the Commissioners about the proposed salary of \$60,358 for Mr. Ashe. At the present time, the salary can be afforded through the lapsed salaries in the Board of Elections' budget.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, approval of the appointment and the suggested salary of \$60,358 per year.

Vice-Chairman Reckhow amended her motion as follows:

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to set the salary of the newly-appointed Board of Elections Director Mike Ashe at the amount suggested by the Chairman of the Board of Elections (\$60,358 per year).

The motion carried unanimously.

Mr. Ashe made remarks about his career and his new endeavor.

Public Hearing on Section 42 Financing for Alston Village Apartments

A public hearing is required for the issuance of bonds pursuant to Section 42 of the Internal Revenue Code. An application for Section 42 financing for the Alston Village Apartment project has been approved previously by the Board. The developer, NRP Group L.L.C., has had prepared a financial report showing the financial feasibility of the project. The County's Interim Finance Officer, Susan Fox-Kirk, has reviewed this report.

Following the public hearing, the Board may adopt the resolution. In the suggested resolution, which has been drafted by bond counsel, the Board was requested to make certain findings and approve the financing team.

Resource Person(s): Mary Nash Rusher, Bond Counsel; Chuck Kitchen, County Attorney; and Susan Fox-Kirk, Interim Finance Officer

County Manager's Recommendation: Manager recommends that the Board conduct the public hearing and adopt the suggested resolution if supported by the information received in the agenda package and the information received at the hearing.

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The Commissioners asked questions and made remarks about the proposal to which Ms. Rusher, Bond Counsel, responded. Mr. Kitchen assisted with the questions. Steve Whitsall with the Banks Law firm also provided information.

Chairman Black opened the public hearing that was properly advertised.

As no one signed to speak at this public hearing, Chairman Black closed the public hearing and referred the item back to the Commissioners.

Commissioner Bowser moved, seconded by Commissioner Heron, to approve the item.

The motion carried unanimously.

The resolution follows:

BOARD OF COMMISSIONERS OF
THE COUNTY OF DURHAM

Excerpt of Minutes
of Meeting of
October 23, 2000

Present: Chairman MaryAnn E. Black presiding, and

Commissioners: William V. Bell, Joe W. Bowser, Becky M. Heron, and
Ellen W. Reckhow

Absent: None

* * * * *

On October 23, 2000, at 7:45 p.m., Commissioner MaryAnn E. Black convened a public hearing with respect to the proposed issuance by the County of Durham, North Carolina of its \$22,000,000 Multifamily Housing Revenue Bonds for the acquisition, construction and equipping of a proposed low and moderate income housing development in the County of Durham. After discussion as summarized in Exhibit A, the hearing was closed at 7:55 p.m. and

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the discussion was presented to the County (as hereinafter defined).

On October 23, 2000, during the regularly scheduled meeting of the Board of Commissioners held in the Commissioner's Meeting Room, Durham, North Carolina, the meeting was opened to questions and discussion of the general public in attendance; and, there being none the meeting was closed to public discussion.

* * * * *

Commissioner MaryAnn E. Black introduced the following resolution, the title of which was read:

RESOLUTION APPROVING FINANCING TEAM AND MAKING CERTAIN
FINDINGS WITH RESPECT TO THE ISSUANCE OF MULTIFAMILY
HOUSING REVENUE BONDS (ALSTON VILLAGE APARTMENTS
PROJECT) SERIES 2000A and 2000B

WHEREAS, the Board of Commissioners (the "Board") of the County of Durham (the "County") met in the Commissioners' Meeting Room, Durham, North Carolina at 7:00 p.m. on the 23rd day of October, 2000; and

WHEREAS, NRP Alston Village, L.P. (the "Borrower"), has requested that the County assist in financing the acquisition, construction and equipping of a multi-family residential rental development, consisting of 312 units to be known as Alston Village Apartments located at 5400 South Alston Avenue, Durham County, North Carolina (the "Development") and the County has agreed to do so; and

WHEREAS, pursuant to N.C.G.S. § 153A-376, the Board of Commissioners has the power to exercise directly those powers granted by law to county housing authorities created under Chapter 157 of the North Carolina General Statutes (the "Act"); and

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WHEREAS, pursuant to the Act, the County has the power to issue its bonds to finance the cost of providing multifamily housing for low and moderate income persons; and

WHEREAS, the County finds that the financing of the Development through tax-exempt bonds will provide additional low and moderate income housing in the County; and

WHEREAS, the County proposes to provide the financing for the Development by the issuance of its Multifamily Housing Revenue Bonds (Alston Village Apartments Project), Series 2000A in an amount now estimated not to exceed Twenty-two Million Dollars (\$22,000,000) (the "Series A Bonds") and its Multifamily Housing Revenue Bonds (Alston Village Apartments Project), Series 2000B in an amount now estimated not to exceed One Million Dollars (\$1,000,000) (the "Series B Bonds," and together with the Series A Bonds, the "Bonds");

WHEREAS, the North Carolina Local Government Commission has requested the County to make certain findings with respect to the Bonds consistent with Section 159-153 of the North Carolina General Statutes; and

WHEREAS, the Borrower has requested that the County approve its selection of the following financing team members for the issuance and sale of the Bonds, on the terms and at the fees set forth in the documents relating to the purchase of the Bonds by Dain Rauscher Incorporated, as underwriter, and the sale thereof as AAA rated bonds to the public backed by Fannie Mae mortgage insurance and in the financial information provided to the County with respect to the Bonds:

Bond Counsel:	Hunton & Williams
Issuer's Counsel:	The Banks Law Firm
Underwriter:	Dain Rauscher Incorporated
Underwriter's Counsel:	Ritter, Eichner & Norris
Construction Lender:	Bank of America, N.A.

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Borrower's Counsel:	Broad & Cassell
Permanent Financing:	Fannie Mae/ARCS Commercial Mortgage
Permanent Lender's Counsel:	Arent Fox Kintner Plotkin & Kahn, PLLC
Trustee:	First Union National Bank

WHEREAS, based upon information and evidence received by the County, it has determined to approve the Borrower's request;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE COUNTY OF DURHAM DOES HEREBY RESOLVE, AS FOLLOWS:

1. The above financing team for the issuance of the Bonds by the County is hereby authorized and approved.

2. The County hereby finds that the financing is necessary and expedient to further the County's purpose of promoting low and moderate income housing in the County of Durham, and that the acquisition, construction and equipping of the Development are necessary and sufficient to accomplish the County's purposes with respect to the properties involved.

3. The County hereby finds that the Borrower has demonstrated that the amount of debt to be incurred in connection with the Development and the fees to be paid in connection therewith are sufficient but not excessive for the purpose of acquiring and constructing the Development.

4. The County hereby finds that the Borrower has demonstrated that (i) it is financially responsible and capable of fulfilling its obligations to make loan repayments and other payments that will be required under the loan agreement between the County and the Borrower (the "Loan Agreement"), which will provide the funds to pay principal and interest on the Bonds, and (ii) the Development will generate sufficient revenues to make loan repayments and other payments under

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the Loan Agreement, to operate, repair and maintain the Development at its own expense and to discharge such other responsibilities as may be imposed under the Loan Agreement. The County further finds that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds, and the operation, repair and maintenance of the Development at the expense of the Borrower.

5. The County hereby finds that the use of the proceeds of the Bonds for a loan to finance the costs of the Development and for the other purposes stated above will accomplish the public purposes set forth in the Act and hereby approves such use of proceeds.

6. The Board hereby approves the plan of financing as required by Section 147(f) of the Code.

7. This Resolution shall take effect immediately upon its passage.

Commissioner Joe W. Bowser moved the passage of the foregoing resolution and Commissioner Becky M. Heron seconded the motion and the resolution was passed by the following vote:

Ayes: Commissioners MaryAnn E. Black, William V. Bell, Joe W. Bowser, Becky M. Heron, and Ellen W. Reckhow

Nays: None

Not voting: None

I, Garry E. Umstead, Clerk to the Board of Commissioners for the County of Durham, North Carolina DO HEREBY CERTIFY that the foregoing is a true and complete copy of so much of the proceedings of the Board of Commissioners for said County at a regular meeting duly called and held October 23, 2000, as it relates in any way to the resolution hereinabove set

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forth, and that said proceedings are recorded in Minute Book _____ of the minutes of said Board. Pursuant to N.C.G.S. § 143-318.12, a current copy of a schedule of regular meetings of this Board is on file in my office.

WITNESS my hand and the common seal of said County, this 24th day of October, 2000.

/s/ Garry E. Umstead
Clerk to the Board of Commissioners

(SEAL)

Exhibit A

Certificate and Summary

The undersigned Clerk of the Board of Commissioners of Durham County, North Carolina, hereby certifies:

1. Notice of a public hearing (the "Hearing") to be held on October 23, 2000, with respect to the issuance of bonds by The Durham County Industrial Facilities and Pollution Control Financing Authority (the "Authority") for the benefit of NRP Alston Village, L.P., a North Carolina limited partnership, or a designated affiliate (the "Company") was published on October __, 2000, in The Herald Sun.

2. The presiding officer of the Hearing was Chairman MaryAnn E. Black.

3. The following is a list of the names and addresses of all persons who spoke at the Hearing. (No one spoke at the public hearing.)

4. The following is a summary of the oral comments made at the Hearing. (No oral comments were made.)

IN WITNESS WHEREOF, my hand and the seal of the County of Durham, this 24th day of October, 2000.

/s/ Garry E. Umstead
Clerk, Board of Commissioners of
Durham County, North Carolina

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(SEAL)

Update on Kentington Heights

At the September 11, 2000 meeting, staff presented to the Board the Interim Subarea A Landuse Plan, which is within the NC 54/I-40 Corridor. In an effort to address the need to review the adopted land use plans for the area, staff presented the Subarea A plan, which is the first of three plans for this study area. The study area covers portions of three Small Area plans, which include South Durham, Southwest Durham, and Triangle Township.

During the September 11, 2000, meeting several residents from the Kentington Heights Community as well as adjacent property owners from Fern Valley Estate and Massey Chapel Road were present to express their concerns about the proposed Interim Subarea A Landuse Plan, the impacts of the South Point Mall Development, and the availability of water and sewer services.

At the conclusion of those discussions, the Board decided to take no action on the plan until several issues could be address that were raised by Kentington Height's residents. Such issues included having staff determine whether Kentington Height's residents had an interest in the community remaining residential if the water and sewer problems could be alleviated. In addition, staff was directed to have the Health Department take water samples to determine the safety of the water supply.

Over the past month, staff from several departments has been engaged in fact finding related to the Kentington Heights community. Staff efforts have included:

- surveying the community and tallying results of the surveys
- conducting analysis of land values in the community based on comparable sales in/around the mall development
- examining the counties past history with sewer projects in Kentington Heights
- identifying all of the water and sewer projects that were part of the 1986 bond
- developing cost estimates for installing water and sewer in Kentington Heights, and;
- meeting with the representatives from Kentington Heights in an effort to work through the issues

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Resource Person(s): Wendell M. Davis, Deputy County Manager
T.E. Alston, Planning Supervisor, City/County Planning
Glen Whisler, County Engineer
Steve Crysel, Tax Administrator
Susan Fox-Kirk, Interim Finance Director

County Manager's Recommendation: The Manager's recommendation is that the Board accept the presentation and provide staff directives, if any, based on the Board discussion of the Subarea A Plan.

Chairman Black commented that she received two letters from citizens requesting that Kentington Heights be removed from the agenda. The correspondence came from Dr. Anita M. Keith-Foust and Ms. Gladys H. Rogers. The letters address issues pertaining to the Kentington Heights community. The letters have nothing to do with what the Board is about. The Board must make a decision about land use in the area. She instructed staff to proceed as planned.

Mr. Davis, with the assistance of several staff members, presented the Commissioners an overview and update on Kentington Heights.

The presentation by staff included the following:

Mr. Austin provided the Board with a brief overview of the Subarea A Landuse Plan;
Mr. Davis provided the Board with some facts about the Kentington Heights neighborhood;
Brian Letourneau, Public Health Director, and Mr. Davis shared survey results as well as results from several water tests;
Mr. Whisler explained the County's history relative to water and sewer projects in Kentington Heights;
Ms. Fox-Kirk briefly reviewed the 1986 water and sewer bond projects; and
Mr. Crysel reviewed the analysis of the land sales in and around the Southpoint Mall Development.

Chairman Black stated that the land where Southpoint Mall is located is designated mixed use. We are talking about the land use that will go into our plan for tonight. We are not talking about rezoning.

At the request of the Commissioners, Planning Supervisor Steve Medlin gave the Commissioners an overview of a mixed use development known as Sutton Station located off Fayetteville Road north of NC 54 and south of Woodcroft Parkway zoned I-02.

Commissioner Bell said through the years, the issue in rezoning or land use has never been the resulting value of the land. The Board is being asked to project and suggest how it would like

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this County to be developed. I support staff's recommendation of mixed-use designation for Kentington Heights. I am prepared to move on that. My motion would be to incorporate the NC 54/I-40 Subarea A Landuse Plan.

Commissioner Bell moved, seconded by Vice-Chairman Reckhow, to adopt the Subarea A Landuse Plan.

The motion carried unanimously.

Geer Street Subdivision Site Plan/Preliminary Plat

This item came before the Board at its September 25, 2000 meeting. The Board requested that staff evaluate the buffering issues associated with the perennial streams adjacent to proposed development along with other technical requirements. Staff has addressed these concerns in the staff report and the developer has included a revised plan.

East Geer Ventures was seeking approval of a site plan/preliminary plat to construct 350 single-family residential lots with associated infrastructure and open space on a 128.2-acre tract. The property is located on both sides of Geer Street, south of I-85, west of Ferrell Road, and east of Milan Street. (Tax Map 680, Block 01, Parcel 001, PIN number 0842-01-46-1588). The site is zoned PDR 3.36 and F/J-B, and allows for this use. The proposed site plan/preliminary plan conforms to applicable Zoning and Subdivision Ordinance regulations, the approved development plan, and is consistent with the adopted Community Growth Map (CGM) of the Durham 2020 Comprehensive Plan. The Development Review Board, at its meeting on July 17, 2000, recommended approval. Planning staff recommended approval.

Resource Person(s): Steve Medlin, Planning Supervisor, Durham City/County Planning

County Manager's Recommendation: The Manager recommends that the Board accept the revisions to the site plan that were made after the September 25, 2000 meeting. The plan conforms to zoning and subdivision ordinance regulations. The plan is consistent with the Community Growth Map of the 2020 plan and has been recommended for approval by the development review board.

Mr. Medlin presented the Commissioners an overview of the subdivision site plan/preliminary plat revision to the plan made after the September 25, 2000 meeting.

The Commissioners asked questions to which Attorney Jack Markham responded.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve the item.

The motion carried unanimously.

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(Tax Map number 680, Block 01, Parcel 001; recorded in Ordinance Book _____, page _____.)

Glennstone Subdivision Preliminary Plat

This item came before the Board at the September 25, 2000 meeting. The Board, at that meeting, requested that staff provide a density plan and examine the stormwater issues related to pollution. Staff addressed these items during the presentation.

Cimland, LLC was seeking approval of a preliminary plat to construct 163 single-family residential lots with associated infrastructure and open space on a 165.807-acre tract. The property is located on both sides of Glenn Road, west of I-85, and south of Jeffries Road. (Tax Map 687, Block 01, Parcel 003, 003A, 004, 004A, PIN number 0843-02-78-6286, 0843-02-98-2062, 0843-02-67-4651, 0844-04-60-2473). The site is zoned RD, R-10, F/J-A and F/J-B and allows for this use. The proposed preliminary plan conforms to applicable Zoning and Subdivision Ordinance regulations. The Development Review Board, at its August 25, 2000 meeting, recommended approval. Planning staff recommended approval.

Resource Person(s): Steve Medlin, Planning Supervisor, Durham City/County Planning

County Manager's Recommendation: The Manager's recommendation is that the Board accept the revisions to the preliminary plat that were made after the September 25, 2000 meeting. The plat meets all of the technical ordinance requirements, has been recommended for approval by the development review board, and is recommended for approval by staff.

Mr. Medlin reviewed the density plan and examined the stormwater issues related to pollution that the Board requested at the meeting on September 25, 2000.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve the item.

The motion carried unanimously.

(Tax Map number 687, Block 01, Parcel 003, 003a, 004, and 004a; recorded in Ordinance Book _____, page _____.)

Clean Water Management Trust Fund Grant Agreement for the Proposed Little River Regional Park

In May, the BOCC approved the purchase agreement for Durham's portion of the 391-acre Little River Regional Park site. Durham and Orange Counties have successfully obtained two state grants that will substantially defray the local costs for acquiring the site. In March, the state's Clean Water Management Trust Fund (CWMTF) program awarded up to

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\$377,000 towards the acquisition, and in July, the State's PARTF grant program awarded \$250,000 towards the project. In September, Durham and Orange counties were fortunate to be awarded a federal Land and Water Conservation grant for \$262,000 to pay for site development costs.

The CWMTF Grant Agreement must be approved before Durham can receive any grant funds. The agreement requires that conservation easements be placed on approximately 130 acres of the site that border the North Fork of the Little River and the perennial streams on the site. The easement restrictions are compatible with the park's intended use as a natural area and ensure water quality benefits in perpetuity. The grant funds are reimbursed on an actual cost basis. Because some acquisition related expenses have cost less than originally budgeted, the grant funds received will total closer to \$350,000.

Resource Person(s): Jane Korest, Senior Planner; Chuck Kitchen, County Attorney

County Manager's Recommendation: The Manager recommends that the Board authorize the County Manager to execute the grant agreement.

Ms. Korest reviewed the Clean Water Management Trust Fund Grant Agreement for the Board of County Commissioners.

Commissioner Heron moved, seconded by Commissioner Bowser, to authorize the County Manager to execute the grant agreement.

The motion carried unanimously.

Final Offer to Purchase County Property (600 E. Cornwallis Road)

This item came before the Board at the October 10, 2000 meeting. The Board took no action on the item because staff was asked to verify whether the tax value was correct on the property. Staff has verified the validity of the tax value and has determined the proximity of water and sewer services. Historically, the Board's policy has been to recover the County's investment that was made as a result of the foreclosure process, not the tax value.

Durham County obtained the property located at 600 E. Cornwallis Road (parcel #174-03-030, PIN: 0820-15-64-8220) through a tax foreclosure sale on April 9, 1984. Ms. Kelly Aguilar-Aleman submitted a request to purchase the vacant lot for \$470.75, which is the County's investment in the property (taxes and legal costs). This is a .510-acre lot currently zoned Residential 5 District (R-5) and is buildable. This zoning district permits accessory buildings, detached single-family dwellings, family care homes, home occupations, and public parks and playgrounds. The R-5 district was established to provide sites primarily for detached dwellings of a medium density. Public water and sewer service shall be required for all new construction in the R-5 district. Water and sewer utilities are at Fayetteville

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St. (200 ft. west of the parcel). The cost to bring water to the parcel is \$25 per foot. The cost to bring sewer to the parcel is \$50 per foot.

The 1993 tax value was \$12,000. As public water and sewer are not immediately available and the parcel is located on a paper street (being accessible only by foot), the tax value was reduced to \$6,000. The lot is located approximately 50' beyond the end of the gravel portion of E. Cornwallis Road.

The Upset Bid Process started August 30, 2000 and ended September 11, 2000. During this period no upset bids were received. Therefore, the final qualifying bid of \$470.75, submitted by Ms. Kelly Aguilar-Aleman, was presented for the Board's consideration.

Resource Person(s): Wendell M. Davis, Deputy County Manager, and Bill Martin, Real Property Manager

County Manager's Recommendation:

The Manager's recommendation is that the Board accept the offer of \$470.75 submitted for 600 E. Cornwallis Road by Ms. Kelly Aguilar-Aleman and prepare a non-warranty deed for Chairman's signature. This action is consistent with the Board's policy of recovering the investment value thus getting the property back onto the tax rolls to compliment the County's tax base.

Mr. Martin asked for questions from the County Commissioners.

County Attorney Chuck Kitchen assisted with the answers to the questions.

Commissioner Bowser moved, seconded by Commissioner Bell, that the Board accept the offer of \$470.75 submitted for 600 E. Cornwallis Road by Ms. Kelly Aguilar-Aleman and prepare a non-warranty deed for the Chairman's signature.

The motion carried unanimously.

Introductions

Interim County Manager Carolyn P. Titus introduced the Interim Purchasing Director Anthony Allen and the Interim Budget Director Keith Lane.

Purchase of Medical Malpractice Insurance

The medical malpractice insurance policy the County purchases for EMS, Mental Health, and Public Health is up for renewal. The Risk Manager had previously been given information from our current carrier, CNA, that the renewal would result in a 10-15 percent increase in the

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premium. The County had not intended to go out for bids this year on the medical malpractice policy. The Risk Manager has now received the quote for the ensuing year, and the premium has been increased from the current year's cost of \$67,304 to \$104,885. The increase appears to be due to increased "visits" by the three covered agencies, and due to errors in reporting the correct number of visits to the insurance company in prior years.

Due to the sizable increase in the proposed premium, the County's insurance broker procured quotes from other insurance companies. The best quote was from St. Paul, which had a premium quote of \$78,772. The limits of coverage would remain the same as the current policy; \$1,000,000 per occurrence, \$3,000,000 aggregate. The Board was requested to approve the change in carriers from CNA to St. Paul.

Resource Person(s): Cathy Whisenhunt, Risk Manager; Chuck Kitchen, County Attorney

County Manager's Recommendation: Approve the change in insurance companies in order to save approximately \$26,000 for the same coverage.

Ms. Whisenhunt presented the purchase of the medical malpractice insurance.

Commissioner Bell asked questions and made comments about the proposal to which Ms. Whisenhunt responded.

Commissioner Heron moved, seconded by Commissioner Bowser, to approve the change in insurance companies.

The motion carried unanimously.

Renewal of Excess Worker's Compensation Insurance Policy

Durham County is self-insured for worker's compensation. However, the County purchases excess coverage from an insurance company in case of a catastrophic injury or injuries. The premium is based on the audited annual payroll of the County. The current year's premium rate was approximately \$25,000. The proposed rate for the ensuing year is \$66,600 from the current carrier, Employers Reinsurance. The County's insurance broker received quotes from three other companies. All of the quotes were at least \$20,000 more than the current carrier. The increase in the premium appears also to be due to injuries in two cases which may exceed the prior retention limit of \$100,000 (the amount before insurance begins paying). This affects the "experience rating" the insurance companies give to the County.

The current retention limit is \$250,000. If the County were to increase the retention to \$350,000, the premium would be reduced to \$24,975. If the retention were increased to \$500,000, the premium would be \$17,982. The Board was requested to authorize the renewal of the policy with a retention of \$350,000, as the savings in the premium offset the increased risk to the

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County. It is not recommended to increase the retention to \$500,000 as the reduction in premium is small compared to the increased risk to the County.

Resource Person(s): Cathy Whisenhunt, Risk Manager; Chuck Kitchen, County Attorney

County Manager's Recommendation: Approve the renewal of the Excess Worker's Compensation policy with a retention of \$350,000 to achieve the stated savings in premium cost. The increased risk to the County is more than offset by this savings. Keeping the current retention would require a budget amendment to appropriate sufficient funds to pay the premium, whereas increasing the retention will result in a payment within budgeted amounts.

Ms. Whisenhunt presented the agenda item to the Commissioners.

The Commissioners asked several questions about the renewal of the policy to which Ms. Whisenhunt and County Attorney Kitchen responded.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve the renewal of the Excess Worker's Compensation policy with a retention of \$350,000.

The motion carried unanimously.

Board Appointment

Garry E. Umstead, Clerk to the Board, distributed ballots to make an appointment to the Area Mental Health Board.

Alfred L. Solomon Jr. was appointed to the Area Mental Health Board with the following votes:

For: Bell, Black, Bowser, Heron, and Reckhow

Against: None

Mr. Solomon's term will expire July 2004.

Legislative Breakfast

Commissioner Heron stated the Commissioners should have a legislative breakfast for the Durham Delegation to the General Assembly. The event should be held shortly after the first Monday in December. We need to discuss with the delegation other sources of revenue. We may want the school board to meet with them at the same time.

Interim County Manager Carolyn P. Titus said a date has not been set for a meeting. The Board of Education has shown interest in meeting with the Commissioners and the legislators.

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Chairman Black requested that staff work on the joint meeting for early December.

Adjournment

Chairman Black adjourned the meeting at approximately 8:45 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board