ORDINANCE NO. 1952

AN ORDINANCE TO PROTECT, MAINTAIN AND ENHANCE THE ENVIRONMENT OF THE CITY OF PRICHARD BY CONTROLLING EROSION RESULTANT FROM LAND DISTURBING AND CONSTRUCTION ACTIVITIES IN THE CITY OF PRICHARD, ALABAMA

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRICHARD, ALABAMA, as follows:

Article I. **Statutory Authorization.** The Legislature of the State of Alabama has in Title 11, Chapter 19, Sections 1-24, Chapter 45, Sections 1-11, Chapter 52, Sections 1-84, and Title 41, Chapter 9, Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Prichard, Alabama does ordain as follows:

Section 1.01 **Statement of Purpose.** The purpose of this ordinance is to protect, maintain and enhance the environment of the City of Prichard and the short-term and long-term public health, safety and general welfare by controlling erosion resultant from land disturbing and construction activities. The specific objectives of this ordinance include:

1) Control filling, grading, dredging and other land disturbances which may increase erosion;

2) Establish a permit process and required erosion control methods for land disturbance within The City of Prichard;

3) Maintain and enhance community waters into which storm water outfalls flow, including, but not limited to, lakes, rivers, streams, ponds, wetlands, sinkholes, and groundwater of the City of Prichard.

Section 1.02 **Objectives.**

1) To require the submittal of a Land Disturbance application and appropriate Best Management Practices (BMP) plan prior to any land disturbing activities in accordance with the articles contained herein;

2) To prevent land change which could lead to erosion without proper authorization from the City of Prichard;

3) To comply with the National Pollutant Discharge Elimination System (NPDES) permit and applicable regulations (40 CFR ¶ 122.26) for storm water discharges.

Section 1.03 **Definitions** For the purpose of this ordinance, the following terms, phrases and words and their derivatives, shall have the meaning assigned herein:

1) Administrator. The person or his/her duly authorized representative, designated by the City Council and/or Mayor to supervise the operations of the Land Disturbance program and who is charged with certain responsibilities and duties by this ordinance.

2) Adverse Impact. Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property or to biological productivity, diversity or stability, or which would unreasonably interfere with the enjoyment of life or property.

3) Agriculture. Activities undertaken on land for the production of crops, plants and animals which are useful to man.

4) Alabama Department of Environmental Management (hereafter abbreviated as "ADEM"). The state regulatory agency responsible for administering and enforcing the storm water laws of the United States of America and the State of Alabama.

5) Applicant. Any person, firm, corporation or government entity who executes the necessary forms to procure approval of a Land Disturbance Permit from The City of Prichard.

6) Best Management Practices (hereafter referred to as "BMP"). Activities, prohibitions of practices, maintenance procedures and management practices designed to prevent or reduce the pollution of waters from non-point sources. Best management practices include treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage and construction sites. Best Management Practices Plan (hereafter referred to as "BMP Plan"). A set of drawing and/or other documents submitted by a person as a prerequisite to obtaining a permit, which contain all of the information and specifications pertaining to BMP.

7) City. The City of Prichard, Alabama.

8) Clean Water Act. The Federal Water Pollution Control Act, as amended, codified at 33 U.S.C ¶ 1251, et seq., and regulations promulgated thereunder.

9) Clearing. The removal of trees and brush from the land, not including the ordinary mowing of grass or the maintenance of previously cleared areas.

10) Community Waters. Any or all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells, groundwater and other bodies of natural or artificial surface or subsurface water into which the City of Prichard MS4 flows.

11) Contour. A line of equal elevation above a specified datum, usually mean sea level.

12) Contour line. A line joining points having or representing equal elevations.

13) Discharge. The passing of water or other liquid through an opening or along a pipe, conduit or channel; the rate of flow of water, silt, or other mobile substance which emerges from a pipe, conduit or channel, usually expressed as cubic feet per second, gallons per minute or million gallons per day.

14) Drainage. The removal of surface water from a given area either by gravity or by pumping; commonly applied to surface water and groundwater.

15) Drainage area. That area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line; the area of a drainage basin or watershed, expressed in acres, square miles or other unit of area.

16) Engineer. A person currently licensed by the Alabama State Board of Registration for Professional Engineers and Land Surveyors to provide engineering services.

17) Erosion. Wearing away of lands by running water, or winds.

18) Erosion control. The application of measures to reduce erosion of land surfaces.

19) Grading. Any act by which soil is cleared, stripped, stockpiled, excavated, scarified or filled, or any combination thereof.

20) Inspector. The Administrator or his/her designee, responsible for periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing to verify compliance with the provisions of this ordinance and the specific BMP plans and controls for the land disturbing activities.

21) Land Disturbance. Any land change which may result in soil erosion from water or wind, or movement of sediments, directly or indirectly, to the MS4 and/or community waters, including, but not limited to, construction activities, clearing, dredging, grading, excavating, transporting and filling of land.

22) Municipal separate storm sewer system (herein abbreviated as "MS4"). A system of municipal separate storm sewers, including roads with drainage systems, streets, catch basins, curbs, gutters, easements, swales, ditches, man-made channels and storm drains, carrying storm water runoff which is directly or indirectly discharged to community waters.

23) NPDES. National pollutant discharge elimination system pursuant to Section 402 of the Clean Water Act (33 U.S.C ¶ 1342).

24) Notice of Intent ("NOI"). A written notice by a discharger to the Director of ADEM that the person wishes his or her discharge to be authorized under a general storm water discharge permit authorized by state and federal regulations.

25) Outfall. A point source (meaning any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container rolling stock, concentrated animal feeding operation, landfill leach ate collection system, vessel or other floating craft from which pollutants are or may be discharged, but not including return flows from irrigated agriculture or agricultural water runoff) at the point of a discharge to waters of the United States of America.

26) Permit. Any permit issued pursuant to this article.

27) Permittee. A person, party, government entity and all others who receive a permit to discharge under the NPDES.

28) Pollutant. Includes, but is not limited to, the pollutants specified in Code of Ala. 1975, § 22-22-1(b)(3) and any other effluent characteristics specified in a permit.

29) Pollution. A condition created by the presence of harmful or objectionable content in water.

30) Pollutant loading. The amount of a pollutant entering the MS4.

31) Qualified credentialed professional. A certified professional in erosion and sediment control (CPESC) as determined by the Soil and Water Conservation Society (SWCS) or the International Erosion Control Association (IECA). Other registered or certified professionals such as a professional engineer or a landscape architect, registered land surveyor, registered architect, registered geologist, registered forester, registered environmental Administrator as determined by the National Registry of Environmental Professionals (NREP), Certified Professional Soil Scientist (CPSS) as determined by the American Registry of Certified Professionals in Agronomy, Crops and Soils (ARCPACS), who can document the necessary education, training, and professional certification, registration, or credentials acceptable to the official and can demonstrate proven experience in the field of erosion and sediment control shall be considered a qualified credentialed professional. The qualified credentialed professional must be in good standing with the authority granting the registration. The qualified credentialed professional must

be familiar, and have expertise, with current industry standards for erosion and sediment controls and must be able to inspect and assure that nonstructural BMPs or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) and erosion control efforts, such as grading, mulching, seeding and growth management, or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of this permit. A professional engineer (PE) registered in the state must certify the design and construction of structural practices such as spill prevention control and counter measures (SPCC) plan containment structures, dam construction, etc.

32) Sediment. Solid material settled from suspension in a liquid that has been transported and deposited from its site of origin by air, water, ice or gravity as a product of erosion and has come to rest on the earth's surface either above or below a water surface, usually, inorganic or organic particles originating from weathering, chemical precipitation, or biological activity.

33) Silviculture. The care and cultivation of forest trees, including site preparation, planting, pruning, thinning and harvesting.

34) Site. Any tract, lot or parcel of land or combination of contiguous tracts, lots or parcels of land which is in one ownership, and any combination of tracts, lots and parcels which are contiguous, are owned by two (2) or more parties and are to be developed as a unit, subdivision or project.

35) Stabilization. The prevention of soil movement by any of various vegetative and/or structural means.

36) Storm water. The excess water running off from the surface of a drainage area during and immediately after a period of rain. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.

37) Storm water management. The incorporation of a variety of activities and equipment into a plan to address concerns associated with storm water for the purpose of preventing pollution, improving water quality, keeping pollutants out of runoff, and the implementation of best management practices.

38) Storm water management program (herein referred to as "the management program" or "the program"). A program which covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and, where necessary, intergovernmental coordination, to reduce the discharge of pollutants, to the maximum extent practicable, using management practices control techniques and system design and engineering methods and such other provisions which are appropriate.

39) Storm water permit. A permit which grants permission to the holder to discharge storm water to the MS4 under the NPDES.

40) Stream. A course of running water usually flowing in a particular direction in a definite channel and discharging into some other course of running water or body of water.

41) Structural controls. Measures incorporated into existing storm water drainage systems or newly constructed systems to prevent or minimize the discharge of pollutants for the purpose of maintaining and/or improving water quantity and quality management; quantitative control by a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; qualitative control by a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

42) Utility. A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, telephone service and telegraph service.

43) Variance. The modification of the minimum land disturbance requirements in situations in which exceptional circumstances, applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this article would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this article.

44) Water Quality. Characteristics of storm water runoff that relate to the physical, chemical, biological, or radiological integrity of water.

45) Water Quantity. Characteristics of storm water runoff that relate to the rate and volume of storm water runoff.

Article II. General Provisions.

Section 2.01 Lands to Which This Ordinance Applies.
This ordinance applies to all land disturbance activities undertaken within the jurisdiction of The City of Prichard, Alabama.

Section 2.02 Land Disturbance Activities. Land disturbance activities shall include any land change which may result in soil erosion from water or wind, or movement of sediments, directly or indirectly, to the Municipal Separate Storm Sewer System (MS4) and/or community waters, including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land, except the term shall not include the following:

1) Projects with a total area less than 10,000 square feet (0.23 acres).

2) Agriculture;

3) Silviculture;

4) Such minor land disturbing activities as home gardens, landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;

5) The construction of single family residences when built separately on lots within a subdivision which has a current City of Prichard Land Disturbance permit issued pursuant to this ordinance, provided that excavation is limited to trenches for the foundation, basements, utility service and sewer connections, and minor grading for driveways, yard areas and sidewalks;

6) Minor subsurface exploratory excavations under the supervision of soils engineers or engineering geologists;

7) Digging of water wells or environmental monitoring wells;

8) Construction, installation or maintenance of electrical, telephone, cable television lines and poles, water, sanitary sewer, gas, and other utilities, provided these activities do not pose a significant threat of contamination to community waters and the total project area is less than one (1) acre; and

9) The opening of individual burial sites in property which has been approved for such use by all necessary governmental authorities.

These activities may be undertaken without a permit; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting such activities in accordance with the provisions of this article and any other applicable law, including the proper control of sedimentation and runoff to the MS4.

Section 2.03 ***General Requirements for Land Disturbance Activities.*** No land disturbing activities shall be conducted within the City of Prichard except in such a manner that:

1) Persons conducting land disturbing and construction activities shall take all reasonable measures referred to, and provided for, in this article to protect all public and private property from damage caused buy such activities and to reduce storm water pollution to the maximum extent practicable.

2) All land disturbance activities subject to this article shall be undertaken in accordance with the following requirements:

a) Stripping of vegetation, grading, excavation, and other development activities shall be conducted in such a manner to minimize erosion. Clearing and grubbing must be held to the minimum necessary for grading and equipment operation.

b) Other than land-clearing activities required to install the appropriate BMP in accordance with the BMP plans, any down-slope erosion and sediment control

measures, on-site stream channel protection, and up-slope diversion of drainage required by the BMP plan shall be in place and functional prior to the commencement of any clearing or earth moving operations, and shall be maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday but must be replaced at the end of the workday.

c) To the extent necessary, sediment in runoff water shall be trapped by the use of sediment basins, silt traps or similar measures until the disturbed area is stabilized.

d) Structural controls shall be designed and implemented as required to prevent erosion. All surface water flowing toward the disturbed area shall, to the maximum extent possible, be diverted using berms, channels or sediment traps as necessary. Erosion and sediment control measures shall be designed according to the size and slope of the disturbed and/or drainage areas to effectively detain runoff and prevent erosion.

e) Whenever feasible, natural vegetation shall be retained, protected and supplemented. If feasible, preservation of natural vegetation is encouraged to provide a natural buffer zone, which minimizes erosion potential, protects water quality, and provides aesthetic benefits. Where applicable, natural streams flowing to and through the site shall be maintained in their natural channel and provided with a vegetative buffer zone.

f) Adequate protective measures must be provided for the containment of hazardous substances and other materials with potential to pollute the MS4, including petroleum products, lubricants, and paint.

g) Storm water runoff from the site shall contain no visible floating oil or scum. It shall not cause an unnatural color in the receiving water, nor shall it result in an odor in the community waters. Storm water discharge from the site shall not contain any materials in concentrations sufficient to be dangerous or otherwise detrimental to humans, livestock, wildlife, plant life, fish and aquatic life in the community waters.

h) All control measures shall be checked and repaired as necessary to prevent contamination of community waters, including within twenty-four (24) hours after any rainfall exceeding three-quarters (0.75) inches per twenty-four (24) hour period.

i) Upon completion of land disturbing activities, property owners and their agents shall be responsible for leaving slopes so that they will not erode, through such methods as revegetation, mulching, rip-rapping or gunniting. Regardless of the chosen method, the objective shall be to leave the site erosion-free.

j) Temporary soil stabilization must be implemented to disturbed areas to the maximum extent feasible within seven (7) days on areas that will remain unfinished for more than 30 days. Soil stabilization refers to measures which protect soil from the erosive forces of wind, raindrop impact, and storm water runoff, and includes the growing of grass, sod, and application of mulch, straw, fabric mats, and the early application of gravel base on areas to be paved.

k) Permanent soil stabilization must be applied to disturbed areas to the maximum extent feasible within fourteen (14) days of completion of grading.

l) A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized.

Section 2.04 ***Compliance.*** No land disturbing or construction activities hereafter shall be conducted without full compliance with the terms of this article and other applicable regulations.

Section 2.05 **Abrogation and Greater Restrictions.** These land disturbance regulations are not intended to repeal, abrogate, or impair any existing ordinance, regulation, covenant or restriction. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 2.06 **Interpretation.** In the interpretation and application of this ordinance all provisions shall be 1) considered as minimum requirements; 2) liberally construed in favor of the governing body, and; 3) deemed neither to limit nor repeal any other powers granted under state statutes.

Article III. Administration.

Section 3.01 **Designation of Ordinance Administrator.** The City Clerk or Building Official or his/her agent is hereby appointed to administer and implement the provisions of this article.

Section 3.02 **Permit Procedures and Fees; Land Disturbance Unlawful Without Permit.**

1) **Application.** Application for a Land Disturbance Permit shall be made to the City of Prichard on forms furnished by the City PRIOR to any development activities. No land disturbing activities shall be conducted within the City until a permit has been issued by the Administrator allowing such activity pursuant to the provisions of this article.

2) **Application Form.** Permit application forms may be acquired from the Administrator beginning on the effective date of this Ordinance.

3) **Application Fee.** Each application for the issuance of a Land Disturbance Permit shall be accompanied by a non-refundable **application fee in the amount of 75.00.** This application fee covers administrative costs associated with processing and reviewing the land disturbance permit application.

4) Permit Fee. In addition to the application fee, a Permit Fee shall be assessed in the amount of $50.00 for each acre over one (1) acre up to a maximum of $500.00. As examples:

(a) A project greater than 10,000 square feet and less than or equal to one (1) acre would only be charged the $75 application fee.

(b) A project greater than one (1) acre and less than or equal to two (2) acres would be charged a $75 application fee plus a $50 permit fee.

(c) A project greater than two (2) acres and less than or equal to three (3) acres would be charged a $75 application fee plus a $100 permit fee. And so on to a maximum of $500.

5) **Engineering Review Fee**. An Engineering Review Fee shall be assessed for land disturbance activities equal to or greater than one (1) acre, as follows:

(a)	Initial Engineering Review	$350.00 each; and
(b)	Re-submittal Reviews	$150.00 each.

6) **Land Disturbance Unlawful Without Permit**. It shall be unlawful to commence any land disturbance or construction activities as described in this Ordinance prior to the issuance of a City of Prichard Land Disturbance Permit. A Land Disturbance Permit shall be valid for one (1) year provided that work commences within six (6) months of effective date of the permit, unless sooner revoked for violations of permit conditions, changes in applicable law, or other good cause. If work is not commenced within six (6) months of the effective date of the permit, the applicant shall be required to submit a new permit application and pay all applicable fees. Upon project completion, the applicant shall notify the Administrator and request termination of permit coverage. The Administrator shall grant termination within thirty (30) days unless it is determined that the applicant has failed to meet the requirements of this ordinance, particularly that regarding proper soil stabilization.

Section 3.03 **Land Disturbance Permit Requirements.** The application for a Land Disturbance Permit shall include, at minimum, the following information:

1) Name and telephone number of applicant;

2) Business or residence address of applicant;

3) Name and address of owner of subject property;

4) Designated Point of Contact for the project;

5) Address and legal description of subject property;

6) Name and address of contractor and any applicable subcontractors who shall perform the land disturbing activity;

7) The nature, extent and purpose of the land disturbing activity including the size of the area for which the permit shall be applicable and a schedule for the starting and completion dates of the land disturbing activity;

8) A BMP plan outlining specific measures used to control erosion and storm water discharge from the site;

9) A map or plot of the property upon which land disturbance activities are to be conducted, prepared by a registered land surveyor, detailing present topography, properties immediately adjacent to the subject site, and all existing improvements, including, but not limited to, grades and elevations of streets, sidewalks, drainage and utility facilities;

10) All proposed contours;

11) An erosion control plan prepared by a qualified credentialed professional indicating erosion control devices, soil stabilization specifications, and storm water management measures designed to reduce erosion and minimize impact to the MS4;

12) For land disturbance activities greater than one (1) acre, or part of a larger development or project that is, or will eventually be, larger than one (1) acre in size require an NPDES permit issued by the Alabama Department of Environmental Management (ADEM) authorizing the discharge of storm water. If an NPDES permit is required, a copy of the Notice of Intent (NOI) shall be submitted to the Administrator with the Land Disturbance Permit Application. If the current NPDES permit should expire during land disturbance activities, a copy of the new NOI and ADEM's subsequent verification of coverage shall be submitted to the Administrator;

13) Any other information deemed necessary by the Administrator to effectively evaluate the potential for contamination of the MS4 by erosion and storm water runoff.

Section 3.04 **Availability of Permit**. An approved copy of the City of Prichard Land Disturbance Permit shall be maintained at the office of the designated contact person and at the permitted subject site. The permit shall be made available for inspection at any time by the Administrator and his/her agents.

Section 3.05 **Transfer of Permit**. A City of Prichard Land Disturbance Permit is non-transferable. The owner/developer shall provide the Administrator written notification should the entity issued a Land Disturbance Permit change during the land disturbance activities. The Administrator may require a new Land Disturbance Permit Application be filed under the new entities name and fees assessed in accordance with Section 3.02 of this article.

Section 3.06 **Signatory Requirements**. (a) All applications required by this ordinance to be submitted to the Administrator shall be signed as follows:

1) If the application is submitted by a corporation, it must be signed by the president or a vice president, secretary or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation. Proof of authority of the signatory shall be provided to the Administrator, upon his/her request.

2) If the application is submitted by a limited liability corporation, it must be signed by the manager or other person who serves the same function as the president of a corporation.

3) If the application is submitted by a partnership, it must be signed by a general partner or the proprietor.

4) If the application is submitted by a sole proprietorship, it must be signed by the proprietor.

5) If the application is submitted by a municipality, the state or federal government, or other municipal, state or federal agency, it must be signed by a principal executive officer of such government or the chief executive officer of the agency, or a senior executive officer having responsibility for overall operations of a principal geographic unit of any such governmental agency.

(b) Any person signing the application or correspondence shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and that I have personally examined and am familiar with information therein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and civil penalty."

Article IV. **Monitoring and Inspections.** The Administrator or his/her agents may periodically monitor the erosion control and the quality of storm water runoff from land disturbing activities permitted pursuant to this article.

Section 4.01 **Detections of Illicit Connections, Improper Disposal, and/or Other Discharges.** The administrator, and his/her authorized agents, shall take the necessary steps to detect and eliminate illicit connections and eliminate improper disposal and/or discharge to the MS4, including the required wet-weather and dry-weather programs to screen illicit connections and improper discharges and identify their source(s) from land disturbing activities.

Section 4.02 **Inspections.** Inspections to monitor the quality of erosion control measure and the quantity of pollutants in storm water discharges from sites permitted pursuant to this ordinance, and from any other facilities or sites the Administrator deems a potential source of contamination to the community waters, including those facilities and sites which hold current NPDES permits, shall be performed in accordance with the following protocol:

1) The Administrator or his/her designee, hereafter referred to as "inspector," bearing proper identification may enter all land disturbing activities for regular, periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing to verify compliance with the provisions of this ordinance and the specific BMP plans and controls for the land disturbing activities. The inspector shall notify the property owner, his contact person or on-site representative prior to inspection. Inspections shall be conducted at reasonable times to confirm the implementation and maintenance of BMP plans.

2) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas in which no objection is raised. The inspector shall immediately report the refusal and the grounds to the Administrator. The Administrator may seek appropriate compulsory process. The property owner is responsible for all costs and expenses incurred by the City during this process, including any court costs or legal fees.

3) If the Administrator, or his/her designees, has reasonable cause to believe that discharges from the land disturbing activities may cause imminent threat to the human health or the environment, an inspection may take place at any time and without notice to the owner or on-site representative. The inspector shall present proper credentials upon reasonable request by the owner or representative.

4) At any time during the conduct of an inspection or at such other times, as the Administrator, or his/her designees, may request information from the owner or on-site representative, the owner or representative may identify areas of the site, material or processes which contain or which might reveal a trade secret. If the inspector has no clear or convincing reason to question such identification, the inspection report shall note that trade secret information has been omitted. To the

extent practicable, the Administrator shall protect all information which is designated as a trade secret by the owner or their representative.

5) In the event of substantial erosion or pollutant loading to community waters, the Administrator will take the following steps:

a) Field Inspection to verify possible sources of erosion and pollution,

b) Informing the owner or on-site representative of the facility determined by the Administrator to be the source of the erosion and pollution and requesting that corrective actions be implemented immediately by the owner or on-site representative,

c) Following up with the owner or on-site representative to determine the status of corrective actions, and

d) Enforcement procedures shall be as provided in Article V of this ordinance, if needed.

The Administrator, or his/her designees, shall have the authority to stop all work at the project site until the sources of erosion and pollution are properly corrected.

Article V. Enforcement and Abatement.

Section 5.01 Unauthorized Discharge.

(a) **Discharges Public Nuisance**. Any site erosion or discharge of storm water made in violation of this ordinance or of any condition of a permit issued pursuant to this ordinance is hereby declared a public nuisance and shall be corrected and/or abated in accordance with applicable law.

(b) **Allowable Discharges**. The following direct or indirect discharges into the MS4 are allowable under the terms of this ordinance unless determined by the Administrator to be a source of contamination to community waters:

1) landscape irrigation;

2) uncontaminated water from foundation and footing drains;

3) discharges from springs;

4) individual residential car washing;

5) lawn watering;

6) waterline and fire hydrant flushings; and

7) discharges from fire fighting activities.

Section 5.02 **Accidental Discharges.**

(a) **Notice to Administrator and Local Emergency Management Authority.** In the event of a discharge of hazardous substance or a significant spill of a hazardous substance to the MS4 which could constitute a threat to human health or the environment, the owner, operator or on-site representative shall give notice to the Administrator and local emergency management authority in the same manner and within the same time as required by state regulations for notice to ADEM.

(b) **Minimization of adverse Impact.** The owner, operator or on-site representative of such property should take all reasonable steps to minimize adverse impact to the community waters cause by discharges to the MS4, including such improved and additional monitoring as may be necessary to determine the nature and impact of the discharge. Absent a compelling public interest to the contrary, it shall not be a defense for the owner, operator or on-site representative in an enforcement situation that it would have been necessary to halt or reduce business or activity of the site, or any project or facility thereon, to maintain water quality and minimize adverse impact that the discharge may cause.

Section 5.03 **Immediate Threats to Public Health and Welfare.** Notwithstanding any other provision in the ordinance to the contrary, in the event of an immediate threat to the pubic health or welfare, the Administrator may take all appropriate measures to remove or alleviate such threat.

Section 5.04 **Administrative Notification and Enforcement.**

1) **Notification of Violation:** Whenever the Administrator finds that any person is in violation of any provision of this ordinance, the Administrator or his/her agent may serve upon such person written notice of the violation. Within twenty-four (24) hours of the date and time of such written notice, the owner, operator or on-site representative shall take all necessary corrective actions and preventative measures to adequately correct the items identified in the Notice of Violation.

2) ***Compliance Orders*:** When the Administrator finds any person has violated, or continues to violate, this ordinance, a compliance order may be issued to the violator, directing that, within a specified time period, adequate structures and BMP measures be installed, or procedures implemented, or other action be taken, to remedy such violation. Compliance orders may also contain such other requirements as may be reasonably necessary and appropriate to address such violation, including the construction of appropriate structures, BMP measures, and self-monitoring and management practices.

3) ***Stop Work Orders*:** When the Administrator finds that any person has violated, or continues to violate, this ordinance or any article contained therein, the

Administrator may issue an order to such person to cease and desist all such violations immediately, and direct such person in violation of this ordinance to:

a. Comply with this ordinance forthwith; or

b. Take such appropriate remedial or preventative action as may be required to address properly a continuing or threatened violation of this ordinance, including halting operations and terminating the discharge.

Section 5.05 (a) **Unlawful Acts, Misdemeanor.** It shall be unlawful for any person to:

1) Violate any provision of this ordinance;

2) Violate the provisions of any permit issued pursuant to this ordinance;

3) Fail or refuse to comply with any lawful order issued by the Administrator which has not been timely appealed to the Board of Adjustment within the time allowed by this ordinance.

(b) **Penalty.** Such person shall be guilty of a misdemeanor, and each day of such violation, failure or refusal to comply with this article shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of any of the provisions of this article may be punished by a fine of up to $500.00 per day and/or up to 30 days in jail. Any work performed without submitting a Land Disturbance permit application may be subject to a Civil Penalty of up to $500 per day.

Section 5.06 **Judicial Proceeding and Relief.** The Administrator may initiate proceeding in any court of competent jurisdiction against any person who has or is about to:

1) Violate the provisions of this ordinance;

2) Violate the provisions of any permit issued pursuant to this ordinance;

3) Fail or refuse to comply with any lawful order issued by the Administrator which has not been timely appealed to the Board of Adjustments within the time allowed by this ordinance.

Article VI. **Variance Procedures.** The Board of Adjustment as established by the City of Prichard shall hear and decide requests for appeals or variance from the requirements of this ordinance. Variances may be granted provided they would not result in a violation of the ADEM permit regulations or any state or federal regulation.

1) The Board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the City Clerk, Building Official and his/her agents, or the Planning and Zoning Commission in the enforcement or administration of this ordinance.

2) Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Circuit Court of Mobile County, Alabama as provided in Section 11-19-20, Code of Alabama, 1975.

3) Applicants for variances shall submit a written request for variance, detailing specific reasons for seeking the variance and reasons therefore, including supporting data as to why the variance should be granted.

4) Variances may be issued for development necessary for the conduct of a functionally dependant use, provided the criteria of this Article are met, no reasonable alternative exists, and development is protected by methods that minimize erosion and storm water runoff while creating no additional threat to the public safety.

5) Variances shall not be issued if the land disturbance will adversely impact community waters.

6) In reviewing such requests, the Board of Adjustment shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of the ordinance.

7) **Conditions for Variances**:

A variance shall be issued *ONLY* when there is:

a. A finding of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased soil erosion, adverse impacts to community waters, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with local existing laws and ordinances.

Article VII. **General Provisions.**

Section 7.01 The provisions of this ordinance are minimum standards for erosion and sediment control; therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon the determination that the variance is the minimum necessary to afford relief.

Section 7.02 The City Clerk, Building Official and his/her agents shall maintain records of all appeal actions and report any variance to ADEM upon request.

Section 7.03 Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

Section 7.04 If any provision or provisions of this Ordinance shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 7.05 This Ordinance shall be effective immediately upon its adoption and publication as required by law.

ADOPTED this the 18th day of September, 2008.

Presiding Officer

ATTEST:

DARLENE PALMER LEWIS, City Clerk

APPROVED this the 18th day of September 2008.

RONALD K. DAVIS, Mayor