

D Bentel: Public Comments re Erosion and Sediment Control for BOS Meeting on Friday February 24, 2022

I am providing a summary of my interpretation of legal requirements, and some questions the requirements raise, based on Carson City Code of Ordinances, Title 12. WATER, SEWERAGE AND DRAINAGE. I have attached the full document as a reference for your edification.

Background

§ 12.18.020. Applicability

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulation, and the NPDES municipal stormwater permit and any amendments, revisions or re-issuance thereof. No required permit issued pursuant to this chapter shall relieve a person of the responsibility to secure other permits and approvals required for activities regulated by any other applicable rule, code, act, permit or ordinance.

§ 12.18.040.2 Permit Application

Permit application shall be consistent with those required submittals for an engineering permit, along with plans, specifications, and project schedules for all construction operations for earth disturbances of more than 1 acre in size or areas greater than 10,000 square feet of new impervious surface or of more than 50 cubic yards of grading.”

§ 12.18.070. Responsibility of permittee

2. Preventing damage to adjacent property (No person shall disturb earth on land so close to the property line as to endanger any adjoining public street, sidewalk, alley, or any public or private property without supporting and protecting such property from settling, cracking, or other damage which might result).

4. Promptly removing all soil, miscellaneous debris, materials applied, dumped, or otherwise deposited on public streets, highways, sidewalks, or other public thoroughfares or any other non-authorized offsite location, during transit to and from the construction site, or otherwise, where such spillage constitutes a public nuisance, trespass or hazard in the determination of the city engineer or a court of competent jurisdiction.

§ 12.18.080. General requirements.

2. All earth disturbances shall be conducted in such a manner so as to effectively reduce accelerated soil erosion and resulting sedimentation and should not exceed the erosion expected to occur for the site in its totally undeveloped state.

Discussion

The Deputy City Attorney said originally, in writing, that no Permit application was required for the Prison Hill projects, and one was only prepared after I filed a formal “Misdemeanor Complaint” in which the Parks Department, Open Space Department and Deputy District Attorney were specifically named. This complaint clearly showed why the erosion control plan and SWPPP were in fact required, according to the City’s regulations. Based on my complaint, the Deputy DA provided me with a city-prepared SWPPP which was inadequate in that it did not specify any post-construction BMP’s, or maintenance of the roadway after sediment had been

deposited on the road surface from all low points on the OHV western side of hill. I submitted an edited version of the SWPPP and was told by the DA that it wasn't his intent to have me review the SWPPP document, but would pass on my comments to the Parks and Open Space Departments. I also noted that he had not provided any answers to my question about not having prepared a SWPPP for Project 1 (Signs of Change 1 and 2) and have not had a response yet on this issue.

In my opinion, the constant use of prison hill as an OHV area is clearly an on-going earth disturbance that causes heavy erosion and sediment transport to occur after rain. The construction of sediment detention basins downstream of all major drainages on the on the west side of the hill (i.e., prior to discharging water towards Golden Eagle Lane), is crucial to stop sediment from reaching the road, and ultimately the Carson River. This is clearly an oversight in the engineering design.

Taking the appropriate regulations into account, the City is fully responsible to clean up the sediment deposited on Golden Eagle Lane after every storm that causes eroded sediment to be deposited on the roadway. The existing sediment piles and stormwater ditches from the October 2021 storms have NOT been addressed by the City, neither has sediment from previous storms ever been addressed. The City owns Prison Hill and therefore the City is responsible for removing the deposited sediment from the roadway and stormwater ditches, and ensuring that all culverts remain unblocked.

The State culvert under Golden Eagle Lane has been blocked for a very long time and the City and State go back and forth blaming the delay on each other. The State is happily accepting ALL sediment that is caused by OHV's in their Prison sediment placement area, and it is only a question of time before this gets into the Carson River. The City should insist that the State repair or replace the blocked culvert, and stop using the State as an excuse for not performing this work. The State may be fully justified in charging the City for this repair or replacement. It is deplorable that this issue has been allowed to continuously occur for over five years.

Carson City Code of Ordinances

Title 12. WATER, SEWERAGE AND DRAINAGE

Chapter 12.18. EROSION AND SEDIMENT CONTROL

§ 12.18.010. Definitions

12.18.01.3. "Best management practices (BMPs)" means physical, structural and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, errant dust, waste disposal and drainage from material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the State, (United States). BMPs may include schedules of activities, prohibition of practices, design standards and maintenance activities.

12.18.01.6. "Earth disturbance" means any man-made change in the natural cover or topography of land, including all stripping, grading, cut and fill operations, building, paving and other activities, which may result in or contribute to soil erosion or sedimentation of the waters of the State.

12.18.01.8. "Excavation" means any act, by which soil or rock is cut into, dug, mined, quarried, uncovered, removed, displaced, relocated, or stockpiled, including the conditions resulting from excavation.

12.18.01.9. "Filling" means any act by which soil, rock or other construction materials are placed, stockpiled, dumped, or a combination thereof onto the surface of the earth that may be exposed to rain water or wind.

12.18.01.10. "Grading" means any stripping, excavating, filling, stockpiling, or any combination thereof, and also included shall be the land in its excavated or filled condition.

12.18.01. 20. "Pollution" means contamination or other alteration of the physical, chemical or biological properties of waters of the State, including change in pH, temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the State that will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreation or to other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

12.18.01.21. "Stripping" means any activity that removes or significantly disturbs the vegetative surface cover including clearing and grubbing operations.

12.18.01.22. "Storm water" means surface runoff and drainage associated with storm events and snowmelt.

12.18.01.23. "Temporary soil erosion control measures" means interim control measures which are installed during construction and maintained for the purpose of controlling soil erosion until permanent soil erosion control measures are implemented.

§ 12.18.020. Applicability

All persons taking any action or applying for any land development, land division or construction permits and/or approvals shall be required to submit for approval of an erosion and sediment control plan with their application and/or request, or;

Any person who undertakes, or is responsible for undertaking any action, which involves earth disturbance, is ultimately responsible to see that soil erosion and sedimentation as well as the resultant changed water flow characteristics are controlled to the extent necessary to avoid damage to property and to avoid pollution of receiving waters. Nothing in this chapter shall be taken or construed as lessening or modifying the ultimate responsibility of such persons. Nor do the requirements of this chapter imply the assumption of any liability therefore on the part of the city.

The standards, criteria and requirements of this chapter are to be seen as minimum standards that are not necessarily adequate to meet the highly variable conditions that must be covered by effective control measures. Compliance with the requirements of this chapter may not, therefore, of itself discharge such person's responsibility to provide effective control measures.

Erosion and sedimentation that occurs from construction activities within the city shall be prevented from leaving construction sites by providing proper provisions for water disposal and by protecting soil surfaces during and after construction, in order to promote the safety, public health, convenience and general welfare of the community.

No permits shall be issued unless said permits include soil erosion and sediment control measures consistent with the requirements of this chapter and related development standards.

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulation, and the NPDES municipal stormwater permit and any amendments, revisions or re-issuance thereof. No required permit issued pursuant to this chapter shall relieve a person of the responsibility to secure other permits and approvals required for activities regulated by any other applicable rule, code, act, permit or ordinance.

§ 12.18.030. Exceptions to applicability.

No erosion and sediment control plan shall be required for the following:

1. Agricultural use of land zoned agricultural.
2. Single family residences with less than 1 acre of disturbed area and/or less than 50 cubic yards of grading.
3. All other land use zones or public areas of less than 10,000 square feet of new impervious surface, and/or less than 50 cubic yards of grading, and/or less than 1 acre of earth disturbance.
4. Where the city engineer agrees, in writing, with the permittee that the planned work and the final structures or topographical changes will not result in or contribute to soil erosion or sedimentation, i.e., the rainfall erosivity factor is less than 5 during the period of construction activity; will not interfere with any existing drainage course in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way; will not present any hazard to any persons or property; or will have no detrimental influence upon the public welfare or upon the total development of the watershed.
5. Even though no erosion and sediment control plan is required under subsections (1), (2), (3), and (4) of this section, those operations and construction activities which are exempted from submitting an erosion and sediment control plan **must comply with the rules and regulations in this chapter when conditions change such that appropriate controls are necessary to retain soil erosion on the area of earth disturbance.**

§ 12.18.040. Permits and fees.

1. Permit Requirement. Except as exempted by Carson City Municipal Code, no person shall do any earth disturbance, unless the city issues a valid permit. Issuance by city does not exempt the parties from obtaining any other permits required by the State of Nevada or the Federal Government.
2. Permit Application. Permit application shall be consistent with those required submittals for an engineering permit, along with plans, specifications, and project schedules for all construction operations for earth disturbances of more than 1 acre in size or areas greater than 10,000 square feet of new impervious surface or of more than 50 cubic yards of grading.

4. Fees. No separate fees under this Section will be imposed.

§ 12.18.070. Responsibility of permittee. _

During earth disturbance operations the permittee shall be responsible for:

1. Preventing damage to any public utilities or services within the limits of earth disturbance and along any routes of travel of the equipment;
2. Preventing damage to adjacent property (No person shall disturb earth on land so close to the property line as to endanger any adjoining public street, sidewalk, alley, or any public or private property without supporting and protecting such property from settling, cracking, or other damage which might result).
3. Executing the proposed work in accordance with the permitted plans and in compliance with all the requirements of the permit and this chapter;
4. Promptly removing all soil, miscellaneous debris, materials applied, dumped, or otherwise deposited on public streets, highways, sidewalks, or other public thoroughfares or any other non-authorized offsite location, during transit to and from the construction site, or otherwise, where such spillage constitutes a public nuisance, trespass or hazard in the determination of the city engineer or a court of competent jurisdiction.

§ 12.18.080. General requirements. _

1. All temporary erosion control facilities and all permanent facilities intended to control erosion from any earth disturbance shall be installed before the work takes place.
2. All earth disturbances shall be conducted in such a manner so as to effectively reduce accelerated soil erosion and resulting sedimentation, and should not exceed the erosion expected to occur for the site in its totally undeveloped state
3. All persons engaged in earth disturbances shall design, implement, and maintain acceptable soil erosion and sedimentation control measures, in conformance with the erosion control technical standards adopted by the city.
4. All earth disturbances shall be designed, constructed and completed in such a manner so that the exposed area of any disturbed land shall be limited to the shortest possible period of time.
5. Sediment cause by accelerated soil erosion shall be removed from runoff water to the maximum extent practicable before it leaves the site of the earth disturbance.

6. Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the earth disturbance area shall be designed to limit the water flow to a non-erosive velocity.

7. Temporary soil erosion control facilities shall be removed and earth disturbance areas graded and stabilized with permanent soil erosion control measures pursuant to standards and specifications prescribed in accordance with the provisions the development standards of Carson City.

8. Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area shall be completed as soon as possible after final grading or the final earth disturbance has been completed. When it is not possible to permanently stabilize a disturbed area after an earth disturbance has been completed or where significant earth disturbance activity ceases, temporary soil erosion control measures shall be implemented. All temporary soil erosion control measures shall be maintained until permanent soil erosion measures are implemented.

(Ord. 2006-29 § 10, 2006).

§ 12.18.120. Acts resulting in violation of Federal Clean Water Act. _

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

(Ord. 2006-29 § 14, 2006).