

Soil Erosion, Sedimentation And Pollution Control Ordinance

NOW, THEREFORE, BE IT ORDAINED, BY
The Town of Thunderbolt

SECTION I TITLE

This ordinance will be known as The Town of Thunderbolt Soil Erosion, Sedimentation and Pollution Control Ordinance.

SECTION II DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this ordinance, unless otherwise specifically stated:

1. **Best Management Practices (BMPs):** These include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the 'Manual for Erosion and Sediment Control in Georgia' published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.
2. **Board:** The Board of Natural Resources.
3. **Buffer:** The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.
4. **Certified Personnel:** A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.
5. **Coastal Marshlands:** Shall have the same meaning as in O.C.G.A. 12-5-282.
6. **Commission:** The Georgia Soil and Water Conservation Commission (GSWCC).
7. **CPESC:** Certified Professional in Erosion and Sediment Control with current certification by EnviroCert, Inc., which is also referred to as CPESC or CPESC, Inc.
8. **Cut:** A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface. Also known as excavation.
9. **Department:** The Georgia Department of Natural Resources (DNR).
10. **Design Professional:** A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification by EnviroCert, Inc. Design Professionals shall practice in a manner that complies with applicable Georgia law governing professional licensure.
11. **Director:** The Director of the Environmental Protection Division or an authorized representative.
12. **District:** The Coastal Soil and Water Conservation District.
13. **Division:** The Environmental Protection Division (EPD) of the Department of Natural Resources.
14. **Drainage Structure:** A device composed of a virtually nonerodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm water management, drainage control, or flood control purposes.
15. **Erosion:** The process by which land surface is worn away by the action of wind, water, ice or gravity.
16. **Erosion, Sedimentation and Pollution Control Plan:** A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, that includes, as

- a minimum protections at least as stringent as the State General Permit, best management practices, and requirements in section IV.C. of this ordinance.
17. **Fill:** A portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.
 18. **Final Stabilization:** All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or landscaped according to the Plan (uniformly covered with landscaping materials in planned landscape areas), or equivalent permanent stabilization measures as defined in the Manual (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.
 19. **Finished Grade:** The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.
 20. **Grading:** Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.
 21. **Ground Elevation:** The original elevation of the ground surface prior to cutting or filling.
 22. **Land-Disturbing Activity:** Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Section III, Paragraph 5.
 23. **Larger Common Plan of Development or Sale:** A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, “plan” means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.
 24. **Local Issuing Authority:** The governing authority of any county or municipality which is certified pursuant to subsection (a) O.C.G.A. 12-7-8.
 25. **Metropolitan River Protection Act (MRPA):** A state law referenced as O.C.G.A. 12-5-440 et.seq. which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.
 26. **Natural Ground Surface:** The ground surface in its original state before any grading, excavation or filling.
 27. **Nephelometric Turbidity Units (NTU):** Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed or suspended particles are present.
 28. **NOI:** A Notice of Intent form provided by EPD for coverage under the State General Permit.
 29. **NOT:** A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.

30. **Operator:** The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the erosion, sedimentation and pollution control plan or to comply with other permit conditions.
31. **Outfall:** The location where storm water in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.
32. **Permit:** The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance.
33. **Person:** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of the State of Georgia, any interstate body or any other legal entity.
34. **Phase or Phased:** Sub-parts or segments of construction projects where the sub-part or segment is constructed and stabilized prior to completing construction activities on the entire construction site.
35. **Project:** The entire proposed development project regardless of the size of the area of land to be disturbed.
36. **Properly Designed:** Designed in accordance with the design requirements and specifications contained in the “Manual for Erosion and Sediment Control in Georgia” (Manual) published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the Manual as approved by the Commission up until the date of NOI submittal.
37. **Roadway Drainage Structure:** A device such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
38. **Sediment:** Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, ice, or gravity as a product of erosion.
39. **Sedimentation:** The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
40. **Soil and Water Conservation District Approved Plan:** An erosion, sedimentation and pollution control plan approved in writing by the Coastal Soil and Water Conservation District.
41. **Stabilization:** The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.
42. **State General Permit:** The National Pollution Discharge Elimination System (NPDES) general permit or permits for storm water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state’s authority to implement the same through federal delegation under the Federal Water

Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.

43. **State Waters:** Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of Georgia which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.
44. **Town:** The municipality of The Town of Thunderbolt which is not a certified Local Issuing Authority.
45. **Structural Erosion, Sedimentation and Pollution Control Practices:** Practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures and sediment traps, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.
46. **Trout Streams:** All streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. 12-5-20, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.epd.georgia.gov. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters

are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

47. **Vegetative Erosion and Sedimentation Control Measures:** Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:
 - a. Permanent seeding, sprigging or planting, producing long-term vegetative cover, or
 - b. Temporary seeding, producing short-term vegetative cover; or
 - c. Sodding, covering areas with a turf of perennial sod-forming grass.

Such measures can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.

48. **Watercourse:** Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.
49. **Wetlands:** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

SECTION III EXEMPTIONS

This Ordinance provides the authority to advise whether an application complies with requirements under the state NPDES program and requires best management practices to

prevent and minimize E&S; requires erosion, sedimentation and pollution control plan submission and review prior to commencing construction; requires inspections and enforcement, including stop work orders, bond forfeiture, and monetary penalties; and requires education and certification for persons involved in land development, design, review permitting, construction, monitoring, inspection and other land disturbing activities. Until such time that the Town becomes an LIA, the Division or other appropriate state agency is responsible for oversight and implementation of these aforementioned responsibilities and powers granted by this ordinance. The Town, by adoption of this ordinance and as specified in Section VI and VII of this ordinance, is also granted discretionary powers to implement initial inspections and limited enforcement rights on a case-by-case basis for stop-work orders.

This ordinance shall apply to any land-disturbing activity undertaken by any person on any land except for the following

1. Surface mining, as the same is defined in O.C.G.A. 12-4-72, "The Georgia Surface Mining Act of 1968".
2. Granite quarrying and land clearing for such quarrying;
3. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
4. The construction of single-family residences, when such construction disturbs less than one (1) acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in O.C.G.A. 12-7-6 and this paragraph. The minimum requirements of subsection (b) of O.C.G.A. 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the appropriate state agency.
5. Agricultural operations as defined in O.C.G.A. 1-3-3, "definitions", to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;
6. Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of Section IV C. of this ordinance, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices;
7. Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;
8. Any project involving less than one (1) acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which

involves less than one (1) acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Town from regulating any such project which is not specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, 9 or 10 of this section;

9. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the Department of Transportation or the State Road and Tollway Authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. 12-7-7.1; except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the appropriate state agency. The appropriate state agency shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if an application had been approved, and violations shall be subject to the same penalties as violations by permit holders;
10. Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission,

any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and

11. Any public water system reservoir.

SECTION IV MINIMUM REQUIREMENTS FOR EROSION, SEDIMENTATION AND POLLUTION CONTROL USING BEST MANAGEMENT PRACTICES

A. GENERAL PROVISIONS

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this ordinance shall contain provisions for application of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section IV B. & C. of this ordinance. The application of measures and practices shall

apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.

B. MINIMUM REQUIREMENTS/ BMPs

1. Best management practices as set forth in Section IV B. & C. of this ordinance shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. 12-7-6 subsection (b).
2. A discharge of storm water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by the appropriate state agency or of any state general permit issued by the Division pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than twenty-five (25) nephelometric turbidity units for waters supporting warm water fisheries or by more than ten (10) nephelometric turbidity units for

waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five (5) acres.

3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by the appropriate state agency or of any state general permit issued by the Division pursuant to subsection (f) of Code Section 12-5-30, the "Georgia Water Quality Control Act", for each day on which such failure occurs.
 4. The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
 5. The Town may set more stringent buffer requirements than stated in C.15,16 and 17, in light of O.C.G.A. § 12-7-6 (c).
- C. The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et. seq. for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the *Manual for Erosion and Sediment Control in Georgia* published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:
1. Stripping of vegetation, regrading and other development activities shall be

- conducted in a manner so as to minimize erosion;
2. Cut-fill operations must be kept to a minimum;
 3. Development plans must conform to topography and soil type so as to create the lowest practicable erosion potential;
 4. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
 5. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
 6. Disturbed soil shall be stabilized as quickly as practicable;
 7. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
 8. Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
 9. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. 12-7-1 et. seq.;
 10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
 11. Cuts and fills may not endanger adjoining property;
 12. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
 13. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;
 14. Land-disturbing activity plans for erosion, sedimentation and pollution control shall include provisions for treatment or control of any source of sediments and adequate

- sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Section IV B. 2. of this ordinance;
15. Except as provided in paragraph (16) and (17) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. 12-2-8, where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or where bulkheads and sea walls are installed to prevent shoreline erosion; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of water flow. Unless exempted as along an ephemeral stream, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:
 - a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed.

- Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and
16. There is established a 25 foot buffer along coastal marshlands, as measured horizontally from the coastal marshland-upland interface, as determined in accordance with Chapter 5 of Title 12 of this title, the "Coastal Marshlands Protection Act of 1970" and the rules and regulations promulgated thereunder, except where the director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director pursuant to Code Section 12-2-8, where an alteration within the buffer area has been authorized pursuant to Code Section 12-5-286, for maintenance of any currently serviceable structure, landscaping, or hardscaping, including bridges, roads, parking lots, golf courses, golf cart paths, retaining walls, bulkheads, and patios; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, where a drainage structure or roadway drainage structure is constructed or maintained; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, on the landward side of any currently serviceable shoreline stabilization structure, or for the maintenance of any manmade storm-water detention basin, golf course pond, or impoundment that is located entirely within the property of a single individual, partnership, or corporation; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented. For the purposes of this paragraph maintenance shall be defined as actions necessary or appropriate for retaining or restoring a currently serviceable improvement to the specified operable condition to achieve its maximum useful life. Maintenance includes emergency reconstruction of recently damaged parts of a currently serviceable structure so long as it occurs within a reasonable period of time after

damage occurs. Maintenance does not include any modification that changes the character, scope or size of the original design and serviceable shall be defined as usable in its current state or with minor maintenance but not so degraded as to essentially require reconstruction.

- a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat; and
- b. The buffer shall not apply to crossings for utility lines that cause a width of disturbance of not more than 50 feet within the buffer, provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.
- c. Activities where the area within the buffer is not more than 500 square feet or that have a "Minor Buffer Impact" as defined in 391-3-7-.01(r), provided that the total area of buffer impacts is less than 5,000 square feet are deemed to have an approved buffer variance by rule. Bank stabilization structures are not eligible for coverage under the variance by rule and notification shall

be made to the Division at least 14 days prior to the commencement of land disturbing activities.

- D. Nothing contained in O.C.G.A. 12-7-1 et. seq. shall prevent the Town from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Section IV B. & C. of this ordinance.
- E. The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.

SECTION V APPLICATION/PERMIT PROCESS

- A. GENERAL
The property owner, developer and designated planners and engineers shall design and review before submittal the general development plans. The appropriate state agency shall review the tract to be developed and the area surrounding it. They shall consult the zoning ordinance, storm water management ordinance, subdivision ordinance, flood damage prevention ordinance, this ordinance, and any other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the Town. However, the owner and/or operator are the only parties who may obtain a permit.
- B. APPLICATION REQUIREMENTS
 - 1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the Town without first obtaining authority from the appropriate state agency to perform such activity.
 - 2. The application for a permit (Notice of Intent) shall be directed to the appropriate state agency. Concurrently, the Town shall receive copies of said submission, as well as all subsequent communications with the appropriate state agency. The permit when issued shall be provided to the Town. The

application must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Section V C. of this ordinance. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of Section IV B. & C. of this ordinance will be met. Applications for a permit will not be accepted unless accompanied by copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10.

3. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit.
4. If the application is brought to the Town the Town shall refer the applicant to the appropriate state agency for submittal of the application and review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. The appropriate state agency shall approve or disapprove a plan within 45 days of receipt. Failure of the appropriate state agency to act within 45 days shall be considered an approval of the pending plan. The results of the appropriate state agency review shall be forwarded to the Town for information only. No permit will be issued unless the

plan has been approved by the appropriate state agency, and any variances required by Section IV C. 15, 16 and 17 have been obtained, all fees have been paid, and bonding, if required as per Section V B.6., have been obtained.

5. If a permit applicant has had two or more violations of previous permits, this ordinance section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing the application under consideration, the appropriate state agency may deny the permit application.
 6. The appropriate state agency may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the appropriate state agency may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the appropriate state agency with respect to alleged permit violations.
- C. PLAN REQUIREMENTS

1. Plans must be prepared to meet the minimum requirements as contained in Section IV B. & C. of this ordinance, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The *Manual for Erosion and Sediment Control in Georgia* is hereby incorporated by reference into this ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types,

geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and State laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A. 12-7-20.

2. Data Required for Site Plan shall include all the information required from the appropriate Erosion, Sedimentation and Pollution Control Plan Review Checklist established by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

D. PERMITS

1. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the appropriate state agency of a completed application, providing variances and bonding are obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
2. No permit shall be issued by the appropriate state agency unless the erosion, sedimentation and pollution control plan approved by the appropriate state agency has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Section IV C. 15, 16 and 17 are obtained, bonding requirements, if necessary, as per Section V B. 6. are met and all ordinances

and rules and regulations in effect within the jurisdictional boundaries of the Town are met. If the permit is denied, the reason for denial shall be furnished to the applicant.

3. Any land-disturbing activities by the Town shall be subject to the same requirements of this ordinance, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the Town.
4. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
5. The permit may be suspended, revoked, or modified by the appropriate state agency, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this ordinance. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.
6. The appropriate state agency may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of the application, in light of O.C.G.A. 12-7-7 (f) (1).

SECTION VI
INSPECTION AND ENFORCEMENT

- A. The appropriate state agency will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also,

the appropriate state agency shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance.

- B. The Town may review and amend its ordinances, to the extent appropriate, if new amendments to the Erosion and Sedimentation Act of 1975 are made.
- C. The Town and/or appropriate state agency shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- D. No person shall refuse entry or access to any authorized representative or agent of the Town and/or appropriate state agency who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

SECTION VII PENALTIES AND INCENTIVES

A. FAILURE TO OBTAIN A PERMIT FOR LAND-DISTURBING ACTIVITY

If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this ordinance without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the Town.

B. STOP-WORK ORDERS

Enforcement capability ultimately rests with the appropriate state agency, as specified in Section III. However, in order to protect, preserve, or support other governmental agencies to ensure no detrimental impacts, the Town reserves the right to issue stop-work orders at the Town's discretion.

For the first and second violations of the provisions of this ordinance, the Director or the Town shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the Director or the Town shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the Town shall issue an immediate stop-work order in lieu of a warning;

1. For a third and each subsequent violation, the Director or the Town shall issue an immediate stop-work order; and;
2. All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
3. When a violation in the form of taking action without a permit, failure to

maintain a stream buffer, or significant amounts of sediment, as determined by the appropriate state agency or by the Director or his or her Designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the Town or by the Director or his or her Designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

C. BOND FORFEITURE

If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of Section V B. 6. The appropriate state agency may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

D. MONETARY PENALTIES

1. Any person who violates any provisions of this ordinance, or any permit condition or limitation established pursuant to this ordinance, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director issued as provided in this ordinance shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this ordinance, notwithstanding any provisions in any Town charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed \$2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of Town ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this ordinance under Town ordinances approved under this ordinance shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

SECTION VIII
EDUCATION AND
CERTIFICATION

- A. Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. 12-7-20.
- B. For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of

said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.

- C. Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this ordinance.
- D. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. 12-7-19, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of O.C.G.A 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

SECTION IX ADMINISTRATIVE APPEAL JUDICIAL REVIEW

- A. ADMINISTRATIVE REMEDIES
The suspension, revocation, modification or grant with condition of a permit by the appropriate state agency upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the appropriate state agency within a timeframe established by the appropriate state agency by making and filing a written notice of appeal said notice of appeal to be filed with the appropriate state agency

within 5 business days of any action taken by the appropriate state agency.

- B. JUDICIAL REVIEW
Any person, aggrieved by a decision or order of the appropriate state agency , after exhausting his administrative remedies with the appropriate state agency, shall have the right to appeal denovo to the Superior Court of Chatham County.

SECTION X EFFECTIVITY, VALIDITY AND LIABILITY

- A. EFFECTIVITY
This ordinance shall become effective on the _____ day of _____, 20__.
- B. VALIDITY
If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this ordinance.
- C. LIABILITY
 1. Neither the approval of a plan under the provisions of this ordinance, nor the compliance with provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the Town or appropriate state agency for damage to any person or property.
 2. The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.
 3. No provision of this ordinance shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and

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approved thereunder or pollute any
Waters of the State as defined thereby.

ATTEST:

Signature
