

AN ORDINANCE TO AMEND THE CODE OF ATHENS-CLARKE COUNTY, GEORGIA WITH RESPECT TO **SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL**; AND FOR OTHER PURPOSES.

The Commission of Athens-Clarke County, Georgia hereby ordains as follows:

SECTION 1. Chapter 8-3, entitled "Soil Erosion and Sedimentation Control," is hereby amended by deleting said Chapter in its entirety and substituting the following in lieu thereof:

**"CHAPTER 8-3. SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL.**

Sec. 8-3-1. Title.

Sec. 8-3-2. Definitions.

Sec. 8-3-3. Exemptions.

Sec. 8-3-4. Minimum requirements for erosion and sedimentation control, using best management practices.

Sec. 8-3-5. Application/permit process.

Sec. 8-3-6. Inspection and compliance.

Sec. 8-3-7. Enforcement and Penalties.

Sec. 8-3-8. Education and certification.

Sec. 8-3-9. Administrative appeal; judicial review.

Sec. 8-3-10. Effective date, validity and liability.

**Sec. 8-3-1. Title.**

This chapter will be known as the "Athens-Clarke County Soil Erosion, Sedimentation and Pollution Control Ordinance."

**Sec. 8-3-2. Definitions.**

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

Best management practices (BMP's): 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 Georgia Soil and Water Conservation Commission (GSWCC) as of January 1 of the year in which the land-disturbing activity was permitted.

Board: The Board of Natural Resources.

Buffer: The area of land immediately adjacent to the banks of state waters which in its natural state of vegetation facilitates the protection of water quality and aquatic habitat.

Certified Personnel: A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.

Clearing: Any activity that removes the natural ground surface including tree canopy of the project site prior to grading, excavating or filling.

Commission: The Georgia Soil and Water Conservation Commission.

Construction phasing: The clearing of land in distinct phases as listed in the activity schedule, with the stabilization of each phase completed before the clearing of the next phase begins. See phase or phased.

CPESC: Certified Professional in Erosion and Sediment Control with current certification by Certified Profession in Erosion and Sediment Control Inc., a corporation registered in North Carolina, which is also referred to as CPESC or CPESC, Inc.

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 excavated surface. Also known as excavation.

Department: The Georgia Department of Natural Resources.

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 Certified Professional in Erosion and Sediment Control Inc.

Director: The Director of the Environmental Protection Division of the Department of Natural Resources, or an authorized representative.

District: The Oconee River Soil and Water Conservation District.

Division: The Environmental Protection Division (EPD) of the Department of Natural Resources.

Drainage structure: A device composed of a virtually non-erodible 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 stormwater management, drainage control, or flood control purposes.

Erosion: The process by which land surface is worn away by the action of wind, water, ice or gravity.

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 8-3-4(c) of this Chapter. Also known as the "plan."

Fill: A portion of land surface to which soil or other solid material has been added; the depth above the original ground.

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 equivalent permanent stabilization measures (such as the use of rip rap, gabions, permanent mulches or geo-textiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop of perennial vegetation appropriate for the time of year and region; or a crop of annual vegetation and a seeding of target crop perennials appropriate for the region. Final stabilization applies to each phase of construction.

Finished grade: The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.

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.

Ground elevation: The original elevation of the ground surface prior to cutting or filling.

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 8-3-3(a)(5).

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.

Local issuing authority (LIA): The governing authority of Athens-Clarke County, Georgia, which is certified pursuant to subsection (a) of O.C.G.A. § 12-7-8.

Natural ground surface: The ground surface in its original state before any grading, excavation or filling.

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 colloidally dispersed or suspended particles are present.

NOI: A Notice of Intent form provided by EPD for coverage under the State General Permit.

NOT: A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.

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.

Outfall: The location where stormwater in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site or a protected stream on site as defined in Chapter 8-6 Protected Environmental Areas, becomes a point source discharging into that receiving water or protected stream.

Permit (Land-disturbing Permit or LD Permit): The authorization necessary to conduct a land-disturbing activity under the provisions of this chapter.

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.

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.

Project: The entire proposed development project regardless of the size of the area of land to be disturbed.

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.

Roadway drainage structure: A device such as a bridge, culvert, or ditch, composed of a virtually non-erodible 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 way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

Sediment: Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice, or gravity as a product of erosion.

Sedimentation: The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.

Soil and Water Conservation District Approved Plan: An erosion, sedimentation and pollution control plan approved in writing by the Oconee River Soil and Water Conservation District.

**Stabilization:** The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures as specified in the *Manual for Erosion and Sediment Control in Georgia* for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

**State General Permit (NPDES General Permit or permits):** The National Pollution Discharge Elimination System general permit or permits for stormwater 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. § 1251 et seq., and subsection (f) of O.C.G.A. § 12-5-30.

**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.

**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 include but are not limited to riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.

**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*.

**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.

**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.

### **Sec. 8-3-3. Exemptions.**

(a) This chapter 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 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 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 Section 8-3-4 of this chapter and this paragraph. The minimum requirements of section 8-3-4 of this chapter and the buffer zones provided by this section shall be enforced by the Local Issuing Authority;

(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 aquaculture, 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 8-3-4(c) of this chapter, 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 years after completion of such forestry practices;

(7) Any project carried out under the technical supervision of the Natural Resources Conservation Service (NCRCS) of the United States Department of Agriculture;

(8) Any project involving less than one 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 acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainageways 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 acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainageway, 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 local issuing authority from regulating any such project which is not specifically exempted by paragraphs (1), (2), (3), (4), (5), (6), (7), (9) or (10) of this subsection (a);

(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 Local Issuing Authority, 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;

(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.

**Sec. 8-3-4. 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 this chapter and the State General Permit (NPDES General Permit) are not met. Therefore, plans for those land-disturbing activities which are not exempted by this chapter shall contain provisions for application of soil erosion and sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section 8-3-4(b) and (c) of this chapter. 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 the requirements of this chapter and the State General Permit (NPDES General Permit).

(b) Minimum requirements/BMP's.

(1) Best management practices as set forth in section 8-3-4 (b) and (c) of this chapter 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 the LIA 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 stormwater 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 stormwater 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 Local Issuing Authority 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 25 nephelometric turbidity units for waters supporting warm water fisheries. 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 acres.

(3) Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by the Local Issuing Authority 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 failure occurs.

(4) The Local Issuing Authority may set more stringent buffer requirements than stated in (c)15, in light of O.C.G.A. § 12-7-6 (c).

(c) The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter 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 BMP's:

(1) Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion, including construction phasing on all sites, with the size and scope of each construction phase to be reviewed and approved by the local issuing authority;

(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 practical 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) Erosion, Sedimentation and Pollution Control Plans 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 8-3-4(b)(2) of this chapter. Erosion, Sedimentation and Pollution Control Plans shall also include all necessary information for compliance with the State General Permit;
- (15) 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 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. 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) Additional buffers beyond those listed in paragraph (15) may be required on the site. Applicant should refer to the Athens-Clarke County Protected Environmental Areas Ordinance Chapter 8-6 for additional requirements.

(d) Nothing contained in this chapter shall prevent the Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in section 8-3-4(b) and (c) of this chapter.

(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 chapter or the terms of the permit.

### **Sec. 8-3-5. 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 Local Issuing Authority shall review the tract to be developed and the area surrounding it. The property owner, developer and designated planners and engineers shall consult the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood protection ordinance, this ordinance, and other ordinances which regulate the development of land within the jurisdictional boundaries of the Local Issuing Authority. However, the operator is the only party who may obtain a permit.

(b) Application requirements.

(1) No person shall conduct any land-disturbing activity within the jurisdictional boundaries of Athens-Clarke County without first obtaining a LD permit from the Transportation and Public Works Department of Athens-Clarke County (Public Works Department) to perform such activity and providing a copy of Notice of Intent submitted to EPD if applicable.

(2) The application for a permit shall be submitted to the Public Works Department and 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 8-3-5(c) of this chapter. 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 8-3-4(b) and (c) of this chapter will be met. Applications for a permit will not be accepted unless accompanied by one copy 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) Fees will be charged for plan review, permits, and/or inspection in accordance with the provisions of Athens-Clarke County Code Section 7-1-560.

(4) In addition to the local permitting fees, State General Permit 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. In Athens-Clarke County, a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. § 12-7-8, half of such fees levied shall be submitted to Athens-Clarke County and half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) or O.C.G.A. § 12-7-17 shall be submitted in full to the Division, regardless of the existence of a local issuing authority in the jurisdiction.

(5) The Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct the review and approval or disapproval concerning the adequacy of the Erosion, Sedimentation and Pollution Control Plan without referring the application and plan to the District. The Local Issuing Authority with plan review authority shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of the Local Issuing Authority to act on a revised Plan submittal within 35 days shall be considered an approval of the revised Plan submittal.

(6) If a permit applicant has had two or more violations of previous permits, this chapter section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the Local Issuing Authority may deny the permit application.

(7) The Local Issuing Authority 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 chapter or with the conditions of the permit after issuance, the Local Issuing Authority 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.

(c) Plan requirements.

(1) Plans must be prepared to meet the minimum requirements as contained in section 8-3-4(b) and (c) of this chapter, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the *Manual for Erosion and Sediment Control in Georgia*, published by the state soil and water conservation commission. *The Manual for Erosion and Sediment Control in Georgia* is hereby incorporated by reference into this chapter. It is on file and

available for public inspection in the offices of the Department of Transportation and Public Works. 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 stormwater management facilities, local ordinances and state laws. Plans must meet all of the criteria listed within the State General Permit. 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. Section 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 45 days after receipt by the Local Issuing Authority 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. Permits will expire after six months from date of issuance. If a project is not complete at that time, a written request for permit extension to the Local Issuing Authority must be submitted by the permittee 30 days prior to the permit expiration date. The Local Issuing Authority will review the request and determine whether a permit extension will be granted. The LIA in considering the request for an extension shall take into consideration whether or not any action allowed under the permit has been taken by the applicant during the six-month permit period. The reason for a decision to deny the request will be made in writing and furnished to the applicant. If an extension is not granted, all work must stop on the site, and a new permit application shall be submitted for review and approval or disapproval.

(2) No permit shall be issued by the Local Issuing Authority unless the Erosion, Sedimentation and Pollution Control Plan has been approved, and the Local Issuing Authority has affirmatively determined that the plan is in compliance with this chapter, any variances required from section 8-3-4(c)(15) are obtained, bonding requirements, if necessary, as per section 8-3-5(b)(7) are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the Local Issuing Authority are met. If the permit is denied, the reason for denial shall be furnished to the applicant.

(3) If the tract is to be developed in phases, then a separate permit shall be required for each phase.

(4) The permit may be suspended, revoked, or modified by the Local Issuing Authority, 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, Sedimentation and Pollution Control Plan or that the holder or his successor in title is in violation of this chapter. 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.

(5) Any land-disturbing activities by the Local Issuing Authority shall be subject to the same requirements of this Chapter, and any other ordinances relating to land development, as are applied to private persons and the Division shall enforce such requirements upon the Local Issuing Authority.

**Sec. 8-3-6. Inspection and Compliance.**

(a) The Director of the Athens-Clarke County Public Works Department, or his or her designee, 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 Local Issuing Authority shall regulate both 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 chapter, he shall be deemed in violation of this chapter and subject to the penalties for violation of this chapter, a stop work order, and/or other enforcement action provided for in this chapter.

(b) The Director of the Public Works Department, or his or her designee, shall have the power to conduct such investigations by the Local Issuing Authority as it may reasonably deem necessary to carry out duties as prescribed in this chapter, 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.

(c) No person shall refuse entry or access to any authorized representative or agent of the Local Issuing Authority, the Commission, the District, or Division 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.

(d) The Local Issuing Authority must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.

**Sec. 8-3-7. Enforcement and Penalties.** Any action or inaction which violates the provisions of this chapter or the requirements of an approved Erosion, Sedimentation, and Pollution Control Plan or land disturbance permit may be subject to the enforcement actions provided for in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties provided for in this section shall not prevent such equitable relief. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law, and the department may seek cumulative remedies.

(a) Failure to obtain a permit for land-disturbing activity. It shall be unlawful for any person to commence any land-disturbing activity requiring a land-disturbing permit as prescribed in this chapter

without first obtaining said permit. Upon conviction for the violation of this paragraph the person shall be subject to the punishment allowed under Section 1-1-5. In addition, upon conviction for the violation thereof, 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 Local Issuing Authority.

(b) Notice of Violation; Stop work orders.

(1) Notice of violation. If the applicant or other responsible person has failed to comply with the terms and conditions of permit, approved erosion, sedimentation and pollution control plan or the provisions of this article, the Local Issuing Authority may issue a written notice of violation to such applicant or other responsible person. The violator shall have the amount of time specified in the written notice to correct the violation. Issuance of a notice of violation is not a prerequisite to taking any enforcement action.

If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this chapter 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 8-3-5(b)(7). The Local Issuing Authority 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.

(2) Stop Work Orders. The Local Issuing Authority may issue a stop work order which shall be served on the applicant or other responsible person. A stop work order shall be effective immediately and shall mean that all land disturbance activity and construction activity on the project must stop unless the work pertains to correcting the violation or installing/maintaining erosion control best management practices in accordance with applicable local ordinances and state law. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the stop work order or has otherwise cured the violation or violations described therein, and the stop work order has been released by the LIA in writing, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations. Issuance of a stop work order is not a prerequisite to taking any other enforcement action.

(3) Failure to abide by the stop work order is unlawful.

(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 chapter 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 8-3-5(b)(7). The local issuing authority 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. Any person who violates any provisions of this chapter, or any permit condition or limitation established pursuant to this chapter or who negligently or intentionally fails or refuses to comply with any final or emergency order of the director issued as provided in this chapter shall be liable for a civil penalty not to exceed \$2,500.00 per day. Pursuant to the authority granted to local governments pursuant to O.C.G.A. Section 12-7-15, for the purpose of enforcing the provisions of this chapter, notwithstanding any provisions in any City Charter to the contrary and notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, the Municipal Court of Athens-Clarke County shall be authorized to impose a penalty 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. In seeking civil penalties as provided for herein, the Local Issuing Authority upon written request may cause a hearing to be conducted before the Municipal Court judge for the purpose of determining whether such civil penalties should be imposed and whether the LD permit shall be revoked or suspended. The decision of the Municipal Court judge shall constitute the final decision of the Local Issuing Authority and any party to the hearing, including the Local Issuing Authority, shall have the right of judicial review thereof in accordance with law by Writ of Certiorari to the Superior Court. In considering the amount of the civil fine, if any, the Municipal Court judge shall consider the following factors:

1. The gravity of the violation;
2. Any previous violations within a two-year period;
3. The costs to Athens-Clarke County related to compliance or enforcement efforts undertaken by Athens-Clarke County in pursuing the case;
4. Actions of the permittee, its employees, subcontractors or agents in connection with the violation.

The imposition of a civil fine under the provisions of this section shall not prevent the suspension, revocation, or non-renewal of the permit or the taking of punitive or remedial action for any other violation of the ordinances of Athens-Clarke County or for subsequent violations of this chapter. For purposes of administering and enforcing this chapter, any act committed by an employee, agent or representative of a permittee shall be deemed to be an act of such permittee.

(e) Withhold Certificate of occupancy. In addition to other penalties, the Local Issuing Authority may request that the Athens-Clarke County Building Permits and Inspections Department is authorized to refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. Withholding a certificate of occupancy shall not be a prerequisite to taking any other enforcement actions.

(f) Suspension, revocation or modification of permit. The Local Issuing Authority may suspend, revoke or modify the LD permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of suspension, revocation, or modification of permit or has otherwise cured the violations described therein, provided such permit may be reinstated upon such conditions as the Local Issuing Authority may deem necessary to enable the applicant or other responsible person to

take the necessary remedial measures to cure such violations. Suspension, revocation, or modification of a permit shall not be a prerequisite to taking any other enforcement action.

(g) Violations made unlawful; penalties. It shall be unlawful for any person to violate the provisions of this Chapter. Upon conviction for the violation thereof each person shall be subject to the punishment allowed under section 1-1-5, after hearing before the judge of Municipal Court. In addition, upon conviction for the violation thereof by a permittee, his agents or employees, any permit may be revoked, suspended or put on probation under conditions.

The infliction of a penalty under the provisions of this paragraph shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of this chapter.

(h) Consent order. The Director of the Athens-Clarke County Department of Transportation and Public Works is hereby authorized at his discretion to enter into consent orders, assurances of voluntary compliance, or other similar documents (hereafter referred to as "Consent Order") establishing an agreement with any person responsible for violating the provisions of this chapter. Such Consent Orders will include specific action to be taken by the person to correct the violation within a time period also specified by the Consent Order. Issuance of a Consent Order shall not be a prerequisite to taking any other enforcement actions under this chapter.

#### **Sec. 8-3-8. 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 who 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 chapter.

(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. Section 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 Section 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

**Sec. 8-3-9. Administrative appeal; judicial review.**

(a) Administrative remedies. The suspension, revocation, modification, grant with condition of a permit, or denial of an extension of a permit by the Local Issuing Authority 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 within 30 days after receipt by the Local Issuing Authority of written notice of appeal before the administrative hearing officer pursuant to the provisions of Section 1-5-1 of the Code of Athens-Clarke County.

(b) Judicial review. Any person aggrieved by a decision or order of the Local Issuing Authority after exhausting his administrative remedies shall have the right to appeal de novo to the Superior Court of Athens-Clarke County.

**Sec. 8-3-10. Effective date, validity and liability.**

(a) Effective date. This chapter shall become effective as provided in Athens-Clarke County Charter Section 2-204.

(b) Validity. If any section, paragraph, clause, phrase, or provision of this chapter shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this chapter.

(c) Liability.

(1) Neither the approval of a plan under the provisions of this chapter, nor the compliance with provisions of this chapter shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the Local Issuing Authority or District 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 chapter or the terms of the permit.

(3) No provision of this chapter 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 approved thereunder or pollute any waters of the state as defined thereby.”

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.