

## ARTICLE 3 – ADMINISTRATION

### Sec. 300-010 GENERAL

In addition to other responsibilities and authorities noted in other sections of this Ordinance, the duty of administering and enforcing the provisions of this Ordinance is hereby conferred upon the Director acting on behalf of the County Board of Commissioners.

### Sec. 300-020 EXEMPTION FROM REQUIREMENTS

The following development activities are exempt from Article 4 of this Ordinance and the requirements of providing stormwater management, *but are not exempted from State Erosion Control / Forestry BMPs*:

- A. Agricultural and forestry land management activities.
- B. Additions or modifications to existing detached single-family or duplex dwellings.
- C. Construction of a detached single-family dwelling, which is not part of a larger development.
- D. Repairs to any stormwater management facility or practice deemed necessary by the County.

### Sec. 300-030 SPECIAL EXCEPTIONS AND VARIANCES PROCEDURES

The Newton County Board of Zoning Appeals shall consider all special exception requests from the requirements of this Ordinance when due to extraordinary and exceptional conditions pertaining to a particular piece of property, the strict application of such requirements may result in unnecessary hardship. A formal written application, along with any such fees as may be established by the Board of Commissioners, shall be filed with the Director and submitted to the Newton County Board of Zoning Appeals. The following procedures shall apply to all applications:

- A. The application for a special exception shall state the specific regulation from which exception is sought and the reasons the exception is needed. The application shall contain such information as the Director deems necessary to evaluate the request.
- B. It shall be the applicant's responsibility to provide sufficient justification for granting the exception variance.
- C. The Director and staff shall prepare an evaluation statement concerning each application for special exception. The evaluation shall consider the circumstances and supporting documents supplied by the applicant and other generally available technical information pertaining to the special exception request. The evaluation shall consider

whether the request satisfies each criteria governing special exceptions, and the Director shall make a recommendation as to grant, grant with conditions, or denial of the special exception.

D. No special exception shall be granted if the hardship has been created by the applicant (for example, by poor subdivision design). No special exception shall be granted to permit a use not otherwise authorized in the zoning district. No special exception shall be granted if it would result in increased threats to public safety, extraordinary public expense, create nuisances, or conflict with the Newton County Zoning Ordinance, Development Regulations, Comprehensive Plan or other applicable rules and regulations. No special exception shall be granted to any applicant currently in violation of any Newton County ordinance or regulation.

E. The application shall be heard at a regularly scheduled Board of Zoning Appeals meeting. At the hearing on a special exception application, the Director or staff shall appear and present its analysis and findings to the Board of Zoning Appeals. The Board of Zoning Appeals shall only consider evidence presented with the application or at the hearing. Board members shall not accept any ex parte evidence, and all evidence submitted (including the staff analysis) shall be disclosed at or before the public hearing, to allow all sides the opportunity to review it. The Board of Zoning Appeals shall make a decision to approve the special exception, approve with conditions, or deny the special exception, citing to the grounds relied upon, and/or to the staff evaluation comments.

F. In consideration a special exception request, the Board of Zoning Appeals shall consider the following criteria, all of which must be satisfied:

1. Whether there are extraordinary and exceptional circumstances or conditions pertaining to the particular piece of property because of its size, shape or topography, and through no fault of the applicant;
2. Whether the strict application of this Ordinance to this particular piece of property would create severe practical difficulty or unnecessary hardship;
3. Whether the exception requested is the minimum necessary; and
4. Whether relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance.

#### Sec. 300-040 ADMINISTRATIVE VARIANCE

A. Administrative variances may be granted by the Director. The Director is authorized to vary the requirements of the Ordinance up to ten percent, in circumstances where doing so would not impair the purposes of the Ordinance, and is necessary because of a hardship on the applicant that was not created by the applicant. Administrative variances are to be granted as infrequently as possible.

B. The grant of an administrative variance may be appealed pursuant to Sec. 300-050. The denial of an administrative variance may only be appealed by first applying for a Special Exception, under Sec. 300-030.

#### Sec. 300-050 APPEALS

A. Appeal of Planning and Development Department Staff decisions. The Newton County Board of Zoning Appeals shall hear and decide appeals when it is alleged that there is an error in any interpretation or determination made by the Director or Planning and Development Department Staff in the administration of this Ordinance. Such appeals may be brought by the applicant, any member of the Board of Commissioners, or any aggrieved person, as defined below. Such appeals shall be taken within thirty (30) days of the decision appealed by filing with the Planning and Development Department and the Board of Zoning Appeals a notice of appeal specifying the grounds for appeal.

B. Appeal of Board of Zoning Appeals decisions. Any person or persons severally or jointly aggrieved by any decision of the Board of Zoning Appeals may take an appeal to the Board of Commissioners by filing a notice of appeal within ten days of the date of the decision of the Board of Zoning Appeals. The secretary of the board of Zoning Appeals shall transmit the record to the Board of Commissioners, and the Board of Commissioners shall hear the appeal de novo within forty-five days of the filing of the notice of appeal.

C. Aggrieved Persons. A person is aggrieved only if they own the subject property, or they own nearby or adjacent property which is in danger of suffering special damages or injury not common to all property owners similarly situated as a result of the action.

#### Sec. 300-060 VIOLATION AND PENALTY

A. It shall be the duty of the Director to enforce this Ordinance. The Director shall have the authority to revoke, suspend or void any development permit and shall have the authority to suspend all work on a site or portion thereof.

B. Any permit issued in conformance with this Ordinance shall be voided if its terms are violated.

C. Work which is not authorized by an approved permit, which is not in conformance with the approved plans for the project or which is not in compliance with the provisions of this Ordinance or any other adopted code, regulation or ordinance of Newton County, shall be subject to an immediate stop work order issued by the Department. Work which proceeds without having received the necessary inspections of the Department shall be halted until all inspections of intervening work are complete.

D. The filing or recording of a plat of a subdivision or development without the required approvals as established by this Ordinance is declared to be a misdemeanor.

E. Any responsible party or other persons convicted by a court of competent jurisdiction of violating any provision of this Ordinance shall be guilty of violating a duly adopted Ordinance of Newton County and shall be punished either by a fine not to exceed \$1,000. The owner of any lands or parts thereof, where anything in violation of this Ordinance shall be placed or shall exist and each responsible party or other person assisting in the commission of any such violation, shall be guilty of a separate offense.

## **ARTICLE 4 – POST-CONSTRUCTION STORMWATER MANAGEMENT**

### Sec. 400-010 PURPOSE

The purpose of this Article is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and non-point source pollution associated with new development and redevelopment. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, environment and general welfare of the public; and, protect water and aquatic resources. This Article seeks to meet that purpose through the following objectives:

- A. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;
- B. Require that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable in order to reduce flooding, streambank erosion, non-point source pollution, and maintain the integrity of stream channels and aquatic habitats;
- C. Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- D. Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum post-development stormwater management standards;
- E. Encourage the use of nonstructural stormwater management and stormwater better site design practices, such as the preservation of greenspace and other conservation areas, to the maximum extent practicable. Coordinate site design plans, which include greenspace, with the county's greenspace protection plan;
- F. Establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety; and,
- G. Establish administrative procedures for the submission, review, approval and disapproval of stormwater management plans, and for the inspection of approved active projects, and long-term follow up.

#### Sec. 400-020 APPLICABILITY

All persons proposing development and/or construction within Newton County shall submit a Stormwater Management Plan and hydrology study to the Director for review of conformity with this Ordinance, except as provided in Section 300-020. These standards apply to any new development or redevelopment site that meets one or more of the following criteria:

- A. New development that involves the creation of 5,000 square feet or more of impervious cover, or that involves other land development activities of one acre or more;
- B. Redevelopment that includes the creation, addition or replacement of 5,000 square feet or more of impervious cover, or that involves other land development activity of one acre or more;
- C. Any new development or redevelopment, regardless of size, that is defined as a hotspot land use;
- D. Land development activities that are smaller than the minimum applicability criteria set forth in items A and B above if such activities are part of a larger common plan of development, even though multiple, separate and distinct land development activities may take place at different times on different schedules; or,
- E. Activities that lie within a special drainage district as defined in the Newton County Stormwater Local Design Manual (LDM) and are regulated by the provisions of the special drainage district.

#### Sec. 400-030 STORMWATER LOCAL DESIGN MANUAL

Newton County will utilize the policy, criteria and information including technical specifications and standards in the latest edition of the Georgia Stormwater Management Manual and the Newton County Stormwater LDM, for the proper implementation of the requirements of this Ordinance. The manual may be updated and expanded periodically, based on improvements in science, engineering, monitoring and local maintenance experience. The Georgia Stormwater Management Manual and Newton County Stormwater LDM are adopted by reference and declared to be part of this Ordinance.

#### Sec. 400-040 REQUIREMENTS FOR STORMWATER MANAGEMENT PLAN

A. The Stormwater Management Plan shall be prepared under the supervision of, and certified by, a Professional Engineer, Professional Land Surveyor, or Registered Landscape Architect with competency in Hydrology and Hydraulics, currently registered in the State of Georgia. The plan shall conform with the requirements of this Article.

B. Upon receipt of the Stormwater Management Plan, the County shall perform appropriate reviews, and shall either approve the Stormwater Management Plan or return comments and reasons for rejection.

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Sec. 400-050 PERMIT PROCEDURES AND REQUIREMENTS

A. Permit Application Requirements

No owner or developer shall perform any land development activities without first meeting the requirements of this Article prior to commencing the proposed activity. Unless otherwise exempted by this Ordinance, or granted a waiver to meeting the minimum requirements outlined in the Newton County Stormwater LDM, a Land Disturbance Permit application shall be accompanied by the following items in order to be considered:

1. Stormwater concept plan and consultation meeting certification if required by subsection B, below;
2. Stormwater Management Plan;
3. Inspection and long term maintenance agreement;
4. Stormwater Tax Assessment Area, if applicable;
5. Performance bond, if applicable; and,
6. Land Disturbance Permit application and applicable review fees.

B. Stormwater Concept Plan and Consultation Meeting

Projects that are complex in nature may require a stormwater concept plan and consultation prior to submittal of design plans for review by the County. The stormwater concept plan shall meet the requirements outlined in the LDM. For the purposes of this section, any proposed development activity that meets any of the following criteria shall be required to prepare a stormwater concept plan and participate in a consultation meeting prior to submission of engineering plans for review.

1. Any residential subdivision with greater than 50 lots, unless such development contains 2-acre or greater lots.
2. Any non-residential development with a disturbed area of 10 acres or greater.
3. Any non-residential development regardless of size which has an impervious surface coverage that covers 50 percent or more of the property excluding those lands contained within undisturbed buffers including but not limited to floodplains, stream buffers and undisturbed buffers between dissimilar zonings.

4. Any non-residential development regardless of size, which is defined as a hot spot land use.

#### C. Stormwater Management Plan Requirements

A Stormwater Management Plan must be submitted in accordance with the LDM.

#### D. Inspection and maintenance agreement

The applicant or owner of the land involved in a land development project requiring a stormwater management facility or practice hereunder and for which Newton County requires ongoing maintenance must execute a stormwater management inspection and maintenance agreement that shall be binding on all subsequent owners of the site or any portion thereof.

1. Approval and Recording of Inspection and Maintenance Agreement.

The inspection and maintenance agreement shall require approval by the Director prior to final plat approval or final site plan approval. The Agreement shall be recorded by the property owner in the land records of Newton County. A covenant running with the land will describe said agreement and the obligation of all present and future holders of any interest in the development or any portion thereof. Said covenant shall be recorded on the deed of every parcel of property and/or lot that is derived in any way from the land development activity. Thereafter, each deed shall be recorded in the county deed records.

2. Required Contents.

The stormwater management inspection and maintenance agreement shall identify by name and official title, if applicable, the person(s) bound by said agreement to cause said inspection and maintenance. For residential developments, responsibility for the operation and maintenance of the stormwater management facility or practice shall remain that of the party which executed the stormwater management inspection and maintenance agreement unless and until such time as the duties hereunder are properly assumed by a homeowners association which is created as specified in this section. Evidence of the assumption of such duties shall be in a writing executed by the party assigning said duties and the homeowners association.

The duties created under the inspection and maintenance agreement shall transfer to each and every subsequent owner/applicant, or homeowners association (where one is established and duties are assigned thereto, in accordance with this Ordinance), or similar holders of interest in the development or any portion thereof. Upon transfer, each owner/applicant, homeowners association, or similar interest holder shall cause the deed of transfer to be marked upon its face with notice of obligations of the inspection and maintenance agreement through use of a restrictive covenant, as previously described. Each successor in title shall be bound by the inspection and maintenance agreement to all the duties of his predecessor thereunder.

The stormwater inspection and maintenance agreement shall incorporate by reference the project's operation and maintenance plan and account for all the work requirements specified in the plan.

The inspection and maintenance agreement shall provide that preventive maintenance inspections of infiltration systems, retention, or detention structures may be made by the County, at its option. The County's inspection schedule shall be established on a frequency that meets the intent of this Article and applicable regulatory compliance requirements bestowed on the County.

Right-of-entry for inspection. The terms of the inspection and maintenance agreement shall provide for the Director or his/her designee to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this Article is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this Article.

The inspection and maintenance agreement shall provide that the County shall notify the property owner(s) of the facility of any violation, deficiency or failure to comply with the Agreement. The Agreement shall also provide that upon a failure to correct violations requiring maintenance work or failure to provide an action plan for correcting such violation within ten (10) business days after notice thereof, the County may provide for all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the costs of the work performed by the County, and there shall be a lien on every parcel of property and/or lot that is derived in any way from the land development activity. If a Stormwater Tax Assessment Area has been established, the costs of the work performed shall be collected as provided in subsection E. Should such a lien be filed, portions of the affected property may be released by Newton County following the payments by the owner of such portion of the property of such owner's pro-rata share of the lien amount based upon the acreage to be released with such release amount to be determined by the Newton County Board of Commissioners.

### 3. Additional Requirements for Residential Subdivisions.

Prior to final plat approval, the developer of a subdivision, which is subject to the provisions of this Article, shall create a homeowners association for the residential subdivision(s) for which the developer is requesting approval. All property owners within the subdivision shall be members of the homeowners association. The homeowners association shall be the legal entity to which all correspondence and notice, required under or related to this Article is given by Newton County and from which Newton County will accept the same.

A copy of the homeowners' association's recorded declaration shall be provided to the County. The declaration shall provide:

- a. That the stormwater management facilities are part of the common elements of the development and shall be subject to the inspection and maintenance agreement and covenant;
- b. That membership in the association shall be mandatory and automatic for all homeowners of the development and their successors;
- c. That the association shall have lien authority to ensure the collection of dues from all members;
- d. That the requirements of the inspection and maintenance agreement and covenant shall receive the highest priority for expenditures by the association except for any other expenditures required by law to have higher authority;
- e. That a separate fund shall be maintained by the association for the routine maintenance, reconstruction and repair of the facilities, separate from all other funds of the association; that it shall be kept in an account insured by the FDIC;
- f. That the routine maintenance, reconstruction, and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the County to be adequate to pay for the probable reconstruction and repair cost (but not routine maintenance cost) for a three-year period;

#### 4. Dedication to County.

In lieu of an inspection and maintenance agreement, the Newton County Board of Commissioners may, at its discretion, accept dedication of any existing or future stormwater management facility for perpetual maintenance by Newton County, provided such facility meets all the requirements of this Ordinance, the LDM and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular structural maintenance by Newton County. In the event the County accepts dedication of any stormwater management facility for a residential subdivision, the Resolution creating the Stormwater Tax Assessment Area for the subdivision required by Subsection E.1, below, shall specify the fee for routine inspection, maintenance and repair activities to be performed by the County. In addition the Resolution creating the Stormwater Tax Assessment area may specify a fee to offset potential non-routine maintenance and repair expenditures by the county. These funds shall be maintained in a designated account for the Stormwater Tax Assessment Area activities. Collection of the amount for non-routine maintenance and repair shall be suspended once the account contains an amount necessary, as determined by the Director, to rebuild the stormwater facilities. The Board of Commissioners may revise said fees by resolution no earlier than 30 days after written notice to the participants in the Stormwater Tax Assessment Area.

E. Stormwater Tax Assessment Area.

1. Establishment of a Stormwater Tax Assessment Area.

Prior to final plat approval, the developer of any common development subject to the provisions of this Article shall establish a Stormwater Tax Assessment Area that shall thereafter encompass the development, each subdivision thereof, and any other property that is alleged to be covered/served by the stormwater management plan. The Stormwater Tax Assessment Area shall be established within the County upon a petition presented to the Board of Commissioners by the developer of any new subdivision or any additional unit or phase of an existing large subdivision which has been approved for development in units or phases. The petition shall be accompanied by appropriate forms, to be promulgated by the county, which shall at least list thereon the legal description and the district, land lot, block and/or lot of each parcel or tract of land affected by the proposed Stormwater Tax Assessment Area. Approval of the petition shall be by majority vote of the Board of Commissioners. Upon approval, the Board shall establish, by appropriate Resolution, the particular Stormwater Tax Assessment Area for which the petition has been submitted. The establishing resolution shall state the charge or fee for such service or the basis for computation and adjustment of the charge or fee.

2. Determination and Collection of Charges and Fees Incident to the Establishment of Stormwater Tax Assessment Area.

a. At the time of the approval of the petition by the Board of Commissioners, a copy of the resolution establishing the Stormwater Tax Assessment Area shall be transmitted to the County Tax Commissioner. The Tax Commissioner shall be responsible for the collection of any and all charges and fees which are established by the Board pursuant to Paragraph 1. Said charges and fees may be imposed against any business, resident or other property served by the stormwater management plan.

b. Property owners within a Stormwater Tax Assessment Area shall be billed annually through their regular ad valorem county tax bill for the cost to the county of county performance of inspection, maintenance and repair activities on privately-owned stormwater management facilities and practices during the 12 months proceeding the end of Newton County's fiscal year ending June 30 of the applicable tax year. The rate for Stormwater Tax Assessment Areas shall be determined based on the total cost incurred by the county in inspecting, maintaining and repairing these facilities in the applicable tax year divided by the number of non-exempt parcels which exist in all Stormwater Tax Assessment Areas in existence in the county in the applicable tax year.

c. A parcel that exists in a Stormwater Tax Assessment Area shall be exempt from the stormwater tax assessment if all requirements set forth in the inspection and maintenance agreement have been met and all necessary

documentation thereof has been submitted to and approved by the Director. The determination of applicability of exemption shall be made on a yearly basis by the Director. For residential subdivisions, individual lots shall not be exempt, all property owners shall be considered exempt or non-exempt based on the work performed for that subdivision.

#### F. Maintenance Bonds.

Prior to final plat approval of all subdivision development projects, the developer shall submit to the Director a bond or irrevocable letter of credit for the purpose of guaranteeing the materials and workmanship of all stormwater control measures associated with the development for a period of two (2) years from the issuance of the final plat or until the issuance of 75% of the Certificates of Occupancy for the subdivision development, whichever is greater. The bond amount shall be calculated by the Director and provided to the developer upon completion of field activities and submittal of the final plat to the Newton County Planning and Development Department.

If, during the bond period, the need for repairs to any of the stormwater control measures becomes evident then the developer will be notified in writing by the Director and informed of the measures to be taken to repair the facilities. If the developer has not taken significant action, as determined by the Director, within thirty (30) days of said notification, the Director shall take such steps as are necessary to claim an amount of the funds from the bond or letter of credit which, as estimated based upon no less than two bids secured by the Director, will cover all costs and expenses the county will incur in causing the repairs to be made.

#### G. Modifications for Off-Site Facilities

The Stormwater Management Plan for each land development project shall provide for stormwater management measures located on the site of the project, unless provisions are made with the Director to manage stormwater by an off-site, or regional facility. The off-site or regional facility: (1) must be located on property legally dedicated for the purpose, (2) must be designed and adequately sized to provide a level of stormwater quantity and quality control that is equal to or greater than that which would be afforded by on-site practices and (3) there must be a County approved, legally-obligated entity responsible for long-term operation and maintenance of the off-site or regional stormwater facility. In addition, on-site measures shall be implemented, where necessary, to address stormwater management issues upstream and downstream from the development site to the off-site or regional facility.

A Stormwater Management Plan must be submitted to Newton County, which shows the adequacy of the off-site or regional facility.

To be eligible for a modification, the applicant must demonstrate to the satisfaction of Newton County that the use of an off-site or regional facility will not result in the following impacts to upstream or downstream areas:

1. Increased threat of flood damage to public health, life, and property;
2. Deterioration of existing culverts, bridges, dams, and other structures;
3. Accelerated streambank or streambed erosion or siltation;
4. Degradation of in-stream biological functions or habitat; or
5. Water quality impairment in violation of State of Georgia water quality standards, and/or violation of any State or Federal regulations.

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Sec. 400-060 POST-DEVELOPMENT STORMWATER MANAGEMENT  
PERFORMANCE CRITERIA

The following performance criteria shall be applicable to all stormwater management plans, unless otherwise provided for in this Ordinance:

A. Water Quality

Stormwater runoff generated from a site shall be adequately treated before discharge. It will be presumed that a stormwater management system complies with this requirement if:

1. The system is sized to treat the prescribed water quality treatment volume from the site, as defined in the LDM;
2. Appropriate structural stormwater controls or nonstructural practices are selected, designed, constructed or preserved, and maintained in accordance with the specific criteria in the LDM; and,
3. Runoff from hotspot land uses and activities identified in the LDM are adequately treated and addressed through the use of appropriate structural stormwater controls, nonstructural practices and pollution prevention practices.

B. Stream Channel Protection

Protection of stream channels from bank and bed erosion and degradation shall be provided by using all of the following three approaches:

1. Preservation, restoration and/or reforestation (with native vegetation) of the applicable stream buffer;
2. 24-hour extended detention storage of the 1-year, 24-hour return frequency storm event;
3. Erosion prevention measures such as energy dissipation and velocity control.

All design and construction work that is undertaken proximate to stream channels (including the buffer areas) shall be in strict conformance with current local, State and Federal regulations.

#### C. Flood Protection

Flood and public safety protection shall be provided by controlling and safely conveying storm events such that flooding is not exacerbated for the storm events specified in the LDM and in accordance with applicable requirements in Article 6 of this Ordinance.

#### D. Drainage System Guidelines

Stormwater conveyance facilities, which may include but are not limited to culverts, stormwater drainage pipes, catch basins, drop inlets, junction boxes, headwalls, gutters, swales, channels, ditches, and energy dissipaters shall be provided when necessary for the protection of public and private properties adjoining project sites. Stormwater conveyance facilities that are designed to carry stormwater runoff from more than one parcel, existing or proposed, shall meet the following requirements:

1. Methods to calculate stormwater flows shall be in accordance with the LDM;
2. All culverts, pipe systems and open channel flow systems shall be sized in accordance with the stormwater management plan using the methods included in the LDM; and,
3. Design and construction of stormwater conveyance facilities shall be in accordance with the criteria and specifications found in the LDM.

#### E. Dam Design Guidelines

Any land disturbing activity that involves a property, which is proposed to contain a dam, shall comply with the provisions of this Section.

1. New Dams Which Become Subject to the Requirements of the Georgia Safe Dams Act and Rules for Dam Safety. Dams proposed to be 25 feet or more in height or proposed to have an impounding capacity of 100 acre-feet or more at maximum water storage elevation shall be subject to the following:
  - a. If a development is located within the breach zone of a dam, then the dam shall be subject to the requirements of the Georgia Safe Dams Act and Rules for Dam Safety adopted by the Georgia Department of Natural Resources. The developer shall obtain necessary approvals and permits from the Environmental Protection Division of the Georgia Department of Natural Resources for the project and the dam prior to securing a Land Disturbance Permit from the County. If the development is not located within the breach zone, the developer shall submit construction plans to the County prior to securing a Land Disturbance Permit from the County.

- b. If the developer elects to construct the dam in accordance with the design standards for new dams as contained in the Rules for Dam Safety, then new development shall be permitted within the dam breach zone. However, the dam shall meet the design standards for new dams as contained in the Rules for Dam Safety if development currently exists or is proposed in the dam breach zone.
- c. If the developer elects not to construct the new dam to the design standards for new dams as contained in the Rules for Dam Safety, then a dam breach analysis for the dam shall be submitted along with the construction plans prior to securing a Land Disturbance Permit from the County. The dam breach analysis shall be certified by a Professional Engineer licensed in Georgia and approved by the Georgia Safe Dams Program. The design engineer shall utilize the computer models entitled “DAMBRK” or “HEC-RAS” for the dam breach analysis.
- d. Should the dam not meet the design standards for dams as contained in the Rules for Dam Safety, then only the following uses and structures shall be permitted within the dam breach zone:
- i. Agriculture which requires no structures for human habitation within the dam breach zone including forestry, livestock raising, and agricultural and forestry access roads.
  - ii. Fences.
  - iii. Outdoor advertising signs provided they are located no closer than 100-feet from any residence or place of business.
  - iv. Roads, driveways and parking areas.
  - v. Utility poles, towers, pipelines, water treatment outfalls and facilities, or other similar facilities and structures.
- e. For any dam that is proposed not to meet the design for new dams as contained in the Rules for Dam Safety, the developer shall obtain a dam breach easement, recorded with the Clerk of Superior Court, from any off-site property owner where it is proposed for the dam breach zone to extend off the property where the dam is being constructed. The developer shall also cause a dam breach easement to be recorded upon the property being developed.
- f. Prior to recording of a Final Plat or issuance of a Certificate of Occupancy, as appropriate, an as-built survey must be performed by a Professional Land Surveyor and an as-built design certification must be performed by a Professional Engineer currently registered in the State of Georgia. Both certifications must be submitted to the Director. The certification shall state that the dam is constructed in accordance with the provisions of this Article, as well as the approved construction plans. If the project is for the development of a subdivision, the developer shall also

establish a legal entity, acceptable to the County, such as a mandatory Homeowner's Association (HOA) that will be responsible for the perpetual maintenance of the dam and its impoundment, prior to approval of the Final Plat.

2. Dams Subject to Regulation by the County. Dams proposed to be nine feet or more in height, but less than 25 feet in height, in combination with an impounding capacity proposed to be 20 acre-feet or more at maximum water storage elevation, but less than 100 acre-feet, shall be subject to the following:

a. If the developer elects not to construct the dam to the design standards for dams as contained in the Rules for Dam Safety, then a dam breach analysis for the dam shall be submitted to the Director with the construction plans prior to securing a Land Disturbance Permit from the County. The dam breach analysis shall be certified by a Professional Engineer licensed in Georgia and approved by the Georgia Safe Dams Program. The design engineer shall utilize the computer models entitled "DAMBRK" or "HEC-RAS" for the dam breach analysis.

b. Should the dam not meet the design standards for dams as contained in the Rules for Dam Safety, then only the following uses and structures shall be permitted within the dam breach zone:

- i. Agriculture which requires no structures for human habitation within the dam breach zone including forestry, livestock raising, and agricultural and forestry access roads.
- ii. Fences.
- iii. Outdoor advertising signs provided they are located no closer than 100-feet from any residence or place of business.
- iv. Roads, driveways and parking areas.
- v. Utility poles, towers, pipelines, water treatment outfalls and facilities, or similar facilities and structures.

c. If the developer elects to construct the dam in accordance with the design standards for dams as contained in the Rules for Dam Safety, then new development shall be permitted within the dam breach zone. However, the dam shall meet the design standards for dams as contained in the Rules for Dam Safety if development currently exists or is proposed in the dam breach zone.

d. Construction plans for dams defined herein shall be submitted to the County prior to securing a Land Disturbance Permit from the County. The plans shall be certified by a Professional Engineer licensed in Georgia and approved by the Georgia Safe Dams Program.

e. For any dam that is proposed not to meet the design standards for dams as contained in the Rules for Dam Safety, the developer shall obtain a dam breach easement, recorded with the Clerk of Superior Court, from any off-site property owner where it is proposed for the dam breach zone to extend off the property where the dam is being constructed. The developer shall also cause a dam breach easement to be recorded upon the property being developed.

f. Prior to recording of a Final Plat or issuance of a Certificate of Occupancy, as appropriate, the required as-built certifications, as stated herein, shall be submitted to the Director.

3. Existing Dams. Existing dams that are located on a project site and will remain after construction is complete, shall comply with the provisions of this Article and all referenced articles as if they were new dams.

4. Existing Category II Dams. When an existing Category II dam would be reclassified to a Category I dam because of a proposed development downstream of the dam, the following shall be provided by the developer for review by the Georgia Safe Dams Program.

- a. Location of the Category II dam and the proposed development; and,
- b. A surveyed cross-section of the stream valley at the location of the proposed development including finished floor elevations; and,
- c. A dam breach analysis using the “DAMBRK” or “HEC-RAS” computer model to establish the height of the flood wave in the downstream floodplain. The “DAMBRK” or “HEC-RAS” modeling shall be completed in accordance with the Safe Dams Program by a qualified registered engineer licensed in Georgia and approved by the Georgia Safe Dams Program..

**Sec. 400-070 CONSTRUCTION INSPECTIONS**

A. Periodic inspection of the development site shall be made by the Director to ensure that the Stormwater Management Plan is properly implemented.

B. Upon completion of the construction phase on the project, and prior to approval of the Final Plat or issuance of a Certificate of Occupancy, the developer shall provide an as-built survey and an as-built design certification for each stormwater management facility. The as-built survey(s) shall be prepared by a Land Surveyor currently registered in the State of Georgia. A certified record drawing of the facility shall be prepared based upon this as-built survey. Based on the actual parameters established on the record drawing, an addendum to the Stormwater Management Plan shall be prepared which demonstrates that the facility, as constructed, complies with the requirements of the approved

Stormwater Management Plan. The certified record drawing shall be certified by a Professional Engineer currently registered in the State of Georgia.

#### Sec. 400-080 LONG-TERM INSPECTION AND MAINTENANCE

A. Long-term inspection and maintenance of stormwater facilities and practices. Stormwater management facilities and practices included in a stormwater management plan that are subject to an inspection and maintenance agreement must undergo ongoing inspections to ensure compliance with the requirements of the agreement, the plan and this Ordinance. The responsible person, as designated in the approved inspection and maintenance agreement, shall inspect the stormwater management facilities or practices on a periodic basis.

B. County Inspections. Inspection programs by the Director may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental, safety laws, and to meet applicable regulatory requirements. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in stormwater management facilities; and evaluating the condition of stormwater management facilities and practices. Inspection reports, including documented deficiencies and needed maintenance requirements, shall be maintained by the Director and provided to the responsible party to undertake appropriate action. Scanned or electronic copies of original documents may be maintained in lieu of said original documents.

C. Duty to Maintain. Property owners are responsible for performing operation and maintenance activities for stormwater management facilities and practices located on their property in accordance with the Operations and Maintenance Plan. Parties responsible for the operation and maintenance of a stormwater management facility shall provide records of all maintenance and repairs to the Director.

D. Failure to maintain. In the event that the stormwater management facility has not been maintained and/or becomes a danger to public safety or public health, the Director shall notify the person responsible for carrying out the maintenance plan by registered or certified mail to the person specified in the inspection and maintenance agreement. The notice shall specify the measures needed to comply with the agreement and the plan and shall specify the time within which such measures shall be completed.

If a responsible person fails or refuses to meet the requirements of the inspection and maintenance agreement, the Director may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the facility or practice in proper working condition. The owner(s) of the facility shall be assessed the costs of the work performed by the County, and there shall be a lien on all property of the owner in which said property utilizes, or will utilize such facility in achieving stormwater management,. If a Stormwater Tax Assessment Area has been established, the costs of the work performed shall be collected as provided in Section 400-050 E. Alternatively,

the Director may consult Code Enforcement to issue citations to help force compliance with the inspection and maintenance agreement.

#### Sec. 400-090 MAINTENANCE OF PRE-EXISTING STORMWATER FACILITIES

##### Pre-Existing Residential Subdivisions.

Any homeowner's association with a duty to maintain a pre-existing stormwater facility may establish a Stormwater Tax Assessment Area upon presentation of a petition to the Board of Commissioners by either or both of the following:

1. Owners whose cumulative holdings total fifty-one percent (51%) or more of the property affected within the proposed Stormwater Tax Assessment Area.
2. Fifty-one percent (51%) of the owners of the property affected within the proposed Stormwater Tax Assessment Area.

Approval of the petition shall be by majority vote of the Board of Commissioners. If approved, the Board shall establish, by resolution, the particular Stormwater Tax Assessment Area for which the petition has been submitted. The establishing resolution shall state the charge or fee for such service, as well as the basis for computation and adjustment of the charge or fee. Establishment of the Stormwater Tax Assessment Area and collection of fees shall be in accordance with Section 400-050 E.

#### 400-100 VIOLATIONS, ENFORCEMENT AND PENALTIES

Any action or inaction which violates the provisions of this Article or the requirements of an approved stormwater management plan or permit, may be subject to the enforcement actions outlined 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 described below shall not prevent such equitable relief.

A. Notice of violation. If the Director determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this Article, the Director shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this Article without having first secured a permit, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

1. The name and address of the owner or the applicant or the responsible person;

2. The address or other description of the site upon which the violation is occurring;
3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan or this Ordinance and the date for the completion of such remedial action; and
5. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed.
6. A statement on whether the violation must be corrected within ten (10) business days or whether an action plan submitted within ten (10) business days will be acceptable.

B. Penalties. In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one (1) or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Director shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten (10) business days (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four (24) hours notice shall be sufficient) to cure such violation or develop an action plan for curing such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the Director may take any one (1) or more of the following actions or impose any one (1) or more of the following penalties.

1. Stop work order. The Director may issue a stop work order that shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, 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.
2. Withhold certificate of occupancy. The Director may refuse to issue a certificate of occupancy for any and all buildings 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.
3. Suspension, revocation or modification of permit. The Director may suspend, revoke or modify the 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 violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Director may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

4. Citations. For intentional and flagrant violations of this Article, or in the event the applicant or other responsible person fails to take the remedial measures set forth in previously issued notice-of-violation(s) or otherwise fails to cure the violations or develop and action plan for curing such violation within ten (10) business days, the Director may issue a citation to the applicant or other responsible person, requiring such person to appear in Magistrate Court of Newton County to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00). Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

#### Sec. 400-110 SOIL EROSION AND SEDIMENTATION CONTROLS

Developers shall be required to provide soil erosion and sedimentation control measures in conformance with state law and the Newton County Soil Erosion and Sedimentation Control provisions of Article 7.

