

**AN ORDINANCE TO AMEND
THE NEWTON COUNTY WATER RESOURCES MANAGEMENT ORDINANCE;
TO REPEAL CONFLICTING PROVISIONS;
TO PROVIDE FOR AN EFFECTIVE DATE;
AND FOR OTHER PURPOSES**

BE IT ORDAINED by the Board of Commissioners, Newton County, Georgia, and under the authority of the same that the Newton County Water Resources Management Ordinance is hereby amended as follows:

Section 1

Newton County does hereby amend Article 2 Definitions by deleting the following definitions in their entirety and inserting in lieu thereof the definitions contained in Exhibit "A" attached hereto and incorporated herein by reference thereto:

Best Management Practices (BMP)
Erosion and Sedimentation Control Plan
Fill
Nephelometric Turbidity Units (NTU)
Operator
Qualified Personnel
Roadway Drainage Structure
Soil and Water Conservation District Approved Plan
State General Permit
Trout Streams

Section 2

Newton County does hereby amend Article 7 Erosion and Sedimentation Control by deleting the Article in its entirety and inserting in lieu thereof the Article contained in Exhibit "B" attached hereto and incorporated herein by reference thereto.

Section 3

All ordinances or regulations or parts thereof in conflict herewith are hereby repealed.

Section 4

This Ordinance shall be in force and take effect on June 2, 2010.

Adopted and approved by the Board of Commissioners on the 1st day of June, 2010.

NEWTON COUNTY BOARD OF COMMISSIONERS



By: Kathryn G. Morgan
Kathryn G. Morgan, Chairman

Attest: Jackie Smith
Jackie Smith, Clerk

Exhibit "A"

Best Management Practices (BMP)

These include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the 'Manual for Erosion and Sediment Control in Georgia' published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.

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 700-030 C of this ordinance.

Fill

A portion of land surface to which soil or other solid materials have been added; the depth above the original ground surface or an excavation.

Nephelometric Turbidity Units (NTU)

Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed or suspended particles are present.

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.

Roadway Drainage Structure

A device such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

Soil and Water Conservation District Approved Plan

An erosion, sedimentation and pollution control plan approved in writing by the Upper Ocmulgee River Soil and Water Conservation District.

State General Permit

The National Pollution Discharge Elimination System (NPDES) general permit or permits for storm-water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq., and subsection (f) of

O.C.G.A. § 12-5-30.

Trout Streams

All streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.gaepd.org. . Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

Exhibit “B”

ARTICLE 7 – EROSION AND SEDIMENTATION CONTROL

Sec. 700-010 Definitions

For the purposes of this Article only, the following definitions shall apply:

Board

The Board of Natural Resources.

Buffer

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

Certified Personnel

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

Commission

The Georgia Soil & Water Conservation Commission (GSWCC).

CPESC

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

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 or an authorized representative.

District

The Upper Ocmulgee River Soil and Water Conservation District.

Division

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

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 measures (such as the use of rip rap, gabions, permanent mulches or geotextiles) 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 as appropriate for the region. Final stabilization applies to each phase of construction.

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.

Outfall

The location where storm water, in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.

Permit

The authorization necessary to conduct a land-disturbing activity under the provisions of this Article.

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.

Sec. 700-020 EXEMPTIONS

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

A. Surface mining, as the same defined in O.C.G.A. § 12-4-72, “The Georgia Surface Mining Act of 1968”;

B. Granite quarrying and land clearing for such quarrying;

C. 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;

D. The construction of single-family residences, when such construction disturbs less than one acre and is not 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 O.C.G.A. 12-7-6 and this Paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams, pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the Director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The riparian buffers established under Divisions 415, 420 and 520 of the Zoning Ordinance of Newton County, Georgia are also applicable. The minimum requirements of subsection (b) of O.C.G.A. 12-7-6 and the buffer zones provided by this section shall be enforced by the Local Issuing Authority;

E. Agricultural operations as defined in O.C.G.A. § 1-3-3, “definitions”, to include raising, harvesting, or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;

F. 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 700-030 C. of this Article, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices;

G. Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

H. 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 drainage ways which have water in them only during and immediately after rainfall events; 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 drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Local Issuing Authority from regulating any such project which is not specifically exempted by paragraphs A, B, C, D, E, F, G, I or J of this section;

I. 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 Department of Transportation or State Road and Tollway Authority which disturb one (1) 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;

J. 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

K. Any public water system reservoir.

Sec. 700-030 MINIMUM REQUIREMENTS FOR EROSION AND SEDIMENTATION CONTROL USING BEST MANAGEMENT PRACTICES

A. General Provisions. Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not excluded by this Article shall contain provisions for application of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion and sedimentation control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section 700-030 B and C of this Article. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.

B. Minimum Requirements/BMP's

1. Best management practices as set forth in Section 700-030 B and C of this Article shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to subsection (f) of Code Section § 12-5-30, "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 a local Issuing Authority or of any state general permit issued by the Division pursuant to subsection (f) of Code Section § 12-5-30, the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten (10) nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.
3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local Issuing Authority or any state general

permit issued by the Division pursuant to subsection (f) of Code Section § 12-5-30, the “Georgia Water Quality Control Act”, for each day on which such failure occurs.

4. The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur.

5. The Local Issuing Authority may set forth more stringent buffer requirements than stated in C. 15. and 16. in light of O.C.G.A. 12-7-6(c).¹

C. The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 *et seq.* for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with and no less stringent than, those practices contained in the *Manual for Erosion and Sediment Control in Georgia* published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

1. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;
2. Cut-fill operations must be kept to a minimum;
3. Development plans must conform to topography and soil type so as to create the lowest 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

¹ See Divisions 415, 420 and 520 of The Zoning Ordinance of Newton County Georgia, as amended, for additional riparian buffer requirements.

used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. § 12-7-1 *et. seq.*;

10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;

11. Cuts and fills may not endanger adjoining property;

12. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;

13. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;

14. Land-disturbing activity plans for erosion, sedimentation and pollution control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Section 700-030 B.2. of this Article.

15. Except as provided in paragraph (16) of this subsection, there is established a 35-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 which must cross a state water 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. Unless exempted as along an ephemeral stream, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. Any variance granted by the Director pursuant to O.C.G.A. 12-2-8 shall also serve as a variance to the 35-foot buffer established by this Paragraph but shall not serve as a variance to any riparian buffers in excess of 35 feet established under Divisions 415, 420 and 520 of The Zoning Ordinance of Newton County Georgia, as amended. The following requirements shall apply to any such buffer established under this Paragraph:

- 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 land-disturbing activity is initiated and

continuing until final stabilization of the site is achieved, the boundary of the buffer shall be designated by four foot orange safety fencing. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and

16. There is established a 50-foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25-foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the Board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The Director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:

a. No land-disturbing activities shall be conducted within 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 land-disturbing activity is initiated and continuing until final stabilization of the site is achieved, the boundary of the buffer shall be designated by four foot orange safety fencing. 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.

D. Nothing contained in this chapter shall prevent any Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Section 700-030 B and C of this Article.

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 Article or the terms of the permit.

Sec. 700-040 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. They shall review the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this Article, and other ordinances which regulate the development of land within the jurisdictional boundaries of the Local Issuing Authority. However, the owner and/or operator are the only parties who may obtain a permit.

B. Application Requirements

1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of Newton County without first obtaining a permit from the Planning & Development Department of Newton County to perform such activity and providing a copy of the Notice of Intent submitted to EPD if applicable.

2. The application for a permit shall be submitted to the Planning & Development Department of Newton County 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 700-040 C of this Article. 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 700-030 B and C of this Article will be met. Applications for a permit will not be accepted

unless accompanied by three (3) copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10.

3. A fee, in an amount set by the Newton County Board of Commissioners, shall be charged for each acre or fraction thereof in the project area.

4. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. § 12-5-23, provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In 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 the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of 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. Immediately upon receipt of an application and plan for a permit, the Local Issuing Authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan.

A District shall approve or disapprove a plan within 35 days of receipt. Failure of a District to act within 35 days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Local Issuing Authority. No permit will be issued unless the plan has been approved by the District, and any variances required by Section 700-030 C. 15. and 16. have been obtained, all fees have been paid, and bonding has been obtained. Such review will not be required if the Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct such review and approval of the 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 with plan review authority to act 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 Article section, or the Erosion and Sedimentation Act, as amended, within three (3) 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 shall 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 Article 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. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the Local Issuing Authority with respect to alleged permit violations.

C. Plan Requirements

1. Plans must be prepared to meet the minimum requirements as contained in Section 700-030 B and C of this Article, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The *Manual for Erosion and Sediment Control in Georgia* is hereby incorporated by reference into this Article. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and State laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development, design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A. 12-7-20.

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

D. Permits

1. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the 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.

2. No permit shall be issued by the Local Issuing Authority unless the erosion, sedimentation and pollution control plan has been approved by the District and the Local Issuing Authority has affirmatively determined that the plan is in compliance with this Article, any variances required by Section 700-030 C 15 and 16 are obtained, bonding requirements, if necessary, as per Section 700-040 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. Any land-disturbing activities by a Local Issuing Authority shall be subject to the same requirements of this Article, and any ordinances relating to land development, as are applied to private persons, and the Division shall enforce such requirements upon the Local Issuing Authority.

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

5. The permit may be suspended, revoked, or modified by the 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 and sedimentation control plan or that the holder or his successor in title is in violation of this Article. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

6. The Local Issuing Authority may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of this application, in light of O.C.G.A. 12-7-7(f)(1).

7. No permit shall be issued unless the applicant provides a statement by the Newton County Tax Commissioner's Office certifying that all ad valorem taxes levied against the property and due and owing have been paid.

Sec. 700-050 INSPECTION AND ENFORCEMENT

A. The Planning and Development Department of Newton County 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 Article, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this Article.

B. 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.

C. The Planning and Development Department of Newton County shall have the power to conduct such investigations as it may reasonable deem necessary to carry out duties as prescribed in this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.

D. No person shall refuse entry or access to any authorized representative or, agent of the 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.

E. The Districts or the Commission or both shall periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to O.C.G.A. § 12-7-8(a). The Districts or the Commission or both may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion, sedimentation and pollution control program. The Districts or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.

F. The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to Code Section § 12-7-8 (a). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to O.C.G.A. § 12-7-8 (a) has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. § 12-7-7 (e), the Division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 90 days within which to take the necessary corrective action to retain certification as a Local Issuing Authority. If the county or municipality does not take necessary corrective action within 90 days after notification by the division, the division may revoke the certification of the county or municipality as a Local Issuing Authority.

Sec. 700-060 PENALTIES AND INCENTIVES

A. Failure to Obtain a Permit for Land-Disturbing Activity

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

B. Stop-Work Orders

1. For the first violation of the provisions of this Article, the Local Issuing Authority shall issue a written warning to the violator. The violator shall have three (3) business days to correct the violation. If the violation is not corrected within three (3) business days, the Director or Local Issuing Authority shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the Local Issuing Authority shall issue an immediate stop-work order in lieu of a warning.
2. For each subsequent violation, the Director or the Local Issuing Authority shall issue an immediate stop-work order; and
3. All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
4. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or any amount of sediment, as determined by the Local Issuing Authority or by the Director or his or her designee, has been or is being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the Local Issuing Authority or by the director or his or her designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls
5. If, through inspection, it is determined that a person engaged in land-disturbing activities is not in compliance with BMP's, the deposit of any silt or sediment into State Waters is an automatic violation subject to a stop-work order and citation.

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 Article 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 Sec. 700-040 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

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

2. The following minimum penalties shall apply to land-disturbing activities performed in violation of any provision of this Article, any rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this Article:

a. There shall be a minimum penalty of \$250.00 per day for each violation involving the construction of a single-family dwelling by or under contract with the owner for his or her own occupancy; and;

b. There shall be a minimum penalty of \$1,000.00 per day for each violation involving land-disturbing activities other than as provided in subsection (a) of this paragraph.

Sec. 700-070 EDUCATION AND CERTIFICATION

A. Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the Commission in consultation with the Division and the stakeholder advisory board created pursuant to O.C.G.A. 12-7-20.

B. For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.

C. Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this Article.

D. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of O.C.G.A. 12-7-19(b)(1), then any person or entity involved at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in O.C.G.A. 12-7-19(b)(4) and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

Sec. 700-080 ADMINISTRATIVE APPEAL JUDICIAL REVIEW

A. Administrative Remedies

The suspension, revocation, modification or grant with condition of permit by the Local Issuing Authority upon finding that the holder is not in compliance with the approved erosion and sediment control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Newton County Planning Commission within fifteen (15) days after receipt by the Local Issuing Authority of written notice of appeal.

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 Newton County.

Sec. 700-090 LIABILITY

Liability

A. Neither the approval of a plan under the provisions of this Article, nor the compliance with provisions of this Article 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.

B. 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 Article or the terms of the permit.

C. No provision of this Article 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.