

AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA, AS REVISED 1988, CHAPTER 14, TO MATCH OR EXCEED THE UPDATED 2016 - MODEL ENVIRONMENTAL PROTECTION DIVISION ORDINANCE, AND FOR OTHER PURPOSES.

WHEREAS, the Governing Authority of DeKalb County is tasked with the protection and the preservation of the health, safety and general welfare of the citizens of the County; and

WHEREAS, O.C.G.A. § 12-7-4 states that the County shall adopt a comprehensive ordinance establishing the procedures governing land-disturbing activities which are conducted within their respective boundaries; and

WHEREAS, the adoption of the Environmental Protection Division (“EPD”) 2016 model ordinance helps to ensure that the County remains a certified Local Issuing Authority (“LIA”); and

NOW, THEREFORE, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 14 of the Code of DeKalb County, Georgia, as Revised 1988, be amended as follows:

PART I. ENACTMENT

The following definitions in Section 14-1 of the Code of DeKalb County, as revised 1988, shall be amended to read as follows, in alphabetical order:

Sec. 14-1. Definitions.

Best management practices (BMP's) are sound conservation and engineering practices that prevent or minimize erosion and resulting 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.

CPESC means a Certified Professional in Erosion and Sediment Control with current certification by, EnviroCert, Inc. which is also referred to as CPESC or CPESC, Inc.

Cut means a portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface. Also known as "excavation."

Design professional means a professional licensed by the State in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a certified professional in erosion and sediment control (CPESC) with a current certification by EnviroCert, Inc. Design Professionals shall practice in a manner that complies with applicable Georgia law governing professional licensure.

Director, EPD means the Director of the Environmental Protection Division or an authorized representative.

Erosion, Sedimentation and Pollution Control Plan means a plan required by the Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 et seq., that includes, protections at least as stringent as the State General Permit, best management practices, and requirements in Sec. 14-38(b)(4)(c) of this ordinance.

Fill means a portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.

Final stabilization means that 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, one hundred (100) percent of the soil surface is uniformly covered in permanent vegetation with a density of seventy (70) percent or greater, or landscaped according to the Erosion, Sedimentation and Pollution Control Plan (uniformly covered with landscaping materials in planned landscape areas), or equivalent permanent stabilization measures as defined in the Manual for Erosion and Sediment Control in Georgia, as amended (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.

Nephelometric turbidity units (NTU's) means 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 means 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.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of the State of Georgia, any interstate body or any other legal entity.

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

Soil and water conservation district approved plan means an erosion, sedimentation and pollution control plan approved in writing by the DeKalb County Soil and Water Conservation District.

State general permit means 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 O.C.G.A. § 12-5-30(f).

State waters means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or

artificial, lying within or forming a part of the boundaries of the State of Georgia, which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

The following sub-sections of Section 14-38(b) shall be amended to read as follows:

Sec. 14-38(b). Standards.

(3) *Exemptions.* This section 14-38 shall apply to any land-disturbing activity undertaken by any person on any land except for the following:

- a. Surface mining, as the same is defined in O.C.G.A. § 12-4-72, the "Georgia Surface Mine 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 (1) acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in subsection 14-38(b)(4) 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 fifty (50) horizontal feet and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least fifty (50) horizontal feet, but the development director may grant variances to no less than twenty-five (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 twenty-five (25) horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection 14-38(b)(4) and the buffer zones provided by this section shall be enforced by the development department;
- 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 aquaculture, 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 subsection (b)(4)c. of this section, 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 (1) acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre or within two hundred (200) feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainageways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one (1) acre, which involves land-disturbing activity, and which is within two hundred (200) feet of any such excluded channel or drainageway, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent DeKalb County from regulating any such project which is not specifically exempted by paragraphs (b)(3)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 section 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.

(4) *Minimum requirement for erosion, sedimentation and pollution control using best management practices.*

a. *General provisions.* Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of this ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities that are not exempted by this chapter shall contain provisions for application of soil erosion and sedimentation control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of subsections (b)(4)b. and c. of this section and any other applicable provision of this section. The application of measures and practices shall apply to all features of the site, including street and utility installations, stormwater management facilities, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with the requirements of this ordinance and the NPDES general permit. The development director may require that land disturbance activity be phased. Soil erosion and sedimentation control plans shall address appropriate measures to effectively control soil erosion during successive phases of construction.

b. *Minimum requirements.*

1. Best management practices as set forth in subsections (b)(4)b. and c. 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 of the environmental protection division (EPD) 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 O.C.G.A. § 12-5-30(f), the "Georgia Water Quality Control Act". As used in this subsection, the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. § 12-7-6(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 O.C.G.A. § 12-5-30(f), the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than twenty-five (25) nephelometric turbidity units for waters supporting

warm water fisheries or by more than ten (10) nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the director of the EPD. This paragraph shall not apply to any land disturbance associated with the construction of single-family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five (5) acres.

3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to O.C.G.A. § 12-5-30(f), the "Georgia Water Quality Control Act", for each day on which such failure occurs.
 4. The director of the EPD may require, in accordance with regulations adopted by the BNR, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
- 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 or 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 shall be kept to a minimum;
 3. Development plans shall 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 as provided in sections 14-39 and 14-42;
 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 runoff water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. § 12-7-1 et seq.;

10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
11. Cuts and fills shall not endanger adjoining property;
12. Fills shall not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
13. Grading equipment shall 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 sediment on-site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (b)(4)b.2.;
15. Except as provided in paragraph 16. of this subsection, there is established a twenty-five-foot state 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 of the EPD determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director of the EPD pursuant to O.C.G.A. § 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or along any ephemeral stream. As used in this provision, the term "ephemeral stream" means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the groundwater 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 twenty-five (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 of the EPD as provided in this paragraph. The following requirements shall apply to any such buffer:
 - i. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative

cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

- ii. 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 twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (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;

16. There is established a fifty-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 twenty-five (25) gallons per minute or less shall have a twenty-five-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 BNR, 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 of the EPD 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:

- i. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- ii. 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 twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (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. 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 section or the terms of the permit.

(5) *Application/permit process.*

- a. *General.* Before submittal, the property owner, developer and designated planners and engineers shall design and review the general development plans. The Local Issuing Authority shall review the tract to be developed and the area and surrounding it. They shall consult the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this chapter, and other ordinances, rules, regulations or permits, which regulate the development of land within the jurisdictional boundaries of the local issuing authority. However, the owner and/or operator is the only party who may obtain a permit.

- b. *Application requirements.*

1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of DeKalb County without first obtaining a permit from the development director to perform such activity, and providing a copy of the notice of intent submitted to the EPD, if applicable.
2. The application for a permit shall be submitted to the development director 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 subsection (b)(5)c. 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 subsection (b)(4)b. and c. will be met. Applications for a permit will not be accepted unless accompanied by eight (8) copies of the applicant's soil erosion, sedimentation and pollution 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 permitting fee, as determined by the 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 O.C.G.A. § 12-5-23(a)(5), provided that such fees shall not exceed eighty dollars (\$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 O.C.G.A. § 12-7-8(a) 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 O.C.G.A. §

12-7-17(9) or (10) 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. The district shall approve or disapprove a plan within thirty-five (35) days of receipt. Failure of a district to act within thirty-five (35) days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the development director. No permit will be issued unless the plan has been approved by the district, and any variances required by subsection (b)(4)c.15 and 16 have been obtained, all fees have been paid, and bonding if required by subsection (b)(5)b.7. have been obtained. Such review will not be required if DeKalb County and the district enter into an agreement which allows DeKalb County 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 thirty-five (35) days of receipt. Failure of the local issuing authority with plan review authority to act within thirty-five (35) days shall be considered an approval of the revised plan submittal.
6. If a permit applicant has had two (2) or more violations of previous permits, this chapter, or the Erosion and Sedimentation Act, as amended, within three (3) years prior to the date of filing of the application under consideration, the development director may deny the permit application.
7. The Local Issuing Authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, three thousand dollars (\$3,000.00) per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

c. *Plan requirements.*

1. Plans must be prepared to meet the minimum requirements as contained in subsection (b)(4) b. and c., 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 chapter. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and stormwater management facilities, local ordinances and state laws. 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 the 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 development director of a completed application, provided 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 development director unless the erosion, sedimentation and pollution control plan has been approved by the district and the development director has affirmatively determined that the plan is in compliance with this chapter, any variances required by subsection (b)(4)c.15. and 16. are obtained, bonding requirements, if necessary, as per subsection (b)(5)b.7. are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of DeKalb County are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
 3. Any land-disturbing activity by the governing authority shall be subject to the same requirements of this section, and any other ordinances relating to land development as are applied to private persons, and the director shall enforce such requirements upon the governing 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 DeKalb County, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion, sedimentation and pollution control plan or that the holder or his successor in title is in violation of this chapter. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.
 6. No permit shall be issued until the applicant files documents with the development director demonstrating compliance with all applicable local, state and federal requirements.
 7. The development director may reject a permit application if the applicant has had two or more convicted violations of the Erosion and Sedimentation Act permit

requirements within three years prior to the date of the application, in light of O.C.G.A. § 12-7-7(f)(1).

(6) *Inspection and enforcement.*

- a. The development director 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, DeKalb County shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbance 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 section, a written notice to comply shall be served upon that person by the development director. 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 section.
- b. The development director shall have the power to conduct such investigations as may reasonably be necessary to carry out duties as prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- c. No person shall refuse entry or access to any authorized representative or agent of DeKalb County, the commission, the district, or the division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
- d. The district or the commission or both shall semi-annually review the actions of the county. The district or the commission or both may provide technical assistance to DeKalb County for the purpose of improving the effectiveness of the county's erosion and sedimentation control program. The district or the commission shall notify the division and request investigation by the division if the county's program is found to be deficient or ineffective.
- e. The division may periodically review the actions of DeKalb County which has been certified as a local issuing authority pursuant to O.C.G.A. § 12-7-8(a). Such review may include, but shall not be limited to, review of the administration and enforcement of DeKalb County's ordinances and review of conformance with an agreement, if any, between the district and DeKalb County. If such review indicates that DeKalb County 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 DeKalb County governing authority in writing. Upon receipt of the notification, the governing authority shall have ninety (90) days within which to take the necessary

corrective action to retain certification as a local issuing authority. If DeKalb County does not take necessary action within ninety (90) days after notification by the division, the division shall revoke the certification of DeKalb County as a local issuing authority.

- f. DeKalb County must amend its ordinances to the extent appropriate within twelve (12) months of any amendment to the Erosion and Sedimentation Act of 1975.

(7) *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 chapter 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 unincorporated DeKalb County.
- b. *Stop work orders.* Upon notice from the development director or other county authorized representative, work on any project that is being done contrary to the provisions of this chapter or in a dangerous or unsafe manner, shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, his/her authorized agent or the person or persons in charge of the activity on the property, and shall state the conditions under which work may be resumed. Where an emergency exists, no written notice shall be required.
 - 1. For the first and second violations of the provisions of this section on a site, the director of the EPD or the development director shall issue a written notice of violation to the violator. The violator shall have five (5) days to correct the violation. If the violation is not corrected within five (5) days, the director of the EPD or the development director shall issue a stop work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided 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 of the EPD or development director shall issue an immediate stop work order in lieu of notice of violation.
 - 2. For a third and each subsequent violation on a site, the development director 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 land disturbance without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the development director, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the development director. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

- c. *Bond forfeiture.* If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served by the development director upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this chapter and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of subsection (b)(5)b.7. The chief executive officer may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
- d. *Monetary penalties.* Any person who violates any provisions of this section, or any permit condition or limitation established pursuant to this section, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the development director issued as provided in this section shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) per day, or the maximum amount authorized by section 1-10 of the Code of DeKalb County. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought under county ordinances approved under this section shall be authorized to impose penalties for such violations not to exceed two thousand five hundred dollars (\$2,500.00) for each violation; however the maximum assessment shall not exceed the amount authorized by section 1-10 of the Code of DeKalb County. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

(8) *Education and certification.*

- a. Persons involved in land development design, review, permitting, construction, monitoring, or inspection of 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 (1) person who is responsible for 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 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 section.
- 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 in land-disturbing activity 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), but shall not be required to meet any educational requirements that exceed those specified in said paragraph.

(9) *Administrative appeal, judicial review.*

- a. *Administrative remedies.* The suspension, revocation, modification or grant with condition of a permit by DeKalb County upon finding that the holder is not in compliance with the approved erosion, sediment and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to an appeal before the zoning board of appeals pursuant to the procedures and standards set forth in subsection 14-34(d).
- b. *Judicial review.* Any person aggrieved by administrative appeals from a decision or order of the zoning board of appeals authorized by subsection (b)(9)a. of this section may appeal as provided for by State law.

PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2019.

JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2019.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

ANDREW BAKER, AICP
Director Planning & Sustainability
DeKalb County, Georgia

APPROVED AS TO FORM:

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia