

Board of Commissioners
Gwinnett County
Lawrenceville, Georgia

A Resolution to Amend the Gwinnett County Soil Erosion and Sediment Control Ordinance

SEA2004-001

Date of Reading and Adoption: June 22, 2004

At the regular meeting of the Gwinnett County Board of Commissioners held at the Gwinnett Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia:

<u>Commission Members</u>	<u>Present</u>	<u>Vote</u>
Wayne Hill, Chairman	Yes	Aye
Marcia Neaton, District 1	Yes	Aye
Albert Nasuti, District 2	Yes	Aye
John Dunn, District 3	Yes	Aye
Kevin Kenerly, District 4	Yes	Aye

On motion of Commissioner Kenerly, seconded by Commissioner Neaton, which carried 5-0, the following resolution was adopted:

SEA2004-001

A Resolution to Amend the Gwinnett County Soil Erosion and Sediment Control Ordinance

WHEREAS, the Gwinnett County Soil Erosion and Sediment Control Ordinance was adopted by the Board of Commissioners on March 28, 1972, and was last amended on June 25, 2002; and,

WHEREAS, the Code of Ordinances of Gwinnett County provides for amendments thereto by resolution of the Board of Commissioners; and,

WHEREAS, the Georgia Erosion and Sedimentation Act of 1975, as amended, requires local governments to revise local soil erosion and sediment control ordinances upon notice from the appropriate state agency due to changes to said act; and,

WHEREAS, the Board of Commissioners finds that it is in the public interest to amend said ordinance in order to provide for the public health, safety, convenience, order, prosperity and the general welfare of the present and future inhabitants of Gwinnett County;

NOW, THEREFORE BE IT RESOLVED by the Gwinnett County Board of Commissioners, this 22nd day of June, 2004, that the Gwinnett County Soil Erosion and Sediment Control Ordinance is hereby amended by deleting Articles 2, 3, 4, 5, 6, 7, 8, and 9 of the ordinance and substituting in lieu thereof the following new Articles 2, 3, 4, 5, 6, 7, 8, 9 and 10, as follows:

Article 2.
Rules of Construction and Definitions.

2.1. Rules Applying to Text.

For the purpose of this ordinance certain rules of construction apply to the text as follows:

1. Words used in the present tense include the future tense; and the singular includes the plural, unless the context clearly indicates contrary.
2. The word "shall" is always mandatory and not discretionary.
3. The word "may" is permissive.
4. Except as specifically defined herein, all words used in this ordinance have their common dictionary definition.

2.2. Definitions.

The following definitions shall apply in the interpretation and enforcement of this ordinance. The definitions of the Zoning Resolution, the Development Regulations, the Construction Code and the Floodplain Management Ordinance are hereby included and adopted by reference. Whenever a conflict of definitions is considered to exist or an interpretation of these definitions is necessary, the director shall resolve the conflict and interpret the definition. The action of the director shall be recorded and made a part of these definitions.

Appeal: The process through which a property owner disagrees with the interpretation or decision of the director or who knowingly chooses not to comply with the requirements of this ordinance may be heard by the Board of Commissioners.

Best Management Practices (BMP's): A collection of structural measures and vegetative practices which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control. The term "properly designed" means designed in accordance with the hydraulic design specifications contained in the "*Manual for Erosion and Sediment Control in Georgia*" specified in OCGA 12-7-6 subsection (b).

Board of Commissioners: The Board of Commissioners of Gwinnett County, Georgia.

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.

Commission: The Georgia Soil and Water Conservation Commission.

Construction Code: The Gwinnett County Construction Code as may be amended from time-to-time.

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

Department: The Gwinnett County Department of Planning and Development.

Director: The director of the Gwinnett County Department of Planning and Development or the director's duly authorized representative.

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

Development Regulations: The Development Regulations of Gwinnett County, Georgia, as may be amended from time-to-time.

District: The Gwinnett County Soil and Water Conservation District.

Drainage Structure: A device composed of a virtually nonerrodible material such as concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm water management, drainage control, or flood control purposes.

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

Erosion and Sediment Control Plan: A plan for the control of soil erosion and sedimentation resulting from a land disturbing activity. Also known as the "plan."

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

Finished Grade: The final elevation and contour of the ground after cutting or filling and conforming to the proposed design approved by the Department.

Grading: Altering the shape of ground surfaces to a predetermined condition; this includes stripping, cutting, filling, stockpiling and shaping or any combination thereof and shall include the land in its cut or filled condition.

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

Land Disturbing Activity: Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, clearing and grubbing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Article 3 Section 3.1, Paragraph 5 of this ordinance.

Land Disturbing Permit: A clearing, clearing and grubbing, grading, development, or building permit as are defined and authorized by the Development Regulations and the Construction Code. Each clearing, clearing and grubbing, grading, or development permit shall include the required erosion and sediment control measures and practices.

Larger Common Plan of Development or Sale: A contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For the purposes of this paragraph, “plan” means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.

Local Issuing Authority: The governing authority of any county or municipality which is certified pursuant to subsection (a) of OCGA 12-7-8.

Metropolitan River Protection Act: A state law referenced as OCGA 12-5-440 et seq., which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.

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

Nephelometric Turbidity Units (NTU's): 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 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 storm-water pollution prevention 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 storm-water pollution prevention plan or to comply with other permit conditions.

Person: Any individual, partnership, firm, association, corporation, 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, interstate body or any other legal entity.

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

Qualified Personnel: Any person who meets or exceeds the education and training requirements of OCGA 12-7-19.

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 way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

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

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

Soil and Water Conservation District Approved Plan: An erosion and sedimentation control plan approved in writing by the Gwinnett County Soil and Water Conservation District.

Stabilization: The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

State General Permit: The National Pollution Discharge Elimination System general permit or permits for storm water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.

State Waters: Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural and artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership or corporation.

Structural Erosion and Sedimentation Control Measures: Measures for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment

control measures are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such measures are found in the publication Manual for Erosion and Sediment Control in Georgia.

Trout Streams: All streams or portions of streams within the watershed as designated by the Game and Fish Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, OCGA 12-5-20 et seq. 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.

Vegetative Erosion and Sedimentation Control Measures: Measures for the stabilization of erosive or sediment-producing areas by covering the soil with but not limited to the following:

- a. Permanent seeding, sprigging or planting, producing long-term vegetative cover; or,
- b. Temporary seeding producing short-term vegetative cover; or,
- c. Sodding, covering areas with a turf of perennial sod-forming grass.

Such measures are found in the publication Manual for Erosion and Sediment Control in Georgia.

Watercourse: Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Wetlands: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Article 3 Exemptions

3.1. Exempt Land Disturbing Activities.

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

1. Surface mining, as the same is defined in OCGA 12-4-72, “Mineral Resources and Caves Act;”

2. Granite quarrying and land clearing for such quarrying.
3. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
4. The construction of single-family residences when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements set forth in Article 4 Sections 4.2 and 4.3 of this ordinance 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 of EPD 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 minimum requirements of Article 4 Sections 4.2 and 4.3 of this ordinance and the buffer zones provided by this section shall be enforced by the department;
5. Agricultural operations as defined in OCGA 1-3-3 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 chicken, hens, and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; and farm buildings and farm ponds;
6. Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs “15” and “16” of Article 4, Section 4.3 of this ordinance, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices;
7. Any project carried out under the active technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture. This excludes those land-disturbing activities undertaken by a person who has requested technical

advice only rather than active participation from the Natural Resources Conservation Service;

8. Any project involving 5,000 square feet or less of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and 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 5,000 square feet or less of disturbed area and which is within 200 feet of any such excluded channel or drainageway, must prevent sediment from moving beyond the boundaries of the property on which such project is located. The provisions of this paragraph shall not apply to those projects specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, 9, or 10 of this section;
9. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Georgia Department of Transportation, the Georgia Highway Authority, the Georgia Tollway Authority, or the Gwinnett County Department of Transportation; provided, however, that construction or maintenance projects of the Georgia Department of Transportation or the Georgia Tollway Authority which disturb one (1) or more contiguous acres of land shall be subject to the provisions of OCGA 12-7-7.1; except where the Georgia 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 OCGA 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders.
10. Any land disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in OCGA 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 OCGA 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

OCGA 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and,

11. Any public water system reservoir.

Article 4

Minimum Requirements for Erosion and Sedimentation Control Using Best Management Practices

4.1. General Provisions.

Excessive soil erosion and resulting sedimentation can take place during land disturbing activities. Therefore, plans for those land-disturbing activities that are not exempted by this ordinance shall contain provisions for the application of soil erosion and sedimentation control measures and practices. These provisions shall be incorporated into the erosion and sedimentation control plans. Soil erosion and sedimentation control measures and practices shall conform to the requirements of Sections 4.2 and 4.3 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 and sedimentation pollution during all stages of any land disturbing activity.

4.2. Minimum Requirements / Best Management Practices (BMP'S).

1. Best management practices as set forth in Sections 4.2 and 4.3 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 of EPD or to any other allegation of noncompliance with paragraph 2 of this section or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of OCGA 12-5-30. As used in this section, 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 OCGA 12-7-6 subsection (b).
2. A discharge of storm water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land disturbing permit issued by Gwinnett County or of any state general permit issued by the Environmental Protection Division of the Georgia Department of Natural Resources pursuant to subsection (f) of OCGA 12-5-30 for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units (NTU's) for waters supporting warm water fisheries or by more than ten (10) nephelometric turbidity units (NTU's) for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines as may be issued by the Director of 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 acres.
3. Failure to properly design, install, or maintain best management practices shall constitute

a violation of any land-disturbing permit issued by Gwinnett County or of any state general permit issued by the Environmental Protection Division of the Georgia Department of Natural Resources pursuant to subsection (f) of OCGA 12-5-30 for each day on which such failure occurs.

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

4.3. Additional Minimum Requirements.

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 the state general permit, and 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, shall be observed by all land disturbers and plan preparers, 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 areas 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. The disturbed area shall be stabilized with temporary vegetation or mulch if land-disturbing activity temporarily ceases for more than 14 calendar days;
8. Permanent vegetation and structural erosion control measures shall be installed as soon as practicable. The disturbed area shall be stabilized with permanent vegetation if land-disturbing activity ceases for more than 30 calendar days;
9. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of this ordinance;
10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface 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 shall be kept to a minimum;
14. Land disturbing activity plans for erosion and sedimentation 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 4.2 Paragraph 2 of this article;

15. Except as provided in paragraph 16 of this section, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director of 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 EPD pursuant to OCGA 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; provided, however, that buffers of at least 25 feet established pursuant to Part 6 of Article 5 of Chapter 5 of the "Metropolitan River Protection Act" shall remain in force unless a variance is granted by the Director of EPD as provided in this paragraph. The following requirements shall apply to any such buffer:
 - a. No land disturbing activities shall be conducted within a buffer and it shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed.
 - b. Once the final stabilization of the construction 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.
 - c. Exception: 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,
 - d. 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,
 - e. Prior to action by the Director of EPD, buffer variance requests along state waters with drainage areas greater than 20 acres shall be reviewed for approval or denial by the director using the same buffer variance criteria as adopted by the Board of the Georgia Department of Natural Resources.
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 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 of Natural Resources providing for notice to the EPD or the county of the location and extent of the piping and prescribed methodology for minimizing the impact of such piping and for measuring the volume of water discharged by the stream. Any such pipe must stop short of the downstream landowner's property, and the landowner must comply with the buffer requirement for any adjacent trout streams. The director of 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 any such buffer:

- a. No land disturbing activities shall be conducted within a buffer and it shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed.
- b. Once the final stabilization of the construction 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.
- c. Exception: 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,
- d. 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.
- e. Prior to action by the Director of EPD, buffer variance requests along state waters with drainage areas greater than 20 acres shall be reviewed for approval or denial by the director using the same buffer variance criteria as adopted by the Board of the Georgia Department of Natural Resources.

4.4. Proof or Presumption of Violation by Injury.

The fact that land-disturbing activity for which a land disturbing permit has been issued results in injury to the property of another shall neither constitute proof of, nor create a presumption of, a violation of the standards provided for in this ordinance or the terms of a

land disturbing permit.

Article 5
Permit Application and Plan Requirements

5.1. General.

The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of Gwinnett County that affect the tract to be disturbed and the area surrounding it. They shall review the Zoning Resolution, the Development Regulations, the Floodplain Management Ordinance, the Buffer, Landscape and Tree Ordinance, this ordinance, and other ordinances that regulate the development of land within the unincorporated areas of Gwinnett County. However, the operator is the only party who may obtain a land-disturbing permit.

5.2. Permit Requirements.

1. Land Disturbing Permit Required.

Land-disturbing activities shall not be conducted by any person without first obtaining a land disturbing permit from the Department of Planning & Development to perform such activity. If land is to be disturbed or developed in phases, then a separate land-disturbing permit shall be required for each phase.

2. Application Submittal.

The application for a permit shall be submitted to the Department of Planning & Development and shall include the applicant's erosion and sedimentation control plan accompanied by supporting data as necessary. Plans shall include, as a minimum, the data specified in Section 5.3 of this article. Soil erosion and sedimentation control plans shall conform to the provisions of Article 4 Sections 4.2 and 4.3 of this ordinance. All applications shall contain a certification stating that the plan preparer, or the designee thereof, visited the site prior to creation of the plan or that such a visit was not required in accordance with rules and regulations established by the Board of Natural Resources. 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 Department of Planning & Development of a completed application, providing variances and bonding are obtained where necessary. If the permit is denied, the reason for denial shall be furnished to the applicants.

3. Fees.

- a. A land-disturbing permit fee, in an amount as established by a separate resolution by the Board of Commissioners, shall be charged for each acre or fraction thereof in the project area.
- b. In addition to the land-disturbing permit fee, fees shall be assessed pursuant to paragraph (5) subsection (a) of OCGA 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 OCGA 12-7-8, half of such fees levied shall be submitted to the Georgia EPD; except that any and all fees due from an entity that is required to give notice pursuant to paragraph (9) or (10) of OCGA 12-7-17 shall be submitted in full to the Georgia EPD regardless of the existence of a local issuing authority in the jurisdiction.

4. Review by County Departments.

After having received a complete land-disturbing permit application, reviewed same by the Department of Planning & Development and the Storm Water Management Division of the Department of Public Utilities, and finding it to be in compliance with the Zoning Resolution, the Development Regulations, the Floodplain Management Ordinance, the Buffer, Landscape and Tree Ordinance, the requirements of this ordinance and any variances required by Article 4 Section 4.3 Paragraphs 15 and 16 of this ordinance are obtained, the Department of Planning & Development shall issue the land-disturbing permit.

5. Permit Suspension, Revocation, or Modification

The land-disturbing permit may be suspended, revoked, or modified by the Department of Planning & Development, as to all or any portion of the land affected by the plan, upon finding that the holder or the holder's successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or the holder's successor in title is in violation of this ordinance. A holder of a land-disturbing permit shall notify any successor in title to the holder as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

5.3. Plan Requirements.

1. Plans Shall Meet Minimum Requirements.

Plans shall be prepared to meet the minimum requirements as contained in Article 4 Sections 4.2 and 4.3 of this ordinance. In addition, plans shall also comply with the data requirements of Article 10 of the Development Regulations. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the *Manual for Erosion and Sediment Control in Georgia*, published by the Georgia Soil and Water Conservation Commission as a guide; or through the use of alternate design criteria which conform to sound conservation and engineering practices. The *Manual for Erosion and Sediment Control in Georgia* is hereby incorporated by reference into this ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances or regulations and State laws.

2. Data Required for Plan.

The following data shall be required to be provided on all plans:

- a. Narrative or notes required by this paragraph shall be located on the plan in general notes or in erosion and sediment control notes.
- b. Description of existing land use at the project site and description of the proposed project.
- c. Name, address and phone number of the property owner.
- d. Name and phone number of the 24-hour local contact person who is responsible for erosion and sedimentation controls.
- e. Size of the project, or the phase under construction, in acres.
- f. Activity schedule indicating the anticipated starting and completion dates for the project. The following statement shall be printed in **bold letters** on the plan:

"The Installation Of Erosion And Sedimentation Control Measures And Practices Shall Occur Prior To Or Concurrent With Land-Disturbing Activities."

- g. Storm water and sedimentation management systems, storage capacity, hydrologic study, and calculations, including off-site drainage areas.
- h. Vegetative plan for all temporary and permanent vegetative practices, including species, planting dates, and seeding, fertilizer, lime and mulching rates. The vegetation plan shall show options for year-round seeding.
- i. Detail drawings for all structural practices. Specifications shall follow the guidelines set forth in the *Manual for Erosion and Sediment Control in Georgia*.
- j. Maintenance statement shall be printed on the plan as follows:

"Erosion and sedimentation control measures shall be maintained at all times. If full implementation of the approved plan does not provide for effective erosion and sediment control, additional erosion and sediment control measures shall be implemented to control or treat the sediment source."

3. Additional Plan Preparation and Data Requirements.

Maps, drawings, and supportive computations shall bear the signature, date of signature and seal of a registered or certified professional in engineering, architecture, landscape architecture, land surveying, or erosion and sedimentation

control. After December 31, 2006, all 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 as developed by the Georgia Soil & Water Conservation Commission pursuant to OCGA 12-7-20. The certified plans shall contain the following:

- a. Graphic scale and north point or arrow indicating magnetic north.
- b. Vicinity map indicating the location of the project and existing streets.
- c. Boundary line survey information.
- d. Delineation of disturbed areas within the project boundary.
- e. Existing and planned contours, with contour lines drawn with an interval in accordance with the following table:

Map Scale	Ground Slope	Contour Interval (in feet)
One (1) inch = 100 feet; or larger scale	Flat: 0 - 2%	0.5 or 1
	Rolling: 2 - 8%	1 or 2
	Steep: 8% +	2, 5 or 10

- f. Adjacent areas and features such as streams, lakes, residential areas, etc., which might be affected shall be indicated on the plan.
- g. Proposed structures or additions to existing structures and paved areas.
- h. Delineate the 25-foot horizontal buffer adjacent to state waters and the specified width of buffers in areas required by the Metropolitan River Protection Act.
- i. Delineate the specified horizontal buffer along designated trout streams, where applicable.
- j. Location of the erosion and sedimentation control measures and practices, using the uniform coding symbols from the *Manual for Erosion and Sediment Control in Georgia*, Chapter 6.

4. Property Owner Responsibility for Maintenance.
Maintenance of all soil erosion and sedimentation control measures and practices,

whether temporary or permanent, shall be at all times the responsibility of the property owner.

Article 6 Administration and Inspections

6.1. Administration.

This ordinance shall be administered, interpreted, and enforced by the director. All other ordinances or regulations referenced herein shall be administered by the directors of the departments responsible for such codes and regulations as may be established by the Board of Commissioners.

6.2. Inspection.

1. The Department of Planning & Development will periodically inspect the sites of land disturbing activities for which land disturbing permits have been issued to determine if the activities are being conducted in accordance with the erosion and sedimentation control plan and if the measures and practices required in the plan are effective in controlling erosion and sedimentation. Also regulated by Gwinnett County are both primary and secondary 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.
2. 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, with additional on-site recommendations of the Department, or with the provisions of this ordinance, a written notice to comply shall be served upon that person, the constructor, or the job superintendent. 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 period specified, the person shall be deemed to be in violation of this ordinance.
3. The Director shall have the power to conduct such investigations as reasonably deemed necessary to carry out the duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
4. Entry or access shall not be refused by any person to any authorized representative or agent of the Department who requests entry for the purpose 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.

Article 7
Penalties

7.1. Failure to Obtain a Land Disturbing Permit.

If any person commences any land-disturbing activity in which a land-disturbing permit is required by this ordinance without first obtaining said permit, the person shall be subject to revocation of their business license, work permit or other authorization for the conduct of a business and associated work activities.

7.2. Stop Work Orders.

The following procedures shall apply to the issuance of Stop Work Orders:

1. For the first and second violations of the provisions of this ordinance, the director shall issue a written warning to the violator. The violator shall have no more than five (5) calendar days to correct the violation. If the violation is not corrected within the correction deadline, the director 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 shall issue an immediate Stop Work Order in lieu of a written warning;
2. For a third and each subsequent violation, the 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 taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the Director of Planning & Development, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and/or maintained, a Stop Work Order shall be issued by the Director of Planning & Development. 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.

7.3. Monetary Penalties.

1. Any person who violates any provision of this ordinance, or any permit condition or limitation established pursuant to this ordinance or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director of EPD issued as provided in this ordinance, shall be liable for a civil penalty not to exceed

\$2,500 per day. For the purpose of enforcing the provisions of this ordinance, notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any court of competent jurisdiction trying cases brought as violations of this ordinance, under county ordinances approved pursuant to Georgia law, shall be authorized to impose penalties for such violations not to exceed \$2,500 for each violation or may impose a sentence of imprisonment not to exceed 60 days in jail or both. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

2. The court shall have the power and authority to order the violation corrected in compliance with the requirements of this ordinance and the court may require payment of restitution or impose other punishment allowed by law.
3. In any case in which any land is, or is proposed to be, used or activities are undertaken in violation of this ordinance, the County, in addition to other remedies provided by law, may petition for a restraining order, injunction, abatement, or take any other appropriate legal action or proceeding through a court of competent jurisdiction to prevent, restrain, or abate such unlawful use or activity.

7.4. Issuance of Certificates.

Certificates of Development Conformance (CDC), Certificates of Occupancy (CO) or Certificates of Completion (CC) shall not be issued for any building unless all erosion control measures as shown on the approved plans shall have been completed in accordance with this ordinance.

Article 8 Education and Certification

8.1. Education and Certification Required.

After December 31, 2006, all 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 Georgia Soil & Water Conservation Commission in consultation with the Georgia EPD and the stakeholder advisory board created pursuant to OCGA 12-7-20.

Article 9 Administrative and Judicial Appeal

9.1. Administrative Appeal.

1. An appeal from the requirements of this ordinance or of the decision or interpretation of the director shall be submitted by the property owner on an application form as prescribed by the Department, along with such fees as may be established from time-to-time by the Board of Commissioners.

2. The suspension, revocation, or modification with condition of a permit by the Department 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 this ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Board of Commissioners to be scheduled in their normal course of business after receipt by the Department of written notice of appeal.
 3. The property owner shall state clearly why the requirements of this ordinance cannot be met or why the interpretation or decision of the director is in error.
 4. The director shall transmit a copy of the appeal application to all affected county departments, including the Soil & Water Conservation District, soliciting their respective recommendations and coordinate the recommendations of each respondent. The other responses together with the director's recommendation shall be forwarded to the Board of Commissioners, with the exception of appeals from buffer variance request decisions, for final action in their normal course of business. Buffer variance appeals shall be decided upon by the Soil & Water Conservation District in their normal course of business whose decision shall be final. An appeal in conflict with the provisions of the Georgia Erosion and Sedimentation Act, O.C.G.A. 12-7-1 et seq. shall not be considered or approved by the Board of Commissioners.
 5. After final action by the Board of Commissioners, the Director shall transmit a copy of said action to the Soil and Water Conservation District of Gwinnett County and to the property owner.
- 9.2. Judicial Appeal.
- Any person aggrieved by a decision or order of the director, after exhausting his or her administrative appeals, shall have the right to appeal de novo to the Superior Court of Gwinnett County.

Article 10 Adoption, Severability, Liability and Conflicting Regulations

- 10.1. Adoption.
This ordinance shall become effective immediately upon adoption by the Board of Commissioners and shall be incorporated into the Code of Ordinances, Gwinnett County, Georgia.
- 10.2. Severability.
If any section, subsection, paragraph, sentence, clause, phrase or provision of this ordinance is for any reason held to be unconstitutional or void, the validity of the remaining portion of this ordinance shall not be affected thereby, it being the intent of the Board of Commissioners in adopting this ordinance that no portion thereof or provision of the

ordinance contained herein shall become inoperative or fail by reason of the unconstitutionality or invalidity of any section, subsection, paragraph, sentence, clause, phrase or provision of this ordinance.

10.3. Liability.

1. Neither the approval of a plan under the provisions of this ordinance nor the compliance with the provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon Gwinnett County for damage to any person or property.
2. The fact that a land-disturbing activity for which a land disturbing permit has been issued results in injury to the property of another shall neither constitute proof of, nor create a presumption of, a violation of the standards provided for in this ordinance or the terms of the land disturbing permit.
3. No provision of this ordinance shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved thereunder or pollute any Waters of the State as defined thereby.

10.4. Conflicting Regulations.

All regulations or parts of regulations of the Code of Ordinances, Gwinnett County, Georgia, in conflict with this ordinance shall be and the same are hereby repealed in their portions so in conflict; provided, however, that it is not the intent of this ordinance to repeal or affect any law of the State of Georgia, or any code or ordinance of Gwinnett County adopted as a requirement of state law, in which case the most restrictive shall control.

BE IT FURTHER RESOLVED, that this resolution becomes effective upon its adoption.

BE IT FURTHER RESOLVED, that all codes, ordinances, regulations, resolutions or parts of same in conflict with this resolution are hereby rescinded to the extent of said conflict.

Attest:

Approved As to Form:

County Clerk

Date

County Attorney's Office

Date

Gwinnett County Board of Commissioners

F. Wayne Hill, Chairman

Date Signed: _____

WDJ: C & X: SEA2004-001B