

AN ORDINANCE OF THE COUNTY COMMISSIONER OF BARTOW COUNTY SITTING FOR COUNTY PURPOSES FOR THE PURPOSE OF **AMENDING THE CODE OF BARTOW COUNTY, CHAPTER 34, ARTICLE IV, AND RE-ADOPTING THE BARTOW COUNTY SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE; ADDING PROVISIONS TO COMPLY WITH STATE-MANDATED CHANGES** AND FOR OTHER PURPOSES AT THE REGULARLY SCHEDULED PUBLIC MEETING OF THE COMMISSIONER OF BARTOW COUNTY HELD ON DECEMBER 7, 2016.

WHEREAS, Bartow County, in accordance with the mandates of Chapter 7 of Title 12 of the Georgia Code, the “Erosion and Sedimentation Control Act of 1975,” regulating the control of erosion, sedimentation and pollution in order to preserve the public health, safety and welfare has adopted a local erosion and sedimentation control ordinance, as contained in Article IV of Chapter 34 of the Code of Bartow County; and

WHEREAS, the preexisting Bartow County Soil Erosion and Sedimentation Control Ordinance, (Article IV of Chapter 34 of the Code of Bartow County), requires periodic amendments in order to remain in compliance with revisions made to the Erosion and Sedimentation Act of 1975; and

WHEREAS, it is the intent of this amendment to serve the public health, safety and welfare as well as comply with recent amendments to the E & S Model Ordinance promulgated by the Environmental Protection Division of the Georgia Department of Natural Resources, in accordance with O.C.G.A. § 12-7-1 et seq.;

NOW THEREFORE BE IT ORDAINED AND IT HEREBY IS ORDAINED, by virtue of the authority vested in the Commissioner by law, and by O.C.G.A. § 12-7-4, requiring local governments to adopt erosion and sedimentation control ordinances consistent with the standards put forth in the Erosion and Sedimentation Control Act of 1975, as amended, that Article IV of Chapter 34 of the Code of Bartow County shall be titled the “Bartow County Soil Erosion and Sedimentation and Pollution Control Ordinance”) and is amended and re-adopted as follows:

ARTICLE IV. – SOIL EROSION AND SEDIMENTATION AND POLLUTION CONTROL

DIVISION 1. - GENERALLY

Sec. 34-251. - Title.

This article shall be known as the "Bartow County Soil Erosion and Sedimentation and Pollution Control Ordinance."

Sec. 34-252. - Authorization.

This article is adopted pursuant to O.C.G.A. § 12-7-1 et seq., the Erosion and Sedimentation Act of 1975, as amended, and to the power delegated to Bartow County by the Constitution of the State of Georgia and general law.

Sec. 34-253. - Statement of Purpose.

Soil erosion and sediment deposition onto lands and into waters within the watersheds of this county are continuing to occur as a result of widespread failure to apply proper soil erosion and sedimentation control practices in land clearing, soil movement, and construction activities. Such erosion and sediment deposition result in pollution of county waters and damage to domestic, agricultural, recreational, fish and wildlife, and other resource uses. Improperly controlled soil erosion and sedimentation are a threat to the public health, safety, and welfare. It is therefore declared to be the policy of this county and the intent of this article to strengthen and extend the present erosion and sediment control activities and programs of this county and the state, and to provide for the establishment and implementation of a comprehensive soil erosion and sediment control program to conserve and protect the land, water, air, and other resources of this county.

Sec. 34-254. - Definitions.

The following definitions shall apply in the interpretation and enforcement of this article, unless otherwise specifically stated or the context clearly requires a different meaning:

Best management practices (BMPs) include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control in Georgia" published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.
Board means the Board of Georgia Department of Natural Resources.

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

Certified personnel means a person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.

Clearing means the removal of vegetation and trees to the extent that raw earth is exposed.

Commission means the Georgia Soil and Water Conservation Commission (GSWCC).

CPESC means certified professional in erosion and sediment control with current certification by certified profession in Erosion and Sediment Control, Inc., a corporation registered in North Carolina, which is also referred to as CPESC or CPESC, Inc.

Cut 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 excavated surface. Also known as excavation.

Department means The Georgia Department of Natural Resources (DNR).

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

Developer means a person who undertakes land development activities.

Development means a land development or land development project.

Director means the Director of the Environmental Protection Division or an authorized representative

District means the Coosa River Soil and Water Conservation District

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

Drainage structure means a device composed of a virtually non-erodible material such as concrete, steel, plastic or other such material that conveys water from one

place to another by intercepting the flow and carrying it to a release point for stormwater management, drainage control, or flood control purposes.

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

Erosion and sediment control plan (also referred to as "plan") means a plan required by the Erosion and Sedimentation Act, O.C.G.A. Title 12, Chapter 7 that includes, as a minimum protections at least as stringent as the State General Permit, best management practices, and requirements in section IV.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 elevation.

Final stabilization means 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 the Environmental Protection Division of the Georgia Department of Natural Resources for waste disposal, 100 percent of the soil surface is uniformly covered in permanent vegetation with a density of 70 percent or greater, or equivalent permanent stabilization measures as defined in the Manual (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.

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

Grading means 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 means the original elevation of the ground surface prior to cutting or filling.

Land development means any land change, including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving, and any other installation of impervious cover.

Land-disturbing activity means any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land, but not including agricultural practices as described in subsection 34-255(5).

Larger common plan of development or sale means a contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For 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. For example, any platted or surveyed subdivision would qualify, as would any subdivision that was being marketed as a subdivision.

Local Issuing Authority means the governing authority of any county or municipality which is certified pursuant to subsection (a) O.C.G.A. 12-7-8.

Manual for Erosion and Sediment Control in Georgia means the latest edition of that manual published by the Georgia Soil and Water Conservation Commission pursuant to O.C.G.A. § 12-7-6(b) describing best management practices for soil erosion and sedimentation control, which is incorporated herein by reference.

Metropolitan River Protection Act or MRPA means a state law referenced as O.C.G.A. § 12-5-440 et seq., which addresses environmental and developmental matters in certain metropolitan river corridors and their drainage basins.

Natural ground surface means the ground surface in its original state before any grading, excavation or filling.

Nephelometric turbidity units or NTU 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 particles are present.

NOI means a notice of intent form provided by EPD for coverage under the state general permit.

NOT means a notice of termination form provided by EPD to terminate coverage under the state general permit

Operator means the party or parties that have:

- (1) Operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or
- (2) Day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the erosion, sedimentation and pollution control plan or to comply with other permit conditions.

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

Owner means the legal or beneficial owner of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

Permit or land-disturbing permit means the authorization necessary to conduct a land-disturbing activity under the provisions of this article.

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 this state, any interstate body or any other legal entity.

Phase or phased means sub-parts or segments of construction projects where the sub-part or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

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

Properly designed means designed in accordance with the design requirements and specifications contained in the "Manual for Erosion and Sediment Control in Georgia" (Manual) published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted and amendments to the manual as approved by the commission up until the date of NOI submittal.

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

Sediment means 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 means the action or process of forming or depositing sediment, and also means 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 means an erosion, sedimentation and pollution control plan approved in writing by the Coosa River Soil and Water Conservation District.

Stabilization means the process of establishing enduring protective vegetative cover, structural erosion and sedimentation control measures, or, during construction, through temporary vegetative or non-vegetative means that prevent or reduce to a minimum the erosion process and resultant transport or migration of sediment by wind, water, ice or gravity.

State general permit means 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 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 which are not entirely confined and retained completely upon the property of a single individual, partnership or corporation.

Structural erosion and sedimentation and pollution control practices means practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversion, grade stabilization structures, sediment traps, etc. Such practices can be found in the publication "Manual for Erosion and Sediment Control in Georgia".

Trout streams means all streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.epd.georgia.gov. 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 means measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

- a. Permanent seeding, sprigging or planting, producing long-term vegetative cover, or
- b. Temporary seeding, producing short-term vegetative cover; or
- c. Sodding, covering areas with a turf of perennial sod-forming grass. Such measures can be found in the publication Manual for Erosion and Sediment Control in Georgia.

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

Sec. 34-255. - Exempt activities.

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

- (1) Surface mining, as the same is defined in O.C.G.A. § 12-4-72, "Georgia Surface Mining Act of 1968." Such activities must comply with the Bartow County Zoning Ordinance.
- (2) Granite quarrying and land clearing for such quarrying. Such activities must comply with the Bartow County Zoning Ordinance.
- (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. However, no such activity may disturb any stream buffer or undisturbed buffer called for by this article or the Bartow County Zoning Ordinance.
- (4) 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 O.C.G.A. § 12-7-6 and this paragraph.
 - a. 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.

1. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted.
For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the Director may grant variances to no less than 25 feet.
 - b. 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 subsection (b) of O.C.G.A. 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the Local Issuing Authority;
 - c. If a buffer variance is granted by the director, the applicant must additionally request the county engineer to approve a variance from the Bartow County Stream Buffer Protection Ordinance.
- (5) Agricultural operations as defined in O.C.G.A. § 1-3-3, "Definitions," to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds. Such activities must comply with the Bartow County Zoning Ordinance.
- (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 subsections [34-267(e)(15) and (16)], no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after the completion of such forestry practices. Such activities must comply with the Bartow County Zoning Ordinance, and the Bartow County Timber Operations Ordinance.
- (7) Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture.

- (8) Any project involving less than one acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a large common plan of development or sale with a planned disturbance of equal to or greater than one acre, or within 200 feet of the bank of any state waters and for purposes of this paragraph, "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events 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 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Local Issuing Authority from regulating any such project which is not specifically exempted by paragraphs 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 part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the department of transportation or the state road and tollway authority which disturb one or more contiguous acres of land shall be subject to the 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 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 Bartow County, who shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-7.1 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 electrical 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 Code Section 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 Bartow County 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.

- (11) Any public water system reservoir.

Secs. 34-256—34-266. - Reserved.

**DIVISION 2. - MINIMUM REQUIREMENTS FOR EROSION,
SEDIMENTATION AND POLLUTION CONTROL USING
BEST MANAGEMENT PRACTICES**

Sec. 34-267. - Best management practices; minimum requirements.

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

(b) Minimum Requirements/BMPs.

- (1) Best management practices (BMPs), as set forth in this subsection and subsection (c) of this section, shall be required for all land-disturbing activities undertaken in Bartow County. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia", specified in

O.C.G.A. 12-7-6 subsection (b), which is incorporated herein by reference.

- (2) A discharge of storm water runoff from disturbed areas where best management practices have not been properly designed, installed, and/or maintained shall constitute a separate violation of any land-disturbing permit issued by Bartow County or of any state general permit issued by the division pursuant to subsection (f) of O.C.G.A. 12-5-30 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. 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 Bartow County or of any state general permit issued by the division pursuant to subsection (f) of O.C.G.A. § 12-5-30, the "Georgia Water Quality Control Act," for each day on which such failure occurs.
 - (4) The director may require, in accordance with regulations adopted by the board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
 - (5) The LIA may set more stringent buffer requirements that stated in C.15, and 16, in light of O.C.G.A. § 12-7-6 (c).
- (c) The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. § 12-7-1 et. seq. for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the *Manual for Erosion and Sediment Control in Georgia* published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

- (1) Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion.
- (2) Cut-fill operations must be kept to a minimum.
- (3) Development plans must conform to topography and soil type so as to create the lowest practical practicable erosion potential.
- (4) Whenever feasible, natural vegetation shall be retained, protected and supplemented.
- (5) The disturbed area and the duration of exposure to the 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. Exposed areas shall be vegetated or otherwise stabilized within seven days after disturbance. Temporary vegetation cannot be used as permanent vegetation.
- (8) Permanent vegetation and structural erosion control measures shall be installed as soon as practicable.
- (9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. § 12-7-1.
- (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 that deposit sediment on adjoining property are prohibited; cuts and fills may not endanger adjoining property.
- (12) Cuts and fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners.
- (13) Grading equipment must cross flowing streams by means of bridges or culverts, except when such methods are not feasible, provided in any case, that such crossings are kept to a minimum.
- (14) Land-disturbing activity plans for erosion, sedimentation and pollution control shall include provisions for treatment or control of any source

of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (b)(2) of this ordinance.

- (15) Except as provided in paragraph (16) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. 12-2-8, where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or where bulkheads and sea walls are installed to prevent shoreline erosion on Lake Oconee and Lake Sinclair; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of water flow, Unless exempted as along an ephemeral stream, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:
- a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
 - b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured

from the point of crossing, within 25 degrees of perpendicular to the stream, cause of 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; ii) stream crossings for sewer lines; and

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

- a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
- b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures

are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and

- (d) Nothing contained in O.C.G.A. 12-7-1 et. seq. shall prevent any Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Sec. 34-267 (b) and (c) of this ordinance.
- (e) The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.
- (f) Additional requirements.
 - (1) Allowing visible amounts of sediment to flow onto an adjoining property, into the waters of the state, or across any downstream property, shall constitute a violation of this article.
 - (2) In addition to BMPs, all land-disturbing activities subject to this article shall be conducted in compliance with the Bartow County Site and Utility Details for Development, if applicable.
 - (3) Stabilization of all areas of erodible earth material shall occur weekly and shall not be exposed seven calendar days.
 - (4) Utility companies which are utilizing roadway shoulders for construction are required to maintain and/or stabilize the earth shoulders to within 300 feet of construction. Shoulder construction shall be stabilized every three days as a maximum period time. They are also required to stabilize the shoulder before leaving the work area on any particular day if rain is forecast within the next 24 hours.
 - (5) Tree protection fencing and two rows of Georgia DOT Type "C" wired back silt fence shall be installed at all locations where construction activity will be adjacent to a state water requiring a buffer.
 - (6) All silt fence installed shall be GDOT approved materials.
 - (7) Construction exits. A construction exit must be installed and maintained for any land disturbance or other construction occurring in the county. Such exit must be maintained while any construction and/or grading equipment will be leaving a construction site to a public right-of-way, street, alley, sidewalk or parking area until construction is completed. (The construction exit may be the same as

the driveway exit.) The construction exit shall be graded such that drainage is directed away from any paved street or parking area.

- a. Design and Installation. The construction exit shall be designed and installed per the Manual for Erosion and Sediment Control in Georgia. The pad may be required to be an additional width, length, and/or depth if, in the opinion of the county engineer, conditions so warrant. The pad shall be adequate to substantially eliminate the transport of mud from the construction site by either motor vehicles and/or equipment or from water run-off.
 - b. Contamination of roadways. Tracking or carrying soil onto the pavement of any county or state roadway, whether from the wheels of any vehicle or by any other means, shall constitute a violation of this article. The permit holder shall be responsible for any violation by any subcontractor or any party operating under his permit. All parties involved, including the property owner, the operator, the permit holder, the owner of the vehicle, and the operator of the vehicle, are subject to citation for this violation. This provision shall apply to all residential and non-residential construction, and all clearing and grading, and shall apply whether or not a land disturbance permit is required.
 - c. Clean up. Any materials or mud spilled, dropped, washed, or tracked from vehicles or from the site onto roadways or into storm drains must be removed within 24 hours or the county may perform any necessary corrective work and the owner/developer shall reimburse county for any expenses incurred. In the event the county undertakes the corrective work, no building permits for said development shall be issued until said expenses have been reimbursed to the county.
 - d. The fine for violation of this section shall be \$1,000.00 per day, per exit.
- (g) Continuing duty of builder or developer. In the event final stabilization has not been achieved (due to conditions beyond the control of the owner of the builder/developer), and a request for certificate of occupancy is approved for issuance for a building or structure, the builder and/or developer of the property shall have a continuing duty and responsibility under this article to insure final stabilization is complete as soon as possible, but in no event later than the period granted as a condition of the certificate of occupancy. Prior to the issuance of the certificate of occupancy by the Bartow Building Official, an Erosion Permit shall be issued by the county engineer to the

owner/developer. The builder/developer shall be responsible for materials and workmanship for the duration of the Erosion Permit to insure final stabilization. In the event, the owner, builder and/or developer are subsequently given notice for failing to comply with the requirements of this article the owner, builder/developer shall be required to immediately bring the property into compliance, or be subject to citation as stated in section 34-268 (c).

- (h) Construction site waste. Construction site operators must control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. "Control waste" means to properly contain and dispose of waste in order to prevent it from washing into the stormwater system. Loose construction debris (e.g., packing materials, scraps of lumber, etc.) is prohibited.

Sec. 34-268. - Duty to maintain property.

- (a) Application. This section applies to properties where no land-disturbing activity is occurring, and which are therefore not otherwise regulated by or subject to this article; for example, single family residences and businesses that have been completed, issued a certificate of occupancy, and occupied. If other sections of this article are applicable to the activity or condition, this section shall not apply.
- (b) Duty. Every property owner and resident of the county has a duty to maintain their property, or the property on which they reside, in a manner that prevents excessive erosion onto property or into water bodies not wholly owned by the property owner or resident. This duty requires that appropriate vegetation be maintained on all property to the extent necessary to minimize erosion. Allowing visible sedimentation to flow onto property of another, into county ditches or storm-drains, or into waters of the state, shall constitute a violation of this section.
- (c) Penalty. A violation of this section may be cited by Bartow County enforcement officers and fined by the magistrate court \$150.00 per occurrence. Each rain event may be cited as a separate occurrence.

Secs. 34-269—34-279. - Reserved.

DIVISION 3. – ADMINISTRATION, APPLICATION AND PERMIT PROCESS

Sec. 34-280. - General.

- (a) Coordination with other ordinances. The property owner, operator, developer, and designated planners and engineers shall review the general development plans. Bartow County shall review the tract to be developed and the area surrounding it. In addition to this ordinance they shall review the Bartow County Zoning Ordinance, Bartow County Stormwater Management Ordinance, Bartow County Floodplain Management/ Flood Damage Prevention Ordinance, Bartow County Development Regulations, the Bartow County Building Code Ordinance, and any other ordinances contained in the Code of Bartow County which regulate the development of land within the jurisdictional boundaries of Bartow County. However, the owner and/or operator are the only parties who may obtain a permit. All references to other Bartow County Ordinances shall refer to and incorporate the latest revision as set forth in the Code of Bartow County.

Sec. 34-281. - Land disturbance permit application requirements.

- (a) Land disturbance permit required. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the county without first obtaining a land disturbance permit from the county to perform such activity and shall provide to the county a copy of the NOI submitted to EPD if applicable. Application under this article should be made in conjunction with application for permits under the Bartow County Stormwater Management Ordinance (Code section 34-551 et seq.), as no land-disturbing activity can take place except in compliance with that ordinance. In addition, the applicant is required to comply with all applicable provisions of the ordinances listed in subsection 34-280(a).
- (b) Application. The application for a land disturbance permit shall be submitted to Bartow County and must include the applicant's erosion, sedimentation and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in section 34-282 of this ordinance. Applications for a permit will not be accepted unless accompanied by five (5) copies of the applicant's soil erosion, sedimentation and pollution control plan. 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.
- (c) Fees. Bartow County assesses local permitting fees and also state-mandated fees. All applicable fees shall be paid prior to issuance of the land disturbance permit.
 - (1) Local permitting fees. Except as otherwise provided for herein, fees for an application for a permit on a per-acre of land disturbed basis, as

required by this article, shall be as established by the Commissioner of Bartow County from time to time by resolution of the commissioner.

- (2) State-mandated fees. In addition to the local permitting fees, state-mandated fees shall also be assessed pursuant to O.C.G.A. § 12-5-23(a)(5), provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. 12-7-8 half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. 12-7-17 shall be submitted in full to the Division, regardless of the existence of a Local Issuing Authority in the jurisdiction.
- (d) Review by district. Immediately upon receipt of an application and plan for a permit, the county 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 35 days of receipt. Failure of a district to act within 35 days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the county. No permit will be issued unless the plan has been approved by the district, and any variances required by Section 34-267 (c) (15) and (16) have been obtained, all fees have been paid, and bonding, if required as per Section 34-281 (f), have been obtained. Such review will not be required if the Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct such review and approval of the plan without referring the application and plan to the District. The Local Issuing Authority with plan review authority shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of the Local Issuing Authority with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.
- (e) Repeat violations; fraudulent submissions.
 - (1) Repeat violations. If a permit applicant, has had two or more violations of previous permits, this ordinance (including predecessors), or the Erosion and Sedimentation Act of 1975, as amended, within three years prior to the date of filing of the application under consideration, the county may deny the permit application.
 - (2) Fraudulent submissions. Fraudulent submissions are prohibited, and any falsehoods or misinformation on a permit application shall subject the application to rejection, and subject any permit to revocation. If a

permit is granted to a person who is later determined by the county engineer to be a "strawman," (i.e., not the actual operator, but rather a front for the actual operator), the permit shall be revoked.

- (3) Appeals of denials/revocations. Any person whose permit has been denied or revoked pursuant to this subsection may appeal to the board of zoning appeals. See section 34-299. Any applicant that wishes to appeal the decision of the board of zoning appeals may do so appealing to the Bartow County Commissioner. See section 34-299. Any person aiding in an attempt to circumvent this paragraph may be cited for violation of this article. Whenever a permit is revoked pursuant to this subsection, the letter of credit posted pursuant to subsection (d) of this section may be called and funds therefrom used to stabilize the property subjected to land-disturbing activities.
- (f) Surety requirements. The county shall require the permit applicant to post a surety in an amount equal to \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. The surety shall be in the form of government security, cash, irrevocable letter of credit, or any combination thereof, in a format approved by Bartow County. The surety requirement may be combined with other surety requirements of other provisions of the Bartow County Code relating to roads, storm water, utilities and others. If the applicant does not comply with this article or with the conditions of the permit after issuance, the county may draw against the surety 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.

If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article and, in addition to other penalties, his surety may be drawn against as follows:

- (1) Process and appeal. If the permit holder believes they are not in violation of this article such that the surety should not be drawn against, the permit holder shall have five days to appeal any notice to comply to the Bartow County Commissioner. The appeal provisions of section 34-299 shall not apply to this decision. Appeal shall be made by filing a written notice of appeal with the county engineer stating the basis for the appeal. The commissioner shall consider the appeal as soon as possible, at a public meeting. Except in emergency situations, the surety shall not be drawn against until the appeal is considered.

- (2) Partial release. The county engineer may release a portion of the letter of credit, for the land-disturbing amount, after final stabilization is complete and all permanent vegetation and stabilization measures are in place. Any portion of the letter of credit relating to roads, stormwater, utilities or other provisions of the Bartow County Code shall be governed by its particular section of the code.

Sec. 34-282. - Plan requirements.

- (a) Plans must be prepared to meet the minimum requirements as contained in section 34-267 (b) and (c) of this ordinance, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The *Manual for Erosion and Sediment Control in Georgia* is hereby incorporated by reference into this article. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and 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.
- (b) Data required for E & S 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, hereby incorporated by reference into this article.

Sec. 34-283. - Permits.

- (a) Timeframe on application. Land disturbance permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by Bartow County of a complete and valid application, providing variances and bonding are obtained, where necessary and all applicable fee have been paid prior to issuance. The permit shall include conditions, under which the activity may be undertaken.
- (b) No issuance without compliance. No land disturbance permit shall be issued by Bartow County unless the erosion, sedimentation and pollution control plan has been approved by the district and the county has affirmatively determined that the plan is in compliance with this article, any variances

required by section 34-267 (c) (15) and (16) are obtained, surety requirements per section 34-281 (f) are met, and all ordinances and rules and regulations in effect within the county are met. If the permit is denied, the reason for denial shall be furnished the applicant.

- (c) Any land-disturbing activities by a local issuing authority shall be subject to the same requirements of this ordinance, and any other ordinances relating to land development, as are applied to private persons and the division shall enforce such requirements upon the local issuing authority.
- (d) Multi-phase developments. If the tract is to be developed in phases, then a separate land disturbance permit shall be required for each phase. Individual lots shall not count as separate phases.
- (e) Suspension, revocation or modification. The land disturbance permit may be suspended, revoked, or modified by the county as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in 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 ordinance. A land disturbance permit may be revoked upon a finding by the county engineer that the owner, operator, applicant or permit holder is in violation of the Bartow County Zoning Ordinance, or the Bartow County Flood Damage Prevention Ordinance. A holder of a land disturbance 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. See subsection 34-297(a) of this article.
- (f) The LIA may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of the application, in light of O.C.G.A. 12-7-7 (f) (1).
- (g) Certification of payment of taxes. No land disturbance permit shall be issued unless the applicant provides a statement by the Tax Commissioner of Bartow County certifying that all ad valorem taxes levied against the property and due and owing have been paid.
- (h) Submission of false information. It shall be a violation of this article to make a false certification under sections 34-282 or 34-283 of this article, or to knowingly submit false information on a site plan or application for a land disturbance permit.
- (i) No activity prior to permit issuance. It shall be unlawful to commence any land disturbance activity for the construction of any building; to commence construction of any building; to commence the moving or alteration of any building; or to commence the development of land for a use not requiring a

building, until all necessary permits for such work have been issued. All land development or construction shall comply with the codes and ordinances in effect in Bartow County at the time the permit is issued.

- (j) Predesign meeting. Engineers and developers are required to schedule a predesign meeting with representatives of the development review committee for a consultation meeting at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss and assess constraints, opportunities and potential ideas for erosion control designs before the formal site design engineering is commenced.
- (k) Preconstruction conference. Once the construction plans are approved, no permit for land disturbing activity will be issued to an applicant without the applicant first attending an on-site mandatory preconstruction conference with a representative from Bartow County.
- (l) Erosion and sediment control inspection permit. Bartow County requires all new residential home sites and additions to obtain an erosion and sediment control inspection permit. This permit approval is required prior to undertaking any clearing activity as may be deemed necessary prior to the issuance of an approved residential drainage plan or building permit as outlined in the Bartow County Development Regulations (Appendix B to the Code of Bartow County). The requirements of said E&S inspection permit shall be met prior to recording of final plat, final as-built or release of a certificate of occupancy. Fees for this permit shall be as established by resolution of the Bartow County Commissioner.
- (m) Additional land disturbance permit requirements. In addition to the requirements of this article, Bartow County requires all new development or redevelopment projects creating or replacing more than 5,000 square feet of impervious surface to obtain a stormwater management permit as required by the Bartow County Stormwater Management Ordinance (Code section 34-551 et seq.). This permit is required prior to undertaking any clearing or grading activity for projects exceeding the above listed requirements. All stormwater management permits will be required to follow the construction erosion, sedimentation and pollution control plan submitted and approved by the district (district approval required only on projects disturbing more than one acre) and county engineer.
- (n) Properly displaying permits. Permits for all development must be displayed prior to beginning any clearing or grading for any residential or non-residential development project. All building permits must be displayed prior to beginning any building construction. Such permits must be placed on a post or other structure at least three feet off the ground and no more than two feet back from the right-of-way, so as to be easily visible to the inspectors and passers-by. Such permits must be encased in a waterproof container to protect

them from the elements, and must be legible. The permittee shall be responsible for ensuring a clear and legible permit is on display at all times. In the event of damage or loss, a replacement permit shall be immediately obtained and displayed. Failure to comply with this provision shall result in an administrative fine of \$250.00, and the permit and all subsequent inspections shall be suspended until such fine is paid.

- (o) Monthly E&S report. Upon the issuance of the land disturbance permit, the operator shall ensure that a monthly erosion and sedimentation report outlining the status of the project is delivered to the county on or before the 1st business day of each month. The report will be prepared by a qualified professional engineer/architect/landscape architect/certified professional in erosion and sediment control (CPESC) or an individual meeting the education and certification requirements of section 34-312 of this article. At minimum, individuals involved in development inspections should be certified as Level 1B. All initial inspections and proposed modifications to structural practices (BMPs) shall be certified by a Level 2 design professional. Should this report not be received by 5:00 pm on the said dates, a stop work order along with an administrative fine of \$250.00 may be issued for the project. The permit and all subsequent inspections shall be suspended until such fine is paid. Should the monthly project report fail to meet the requirements of this article, a five-day write up will be issued for the project and a follow up inspection may be required within five days of said report to ensure site is brought into compliance with the requirements of this article. Monthly reports are required to be submitted for the project or each phase of the project until proof of the notice of termination, as defined as "accepted" by the NPDES general permit, as filed with the Georgia EPD is submitted to Bartow County.
- (p) Residential drainage plan. A residential drainage plan (RDP) accepted by Bartow County shall be required prior to issuance of a building permit on those lots subject to periodic or nuisance flooding or as labeled "RDP" on a final plat. The residential drainage plan shall meet the requirements as outlined in the Bartow County Development Regulations (Appendix B to the Code of Bartow County).

Secs. 34-284—34-294. - Reserved.

DIVISION 4. - INSPECTIONS, ENFORCEMENT, PENALTIES, VARIANCES, AND APPEALS

Sec. 34-295. - Inspection.

- (a) Generally. Bartow County enforcement personnel will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the 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-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a notice of violation (NOV) which may include a stop-work order, citation, civil fine, and/or a written notice to comply shall be served upon the that person(s) conducting the land-disturbing activity, in addition to any other remedy allowed under this article. 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 ordinance.
- (b) The Local Issuing Authority must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.
- (c) Right of entry. The Bartow County Engineering Department and code enforcement personnel shall have the power to conduct such investigations as it may reasonably deem 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. The act of seeking a land disturbance permit shall act as consent for inspections on private property to observe whether the property is in compliance with this article.
- (d) Refusal of access. No person shall refuse entry or access to any authorized representative or agent of Bartow County, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

- (e) The District or the Commission or both shall semi-annually review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to O.C.G.A. 12-7-8 (a). The District or the Commission or both may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion, sedimentation and pollution control program. The District or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.
- (f) The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to Code Section 12-7-8 (a). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to O.C.G.A. 12-7-8 (a) has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. 12-7-7 (e), the Division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 90 days within which to take the necessary corrective action to retain certification as a Local Issuing Authority. If the county or municipality does not take necessary corrective action within 90 days after notification by the division, the division shall revoke the certification of the county or municipality as a Local Issuing Authority.
- (g) Re-inspection fees. For each compliance re-inspection made under this article, a re-inspection fee shall be paid by the permit holder. No building permits or any other necessary approvals shall be issued to or on behalf of the permit holder for any project until all violations have been corrected and approved and all outstanding fees are paid in full. Failure to pay the re-inspection fee constitutes a violation of this article. Fees for re-inspections as required by this subsection shall be as established by the Commissioner of Bartow County from time to time by resolution of the commissioner.

Sec. 34-296. - Enforcement.

Enforcement of this article may be through notice to comply, criminal prosecution, civil administrative fines or other civil proceedings. Each day during which the violation or failure or refusal to comply continues shall constitute a separate violation, subjecting the offender to a new civil administrative fine, or other civil or criminal proceeding.

- (a) Criminal prosecution. The county engineer or his or her authorized representatives, including code enforcement personnel, may issue criminal

citations for violations of this article or any stop-work order, or for any other violation of this article.

- (1) Criminal prosecutions for violation of this article upon citation shall be commenced by the completion, signing, and service of a citation by an authorized officer of the county planning and engineering department. The original of the citation shall be personally served upon the accused, his or her authorized representative or, if a corporation, an officer of the corporation or its on-site representative or the person or persons in charge of the activity on the property; a copy shall be promptly filed with the magistrate court.
- (2) Each citation shall state the time and place at which the accused is to appear for trial in magistrate court, shall identify the offense with which the accused is charged, shall have an identifying number by which it shall be filed with the court, shall indicate the identity of the accused and the date of service, and shall be signed by the deputy sheriff or other authorized officer who completes and serves it.
- (3) Any defendant who fails to appear for trial shall thereafter be arrested on the warrant of the magistrate and required to post a bond for his or her future appearance.
- (4) The district attorney, county attorney, or another attorney designated by Bartow County may act as prosecuting attorney for violations of this article.

(b) Civil administrative fine.

- (1) In lieu of proceeding with a criminal citation, the county engineer or an authorized officer of the county engineering department may issue a civil administrative fine. A civil administrative fine may be assessed for any violation of this article. Civil administrative fines for violation of this article shall be made by the completion, signing, and service of a civil violation form by an authorized officer of the county planning and engineering department. The original of the civil violation form shall be personally served upon the accused, his or her authorized representative or, if a corporation, an officer of the corporation or its on-site representative or the person or persons in charge of the activity on the property; a copy shall be promptly filed with the engineering department. A stop-work order may be issued in conjunction with the civil administrative fine.
- (2) Any stop-work order issued in conjunction with a civil administrative fine shall not be lifted until the civil administrative fine is paid and the violation is corrected, if necessary to achieve compliance with the

article. No land disturbance permit, building permit, or other permit under any Bartow County ordinance shall be granted until the fine is paid.

- (3) Fines shall be assessed in the amounts specified in subsection 34-297(d).
 - (4) Civil administrative fines may be appealed pursuant to section 34-299. Payment of the fine at any time shall moot the appeal.
- (c) Other civil proceedings; actions in superior court. In addition to or in lieu of any other remedy, any appropriate county authority, or any person who is an aggrieved person, or is or would be damaged by such violation, may seek injunctive, mandamus or other appropriate relief in superior court to enjoin or prevent a violation of any provision of this article. Such action may also seek civil fines at the rates specified in subsection 34-297(d) of this article for violation of this article, and may additionally seek any other costs associated with the action to enjoin or prevent any violation of any provision of this article. The county shall be entitled to its reasonable attorney's fees and costs for bringing an action in superior court against any operator, permit applicant, or permit holder wherein any relief is granted or fine assessed.
- (d) Stop-work orders.
 - (1) Notice. Upon notice from the county engineer or a duly authorized agent, work on any project that is being done contrary to the provisions of this article, or work done in a dangerous or unsafe manner, shall be immediately stopped. A stop-work order may be issued in conjunction with a criminal citation, a civil fine, or other judicial proceeding.
 - (2) First and second violations; emergency situation. Except as otherwise noted below, for the first and second violations of any of the provisions of this article by the same violator (no matter whether on the same or different property or under the same or different permit), the Director or Bartow county shall issue a written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected in five days, the Director or the county shall issue a stop-work order requiring that land-disturbing activities be stopped until the necessary corrective actions or mitigation has occurred. provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the Local Issuing Authority shall issue an immediate stop-work order in lieu of a warning;

- (3) For a third and each subsequent violation the Director or the county shall issue an immediate stop-work order.
 - (4) Emergency situation. Any violation of this article that (i) creates an emergency situation or (ii) poses an imminent threat to the public health or waters of the state, or (iii) any land-disturbing activities being conducted without a permit, shall be immediately subject to an emergency stop-work order, regardless of whether it is a first, second or subsequent violation. Such notice may be given verbally or in writing to the owner of the property, the operator, and/or the person or persons in charge of the activity on the property, and shall state the conditions under which work may be resumed. A written version shall be provided as soon as practicable.
 - (5) Additional immediate issuance circumstances. In addition to the circumstances described above, when a violation of this article occurs in the form of (i) taking action without a permit; (ii) failure to maintain a stream buffer; or (iii) significant amounts of sediment, as determined by Bartow County or by the Director or his or her Designee, 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 immediately issued by the county or by the Director or his or her Designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls and work to ensure the project site is left in a safe condition so as not to endanger life or damage adjacent properties. The county may erect a sign notifying all persons of the stop-work order, and removal of the sign shall be a violation of this ordinance.
- (e) Notice to comply; forfeiture of letter of credit. 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 may be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance and, in addition to other penalties, shall be deemed to have forfeited his surety required under section 34-281 (f). The county engineer may thereafter draw on the letter of credit or any part thereof and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

Sec. 34-297. - Penalties.

- (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 ordinance without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of Bartow County. Such action may be taken by the Commissioner of Bartow County, upon recommendation of the county engineer.
- (b) Revocation, suspension, or modification of permit; other penalties. If any person commences any activity requiring a development permit as prescribed in this ordinance without first obtaining said development permit, or if any person is found in violation of this article, or for any other reason given in subsection 34-283(d) (e) of this article, the person shall be subject to revocation, suspension or modification of his development permit, in addition to other penalties provided herein. Such actions may be taken by the county engineer, who shall provide written notice to the permit holder. All actions of revocation, suspension or modification of permits, business licenses, work permits and other authorization pursuant to this section may be appealed pursuant to section 34-299 of this article.
- (c) Withholding of certificates of occupancy.
 - (1) The county may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site where any violation of this article exists, until such time as the applicant or other responsible person has taken the remedial measures as set forth in the notice to comply or has otherwise cured the violation.
 - (2) When a particular applicant, property owner, or operator is in violation of any provision of this article on any site in the county, the county may withhold certificates of occupancy on all other sites where that applicant, property owner, or operator is seeking a certificate of occupancy, until all violations by said person are corrected.
 - (3) No certificates of occupancy shall be issued on any project or property where violations of this article are ongoing. This shall prevent issuance of a certificate of occupancy to an individual builder when the general subdivision development land disturbance permit is being violated. However, violations by other builders in that subdivision shall not prevent builders in compliance from receiving certificates of occupancy.

- (4) No certificate of occupancy shall be issued until final stabilization measures are in place, unless measures cannot be emplaced because of extenuating circumstances (i.e. - extreme drought). In such instances a variance should be sought under section 34-298. In no event shall temporary vegetation be counted as permanent vegetation. Prior to issuance of the certificate of occupancy, a plan shall be filed detailing the remaining final stabilization measures to be installed, and the timetable for installation (which in no event shall be longer than six months). Failure to finish installation and complete final stabilization by this timetable shall be a violation of this article for the builder/developer, and for the property owner. In the event of a variance granted to complete final stabilization after a certificate of occupancy is issued or other transfer of ownership occurs, or in the event final stabilization is not complete at such time for any reason, the builder/developer shall retain responsibility for compliance and final stabilization, in addition to the new owner of the property.
- (d) Fines. Fines assessed under this article shall be assessed according to the following mandatory schedule, whether assessed as a civil administrative fine, or assessed as a criminal penalty upon conviction. Pursuant to O.C.G.A. § 12-7-15, 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 as violations of this article shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violations. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.
- (1) Maximum fines. Any person violating any provisions of this article, any permitting conditions, or any stop-work order shall be liable for a penalty not to exceed \$2,500.00 for each violation, which may be assessed as a civil administrative fine or criminal penalty. In no event shall a fine be reduced below the mandatory minimum, as set in subsection (2) below.
- (2) Mandatory minimum fines. Notwithstanding any other provision of this article, the following penalties are mandatory and shall be assessed for any land-disturbing activity performed in violation of any provision of this article or any permit condition or limitation established pursuant to this article:
- a. For any violation involving land-disturbing activities under this article, the minimum required fine shall be \$1,000.00 per day for each violation.
 - b. For any violation of a stop-work order issued under this article, the minimum required fine shall be \$2,000.00 per day for each violation.

- (3) Repeat violator fines. As a deterrent to violation, third and subsequent violations by the same offender of any provision of this article, whether violations of the same or different provisions of this article as the initial violation, and whether involving the same or different property, shall increase the fine owing. However, repeated citations for the same violation on a second and subsequent days shall not count as a subsequent violation, but shall rather be assessed at the same rate as the initial violation. Multiple violations on the same day shall also be assessed at the same level. This same schedule shall apply to criminal penalties and civil administrative fines.
 - a. For the third or subsequent violation by any person involving land-disturbing activities under this article, the minimum required fine shall be \$2,000.00 per day for each violation.
 - b. For the third or subsequent violation by any person of a stop-work order issued under this article, the minimum required fine shall be \$2,500.00 per day for each violation.
- (e) Additional criminal penalties. Persons cited criminally are also subject to the following criminal penalties:
 - (1) Incarceration. In addition to monetary penalties, any person cited with a criminal violation, and found guilty in magistrate court, may be punished by a sentence of imprisonment not exceeding 60 days in jail in addition to the minimum fine.
 - (2) Community service. In lieu of, or in addition to, any fine or incarceration, community service may be ordered by the magistrate court as punishment for a violation of this article. Said community service shall be not less than 20 hours but not more than 250 hours, which must be performed within a period set by the magistrate court, not to exceed one year from the date of conviction for a violation of this article.
 - (3) Any person placed on community service or otherwise placed on probation for a violation of this article shall pay such supervisory fees as may be authorized by law.

Sec. 34-298. - Variances.

- (a) Process. Requests for variances from the requirements of this article shall be heard initially by the county engineer. Variances defined as available only from the EPD director cannot be granted by the county engineer. Any variance given by the director may also be required an additional variance approval by the county engineer, considering the criteria in this section, prior to implementation. See Bartow County Stream Buffer Protection Ordinance.
- (b) Criteria. In reviewing application for variances, the county engineer shall consider all technical evaluations, all relevant factors, and all standards specified in this and other sections of this article. A variance shall only be granted upon (i) a determination that the variance is the result of topography or other hardship beyond the applicant's control, (ii) a determination that failure to grant the variance would result in exceptional hardship, (iii) a determination that the granting of a variance will not result in increased erosion, stormwater run-off, additional threats to public safety, extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing laws or ordinances; (iv) a determination that the variance will not have a negative impact based on the criteria in subsection (c) below; and (v) a determination the variance is the minimum necessary to afford relief. A variance to allow permanent vegetation to be installed after issuance of a certificate of occupancy shall have a duration of no longer than six months.
- (c) Specific negative impact factors. The specific negative impact factors to be considered are as follows:
 - (1) The possibility that, given the variance, erosion, sedimentation or stormwater run-off will affect or injure the lands of others;
 - (2) The danger to life and property due to erosion damage;
 - (3) The availability of alternative options, reconfigurations, and other measures that would achieve erosion and sedimentation control without a variance;
 - (4) The potential for increased maintenance costs subsequent to completion of the development;
 - (5) The negative impacts that the proposed variance would create;
 - (6) The purposes of the requirement and this article.

- (d) Conditions. Upon consideration of the factors listed above, and the purposes of this article, the county engineer may attach such conditions to the granting of a variance as he deems necessary to further the purposes of this article.
- (e) Appeals. Appeals of denial or grant of a variance may proceed according to section 34-299 of this article.

Sec. 34-299. - Administrative and judicial appeals.

The suspension, revocation, modification or grant with condition of a permit by Bartow 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 a hearing before the zoning appeals board within as outlined in this section after receipt by Bartow County of written notice of appeal.

- (a) Appeals of decisions of the county engineer. The board of zoning appeals as established by Bartow County pursuant to the Bartow County Zoning Ordinance shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the county engineer under this article, including any determination granting or denying a variance. Any aggrieved person as defined below shall be entitled to bring an appeal.
- (b) Appeal process. Unless otherwise stated in the specific provision of this article, an appeal shall be initiated within 30 days of the decision by filing a written notice of appeal with the county engineer. The board of zoning appeals shall hold a hearing on the appeal within 35 days of the filing of the notice of appeal. The board of zoning appeals shall, in considering the appeal, consider the standards contained in this article, and abide by the notice and hearing procedures of Article XIV of the Bartow County Zoning Ordinance, which are incorporated herein by reference.
- (c) Appeals of decisions of the board of zoning appeals. Any person aggrieved by the decision of the board of zoning appeals may appeal such decision to the Bartow County Commissioner by following the procedure for appeals as set forth in Article XIV of the Bartow County Zoning Ordinance, unless a specific procedure is provided for in this article.
- (d) Appeals of commissioner's decision. Appeal of the commissioner's decision shall be by de novo appeal to the superior court of Bartow County, within 30 days of the commissioner's decision.
- (e) Aggrieved persons. A person is an aggrieved person, for purposes of this article, if he or she is the applicant, operator or owner of the subject property, or is a neighbor directly adjacent to the subject property, or if he or she owns

property that has been, or could be, flooded or damaged by the planned, proposed or completed development of the subject property, or if he or she is a downstream riparian landowner from the subject property.

Secs. 34-300—34-310. - Reserved.

DIVISION 5. - LEGAL PROVISIONS

Sec. 34-311. – Effectivity, Validity and Liability.

- (a) Effectivity. This ordinance shall become effective immediately upon approval by resolution of the Bartow County Commissioner.
- (b) Validity. If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this ordinance.
- (c) Liability.
 - (1) Neither the approval of a plan under the provisions of this ordinance, nor the compliance with 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 Bartow County or District for damage to any person or property.
 - (2) The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the 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.

Sec. 34-312. - Education and certification.

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

- (b) For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion, sedimentation and pollution control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.
- (c) Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this article.
- (d) If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. § 12-7-19, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of O.C.G.A. § 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

Secs. 34-313—34-350. - Reserved.

SO ADOPTED this 7th day of December 2016, to be effective immediately, the public health, safety, and welfare demanding.

ATTEST:

BARTOW COUNTY, GEORGIA

Kathy Gill, County Clerk

Steve Taylor, Commissioner