

SECTION 3.1 - SITE GRADING AND LAND DISTURBANCE

3.1.1 Soil erosion and sedimentation control.

This Ordinance will be known as the "Alpharetta Soil Erosion and Sedimentation Control Ordinance".

A. *Definitions.* The following definitions shall apply in the interpretation and enforcement of this Ordinance, unless otherwise specifically stated:

Best Management Practices (BMPS). ~~A collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control. The term "properly designed" means designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. § 12-7-6 subsection (b). These include sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the 'Manual for erosion and Sediment Control in Georgia' published by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.~~

Board. The Board of Natural Resources.

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

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

Commission. The Georgia Soil and Water Conservation Commission (GSWCC).

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

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

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

Design Professional. A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification by EnviroCert, Inc. ~~Certified Professional in Erosion and Sediment Control. Design Professionals shall practice in a manner that complies with applicable Georgia law governing professional licensure.~~

Director. The Director of the Environmental Protection Division of the Georgia Department of Natural Resources or an authorized representative.

District. The Fulton County Soil and Water Conservation District.

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

Drainage Structure. A device composed of a virtually nonerodible 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. The process by which land surface is worn away by the action of the wind, water, ice, or gravity.

Erosion, Sedimentation and Pollution Control Plan. A plan required by the Erosion and Sedimentation Act O.C.G.A. Chapter 12-7, that includes, as a minimum protection, at least as stringent as the State General Permit, best management practices, and requirements in Subsection 3.1.1.C. of this ordinance. A plan for the control of soil erosion and sedimentation resulting from a land-disturbing activity. Also known as the "plan".

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

Final Stabilization. All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or landscaped according to the Plan (uniformly covered with landscaping materials in planned landscape areas), 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.) ~~equivalent permanent stabilization measures (such as the use of rip rap, gabions, permanent mulches or geotextiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop of perennial vegetation appropriate for the time of year and region; or a crop of annual vegetation and a seeding of target crop perennials appropriate for the region.~~ Final stabilization applies to each phase of construction.

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

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

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

Land-Disturbing Activity. Any activity which may result in soil erosion from water or wind and the movement of sediments into State Waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Subsection 3.1.1.B.5.

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

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

Metropolitan River Protection Act (MRPA). 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. The ground surface in its original state before any grading, excavation, or filling.

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

NOI. A Notice of Intent form provided by EPD for coverage under the State General Permit.

NOT. A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.

Operator. The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or to comply with other permit conditions.

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

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

Person. 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 of Georgia, any interstate body or other legal entity.

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

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

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

Qualified Personnel. Any person who meets or exceeds the education and training requirements of O.C.G.A. § 12-7-19.

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

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

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

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

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

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

State Waters. Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural 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 Control Practices. 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, diversions, grade stabilization structures, sediment traps and land grading, etc. Such measures can be found in the publication Manual for Erosion and Sediment Control in Georgia.

Trout Streams. All streams or portions of streams within the watershed as designated by the Game and Fish Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., 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. Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:

1. Permanent seeding, sprigging or planting, producing long-term vegetative cover; or
2. Temporary seeding, producing short-term vegetative cover; or
3. 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. Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.

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

B. *Exemptions.* This Ordinance shall apply to any land-disturbing activity undertaken by any person on any land except for the following:

1. Surface mining, as the same is defined in O.C.G.A. § 12-4-72, "Mineral Resources and Caves Act";
2. Granite quarrying and land clearing for such quarrying;
3. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences and other related activities which result in minor soil erosion;
4. The construction of 'For-Sale' dwellings when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this Subsection; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in Subsection 3.1.1.C. of this Ordinance and this Subsection. For residential construction covered by the provisions of this Subsection, there shall be a buffer zone between the residence and any State Waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least fifty (50) horizontal feet and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least fifty (50) horizontal feet but the Director may grant variances to no less than twenty-five (25) feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least twenty-five (25) horizontal feet and no variance to a smaller buffer shall be granted. The minimum requirements of Subsection 3.1.1.C. of this Ordinance and the buffer zones provided by this Section shall be enforced by the Local Issuing Authority;

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;
6. Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in Paragraphs o. and p. of Subsection 3.1.1.C.3. of this Ordinance, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after completion of such forestry practices;
7. Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;
8. Any project involving one-tenth (1/10) acre or less; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within two hundred feet (200') of the bank of any State Waters, and for purposes of this Subsection, "State Waters" excludes channels and drainageways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one-tenth (1/10) acre, which involves land-disturbing activity, and which is within two hundred feet (200') of any such excluded channel or drainageway, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the City from regulating any such project which is not specifically exempted by Subsections 1, 2, 3, 4, 5, 6, 7, 9, or 10 of this Section.
9. Construction or maintenance projects, or both, undertaken and/or financed in whole or in part by the Department of Transportation, the Georgia Highway Authority, or the State 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 State Tollway Authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. § 12-7-7.1; except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the City, the City 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;
10. Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the City, the City shall enforce compliance with the minimum requirements set forth in O.C.G.A.

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

11. Any public water system reservoir.

C. *Minimum Requirements For Erosion And Sedimentation Control Using Best Management Practices.*

1. General Provisions. Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities. Therefore, plans for those land-disturbing activities which are not exempted by this Ordinance shall contain provisions for application of soil erosion and sedimentation control measures and practices. The provisions shall be incorporated into the erosion and sedimentation control plans. Soil erosion and sedimentation control measures and practices shall conform to the requirements of Subsections 3.1.1.C.2. and 3. of this Ordinance. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, and sedimentation, and pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.

2. Minimum Requirements/BMPs.

a. Best management practices, as set forth in Subsections 3.1.1.C.2. and 3. of this Ordinance, shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with Paragraph b of Subsection 3.1.1.C.2. or any substantially similar terms contained in a permit for the discharge of stormwater 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" means 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).

b. A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed and maintained shall constitute a separate violation of any land-disturbing permit issued by the City 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 discharge results in the turbidity of the 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 Subsection shall not apply to any land disturbance associated with the construction of 'For-Sale' dwellings 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.

c. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by the City 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.

d. 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.

e. The LIA may set more stringent buffer requirements than stated in Subsections 3.1.1.C.3.o. and p. in light of O.C.G.A. § 12-7-6(c).

3. The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et. Seq. and this Section 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:

- a. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;
- b. Cut-fill operations must be kept to a minimum;
- c. Development plans must conform to topography and soil type so as to create the lowest practical erosion potential;
- d. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
- e. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
- f. Disturbed soil shall be stabilized as quickly as practicable;
- g. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
- h. Permanent vegetation and structural erosion control measures shall be installed as soon as practicable;
- i. To the extent necessary, sediment in runoff water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this Subsection, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. § 12-7-1 et seq.;
- j. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface of fills;
- k. Cuts and fills may not endanger adjoining property;
- l. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
- m. 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;
- n. Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Paragraph b. of Subsection 3.1.1.C.2. of this Ordinance.
- o. Except as provided in Paragraph p of this Subsection, there is established a twenty-five (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, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the 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 provided, however, the buffers of at least twenty-five (25) feet established pursuant to part 6

of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this Paragraph. The following requirements shall apply to any such buffer:

- (1) 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 'For-Sale' dwelling 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
 - (2) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (50) feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.
- p. There is established a fifty (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 twenty-five (25) gallons per minute or less shall have a twenty-five (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:
- (1) 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 'For-Sale' dwelling when such residence is constructed by 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
 - (2) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (50) feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.
- q. Disturbed areas of any permitted land development project should be limited at any time to a maximum of twenty (20) acres. Larger areas of disturbance may be permitted with the written approval of the Community Development Director.

- r. Where possible, heavy equipment operation, storage of bulk materials, heavy trafficking, and planned building area should avoid soils with high permeability. Soil permeability shall be based on the most recent soil survey or the best information available.
 - s. Where possible, natural drainage pathways and conveyances, should be preserved and/or enhanced.
- 4. Nothing contained in this Section shall prevent the City from adopting rules and regulations, ordinances or resolutions that contain stream buffer requirements that exceed the minimum requirements in Subsections 3.1.1.C.2 and 3 of this Ordinance.
 - 5. 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.

D. *Application/Permit Process.*

- 1. *General.* The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of the City that affect the tract to be developed and the area surrounding it. They shall review local ordinances including but not limited to: zoning, stormwater management, subdivision, flood damage prevention, wetland protection, this ordinance, and others, which regulate the development of land within the jurisdictional boundaries of the City. However, the owner and/or operator is the only party that can obtain a permit.
- 2. *Application requirements.*
 - a. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City without first obtaining a permit from the City Engineer to perform such activity and providing a copy of the Notice of Intent submitted to EPD if applicable.
 - b. The application for a permit shall be submitted to the City Engineer and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Subsection 3.1.1.D.3. of this Ordinance. Erosion, sedimentation, and pollution control plans, together with supporting data, must demonstrate affirmatively that the land-disturbing activity proposed will be carried out in such a manner that the provisions of Subsections 3.1.1.C.2. and 3. of this Ordinance will be met. Applications for a permit will not be accepted unless accompanied by six (6) copies of the applicant's soil erosion and sedimentation control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-10.
 - c. A fee payable to the City shall be paid with each application. The amount of the fee shall be established from time to time by the City Council.
 - d. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. § 12-5-23, provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. § 12-7-8 half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. § 12-7-17 shall be submitted in full to the Division, regardless of the existence of a local issuing authority in the jurisdiction.
 - e. Immediately upon receipt of an application and plan for a permit, the City shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan. A District shall approve or disapprove a plan within thirty-five (35) days of receipt. Failure of a District to act within thirty-five (35) days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the City. No permit will be issued unless the plan has been

approved by the District, and any variances required in Paragraphs o. and p. of Subsection 3.1.1.C.3. have been obtained, all fees have been paid, –and bonding, if required as per Paragraph g. of Subsection 3.1.1.D.2., have been obtained. Such review will not be required if the City and the District have entered into an agreement which allows the City to conduct such review and approval of the plan without referring the application and plan to the District. The City with plan review authority shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of the City with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.

- f. If a permit applicant has had two (2) or more violations of previous permits, this Ordinance, or the Erosion and Sedimentation Act, as amended, within three (3) years prior to the date of filing of the application under consideration, the City may deny the permit application.
- g. The City shall require the permit applicant (except a residential owner/builder) to post a bond in the form of a surety bond, cash, irrevocable letter of credit, or any combination thereof in an amount not to exceed ~~\$5,000.00~~ \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, but not of less than \$3,000.00 in total, prior to issuing the permit. If the applicant does not comply with this Ordinance or with the conditions of the permit after issuance, the City may declare that the applicant is in default and, in accordance with the bond conditions, the City may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance or correct any violations which are determined to exist by a finding of the Code Enforcement Board or through a Court ruling. These provisions shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the City with respect to alleged permit violations.

3. *Plan Requirements.*

- a. Plans must be prepared to meet the minimum requirements as contained in Subsections 3.1.1.C.2 and 3 of this Ordinance. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the *Manual for Erosion and Sediment Control in Georgia*, published by the State Soil and Water Conservation Commission as a guide; 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 Ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances 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 Stakeholder Advisory Board created pursuant to O.C.G.A. § 12-7-20.
- b. Data Required for Site Plan shall include all the information required from the appropriate Erosion, Sedimentation and Pollution Control Plan Review Checklist established by the Commission as of January 1 of the year in which the land-disturbing activity was permitted.
- c. Maintenance of all soil erosion and sedimentation control practices, whether temporary or permanent, shall be at all times the responsibility of the property owner.

4. *Permits.*

- a. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the City of a properly completed application, providing variances, easements, and bonding are obtained, where necessary and all applicable fees

have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.

- b. No permit shall be issued by the City unless the erosion and sedimentation control plan has been approved by the District and the City has affirmatively determined that the plan is in compliance with this Ordinance, any variances required by Paragraphs o. and p. of Subsection 3.1.1.C.3 are obtained, bonding requirements, if necessary, as per Paragraph g. of Subsection 3.1.1.D.2 are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the City are met. If the permit is denied, the reason(s) for denial shall be furnished to 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. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
- e. The permit may be suspended, revoked, or modified by the City, 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 and sedimentation control plan or that the holder or his successor in title is in violation of this Ordinance. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.
- 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. No permit shall be issued unless the applicant provides a written statement certifying that all ad valorem taxes levied against the property and due and owing have been paid.

E. *Inspection And Enforcement.*

- 1. The City Engineer 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 City 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 written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this Ordinance and shall be subject to the penalties set forth in this Ordinance.
- 2. 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.
- 3. The City shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.

4. No person shall refuse entry or access to any authorized representative or agent of the City, the Commission, the District, or the Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
5. The Districts or the Commission or both shall semi-annually review the actions of the City which has been certified as a Local Issuing Authority pursuant to O.C.G.A. § 12-7-8(a). The Districts or the Commission or both may provide technical assistance to the City for the purpose of improving the effectiveness of the City's erosion and sedimentation 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.
6. The Division may periodically review the actions of the City, which has been certified as a Local Issuing Authority pursuant to O.C.G.A. § 12-7-8(a). Such review may include, but shall not be limited to, review of the administration and enforcement of the City's ordinance and review of conformance with an agreement, if any, between the District and the City. If such review indicates that the City 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 City in writing. The City so notified shall have thirty (30) days within which to take the necessary corrective action to retain certification as a Local Issuing Authority. If the City does not take necessary corrective action within thirty (30) days after notification by the Division, the Division may revoke the certification of the City as a Local Issuing Authority.
7. The City shall require all persons holding a permit to request an initial project inspection by the City Engineer prior to the commencing of any land disturbance activity.
8. A land disturbance inspection by the City Engineer shall be requested by the person holding the permit for a final erosion control approval. No Certificate of Occupancy or closure of the land disturbance permit shall be effective until a final site erosion control approval is received from the City Engineer.

F. *Penalties and Incentives.*

1. *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 the City.
2. *Stop-Work Orders.*
 - a. For the first and second violations of the provisions of this Ordinance, the Director or the City Engineer shall issue a written warning to the violator. The violator shall have five (5) days from the issuance of the written warning to correct the violation. If the violation is not corrected within five days, the Director or the City Engineer shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or Waters of the State or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the City Engineer shall issue an immediate stop-work order in lieu of a warning;
 - b. For a third and each subsequent violation, the Director or the City Engineer shall issue an immediate stop-work order; and
 - c. All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such notice shall be in writing and shall be given to the owner of the property, or an agent of the owner, or the person in charge, or conspicuously posted on the site.
 - d. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the City Engineer 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 issued by the City Engineer 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.

3. *Bond Forfeiture.* If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person or served in the same manner as provided above in Paragraph c. of Subsection 3.1.1.F.2. of this Ordinance. 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 performance bond, if required to post one under the provisions of Paragraph g. of Subsection 3.1.1.D.2. The City may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor or use City staff and equipment to stabilize the site of the land-disturbing activity and bring it into compliance.
4. *Monetary Penalties.*
 - a. Any person who violates any provisions of this Ordinance, or any permit condition or limitation established pursuant to this Ordinance, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director or the City Engineer issued as provided in this Ordinance shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this Ordinance, notwithstanding any provisions in the City charter to the contrary, municipal courts shall be authorized to impose a penalty not to exceed \$2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of City ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this Ordinance shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.
 - b. After the City Engineer completes three (3) documented final land disturbance inspections requested by the permit holder for the same permit, a fee of fifty dollars (\$50.00) shall be required for each additional inspection request of the same land disturbance permit.

G. *Education and Certification.*

1. 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.
2. For each site on which land-disturbing activity occurs, each entity or person acting as primary, secondary, or tertiary permittee, as defined in the state general permit, shall have a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan or development or sale permitted by an owner or operator for compliance with the state general permit.
3. 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 ordinance.

4. 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.

H. *Administrative Appeal and Judicial Review.*

1. *Administrative Remedies.* The suspension, revocation, modification or grant with condition of a permit by the City upon finding that the holder is not in compliance with the approved erosion and sediment control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any Ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Board of Appeals within thirty (30) days after receipt by the City of written notice of appeal.
2. *Judicial Review.* Any person, aggrieved by a decision or order of the City, after exhausting his administrative remedies, shall have the right to appeal de novo to the Superior Court of Fulton County.

I. *Validity, Liability and Effective Date.*

1. *Validity.* If any section, paragraph, clause, phrase, or provision of this Ordinance shall be adjudged invalid or held unconstitutional, such decision shall not affect the remaining portions of this Ordinance.
2. *Liability.*
 - a. 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 the City or District for damage to any person or property.
 - b. The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Ordinance or the terms of the permit.
 - c. 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 there under or pollute any Waters of the State as defined thereby.

3.1.2 Burial of materials.

The City has determined that it is in the interest of the public health and safety to regulate the burial of certain materials on any property under development.

A. *Minimum Requirements.*

1. No person shall bury, or cause or permit any person to bury, glass, cans, tires, appliances, and similar man-made materials on any property under development.
2. No person shall bury, or cause or permit any person to bury tree stumps, limbs and similar natural materials on any property under development, except in compliance with the Standards in this Section.

B. *Standards.*

1. No burial shall be permitted on any lot having an area of twenty thousand square feet or less, exclusive of the right-of-way of any road.
2. No portion of any burial site shall lie within fifty feet of any road bed, driveway, building or other structure.

3. Prior to any burial, the Director shall receive and approve a detailed site plan which shall set forth, in addition to other information required by this Ordinance, the location of the proposed burial site(s). In the event that a burial is permitted in accordance with the foregoing provisions, the location of the burial site shall be shown on the Final Plat submitted for recording.

3.1.3 Excavating and trenching.

The City of Alpharetta has determined that most problems and accidents surrounding improperly shored or sloped trench or excavation wall appears to be the result of inadequate planning, failure to build safety into the job planning, failure to provide adequate on the job follow up and inspections to detect hazards and failure to correct job site situations before cave-ins or accidents occur.

Every equipment operator or supervisory personnel shall hold a valid certificate from the City of Alpharetta and the State of Georgia evidencing satisfactory completion of a required educational program on safe trench/excavation practices.

- A. *Definitions.* For purposes of this Section, unless the context indicates otherwise, the following terms shall have the meaning set forth below:

Certificate. Certificate issued by the City of Alpharetta upon satisfactorily completion of a mandatory training/educational program regarding excavation and trenching safety practices, such as to be provided by the City of Alpharetta or other agency sponsored program as recognized by the Alpharetta Fire Chief.

Certificate Holder. The holder of the certificate identified above.

OSHA. The U.S. Department of Labor, Occupational Safety and Health Administration, or successor agency.

Supervisory Personnel. Any person who has the responsibility for layout, oversight, superintending, directing or controlling an excavation or trenching site.

Trench. A narrow excavation made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench is not greater than 15 feet.

- B. *Minimum Requirements.*

1. No individual, partnership, corporation, or other entity of any kind whatsoever shall engage in any excavation or trenching except in compliance with the provisions of this Ordinance and in compliance with any applicable laws of the State of Georgia or of the United States or any rules and regulations applicable to excavating and trenching.
2. All safety and health regulations adopted by OSHA with regard to excavating and trenching operations, particularly Part 1926, Subpart P-Excavations, Trenching, and Shoring, Section 1926.650, 1926.651, 1926.652, 1926.653 of the Code of Federal Regulations, as the same now exist or may be hereafter amended are adopted as a part of this Ordinance the same as if quoted verbatim herein.
3. No equipment operator or supervisory personnel shall participate in any excavation or trenching or in any way work in an excavation or trench unless such person holds a valid certificate from the City of Alpharetta evidencing satisfactory completion of a required educational program on safe trench/excavation practices. No other person shall participate in or work in any certificate holder is present at the excavation or trench site where work is being performed.
4. In the event any person who holds a valid certificate is found to be in violation of the safety standards and requirements on any job site, the certificate may be revoked after notice and hearing as herein provided. In the event of revocation, the certificate may be reinstated one time upon repeat by the person of the educational program required for issuance of the initial certificate.

C. *Standards.*

1. No excavating or trenching shall be performed until a permit or authorization for same has been obtained from the City of Alpharetta. Any applicant will be required to acknowledge receipt and understanding of safety requirements before any permit will be issued. All such permits shall be conspicuously posted upon the job site.
2. No permit or authorization shall be issued unless an authorized agent of the applicant holds a certificate.
3. A notice of violation shall be issued for any deficiency. Upon receipt of such notice, all excavating and trenching work upon any job site shall cease immediately until such time as the violation is corrected.
4. All excavation and trenching work upon any job site shall cease immediately when there is trench activity by any person not a certificate holder and/or when the deficiencies cannot be corrected immediately and/or when such work is being done without a permit.
5. If deficiencies identified in a notice of violation are not corrected, the building permit, land disturbance permit or any other permit issued by the City of Alpharetta may be suspended or revoked for due cause upon the conditions herein identified for revocation of permit.
6. Flagrant and/or repeat violations shall be reported by the City of Alpharetta to OSHA for action by the agency.