

AN ORDINANCE TO AMEND CHAPTER 10, ENVIRONMENT  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWNAN,  
BY DELETING ARTICLE III, SOIL EROSION AND SEDIMENTATION CONTROL AND  
ADOPTING A NEW ARTICLE III, SOIL EROSION, SEDIMENTATION AND  
POLLUTION CONTROL

WHEREAS, the City of Newnan adopted Ordinance Number 97-20 dated August 26, 1997 being the "City of Newnan Soil Erosion and Sediment Control Ordinance"; and

WHEREAS, certain amendments have been made to the Erosion and Sedimentation Act of 1975, which are required to be adopted by the local governing authorities administering said act; and

WHEREAS, the City adopted Ordinance No. 2000-19, dated August 8, 2000 incorporating the "2000" amendments; and

WHEREAS, the City further adopted Ordinance Number 2001-02 dated January 11, 2001, and Ordinance Number 2001-18 dated March 27, 2001 re-incorporating the "2000" amendments and for clerical clarification; and

WHEREAS, the Georgia Soil and Water Conservation Commission requested further changes in the City's ordinance to comply with amendments to the act and the City further adopted Ordinance No. 2004-10 dated June 14, 2004; and

WHEREAS, the Georgia Soil and Water Conservation Commission requested further changes in the City's ordinance to comply with amendments to the act and the City further adopted Ordinance No. 2010-10 dated June 22, 2010, effective July 1, 2010, to comply with the most recent amendments to the act; and

WHEREAS, the Georgia Soil and Water Conservation Commission has requested additional changes in the City's ordinance for editorial purposes;

NOW, THEREFORE, pursuant to the authority granted governing authorities of local municipalities by O.C.G.A. Section 12-7-4 to adopt comprehensive ordinances establishing the procedures governing land-disturbing activities which are conducted within their respective boundaries,

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Newnan and it is hereby ordained by the authority of same that Article III of Chapter 10 is hereby deleted in its entirety and a new Article III of Chapter 10 is hereby adopted to read as follows:

SECTION I: ARTICLE III. SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL

SECTION 10-50. SHORT TITLE

This ordinance will be known as "City of Newnan Soil Erosion, Sedimentation and Pollution Control Ordinance."

SECTION 10-51. FINDINGS AND INTENT

It is hereby found that soil erosion and sediment deposition are occurring as a result of widespread failure to apply proper soil erosion and sedimentation control practices in land clearing, soil movement, and construction activities, and that such erosion and sediment deposition result in pollution of water and damage to domestic, agricultural, recreational, fish and wildlife, and other resource uses. It is, therefore, declared to be the policy of this city and the intent of this section to provide for the establishment and implementation of soil erosion and sedimentation control measures to conserve and protect land and water resources, in accordance with the requirements of the Erosion and Sedimentation Act of 1975 (H.B. No. 174, 1975 Session, General Assembly of Georgia), as amended.

SECTION 10-52. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this section, unless otherwise specifically stated:

1. Best Management Practices (BMP's): 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.
2. Board: The Board of Natural Resources.
3. 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.
4. Certified Personnel: A person who has successfully completed the appropriate certification course approved by the Georgia Soil and Water Conservation Commission.
5. Commission: The Georgia Soil & Water Conservation Commission ("GSWCC").
6. CPESC: 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.
7. Cut: A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface. Also known as excavation.
8. Department: The Department of Natural Resources ("DNR").
9. Design Professional: A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or a person that is a Certified Professional in Erosion and Sediment Control (CPESC) with a current certification by Certified Professional in Erosion and Sediment Control, Inc.
10. Director: The Director of the Environmental Protection Division or an authorized representative.
11. District: The West Georgia Soil and Water Conservation District.
12. Division: The Environmental Protection Division (EPD) of the Department of Natural Resources.

13. **Drainage Structure:** 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 storm-water management, drainage control, or flood control purposes.
14. **Erosion:** The process by which land surface is worn away by the action of wind, water, ice or gravity.
15. **Erosion, Sedimentation and Pollution Control Plan:** A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, that includes, as a minimum protections at least as stringent as the State General permit, best management practices, and requirements in section 10-54 (C) of this Article.
16. **Fill:** A portion of land surface to which soil or other solid material has been added; the depth above the original ground surface or an excavation.
17. **Final Stabilization:** All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or equivalent permanent stabilization measures (such as the use of riprap, gabions, permanent mulches or geotextiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop or 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.
18. **Finished Grade:** The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.
19. **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.
20. **Ground Elevation:** The original elevation of the ground surface prior to cutting or filling.
21. **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 Section 10-53, Paragraph 5.

22. 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.
23. Local Issuing Authority: The governing authority of the City of Newnan, a municipal corporation which has been certified by the Director of the Environmental Protection Division of the Department of Natural Resources as an Local Issuing Authority, pursuant to subsection (a) O.C.G.A. 12-7-8.
24. 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.
25. Natural Ground Surface: The ground surface in its original state before any grading, excavation, or filling.
26. 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.
27. NOI: A Notice of Intent form provided by the EPD for coverage under the State General Permit.
28. NOT: A Notice of Termination form provided by EPD to terminate coverage under the State General Permit.
29. Operator. The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with an erosion, sedimentation and pollution control plan for the site or other permit conditions, such as a person authorized to direct workers t a site to carry out activities required by the erosion, sedimentation and pollution control plan or to comply with other permit conditions.
30. Outfall: The location where storm water in a discernible, confined and discrete conveyance, leaves a facility or site or, if there is a receiving water on site, becomes a point source discharging into that receiving water.

31. Permit: The authorization necessary to conduct a land-disturbing activity under the provisions of this Article.
32. 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 the State of Georgia, any interstate body or any other legal entity.
33. 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.
34. Project: The entire proposed development project regardless of the size of the area of land to be disturbed.
35. 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.
36. Roadway Drainage Structure: 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 roadway consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
37. Sediment: Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, ~~air~~, water, ice, or gravity as a product of erosion.
38. Sedimentation: The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
39. Soil and Water Conservation District Approved Plan: An erosion, sedimentation and pollution control plan approved in writing by the West Georgia Soil and Water Conservation District ("SWCD").
40. 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.

41. State General Permit: The National Pollution Discharge Elimination System general permit or permits for storm-water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.,
42. 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.
43. Structural Erosion, Sedimentation and Pollution 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 and sediment traps, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.
44. Trout Streams: All streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. 12-5-20, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at [www.gaepd.org](http://www.gaepd.org). Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown, or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.
45. Vegetative Erosion and Sedimentation Control Measures: 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 practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.

46. 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.
47. 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.

#### SECTION 10-53. EXEMPTIONS

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

- A.
  1. Surface mining, as same is defined in O.C.G.A. 12-4-72, "The Georgia Surface Mining Act of 1968".
  2. Granite quarrying and land clearing for such quarrying.
  3. Minor Land Disturbing Activities: 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. Single-Family Residences: 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. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the Director may grant variances to no less than 25

feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of O.C.G.A. 12-7-6 and the buffer zones provided by this paragraph section shall be enforced by the Local Issuing Authority.

5. **Agricultural Operations:** 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:** Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of Section 10-54 (C) of this Article, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three (3) years after the completion of such forestry practices.
7. **Natural Resource Conversation Service Projects:** Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;
8. **Projects Less Than 1.0 Acres:** Any project involving less than one (1) acre of disturbed area provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, except 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 such project which is not specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, 9 or 10 of this section.

9. Public Works Projects: Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of Department of Transportation or State Road and Tollway Authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. 12-7-7.1; except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the Local Issuing Authority, the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders.
  
10. Electrical System Projects: 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 of instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the Local Issuing Authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and
  
11. Public Water System Reservoir. Any public water system reservoir.

SECTION 10-54. MINIMUM REQUIREMENTS FOR EROSION, SEDIMENTATION AND POLLUTION CONTROL

A. GENERAL PROVISIONS

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the Article and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not excluded by this Article shall contain provisions for application of soil erosion, sedimentation and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of Section 10-54(B) and (C) of this Article. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this Article and the NPDES General Permit.

B. MINIMUM REQUIREMENTS/BMPs

1. Best management practices as set forth in sub-sections (B) and (C) shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director 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).
2. A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by the local issuing authority 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 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 (5) acres.

3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a Local Issuing Authority or of any state general permit issued by the Division pursuant to subsection (f) 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 Local Issuing Authority may set more stringent buffer requirements than stated in C.15 and 16, in light of O.C.G.A 12-7-6 (c).
  6. The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Article or the terms of the permit. Neither the approval of any permit under the provisions of this Article nor failure of the Local Issuing Authority to enforce compliance with the provisions of this Article or any permit issued hereunder shall relieve any person from legal liability for damages to others caused by such person's land-disturbing activity, nor create any right of action against or impose any liability upon the Local Issuing Authority for damages to any persons or property.
- C. The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et. seq. for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the *Manual for Erosion and Sediment Control in Georgia* published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:
1. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;

2. Cut-fill operations must be kept to a minimum;
3. Development plans must conform to topography and soil type so as to create the lowest practical erosion potential;
4. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
5. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
6. Disturbed soil shall be stabilized as quickly as practicable;
7. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
8. Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
9. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. 12-7-1 et. seq;
10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surface of fills;
11. Cuts and fills may not endanger adjoining property;
12. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
13. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings 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 and preclude sedimentation of adjacent properties and waters beyond the levels specified in this section.
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 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 a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream, crossings for sewer lines; and

16. There is established a 50 foot buffer as measured horizontally from the

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

(a) No land-disturbing activities shall be conducted within 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.

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 requirements that exceed the minimum requirements in Section 10-54 B. & 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.

SECTION 10-55. APPLICATION/PERMIT PROCESS

A. GENERAL

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

B. APPLICATION REQUIREMENTS

1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City of Newnan without first obtaining a permit from the Building Official of the City of Newnan to perform such activity and providing a copy of Notice of Intent submitted to EPD if applicable.
2. The application for a permit shall be made in the name of the owner of property, holding record title. Any agent making application for an owner shall provide written designation of his authority. The application for a permit shall be submitted to the Building Official 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 date specified in Paragraph C of this section. Erosion, sedimentation and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of Section 10-54 of this ordinance will be met. Applications for a permit will not be accepted unless accompanied by ten (10) copies of the applicant's erosion, sedimentation and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-10.
3. A fee shall be charged for each application, and no application shall be deemed complete unless the requisite fee is paid at time of filing. The

amount of required fee shall be set forth in a Fee Schedule, maintained in the office of the Building Official, as from time to time revised by resolution of the City Council.

4. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. 12-7-8 half of such fees levied shall be submitted to the Division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. 12-7-17 shall be submitted in full to the Division, regardless of the existence of a Local Issuing Authority in the jurisdiction.
5. Immediately upon receipt of an application and plan for a permit, the Local Issuing Authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion, sedimentation and pollution control plan. A District shall approve or disapprove a plan within 35 days of receipt. Failure of the District to act within 35 days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Local Issuing Authority. No permit shall be issued unless the plan has been approved by the District, and any variances required by Section 10-54 has been obtained, all fees have been paid, and bonding, if required as per Section 10-55(B) 7, 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 submitted within 35 days of receipt. Failure of the Local Issuing Authority with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.
6. If a permit applicant has had two or more violations of previous permits, this Article, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the Local Issuing Authority may deny the permit application.

7. The Local Issuing Authority may require the permit applicant to post a bond in the form of a surety bond issued by a company licensed in the State of Georgia and returnable to the City of Newnan, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, as a condition of issuing the permit. If the applicant does not comply with this Article or with the conditions of the permit after issuance, the Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
8. Where an application for a permit is denied, the permit approval is specially conditioned on the giving of security, or the Local Issuing Authority has given notice of its intention to suspend a permit and call the bond (or a portion thereof) to be forfeited, notice of such action shall be given in writing to the applicant or permit holder. The aggrieved party is entitled to request, in writing within five (5) days of receipt of notice of the action, a hearing before the City Council of the City of Newnan. Such hearing shall be informally conducted, but held in such manner as to afford the applicant fundamental due process. A hearing record shall be prepared by the City. Any person aggrieved by a final determination of the City Council shall be entitled to file a petition for writ of certiorari to the Superior Court of Coweta County, Georgia, within thirty (30) days of written notice of such final action.

#### C. PLAN REQUIREMENTS

1. Plans must be prepared to meet the minimum requirements as contained in Section 10-54 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*, a copy of which is on file for public inspection in the office of the City Engineer, is hereby incorporated by reference into this Article. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and State laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation

with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A 12-7-20.

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

D. PERMITS

1. Permits shall be issued or denied as soon as practicable but in any event not later than forty five (45) days after receipt by the Local Issuing Authority of a completed application, providing variances and bonding are obtained, where necessary and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
2. No permit shall be issued by the Local Issuing Authority unless the erosion, sedimentation and pollution control plan has been approved by the District and the Local Issuing Authority has affirmatively determined that the plan is in compliance with this Article, any variances required by Section 10-54 are obtained, bonding requirements, if necessary, as per Section 10-55 (B) 7 are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the Local Issuing Authority are met. If the permit is denied, the reason for denial shall be furnished to the applicant in writing.
3. Any land-disturbing activities by a local issuing authority shall be subject to the same requirements of this ordinance, and any other ordinance relating to land development, as are applied to private persons and the Division shall enforce such requirements upon the local issuing authority.
4. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
5. The permit may be suspended, revoked, or modified by the Local Issuing Authority, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion, sedimentation and pollution 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.

6. A permit issued under this Article shall not be valid for work commencing more than six (6) months after its issuance date. Where work is not timely commenced, or work on the Project is suspended for more than three (3) months after commencement, the Local Issuing Authority shall automatically suspend the permit, until the applicant provides a statement from a registered or certified professional in engineering, architecture, landscape architecture, land surveying, or erosion and sedimentation control, certifying that, based upon diligent investigation, no material changes have occurred since the Soil Erosion and Sedimentation Control Plan was originally approved.
7. Any change or amendment of design and construction plans for the Project which may materially impact or negate the permit based on original approval of the erosion, sedimentation and pollution control plans shall require a permit amendment. All amendments shall be applied for in writing and follow the same procedure as original applications for a permit.
8. No permit shall be issued unless the applicant provides a statement by the Coweta County Tax Commissioner and the City Clerk that all ad valorem taxes levied against the property and due and owing have been paid.
9. The Local Issuing Authority may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of the application, in light of O.C.G.A. 12-7-7 (f) (1).

#### SECTION 10-56. INSPECTION AND ENFORCEMENT

- A. The City Engineer or his designee will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the Local Issuing Authority shall regulate both primary and secondary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. 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 section, a

written notice to comply shall be served immediately 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.

- B. The Local Issuing Authority must amend its ordinances to the extent appropriate within twelve (12) months of any amendments to the Erosion and Sedimentation Act of 1975.
- C. The City Engineer or his designee shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- D. No person shall refuse entry or access to any authorized representative or agent of the Local Issuing Authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
- E. The 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 may revoke the certification of the county or municipality as a Local Issuing Authority.

SECTION 10-57. PENALTIES AND INCENTIVES

A. FAILURE TO OBTAIN A PERMIT FOR LAND-DISTURBING ACTIVITY

If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this Article without first obtaining a required permit, the person shall be subject to injunction of the Project, work or activity from the Superior Court of the county where such person resides, or in the case of a non-resident of this State, from the Superior Court of Coweta County; provided, however, where exigent circumstances exist, the City may apply to the Superior Court of Coweta County for a temporary restraining order. In addition, and cumulative thereof, such person shall be subject to citation for violation of this Article before the Municipal Court for the City of Newnan.

B. STOP-WORK ORDERS

(1) For the first and second violations of the provisions of this Article, the Director or the Local Issuing Authority shall issue a written warning to the violator. The violator shall have five (5) days to correct the violation. If the violation is not corrected within five (5) days, the Director or the Local Issuing Authority shall issue a stop-work order requiring that all 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 water of the state, the Director or the Local Issuing Authority shall issue an immediate stop-work order in lieu of a warning. In addition, such person shall be subject to citation for violation of this ordinance before the Municipal Court for the City of Newnan.

(2) For a third and each subsequent violation, the Director or the Local Issuing Authority shall issue an immediate stop-work order; Failure to timely comply with a stop-work order shall subject the person to action for injunction before the Superior Court of the county in which he resides, or in the case of a non-resident of this state, from the Superior Court of Coweta County; provided, however where exigent circumstances exist, the City may apply to the Superior Court of Coweta County for a temporary restraining order. In addition, such person shall be subject to citation before the Municipal Court for the City of Newnan for willful violation of this Article.

(3) All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

(4) When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the Local Issuing Authority 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 Local Issuing Authority or by the Director or his or her designee. All such stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop-work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

C. BOND FORFEITURE

If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this 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 Section 10-55 (B) 7. If a bond was required as a condition of the permit, the Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

D. MONETARY PENALTIES

The general limitations of law on the jurisdiction of municipal courts notwithstanding, any person convicted in the Municipal Court for the City of Newnan for violating any provisions of this Article or the rules and regulations adopted herein, or who negligently or intentionally fails or refuses to comply with any permit conditions, stop-work order or any final or emergency order issued as provided in this Article, may be held liable for a sentence of imprisonment not to exceed 60 days in jail or for a monetary penalty not to exceed \$2,500 per day, or both. Each day during which the violation or failure or refusal to comply continues shall constitute a separate violation.

SECTION 10-58 EDUCATION AND CERTIFICATION

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 Bard created pursuant to O.C.G.A. 12-7-20.

SECTION 10-59 ADMINISTRATIVE APPEAL JUDICIAL REVIEW

A. ADMINISTRATIVE REMEDIES

The suspension, revocation, modification or grant with condition of a permit by the Local Issuing Authority 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 City Council of the City of Newnan within fifteen (15) days after receipt by the Local Issuing Authority of written notice of appeal. Such appeal must be filed within five (5) days following receipt by the holder of written notice of the suspension, revocation, modification or grant with condition of a permit.

B. JUDICIAL REVIEW

Within thirty (30) days of written notice of final action by the City Council of the City of Newnan, Georgia, any person, aggrieved by a decision or order of the Local Issuing Authority, after exhausting his administrative remedies, shall have the right to appeal by Writ of Certiorari to the Superior Court of Coweta County.

C. EFFECTIVITY, VALIDITY AND LIABILITY

A. EFFECTIVITY

This ordinance shall become effective on the date of adoption.

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 the Local Issuing Authority 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.

SECTION II. All ordinances or parts of ordinances in conflict or inconsistent with this ordinance are hereby repealed.

SECTION III. Should any phrase, clause, sentence, or section of this Ordinance be deemed unconstitutional by a Court of competent jurisdiction, such determination shall not effect the remaining provisions of this Ordinance, which provisions shall remain in full force and effect.

Section IV. The effective date of this Ordinance shall be on the date of adoption.

DONE, RATIFIED, and PASSED, by the City Council of the City of Newnan, Georgia, this the 14<sup>th</sup> day of SEPTEMBER, 2010 in regular session.

ATTEST:

Della Hill  
Della Hill, City Clerk

L. Keith Brady  
L. Keith Brady, Mayor

Cynthia E. Jenkins  
Cynthia E. Jenkins, Mayor Pro-Tem

Reviewed:

C. Bradford Sears, Jr.  
C. Bradford Sears, Jr., City Attorney

George M. Alexander  
George M. Alexander, Councilmember

Richard A. Bolin  
Richard A. Bolin, City Manager

Rhodes Shell  
Rhodes Shell, Councilmember

Ray DuBose  
Ray DuBose, Councilmember

Clayton Hicks  
Clayton Hicks, Councilmember

Robert W. Coggin  
Robert W. Coggin, Councilmember