

Chapter 22. Land Use

Article VI. Soil Erosion and Sedimentation Control

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ARTICLE VI. SOIL EROSION AND SEDIMENTATION CONTROL *

Sec. 22-391. Title.

This article will be known as the “City of Elberton Soil Erosion and Sedimentation Control Ordinance”. (Ord. No. 2122, §I, 12-1-03; amended Ord. No. 2159, June 7, 2010)

Sec. 22-392. Definitions.

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” specified in O.C.G.A. 12-7-6 subsection (b).

Buffer: An 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.

CPESC: Certified Professional in Erosion and Sediment Control with current certification by Certified Profession in Erosion and Sediment Control, Inc.

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.

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 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.

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 termination coverage under the state general permit.

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

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

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 up until date of NOI submittal.

(Ord 2159, June 7, 2010).

Sec. 22-393. Exemptions.

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

- (1) Surface mining, as same is defined in O.C.G.A. 12-4-72;
- (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, other related activities which result in minor soil erosion;
- (4) The construction of single-family residence, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided however, that construction of any such residence shall conform to the minimum, requirements as set forth in section 22-394 of this article 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 small 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 section 22-394 of this article and the buffer zones provided by this section shall be enforced by the 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 subsections 22-394(c)(15) and (16) 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 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 less than one 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, and for purposes of this paragraph, "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water them year-round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Local Issuing Authority from regulating any such project which is not specifically exempted by paragraphs (1), (2), (3), (4), (5), (6), (7), (9), or (10) of this section;
- (9) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, 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 nor maintenance projects of 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 permitted 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) Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy

Regulatory Commission any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power, except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the local issuing authority shall enforce compliance with the minimum requirements set forth in 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.

(Ord. No. 21223, §III, 12-1-03)

**Sec. 22-394. Minimum Requirements for Erosion and Sedimentation Control
Using best Management Practices.**

A. *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 excluded 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 minimum requirements of Section IV B. & C. 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 pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.
(Ord 2159, June 7, 2010)

B. *Minimum Requirements/BMP'S:*

1. Best management practices as set forth in Section IV B & C 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 (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 Code Section 12-5-30. 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 storm water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by a local Issuing Authority or of any 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 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the

construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.

3. Failure to properly design, install or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to subsection (f) Code Section 12-5-30 for each day on which such failure occurs.

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

5. The LIA may set more stringent buffer requirements than stated in C.15. and 16., in light of O.C.G.A. Section 12-7-6(c).

(Ord 2159, June 7, 2010)

C. The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter 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 measures shall be installed as soon as practicable;
- (9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is

brought to a condition of continuous compliance with the requirements of O.C.G.A. 12-7-1 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 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 include sedimentation of adjacent waters beyond the levels specified in subsection 22-394(b)(2) of this article;
- (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, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; provided however, 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 crossing 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 an issuing authority from adopting rules and regulations, ordinances, or resolutions which contain requirements that exceed the minimum requirements in Section IV B. & C. of this ordinance.
(Ord 2159, June 7, 2010)

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 or create a presumption of a violation of the standards provided for in this article or the terms of the permit.
(Code No. 2122, §IV, 12-1-03)

Sec. 22-395. Application/Permit Process.

A. General. The property owner, developer, and designated planners and engineers shall review the general development plans and detailed plans of the local issuing authority that affect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, storm water management ordinance, subdivision ordinance, flood damage prevention ordinance, this article and other ordinances which regulate the development of land within the jurisdictional boundaries of the local issuing authority. However, the operator is the only part that can obtain a permit.

B. Application Requirements.

1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City of Elberton without first obtaining a permit from the City of Elberton building inspector 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 submitted to the building inspector 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 Section V. C. of this ordinance. Erosion and sedimentation control plans shall conform to the provisions of Section IV B. & C. of this ordinance. Applications for a permit will not be accepted unless accompanied by two (2) copies of the applicant's solid 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.
(Ord 2159, June 7, 2010)

3. A fee, in the amount of \$80.00 shall be charged for each acre or fraction thereof in the project area.

4. 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 and sedimentation control plan. A District shall approve or disapprove a plan within 35 days of receipt. Failure of a district to act within 35 days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the issuing authority. No permit will be issued unless the plan has been approved by the district, and any variances required by Section IV C. 15. & 16. and bonding, if required as per Section V B.5. (b), have been obtained. Such review will not be required if the issuing authority and the District have entered into an agreement which allows the 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 to act within 35 days shall be considered an approval of the revised plan submittal.
(Ord 2159, June 7, 2010)

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 and sedimentation control plan. A district shall approve or disapprove a land within 35 days of receipt. Failure of a district to act within 35 days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the issuing authority. No permit will be issued unless the plan has been approved by the district, and any variances required by subsection 22-395(c) (15) and 16 and bonding, if required as per subsection 22-395(b) (5), have been obtained. Such review will not be required if the issuing authority and the district have entered into an agreement which allows the issuing authority to

conduct such review and approval of the plan without referring the application and plan to the district.

6. If a permit applicant has had two or more violations of previous permits, this article section, 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 government security, 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, prior to 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. 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 local issuing authority with respect to alleged permit violations.

C. Plan Requirements.

1. Plans must be prepared to meet the minimum requirements as contained in subsections 22-394(b) and (c) of this article. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the Manual or Erosion and Sediment Control in Georgia; published by the State Soil and Water Conservation Commission as a guide; or through the use of alternate design criteria which conform to sound conservation and engineering practices. The Manual for Erosion and Sediment Control in Georgia is hereby incorporated by reference into this 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.

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. (Ord 2159, June 7, 2010)

3. Maps, drawings, and supportive computations shall bear the signature/seal of a registered or certified professional in engineering, architecture, landscape architecture, land surveying or erosion control. After December 31, 2006, all persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements as developed by the commission pursuant to O.C.G.A. 12-7-20. The certified plans shall contain:

- a. Graphic scale land north point or arrow indicating magnetic north.
- b. Vicinity maps showing location of project and existing streets.
- c. Boundary line survey.
- d. Delineation of disturbed areas within project boundary.

- e. Existing and planned contours, with contour lines drawn with an interval in accordance with the following:

<u>Map Scale</u>	<u>Ground Slope</u>	<u>Contour Interval Ft.</u>
1 Inch=100 ft. or larger scale	Flat 0—2%	0.5 or 1
	Rolling 2 – 8%	1 or 2
	Steep 8% +	2, 5 or 10

- f. Adjacent areas and features areas such as streams, lakes, residential areas, etc. which might be affected should be indicated on the plan.
 - g. Proposed structures or additions to existing structures and paved areas.
 - h. Delineate the 25-foot horizontal buffer adjacent to state waters and at the specified width in MRPA areas.
 - i. Delineate the specified horizontal buffer along designated trout streams where applicable.
 - j. Location of erosion and sedimentation control measures and practices using coding symbols from the Manual for Erosion and Sediment Control in Georgia, Chapter 6.
4. Maintenance of all soil erosion and sedimentation control practices, whether temporary or permanent, shall be at all times the responsibility of the property owner.

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 issuing authority unless the erosion and sedimentation control plan has been approved by the district and the local issuing authority has affirmatively determined that the plan is in compliance with this ordinance 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.
3. 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.
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 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.

6. 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).
(Ord 2159, June 7, 2010)

Sec. 22-396. Inspection and Enforcement.

A. The City of Elberton building inspector 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 is 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. 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 article, 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 article.

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.
(Ord 2159, June 7, 2010)

C. No person shall refuse entry or access to any authorized representative or agent of the issuing authority, the commission, 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.

D. The districts or the commission or both shall periodically 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 districts 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 and sedimentation control program. The districts or the commission shall notify the division and request investigation by the division if any deficient or ineffective local program is found.

E. The board, on or before December 31, 2003, shall promulgate rules and regulations setting forth the requirements and standards for certification and the procedures for decertification of a local issuing authority. The division may periodically 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). 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 30 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 30 days after notification by the division, the division may revoke the certification of the county or municipality as a local issuing authority. (Ord. No. 2122, §VI, 12-1-03)

F. The division may periodically review the actions of 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 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 municipality in writing. The governing authority of the municipality so notified shall have 30 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 30 days after notification by the division, the division may revoke the certification of the municipality as a local issuing authority. (Ord 2159, June 7, 2010)

Sec. 22-397. 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 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 local issuing authority.

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 days to correct the violation. If the violation is not corrected within five days, the director or the local issuing authority 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 local issuing authority shall issue an immediate stop-work order in lieu of a warning;

2. For a third and each subsequent violation, the director or the local issuing authority shall issue an immediate stop-work order; and

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

4. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the 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 article and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of subsection 22-395(b)(5). The 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.* Any person who violates any provisions of this article, or any permit condition or limitation established pursuant to this article, or who negligently or intentionally fails or refused to comply with any final or emergency order of the director issued as provided in this article shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this article, notwithstanding any provisions in any City Charter to the contrary, municipal courts shall be authorized to impose 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 county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this article under county ordinances approved under this article 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. (Ord. No. 2122, §VIII, 12-2-03)

Sec. 22-398. Education and Certification.

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

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

C. Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this ordinance.

D. If a state general permittee who has operational control of land-distributing 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.

(Ord 2159, June 7, 2010)

Sec. 22-399. Administrative Appeal, Judicial Review.

A. *Administrative Remedies.* The suspension, revocation, modification or grant with condition of a permit by the issuing authority upon finding that the holder is not in compliance with the 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 Mayor and Council within 30 days after receipt by the issuing authority of written notice of appeal.

B. *Judicial Review.* Any person, aggrieved by a decision or order of the issuing authority, after exhausting his administrative remedies, shall have the right to appeal de novo to the superior court of Elbert County.

(Ord. No. 2122, §IX, 12-1-03)

Sec. 22-400. Effectivity, Validity and Liability.

A. *Effectivity.* This article shall become effective on the 5th day of December, 2003.

B. *Validity.* If any section, paragraph, clause, phrase, or provision of this article shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this article.

C. *Liability:*

1. Neither the approval of a plan under the provisions of this article, nor the compliance with provisions of this article 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 article or the terms of the permit.

3. No provision of this article shall permit any person 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.

(Ord. No. 2122, §X, 12-1-03)

Secs. 22-401 – 22-419. Reserved.