STATE OF GEORGIA
FAYETTE COUNTY

ORDINANCE NO. 2010-03

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, FAYETTE COUNTY, GEORGIA TO AMEND CHAPTER 8, DEVELOPMENT REGULATIONS, ARTICLE IX. SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

WHEREAS, the duly elected governing authority of Fayette County is the Board of Commissioners thereof;

WHEREAS, the governing authority desires to amend the provision that provides for the regulation of soil erosion and sedimentation control for land disturbance activities as allowed by the State of Georgia;

WHEREAS, the health, safety, and welfare of the citizens of Fayette County, Georgia shall be improved and protected by adoption and implementation of this Ordinance.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY, GEORGIA AND IT IS HEREBY ORDAINED BY AUTHORITY THEREOF:

Section 1. That Chapter 8, Development Regulations, Article IX. Soil Erosion and Sedimentation Control Ordinance of the Code of Ordinances, Fayette County, is hereby deleted in its entirety and replaced by a new Article IX. entitled "Fayette County Soil Erosion, Sedimentation and Pollution Control Ordinance" to read as follows:

ARTICLE IX. SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL ORDINANCE

DIVISION 1. GENERALLY

Sec. 8-241. Title. This ordinance will be known as the "Fayette County Soil Erosion, Sedimentation and Pollution Control Ordinance."

DIVISION 2. DEFINITIONS

Sec. 8-242. Definitions; Interpretations. The following definitions shall apply in the interpretation and enforcement of this ordinance, unless otherwise specifically stated.

Best Management Practices (BMPs): Sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, that are

consistent with, and no less stringent than, those practices contained in the 'Manual for Erosion and Sediment Control in Georgia' (Manual.)

Board: The Board of Natural Resources.

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.

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

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 that is also referred to as CPESC or CPESC, Inc.

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

Design Professional: A professional licensed by the State of Georgia in the field of: engineering, architecture, landscape architecture, forestry, geology, or land surveying; or is a CPESC.

Director: The Director of the Environmental Protection Division or an authorized representative.

District: The Towaliga Soil and Water Conservation District.

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

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

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

Erosion Sedimentation and Pollution Control Plan ("Plan"): A plan required by the Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 *et seq.*, that includes, as a

minimum, protections at least as stringent as the state general permit, BMPs, and requirements of this ordinance.

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

Final Stabilization: The point where all soil disturbing activities at the site have been completed, and (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.

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

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

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

Land-Disturbing Activity: Any activity that 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 exempted agricultural practices.

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

Local Issuing Authority: The governing authority of any county or municipality which is certified pursuant to O.C.G.A. § 12-7-8(a). Fayette County, Georgia is the Local Issuing Authority for unincorporated Fayette County.

Manual: 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 and amendments to the Manual as approved by the Commission up until the date of Notice of Intent (NOI) submittal. The 'Manual for Erosion and Sediment Control in Georgia' is hereby incorporated by reference into this ordinance.

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

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

NOI: A Notice of Intent form provided by EPD for coverage under the state general permit.

NOT: A Notice of Termination form provided by EPD to terminate coverage under the state general permit.

Operator: A party or parties that have:

(1) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or

(2) day-to-day operational control of activities necessary to ensure compliance with the Plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the Plan or to comply with other permit conditions.

Plan: The Erosion and Sedimentation and Pollution Control Plan.

Permit: The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance, known as a "Land-Disturbance Permit".

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.

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

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.

Properly Designed: Designed in accordance with the design requirements and specifications contained in the Manual

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

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

Sedimentation: The process where eroded material is transported with and deposited by water, wind, ice or gravity.

Soil and Water Conservation District Approved Plan: An Erosion, and Sedimentation, and Pollution Control Plan approved in writing by the Towaliga Soil and Water Conservation District. As of July 12, 1992, a Memorandum of Agreement between the District, Fayette County, and the State Soil and Water Conservation Commission permits Fayette County to review and approve Erosion, Sedimentation, and Pollution Control Plans.

Stabilization: The process of establishing an enduring soil cover by the installation of temporary or permanent vegetation and/or structures, for the purpose of reducing to a minimum the erosion and sedimentation process.

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

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 that are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

Structural Erosion and Sediment Control Practices: Practices for the stabilization of erodable 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 rip-rap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps, land grading, etc. Such practices can be found in the Manual.

Vegetative Erosion and Sedimentation Control Measures: Measures for the stabilization of erodable or sediment-producing areas by covering the soil with:

(1) Permanent seeding, sprigging or planting, producing long-term vegetative cover;

(2) Temporary seeding, producing short-term vegetative cover; or

(3) Sodding, covering areas with a turf of perennial sod-forming grass.

Such practices can be found in the Manual.

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

Wetlands: 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.

DIVISION 3. EXEMPTIONS

Sec. 8-243. Exemptions. This ordinance shall apply to any land-disturbing activity undertaken by any person on any land within unincorporated Fayette County except for the following:

(1) Surface mining, as the same is defined in O.C.G.A. § 12-4-72 "Mineral Resources and Caves Act";

(2) Granite quarrying and land clearing for such quarrying;

(3) Minor land-disturbing activities such as home gardening, individual home landscaping, repairs, maintenance work, fence installation, and other related activities resulting in minor soil erosion;

(4) The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not exempted under this paragraph. Construction of any such residence shall conform to the minimum requirements as set forth in Division 4 of this ordinance.

(5) Agricultural operations as defined in O.C.G.A. § 1-3-3, "definitions", to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock includes but is not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chicken, hens and turkey; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products and farm buildings and farm ponds;

(6) Forestry land-management practices, including harvesting, provided when such exempt forestry practices cause or result in land-disturbing activities otherwise prohibited in a buffer, as established herein. No other land-disturbing activities, except for normal forestry management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after the completion of such forestry practices;

(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 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. For purposes of this paragraph, "state waters" excludes channels and drainage ways having water in them only during and immediately after rainfall events and intermittent streams that do not have water in them year round; provided, that any person responsible for a project involving less than one acre of land-disturbing activity and 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 not specifically exempted herein;

(9) Construction and/or maintenance projects undertaken or financed in whole and/or in part by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; and/or any road construction or maintenance project, undertaken by Fayette County; provided, that construction or maintenance projects of the Department of Transportation or State Road and Tollway Authority that disturbs 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) 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 any previous referenced entities 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. Violations shall be subject to the same penalties as violations by permit holders; and

(11) Any public water system reservoir.

Sec. 8-244. Reserved.

DIVISION 4. MINIMUM REQUIREMENTS FOR EROSION, SEDIMENTATION AND POLLUTION CONTROL USING BEST MANAGEMENT PRACTICES

Sec. 8-245. General Provisions. Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities not exempted by this ordinance shall contain provisions for application of soil erosion and sedimentation control measures and practices. 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 this ordinance. 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 activities in accordance with requirements of this ordinance and the NPDES General Permit.

Sec. 8-246. Minimum Requirements/BMP's.

(a) Best Management Practices as set forth herein shall be required for all land-disturbing activities. Proper design, installation, and maintenance of BMPs shall constitute a complete defense to any action by the Director/Local Issuing Authority or to any other allegation of noncompliance with Paragraph (b) of this subsection or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to O.C.G.A. § 12-5-30(f), 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 specified in O.C.G.A. § 12-7-6(b).

(b) A discharge of stormwater runoff from disturbed areas where BMPs 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 state general permit issued by the Division pursuant to O.C.G.A. § 12-5-30(f), 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. The turbidity of the receiving waters shall be measured in accordance with guidelines issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single-family homes 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.

(c) Failure to properly design, install, or maintain BMPs 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 O.C.G.A. § 12-5-30(f), the "Georgia Water Quality Control Act", for each day on which such failure occurs.

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

Sec. 8-247. Minimum requirements. Rules, regulations, ordinances, and/or resolutions adopted pursuant to this ordinance for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and BMPs, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, consistent with and no less stringent than, those practices contained in the Manual, 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 practicable 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 surfaces 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) Erosion, Sedimentation, and Pollution Control Plans shall include provisions for treatment or control of any source of sediments and for adequate sedimentation control facilities to retain sediments onsite or preclude sedimentation of adjacent waters beyond the levels specified herein;

(15) There is an established 25 foot buffer along the banks of any state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except:

i. 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;

ii. 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

iii. along any ephemeral stream. As used in this ordinance, 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 groundwater table year round; where groundwater is not a source of the ephemeral stream; and where runoff from precipitation is the primary source of water flow. Unless exempted as along an ephemeral stream buffers of at least 25 feet established pursuant to

Part 6 of Article 5, Chapter 5 of Title 12, of the Official Code of Georgia Annotated, 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.

i. 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.

ii. 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:

A. stream crossings for water lines; or

B. stream crossings for sewer lines.

Sec. 8-248. Watershed Protection. Nothing contained in this ordinance shall supersede the buffer requirements specified in the Fayette County Watershed Protection Ordinance.

Sec. 8-249. Damage to surrounding property. 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.

DIVISION 5. APPLICATION/PERMIT PROCESS

Sec. 8-250. General. The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of Fayette County that affect the tract to be developed and the area surrounding it. They shall review all development ordinances that regulate land within unincorporated Fayette County. However, the owner and/or operator are the only parties that can obtain a Land Disturbance Permit.

Sec. 8-251. Permit required; Application requirements; fees.

(a) No person shall conduct any land-disturbing activity within the jurisdictional boundaries of unincorporated Fayette County without first obtaining a Permit from the Fayette County Stormwater Management Department to perform such activity.

(b) The application for a permit shall be submitted to the Stormwater Management Department and must include the applicant's Erosion, Sedimentation and Pollution Control Plan with supporting data, as necessary. Said Plans shall include, as a minimum, the data specified herein. Applications for a permit will not be accepted unless accompanied by two (2) copies of the Plan. All applications shall contain a certification stating that the Plan preparer or the designee thereof visited the site prior to creation of the Plan or that such a visit was not required in accordance with rules and regulations established by the Board.

(c) A fee shall be charged for each application as determined by the Fayette County Board of Commissioners for the disturbed area.

(d) In addition to the local permitting fees, fees will also be assessed pursuant to O.C.G.A. § 12-5-23(a)(5), provided that such fees shall not exceed $80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the Permit. In a jurisdiction that is certified pursuant to O.C.G.A. § 12-7-8(a), half of such fees levied shall be submitted to the division; except that fees due from an entity which is required to give notice pursuant to O.C.G.A. §§ 12-7-17(9) and (10) shall be submitted in full to the Division, regardless of Fayette County being a Local Issuing Authority.

(e) Upon receipt of a permit application and plan, the Stormwater Management Department shall review the plan within fourteen (14) calendar days and approve or disapprove it concerning the adequacy of the Plan. No permit will be issued unless the plan has been approved by the

Stormwater Management Department, all necessary variances have been approved, a pre-construction meeting has been conducted where the owner or duly-authorized representative is present, and all bonds, if required, have been submitted.

(1) When reviewing any application for a land-disturbing activity permit, the Stormwater Management Department shall consider the past record of the permit applicant in complying with previous land-disturbing activity permits and this ordinance. If a permit applicant has had two or more violations of previous permits, this ordinance section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the Stormwater Management Department may deny the application, pursuant to O.C.G.A. § 12-7-7(f)(1).

(2) The Stormwater Management Department 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 a fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this ordinance or with the conditions of the permit after issuance, the Stormwater Management Department 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 a hearing and judicial review of any determination or order of the Stormwater Management Department with respect to alleged permit violations.

Sec. 8-252. Plan Requirements.

(a) Plans must be prepared to meet the minimum requirements as contained herein, or through the use of more stringent alternate design criteria conforming to sound conservation and engineering practices.

(b) The Plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and stormwater management facilities, local ordinances and state laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land-development design, review, permitting, construction, monitoring, or

inspections or any land-disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A. § 12-7-20.

(c) The 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.

Sec. 8-253. Permits.

(a) Permits shall be issued or denied as soon as practicable but no later than fifteen (15) days after receipt by the Stormwater Management Department of a completed application, provided all state and federal permits/variances and local bonding are obtained, as applicable.

(b) Any variances required herein must be obtained; bonding requirements, if necessary, must be met; all Fayette County ordinances, rules and regulations in effect must be complied with; and the Plan must be approved prior to issuance of a Permit by the Stormwater Management Department.

(c) If the Permit is denied, the reason for denial shall be furnished to the applicant.

(d) Any land-disturbing activities by a Local Issuing Authority shall be subject to the same requirements of this ordinance.

(e) If the tract is to be developed in phases, then a separate Permit shall be required for each phase. If a decision is made to plat the subdivision in phases after the Permit has been issued, and the rights-of-way have been cleared, the cleared areas outside of the phase to be constructed must be mulched and grassed. A new Permit must be issued before work can begin in any subsequent phase, though the work may be continued under the initial NOI if a NOT has not be filed with the state.

(f) The Permit may be suspended, revoked, or modified by the Stormwater Management Department, as to all or any portion of the land affected by the Plan, upon finding that the holder or his or her successor in the title is not in compliance with the approved Plan or that the holder or his or her successor in title is in violation of this ordinance. A holder of a permit shall notify any successor in title to him or her as to all or any portion of the land affected by the approved Plan of the conditions contained in the permit.

(g) A permit shall not be issued for any lot in a subdivision with a minimum lot size less than two (2.0) acres unless it is issued in conjunction with a building permit.

(h) If the work has not begun within ninety (90) calendar days of the issuance of a Permit, then the Permit shall expire. The Permit will expire if the project is not completed and approved within twenty-four (24) months of the issuance of the Permit. If project is a phased project, as indicated on the approved site plan or preliminary plat, then each phase of the project has a twenty-four (24) months time limit. When a Permit expires, the developer will have to apply for a new Permit, however, once a new Permit is issued, work may continue under the initial NOI if a NOT has not be filed with the state.

(i) The Permit must be posted at the site entrance in a place where it can easily be seen.

DIVISION 6. INSPECTION AND ENFORCEMENT

Sec. 8-254. Inspection. The Stormwater Management Department will periodically inspect the sites of land-disturbing activities for which where permits have been issued to determine if the activities are being conducted in accordance with the approved Plan and if the measures required in the Plan are effective in controlling erosion and sedimentation. Also, the Stormwater Management Department shall regulate primary, secondary, and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of BMPs where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of BMPs 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, Permit conditions, or provisions of this ordinance, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he or she shall be deemed in violation of this ordinance.

Sec. 8-255. Investigations. The Stormwater Management Department shall have the power to conduct such investigations as may be reasonably deemed necessary to carry out duties as prescribed in this ordinance, and for this purpose to enter, at reasonable times, upon any property, public or private, for the purpose of investigating and inspecting the sites of land-disturbing activities.

Sec 8-256. Entry. 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 purpose of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative in the process of carrying out his or her official duties. Any such person refusing entry or access to any authorized representative or agent of the Local Issuing Authority, the Commission, the District, or Division shall be subject to penalties described under Sec. 8-259 of this ordinance.

DIVISION 7. PENALTIES AND INCENTIVES

Sec. 8-259. Failure to obtain a Permit for Land-Disturbing Activity. If any person commences any land-disturbing activity requiring a Permit as prescribed in this ordinance without first obtaining said Permit, the person shall be subject to revocation of his work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of Fayette County.

Sec. 8-260. Stop-Work Orders.

(a) For the first and second violations of this ordinance the Director or 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 Local Issuing Authority shall issue a stop-work order requiring that all activities be stopped until necessary corrective action or mitigation has occurred. If the violation presents an imminent threat to public health or state or if the land-disturbing activities are conducted without obtaining the necessary Permit, the Director or Local Issuing Authority shall issue an immediate stop-work order in lieu of a warning;

(b) For a third and any subsequent violation, the Director or Local Issuing Authority shall issue an immediate stop-work order;

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

(d) 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. 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 BMPs 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. Such stop work orders shall apply to all activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

Sec. 8-261. 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 with the time specified, he or she shall be deemed in violation of this ordinance and, in addition to other penalties, shall be deemed to have forfeited his or her performance bond, if required. The Stormwater Management Department may call the bond or any part hereof 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.

Sec. 8-262. Monetary Penalties. Any person who violates any provisions of this ordinance, or any permit condition or limitations established pursuant to this ordinance or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Stormwater Management Department issued, as provided in this ordinance, shall be liable for a civil penalty not to exceed $2,500.00 per day, per violation, or a sentence of imprisonment not to exceed sixty (60) days or both. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

DIVISION 8. EDUCATION AND CERTIFICATION

Sec. 8-263. Requirements. 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.

Sec. 8-264. Representative.

(a) For each site on where land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is responsible for erosion, sedimentation and pollution control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site.

(b) 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.

Sec. 8-265. On-site representative. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of O.C.G.A. § 12-7-19(b)(1), then any person or entity involved in land-disturbing activities at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in O.C.G.A. § 12-7-19(b)(4) and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

DIVISION 9. ADMINISTRATIVE APPEAL JUDICIAL REVIEW

Sec. 8-266. Administrative Remedies. The suspension, revocation, modification or grant with condition of a Permit by the Stormwater Management Department upon finding that the holder is not in compliance with the approved Erosion, Sedimentation 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 Board of Commissioners of Fayette County within thirty (30) days after receipt by the Stormwater Management Department of written notice of appeal.

Sec. 8-267. Judicial Review. Any person, aggrieved by a decision or order of the Stormwater Management Department, after exhausting his or her administrative remedies, shall have the right to appeal de novo to the Superior Court of Fayette County.

DIVISION 10. LIABILITY

Sec. 8-268. Liability.

(a) Neither the approval of a Plan under the provisions of this ordinance, nor the compliance with provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon Fayette County or the District for damage to any person or property.

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

(c) No provision of this ordinance shall permit any 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 hereunder or pollute any waters of the state as defined hereunder.

Section 2. That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 3. a. It is hereby declared to be the intention of the Board of Commissioners that all Sections, paragraphs, sentences, clauses and phrases of this Article are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no Section, paragraph, sentence, clause or phrase of this Article is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Article.

c. In the event that any phrase, clause, sentence, paragraph or section of this Article shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or Sections of the Article and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and Sections of the Article shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4. All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed except those provided for herein.

Section 5. The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

IT IS SO ORDAINED THIS 27 DAY OF May, 2010.

FAYETTE COUNTY BOARD OF COMMISSIONERS

JACK R. SMITH, CHAIRMAN

ATTEST:

CLERK/DEPUTY CLERK