

CHAPTER 10

ENVIRONMENT

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ARTICLE I. FLOOD DAMAGE PREVENTION

DIVISION I: GENERALLY

Sec. 10-1. Purpose.

The purpose of this Chapter is to protect, maintain, and enhance the public health, safety, environment, and general welfare, and to minimize public and private losses due to flood conditions in flood hazard areas. Additionally, this ordinance is intended to protect the beneficial uses of floodplain areas for water quality protection, streambank and stream corridor protection, wetlands preservation, and ecological and environmental protection by provisions designed to:

- (a) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (b) Restrict or prohibit uses which are dangerous to health, safety, and property due to flooding or erosion hazards, or which increase flood heights, velocities, or erosion;
- (c) Control filling, grading, dredging, and other development which may increase flood damage or erosion;
- (d) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands;
- (e) Limit the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters; and
- (f) Protect the stormwater management, water quality, streambank protection, stream corridor protection, wetland preservation, and ecological function of natural floodplain area.

Sec. 10-2. Lands to which this article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of the City of Forsyth.

Sec. 10-3. Designation of ordinance administrator.

The City Manager, or his or her designee shall be appointed to administer and implement the provisions of this ordinance.

Sec. 10-4. Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction, be penalized according to Section 1-14 of this Code. Additionally, violators of this Chapter shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing contained in this article shall prevent the City of Forsyth from taking such other lawful actions as are necessary to prevent or remedy any violation.

Sec. 10-5. Basis for establishing areas of special flood hazard, areas of future conditions flood hazard, and associated floodplain characteristics—flood area maps and studies.

For the purposes of defining and determining “Areas of Special Flood Hazard,” “Areas of Future-Conditions Flood Hazard,” “Areas of Shallow Flooding,” “Base Flood Elevations,” “Floodplains,” “Floodways,” “Future-Conditions Flood Elevations,” “Future-Conditions Floodplains,” potential flood hazard or risk categories as shown on Flood Insurance Rate Maps (FIRM), and other terms used in this ordinance, the following documents and sources may be used for such purposes and are adopted by reference thereto:

- (a) The most recent Flood Insurance Study applying to the City of Forsyth at any given time, along with accompanying maps, other supporting data, and any revisions to the study or its supplemental documentation.
- (b) Other studies, which may be relied upon for the establishment of the base flood elevation or delineation of the base or one-percent (100-year) floodplain and flood-prone areas, including:
 - (1) Any flood or flood-related study conducted by the United States Army Corps of Engineers, the United States Geological Survey, or any other local, state, or federal agency applicable to the City of Forsyth; and
 - (2) Any base flood study conducted by a licensed professional engineer which has been prepared utilizing Federal Emergency Management Agency (FEMA) approved methodology and approved by the City of Forsyth.
- (c) Other studies, which may be relied upon for the establishment of the future-conditions flood elevation or delineation of the future-conditions floodplain and flood-prone areas, including:
 - (1) Any flood or flood-related study conducted by the United States Army Corps of Engineers, the United States Geological Survey, or any other local, state, or federal agency applicable to the City of Forsyth; and
 - (2) Any future-conditions flood study conducted by a licensed professional engineer which has been prepared utilizing FEMA approved methodology approved by the City of Forsyth.
- (d) Such maps, studies, and supporting data shall be available for public inspection at Forsyth City Hall during regular business hours.

Sec. 10-6. Compatibility with other regulations.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, covenant, deed restriction, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standard for human health or the environment shall control.

Sec. 10-7. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood

heights may be increased by manmade or natural causes. This ordinance does not imply that lands outside the Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Forsyth or any officer or employee of the city for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made under this ordinance.

Sec. 10-8. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application.

Addition. Any walled and roofed expansion to the perimeter or height of a building.

Appeal. A request for a review of the ordinance administrator's interpretation of any provision of this ordinance.

Area of future-conditions flood hazard. The land area that would be inundated by the one-percent-annual-chance flood based on future-conditions hydrology (100-year future-conditions flood).

Area of shallow flooding. A designated AO or AH Zone on the city's FIRM with a one percent or greater chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard. The land area subject to one percent or greater chance of flooding in any given year. This includes all floodplain and flood prone areas at or below the base flood elevation designated as Zones A, A1-30, A-99, AE, AO, AH, and AR on a community's FIRM.

Accessory structure or facility. A structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the primary structure.

Base flood. The flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

Base flood elevation. The highest water surface elevation anticipated at any given location during the base flood.

Basement. Any area of a building having its floor subgrade below ground level on all sides.

Building. Has the same meaning as "Structure."

Development. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, clearing, grubbing, grading, paving, any other installation of impervious cover, excavation, or drilling operations or storage of equipment or materials.

Elevated building. A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction. Any structure for which the "start of construction" commenced before August 2, 1994.

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before August 2, 1994.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency. The Region IV Office refers to the regional office in Atlanta, Georgia.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters;
- (b) The unusual and rapid accumulation, or runoff, or surface waters from any source.

Flood insurance rate map (FIRM). An official map of a community, issued by FEMA delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood insurance study (FIS). The official report by FEMA providing an examination, evaluation, and determination of flood hazards and corresponding flood profiles and water surface elevations of the base flood.

Floodplain or flood-prone area. Any land area susceptible to flooding.

Flood proofing. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water, and sanitary facilities, structures, and their contents.

Floodway or regulatory floodway. The channel of a stream, river, or other watercourse and the adjacent areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out near water. The term includes only docking facilities, port facilities, that are not necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Future-conditions flood. The flood having a one percent chance of being equaled or exceeded in any given year based on future-conditions hydrology, also known as the 100-year future-conditions flood.

Future-conditions flood elevation. The highest water surface elevation anticipated at any given location during the future-conditions flood.

Future-conditions hydrology. The flood discharges associated with projected land-use conditions based on the city's zoning maps, comprehensive land-use plans, and/or watershed study projections, and without consideration of projected future construction of stormwater management (flood detention) structures

or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation.

Highest adjacent grade. The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic structure. Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district, or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places by communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior, or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Lowest floor. The lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, if such enclosure is not built to render the structure in violation of other provisions of this ordinance.

Manufactured home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when attached to the required utilities. The term includes any structure commonly referred to as a "mobile home" regardless of the date of manufacture. The term also includes parked trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Mean sea level. The datum to which base flood elevations shown on the city's FIRM are referenced. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988.

New construction. Any structure for which the "start of construction" commenced on or after August 2, 1994 and includes any subsequent improvements to the structure.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 2, 1994.

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

Permit. The permit issued by the City of Forsyth to the applicant which is required prior to undertaking any development activity.

Recreational vehicle means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Repetitive loss. Flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Site. The parcel of land being developed, or the portion thereof on which the development project is located.

Start of construction. Includes substantial improvement, and means the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, additional placement, or other improvement was within 180 calendar days of the permit date. The actual start means either the first placement of permanent construction of the structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure. A walled and roofed building (including a gas or liquid storage tank), that is principally above ground, or a manufactured home.

Subdivision. The division of a tract or parcel of land resulting in one or more new lots or building sites for the purpose, whether immediately or in the future, of sale, of transfer of ownership, or land development. The term includes divisions of land resulting from or made in connection with the layout or redevelopment of a new street or roadway or a change in an existing street or roadway.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. This term also includes repetitive loss.

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement to a structure, taking place during a 10-year period, in which the cumulative cost equals or exceeds 50 percent of the market value of the structure prior to the improvement. The market value of the building means (1) the appraised value of the structure prior to the start of the initial report or improvement, or (2) in the

case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include those improvements of a structure required to comply with existing state or local health, sanitary, or safety code specifications which are the minimum necessary to assure safe living conditions, which have been identified by the code enforcement officer. The term does also not include any alteration of a historic structure, if the alteration will not preclude the structure’s continued designation as a historic structure.

Substantially improved existing manufactured home park or subdivision. The repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equals or exceeds 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

Variance. A grant of relief from the requirements of this ordinance.

Violation. The failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until the documentation is provided.

Sec. 10-9. Permit application requirements.

- (a) No owner or developer shall perform any development activities on a site where an area of special flood hazard or area of future-conditions flood hazard is located without first meeting the requirements of this ordinance prior to commencing the proposed activity.
- (b) Unless specifically excluded by this ordinance, any landowner or developer desiring a permit for a development activity shall submit a permit application to the City Manager, or his or her designee on a form provided by the city for that purpose.
- (c) No permit will be approved for any development activities that do not meet the requirements, restrictions, and criteria of this ordinance.

Sec. 10-10. Floodplain management plan requirements.

An application for a development project with any area of special flood hazard or area of future-conditions flood hazard located on the site shall include a floodplain management/flood damage prevention plan. This plan shall include the following items:

- (a) Site plan drawn to scale, which includes but is not limited to:
 - (1) Existing and proposed elevations of the area in question and the nature, location, and dimensions of existing and/or proposed structures, earthen fill placement, amount and location of excavation material, and storage of materials or equipment;
 - (2) For all proposed structures, spot ground elevations at building corners and 20-foot or smaller internals along the foundation footprint, or one foot contour elevations throughout the building site;
 - (3) Proposed locations of water supply, sanitary sewer, and utilities;
 - (4) Proposed locations of drainage and stormwater management facilities;

- (5) Proposed grading plan;
 - (6) Base flood elevations and future-conditions flood elevations;
 - (7) Boundaries of the base flood floodplain and future-conditions floodplain;
 - (8) If applicable, the location of the floodway; and
 - (9) Certification of the above by a licensed professional engineer or surveyor.
- (b) Building and foundations design detail, including but not limited to:
- (1) Elevation in relation to mean sea level (or highest adjacent grade) of the lowest flood, including basement, of all proposed structures;
 - (2) Elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
 - (3) Certification that any proposed non-residential floodproofed structure meets the criteria in Section 10-20(b).
 - (4) For enclosures below the base flood elevation, location and total net area of flood openings as required in Section 10-19(e) and
 - (5) Design plans certified by a licensed professional engineer or architect for all proposed structure(s).
- (c) Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;
- (d) Hard copies and digital files of computer models, if any, copies of work maps, comparison of pre- and post-development conditions base flood elevations, future-conditions flood elevations, flood protection elevations, special flood hazard areas and regulatory floodways, flood profiles and all other computations, and other information similar to that presented in the FIS;
- (e) Copies of all applicable state and federal permits necessary for proposed development, including but not limited to permits required by Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334; and
- (f) All appropriate certifications required under this ordinance.

The approved floodplain management/flood damage prevention plan shall contain certification by the applicant that all development activities will be down according to the plan or previously approved revisions. All development permits and/or use and occupancy certificates or permits may be revoked at any time if the construction and development activities are not in strict accordance with approved plans.

Sec. 10-11. Construction stage submittal requirements.

For all new construction and substantial improvements on sites with a floodplain management/flood damage prevention plan, the permit holder shall provide to the City Manager a certified as-built Elevation Certificate or Floodproofing Certificate for non-residential construction including the lowest floor elevation or floodproofing level immediately after the lowest floor or floodproofing is completed. A final

Elevation Certificate shall be provided after completion of construction including final grading of the site. Any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When floodproofing is utilized for non-residential structures, said certification shall be prepared by or under the direct supervision of a licensed professional engineer or architect, and certified by same using the FEMA Floodproofing Certificate. This certification shall also include the design and operation/maintenance plan to assure continued viability of the floodproofing measures.

Any work undertaken prior to approval of these certifications shall be at the permit holder's risk. The City Manager shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit certification or failure to make the corrections required hereby shall be cause to issue a stop work order for the project.

Sec. 10-12. Duties and responsibilities of the City Manager, or designee.

Duties of the City Manager, or his or her designee shall include, but shall not be limited to:

- (a) Review all development applications and permits to assure that the requirements of this ordinance have been satisfied and to determine whether proposed building sites will be reasonably safe from flooding;
- (b) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334;
- (c) When Base Flood Elevation data or floodway data have not been provided, then the City Manager, or his or her designee shall require the applicant to obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source to meet the provisions of Sections 10-13—10-24;
- (d) Review and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the lowest floor, including basement, of all new and substantially improved structures;
- (e) Review and record the actual elevation in relation to mean sea level to which any substantially improved structures have been floodproofed;
- (f) When floodproofing is utilized for a non-residential structure, the City Manager, or his or her designee shall review the design and operation/maintenance plan and obtain certification from a licensed professional engineer or architect;
- (g) Notify affected adjacent communities and the Georgia Department of Natural Resources (GA DNR) prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA;
- (h) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (e.g. where there appears to be a conflict between a mapped boundary and actual field conditions) the City Manager, or his or her designee shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance. Where floodplain elevations have been defined, the

floodplain shall be determined based on flood elevations rather than the area graphically delineated on the floodplain maps;

- (i) All records pertaining to the provisions of this ordinance shall be maintained in the office of the City Manager, or his or her designee and shall be open for public inspection;
- (j) Coordinate all FIRM revisions with the GA DNR and FEMA; and
- (k) Review variance applications and make recommendations to the Planning Commission.

Sec. 10-13. Definition of floodplain boundaries.

- (a) Studies "A" zones, as identified in the FIS, shall be used to establish base flood elevations whenever available.
- (b) For all streams with a drainage area of 100 acres or greater, the future-conditions flood elevations shall be provided by the city. If future-conditions elevation data is not available from the city, then it shall be determined by a licensed professional engineer using a method approved by FEMA and the city.

Sec. 10-14. Definition of floodway boundaries.

The width of a floodway shall be determined from the FIS or FEMA approved flood study. For all streams with a drainage area of 100 acres or greater, the regulatory floodway shall be provided by the city. If floodway data is not available from the city, it shall be determined by a licensed professional engineer using a method approved by FEMA and the city.

Sec. 10-15. General standards for development.

- (a) No development shall be allowed with any area of special flood hazard or area of future-conditions flood hazard that could result in any of the following:
 - (1) Raising the base flood elevation or future-conditions flood elevation equal to or more than 0.01 foot;
 - (2) Reducing the base flood or future-conditions flood storage capacity;
 - (3) Changing the flow characteristics as to the depth and velocity of the waters of the base flood or future-conditions flood as they pass both the upstream and the downstream boundaries of the development area; or
 - (4) Creating hazardous or erosion-producing velocities, or resulting in excessive sedimentation.
- (b) Any development within any area of special flood hazard or area of future-conditions flood hazard allowed under Section 10-15(a) shall also meet the following conditions:
 - (1) Compensation for storage capacity shall occur between the average ground water table elevation and the base flood elevation for the base flood, and between the average ground water table elevation and the future-condition flood elevation for the future-conditions flood. Such compensation for storage capacity shall lie within the boundaries of ownership of the property

being developed and shall be within the immediate vicinity of the location of the encroachment. Acceptable means of providing required compensation include lowering of natural ground elevations with the floodplain, or lowering of adjoining land areas to create additional floodplain storage. In no case, shall any required compensation be provided via bottom storage or by excavating below the elevation of the natural (pre-development) stream channel unless such excavation results from the widening or relocation of the stream channel;

- (2) Cut areas shall be stabilized and graded to a slope of no less than 2.0 percent;
- (3) Effective transitions shall be provided such that flow velocities occurring on both upstream and downstream properties are not increased or decreased;
- (4) Verification of no-rise conditions (0.01 foot or less), flood storage volumes, and flow characteristics shall be provided via a step-backwater analysis meeting the requirements of Section 10-16;
- (5) Public utilities and facilities, such as water, sanitary sewer, gas, and electrical systems, shall be located and constructed to minimize or eliminate infiltration or contamination from flood waters; and
- (6) Any significant physical changes to the base flood floodplain shall be submitted as a Conditional Letter of Map Revision (CLOMR) or Conditional Letter of Map Amendment (CLOMA) whichever is applicable. The CLOMR submittal shall be subject to approval by the city using the FEMA Community Concurrence forms before forwarding the submittal package to FEMA for final approval. The responsibility for forwarding the CLOMR to FEMA and for obtaining the CLOMR approval shall be the responsibility of the applicant. Within six months of the completion of development, the applicant shall submit as-built surveys and plans for a final Letter of Map Revision (LOMR).

Sec. 10-16. Engineering study requirements for floodplain encroachments.

An engineering study is required, as appropriate to the proposed development activities on the site, whenever a development proposes to disturb any land within the future-conditions floodplain, except for a residential single-lot development on streams without established base flood elevations and floodways. This study shall be prepared by a licensed professional engineer and made a part of the application for a permit. This information shall be submitted to and approved by the city prior to the approval of any permit which would authorize the disturbance of land located within the future-conditions floodplain. Such study shall include:

- (a) Description of the extent to which any watercourse or floodplain will be altered or relocated because of the proposed development;
- (b) Step-backwater analysis, using a FEMA-approved methodology approved by the city. Cross-sections (which may be supplemented by the applicant) and flow information will be obtained whenever available. Computations will be shown duplicating FIS results and will then be rerun with the proposed modifications to determine the new base flood profiles, and future-conditions flood profiles;
- (c) Floodplain storage calculations based on cross-sections (at least one every 100 feet) showing existing and proposed floodplain conditions to show that base flood floodplain and future-conditions floodplain storage capacity would not be diminished by the development;
- (d) The study shall include a preliminary plat, grading plan, or site plan, as appropriate, which shall clearly

define all future-conditions floodplain encroachments.

Sec. 10-17. Floodway encroachments.

Located within areas of special flood hazard are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity flood waters, debris, or erosion potential. In addition, floodways must remain free of encroachment to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

- (a) Encroachments are prohibited, including earthen fill, new construction, substantial improvements, or other development within the regulatory floodway, except for activities specifically allowed in (b) below.
- (b) Encroachments for bridges, culverts, roadways, and utilities within the regulatory floodway may be permitted, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment will not result in any increase to the pre-project base flood elevations, floodway elevations, or floodway widths during the base flood discharge. A licensed professional engineer must provide supporting technical data and certification thereof; and
- (c) If the applicant proposes to revise the floodway boundaries, no permit authorizing the encroachment into or an alteration of the floodway shall be issued by the city until an affirmative CLOMR is issued by FEMA, or a no-rise certification is approved by the city.

Sec. 10-18. Maintenance requirements.

The property owner shall be responsible for continuing maintenance as may be needed within an altered or relocated portion of a floodplain on the property so that the flood-carrying or flood storage capacity is maintained. The city may direct the property owner (at no cost to the city) to restore the flood-carrying or flood storage capacity of the floodplain if the owner has not performed maintenance as required by the approved floodplain management plan on file with the city.

DIVISION II: PROVISIONS FOR FLOOD DAMAGE REDUCTION

In all areas of special flood hazard and areas of future-conditions flood hazard, the following provisions apply:

Sec. 10-19. General standards.

- (a) New construction and substantial improvements of structures (residential or non-residential), including manufactured homes, shall not be allowed within the limits of the future-conditions floodplain, unless all requirements of Sections 10-15—10-17 have been met;
- (b) New construction and substantial improvements shall be anchored to prevent flotation, collapse, and lateral movement of the structure;
- (c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (d) New construction and substantial improvements shall be constructed by methods and practices that

minimize flood damage;

- (e) *Elevated buildings.* All new construction and substantial improvements that include any fully enclosed area located below the lowest flood formed by foundation and other exterior walls shall be designed to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.
 - (1) Designs for complying with this requirement must either be certified by a licensed professional engineer or architect to meet or exceed the following minimum criteria:
 - a. Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - b. The bottom of all openings shall be no higher than one foot above grade; and
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwater in both directions.
 - (2) So as not to violate the “Lowest Floor” criteria of this ordinance, the unfinished and flood resistant enclosure shall solely be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and
 - (3) The interior portion of such enclosed area shall be finished or partitioned into separate rooms.
- (f) All heating and air conditioning equipment and components (including ductwork), along with all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located three feet above the base flood elevation, or one foot above the future-conditions flood elevation, whichever is higher, to prevent water from entering or accumulating within the components during conditions of flooding;
- (g) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (h) All proposed development shall include adequate drainage and stormwater management facilities per the requirements of the city to reduce exposure to flood hazards;
- (i) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (j) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (k) On-site waste disposal systems shall be located and constructed to avoid impairment to, or contamination from, such systems during flooding;
- (l) Other public utilities such as gas and electric systems shall be located and constructed to avoid impairment to them, or public safety hazards from them, during flooding;

- (m) Any alteration, repair, reconstruction, or improvement to a structure which is not compliant with the provisions of this ordinance, shall be undertaken only if the non-conformity is not furthered, extended, or replaced;
- (n) If the proposed development is located in multiple flood zones, or multiple base flood elevations cross the proposed site, the higher or more restrictive base flood elevation or future condition elevation and development standards shall take precedence;
- (o) When only a portion of a proposed structure is located within a flood zone or the future conditions floodplain, the entire structure shall meet the requirements of this ordinance; and
- (p) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall be reasonably safe from flooding:
 - a. All such proposals shall be consistent with the need to minimize flood damage within the flood-prone area;
 - b. All public utilities and facilities, such as sewer, gas, electrical, and water systems shall be located and constructed to minimize or eliminate flood damage; and
 - c. Adequate drainage shall be provided to reduce exposure to flood hazards.

Sec. 10-20. Building standards for structures and buildings within the future-conditions floodplain.

(a) Residential buildings.

- (1) *New construction.* New construction of principal residential structures shall not be allowed within the limits of the future-conditions floodplain unless all requirements of Sections 10-15—10-17 have been met. If all the requirements of Sections 10-15—10-17 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than three feet above the base flood elevation or one foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 10-19(e)(1).
- (2) *Substantial improvements.* Substantial improvement of any principal residential structure shall have the lowest floor, including basement, elevated no lower than three feet above the base flood elevation or one foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 10-19(e)(1).

(b) Non-residential buildings.

- (1) *New construction.* New construction of principal non-residential structures shall not be allowed within the limits of the future-conditions floodplain unless all requirements of Sections 10-15—10-17 have been met. If all the requirements of Sections 10-15—10-17 have been met, all new construction shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation, or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure,

openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 10-19(e)(1). New construction that has met all the requirements of Sections 10-15—10-17 may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one foot above the base flood elevation, or at least as high as the future-conditions flood elevation, whichever is higher, with walls substantially impermeable to the passage of water and structural components have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the City Manager, or his or her designee using the FEMA Floodproofing Certificate along with design and operation/maintenance plan.

- (2) *Substantial improvements.* Substantial improvement of any principal, non-residential structure located in A1-30, AE, or AH zones, may be authorized by the City Manager, or his or her designee to be elevated or floodproofed. Substantial improvements shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 10-19(e)(1). Substantial improvements may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one foot above the base flood elevation, or at least as high as the future-conditions flood elevation, whichever is higher, with wall substantially impermeable to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the City Manager, or his or her designee using the FEMA Floodproofing Certificate along with the design and operation/maintenance plan.

(c) Accessory structures and facilities.

Accessory structures and facilities (i.e. barns, sheds, gazebos, detached garages, recreational facilities, and other similar non-habitable structures and facilities) which meet the requirements of Sections 10-15—10-17 and are permitted to be located within the limits of the future-conditions floodplain shall be constructed of flood-resistant materials and designed to provide adequate flood openings in accordance with Section 10-19(e)(1) and be anchored to prevent flotation, collapse, and lateral movement of the structure.

(d) Standards for manufactured homes.

- (1) New manufactured homes shall be allowed to be placed within the limits of the future-conditions floodplain unless all requirements of Sections 10-15—10-17 have been met. If all requirements of Sections 10-15—10-17 have been met, all new construction and substantial improvement shall have the lowest floor, including basement, elevated no lower than three feet above the base flood elevation or one foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 10-19(e)(1).

(2) Manufactured homes placed and/or substantially improved in an existing manufactured home park or subdivision shall be elevated so that either:

- a. The lowest floor of the manufactured home is elevated no lower than three feet above the level of the base flood elevation, or one foot above the future-conditions flood elevation, whichever is higher; or
- b. The manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than 36 inches in height above grade.

All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement in accordance with standards of Section 10-19(g).

Sec. 10-21. Building standards for structures and buildings authorized adjacent to the future-conditions floodplain.

- (a) *Residential buildings.* For new construction and substantial improvement of any principal residential building or manufactured home, the elevation of the lowest floor, including basement and access to the building, shall be at least three feet above the base flood elevation or one foot above the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 10-19(e)(1).
- (b) *Non-residential buildings.* For new construction and substantial improvement of any principal non-residential building, the elevation of the lowest floor, including basement and access to the building, shall be at least one foot above the level of the base flood elevation or at least as high as the future-conditions flood elevation, whichever is higher. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to automatically equalize the hydrostatic flood forces on exterior walls shall be provided in accordance with standards of Section 10-19(e)(1). Non-residential buildings may be floodproofed in lieu of elevation.

Sec. 10-22. Building standards for residential single-lot developments on streams without established base flood elevations and floodway (A-Zones).

For a residential single lot development not part of a subdivision that has areas of special flood hazard, where streams exist but no base flood data have been provided (A-Zones), the City Manager, or his or her designee shall review and reasonably utilize any available scientific or historic flood elevation data, base flood elevation and floodway data, or future-conditions flood elevation data available from a federal, state, local, or other source, in order to administer the provisions and standards of this ordinance.

If data are not available from any of these sources, the following provisions shall apply:

- (a) No encroachments, including structures or fill material, shall be located within an area equal to twice the width of the stream or 50 feet from the top of the bank of the stream, whichever is greater.

- (b) In special flood hazard areas without base flood or future-conditions flood elevation data, new construction and substantial improvements shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three feet above the highest adjacent grade at the building site. Flood openings sufficient to facilitate automatic equalization of hydrostatic flood forces shall be provided for flood prone enclosures in accordance with Section 10-19(e)(1).

Sec. 10-23 Building standards for the areas of shallow flooding (AO-Zones).

Areas of special flood hazard may include designated “AO” shallow flooding area. These areas have base flood depths of one to three feet above ground, with no clearly defined channel. In these areas, the following provisions apply:

- (a) All new construction and substantial improvements of residential and non-residential structures shall have the lowest floor, including basement, elevated to no lower than one foot above the flood depth number in feet specified on the FIRM, above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least three feet above the highest adjacent grade. Flood openings hydrostatic flood forces shall be provided in accordance with standards of Section 10-19(e)(1).
- (b) New construction and substantial improvements of non-residential structures may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified FIRM flood level plus one foot above the highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice, and shall provide such certification to the City Manager, or his or her designee using the FEMA Floodproofing Certificate along with the design and operation/maintenance plan; and
- (c) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

Sec. 10-24. Standards for subdivisions of land.

- (a) All subdivision proposals shall identify areas of special flood hazard and areas of future-conditions flood hazard therein and provide base flood elevation data and future-conditions flood elevation data;
- (b) All residential lots in a subdivision proposal shall have sufficient buildable area outside of the future-conditions floodplain such that encroachments into the future-conditions floodplain for residential structures will not be required;
- (c) All subdivision plans will provide the elevations of proposed structures in accordance with Section 10-10(b).

DIVISION III: VARIANCE PROCEDURES

Sec. 10-25. Variance procedures generally.

The following variance and appeals procedures shall apply to an applicant who has been denied a permit for a development activity, or to an owner or developer who has not applied for a permit because it is clear that the proposed development activity would be inconsistent with the provisions of this ordinance.

- (a) Requests for variances from the requirements of this ordinance shall be submitted to the city. All such requests shall be heard and decided in accordance with procedures to be published in writing by the city. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.
- (b) Any person adversely affected by the decision of the city shall have the right to appeal such decision to the Planning Commission as established by the city in accordance with procedures to be published in writing by the Planning Commission. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.
- (c) Any person aggrieved by the decision of the Planning Commission may appeal such decision to the Superior Court of Monroe County, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.
- (d) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure. The variance issued shall be the minimum necessary to preserve the historic character and design of the structure.
- (e) Variances may be issued for development necessary to the conduct of a functionally dependent use, provided the criteria of this Section are met, no reasonable alternative exists, and the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.
- (f) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (g) In reviewing such requests, the City and Planning Commission shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.
- (h) Conditions for variances:
 - (1) A variance shall be issued only when there is:
 - a. A finding of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and

- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or the creation of a nuisance.
- (2) The provisions of this ordinance are minimum standards for flood loss reduction; therefore, any deviation from the standards must be weighed carefully. Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (3) Any person to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor. Such notice must also state that the cost of flood insurance resulting from the lowest floor elevation being placed below the base flood elevation will be commensurate with the increased risk to life and property, and that such costs may be as high as \$25 for each \$100 of insurance coverage provided.
 - (4) The City Manager, or his or her designee shall maintain the records of all variance actions, both granted and denied, and report them to the Georgia Department of Natural Resources and FEMA upon request.
- (i) Any person requesting a variance shall, from the time of the request until the time the request is acted upon, submit such information and documentation as the city and Planning Commission shall deem necessary for the consideration of the request.
 - (j) Upon consideration of the factors listed above and the purposes of this ordinance, the city and the Planning Commission may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this ordinance.
 - (k) Variances shall not be issued “after the fact.”

DIVISION IV: VIOLATIONS, ENFORCEMENT, AND PENALTIES

Sec. 10-26. Violations generally.

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved stormwater management plan or permit, may be subject to the enforcement actions outlined in this Section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

Sec. 10-27. Notice of violation.

If the city determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit therefore, the notice

of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- (a) The name and address of the owner or the applicant or the responsible person;
- (b) The address or other description of the site upon which the violation is occurring;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan, or this ordinance, and the date for the completion of such remedial action;
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and
- (f) A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 30 calendar days after the notice of violation.

Sec. 10-28. Penalties.

In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions for penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the city shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than 10 calendar days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24-hour notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the city may take any one or more of the following actions or impose any one or more of the following penalties.

- (a) *Stop work order.* The city may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation, or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable to the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.
- (b) *Withhold certificate of occupancy.* The city may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

- (c) *Suspension, revocation, or modification of permit.* The city may suspend, revoke, or modify the permit authorizing the development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the city may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (d) *Civil penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation, or otherwise fails to cure the violations described therein within 10 calendar days, or such greater period as the city shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24- hour notice shall be sufficient) after the city has taken one or more of the actions described above, the city may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains un-remedied after receipt of the notice of violation.
- (e) *Criminal penalties.* For intentional and flagrant violations of this ordinance, the city may issue a citation to the applicant or other responsible person, requiring such person to appear in Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days, or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Secs. 10-29—10-60. Reserved.

ARTICLE II. SOIL EROSION AND SEDIMENTATION CONTROL

Sec. 10-61. Title.

This article will be known as the “City of Forsyth Soil Erosion and Sedimentation Control Ordinance.”

Sec. 10-62. Definitions.

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

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

Board. The Board of Natural Resources.

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

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

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

CPESC. Certified Professional in Erosion and Sediment Control with current certification by EnviroCert, Inc., which is also referred to as CPESC or CPESC, Inc.

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

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

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

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

District. The Towaliga Soil and Water Conservation District.

Division. The Environmental Protection Division (EPD) of DNR.

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

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

Erosion, Sedimentation, and Pollution Control Plan. A plan required by the Erosion and Sedimentation Act, O.C.G.A. Chapter 12-7, that includes, as a minimum, protections at least as stringent as the State General Permit, best management practices, and requirements in Section 10-64(c) of this article.

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. One hundred percent of the soil surface is uniformly covered in permanent vegetation with a density of 70 percent or greater, or landscaped according to the Plan (uniformly covered with landscaping materials in planned landscape areas), or equivalent permanent stabilization measures as defined in the Manual (excluding a crop of annual vegetation and seeding of target crop perennials appropriate for the region). Final stabilization applies to each phase of construction.

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

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

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

Land-disturbing activity. Any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in Section 10-63(e).

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

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

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

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

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

NOI. A notice of intent form provided by EPD for coverage under the State General Permit.

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

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

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

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

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.

Phase or phased. Sub-parts or segments of construction projects where the sub-part or segment is

constructed and stabilized prior to completing construction activities on the entire construction site.

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

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

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

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

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

Soil and Water Conservation District Approved Plan.: An erosion, sedimentation, and pollution control plan approved in writing by the Towaliga Soil and Water Conservation District.

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

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

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

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

Trout streams. All streams or portions of streams within the watershed as designated by the Wildlife Resources Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. 12-5-20, in the rules and regulations for Water Quality Control, Chapter 391-3-6 at www.epd.georgia.gov. Streams designated as primary trout waters are defined as

water supporting a self-sustaining population of rainbow, brown, or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

Vegetative erosion and sedimentation control measures. Measures for the stabilization of erodible or sediment-producing areas by covering the soil with: (a) Permanent seeding, sprigging or planting, producing long-term vegetative cover; (b) Temporary seeding, producing short-term vegetative cover; or (c) Sodding, covering areas with a turf of perennial sod-forming grass. Such measures can be found in the publication "Manual for Erosion and Sediment Control in Georgia".

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

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

Sec. 10-63. Exemptions.

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

- (a) Surface mining, as the same is defined in O.C.G.A. 12-4-72, "The Georgia Surface Mining Act of 1968";
- (b) Granite quarrying, and land clearing for such quarrying;
- (c) Minor land-disturbing activities, such as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
- (d) 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 otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in O.C.G.A. 12-7-6 and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the Director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of O.C.G.A. 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the Local Issuing Authority;

- (e) 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;
- (f) Forestry land management practices, including harvesting; provided, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of Section 10-64(c) of this ordinance, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after completion of such forestry practices;
- (g) Any project carried out under the technical supervision of the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture;
- (h) Any project involving less than one acre of disturbed area; provided, 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. For purposes of this paragraph, "State Waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events, and intermittent streams which do not have water in them year-round; however, 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 (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this section;
- (i) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, that construction or maintenance projects of the Department of Transportation or the State Road and Tollway Authority which disturb one or more contiguous acres of land shall be subject to 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;
- (j) 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

(k) Any public water system reservoir.

Sec. 10-64. Minimum requirements for erosion, sedimentation, and pollution control using best management practices.

(a) *General provisions.* Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities if requirements of the ordinance and the NPDES General Permit are not met. Therefore, plans for those land-disturbing activities which are not exempted by this ordinance shall contain provisions for application of soil erosion, sedimentation, and pollution control measures and practices. The provisions shall be incorporated into the erosion, sedimentation, and pollution control plans. Soil erosion, sedimentation and pollution control measures and practices shall conform to the minimum requirements of 10-64(b) and 10-64(c) of this article. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion, sedimentation and pollution during all stages of any land-disturbing activity in accordance with requirements of this ordinance and the NPDES General Permit.

(b) *Minimum requirements/BMPs.*

(1) Best management practices as set forth in 10-64(b) and 10-64(c) of this article shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. 12-7-6 subsection (b).

(2) A discharge of 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 State General Permit issued by the Division pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act", for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than 10 nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.

(3) Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a Local Issuing Authority or of any State General

Permit issued by the Division pursuant to subsection (f) of Code Section 12-5-30, the "Georgia Water Quality Control Act", for each day on which such failure occurs.

- (4) The Director may require, in accordance with regulations adopted by the Board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land disturbing activities occur.
 - (5) The local issuing authority may set more stringent buffer requirements than stated in (c), paragraphs (15), (16), and (17) in light of O.C.G.A. § 12-7-6 (c).
- (c) The rules and regulations, ordinances, or resolutions adopted pursuant to O.C.G.A. 12-7-1 et. seq. for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the State General Permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control in Georgia" published by the GSWCC 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 to minimize erosion;
 - (2) Cut-fill operations must be kept to a minimum;
 - (3) Development plans must conform to topography and soil type 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 runoff water must be trapped using debris basins, sediment basins, silt traps, or similar measures until the 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 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 to adversely affect other property owners;

- (13) Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;
- (14) Land-disturbing activity plans for erosion, sedimentation, and pollution control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Section 10-64(b)(2) of this article;
- (15) Except as provided in paragraph (16) and (17) of this subsection, there is established a 25-foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. 12-2-8, where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or where bulkheads and sea walls are installed to prevent shoreline erosion on Lake Oconee and Lake Sinclair; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream, that under normal circumstances, has water flowing only during and for a short duration after precipitation events, that has the channel located above the ground-water table year-round, for which ground water is not a source of water, and for which runoff from precipitation is the primary source of water flow. Unless exempted as along an ephemeral stream, the buffers of at least 25 feet established pursuant to Part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:
- a. No land-disturbing activities shall be conducted within a buffer. 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; 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, if they occur at an angle as measured from the point of crossing, within 25 degrees 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;
- (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, 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, if 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. 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; 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, if they occur at an angle, as measured from the point of crossing, within 25 degrees 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 are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines;
- a. No land-disturbing activities shall be conducted within a buffer. 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; 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
- b. The buffer shall not apply to crossings for utility lines that cause a width of disturbance of not more than 50 feet within the buffer; provided, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.
- c. The buffer shall not apply to any land-disturbing activity conducted pursuant to and in compliance with a valid and effective land-disturbing permit issued subsequent to April 22, 2014, and prior to December 31, 2015; provided, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented or any lot for which the preliminary plat has been approved prior to December 31, 2015 if roadways, bridges, or water and sewer lines have been extended to such lot prior to the effective date of this article and if the requirement to maintain a 25-foot buffer would consume at least 18 percent of the high ground of the platted lot otherwise available for development; and adequate erosion control measures are incorporated into the project plans and specifications, and such measures are fully implemented.
- d. Activities where the area within the buffer is not more than 500 square feet or that have a

“Minor Buffer Impact” as defined in DNR’s Rules for Erosion and Sedimentation Control: 391-3-7-.01(r), if the total area of buffer impacts is less than 5,000 square feet or deemed to have an approved buffer variance by rule. Bank stabilization structures are not eligible for coverage under the variance by rule and notification shall be made to the Division at least 14 calendar days prior to the commencement of land disturbing activities.

- (d) Nothing contained in O.C.G.A. 12-7-1 et. seq. shall prevent any Local Issuing Authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in Sections 10-64(b) and 10-64(c) of this article.
- (e) The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of, nor create a presumption of a violation of the standards provided for in this article or the terms of the permit.

Sec. 10-65. Application/permit process.

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

(b) *Application requirements.*

- (1) No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City of Forsyth without first obtaining a permit from the City Manager of the City of Forsyth, or his or her designee 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 City Manager of the City of Forsyth, or his or her designee and must include the applicant’s erosion, sedimentation, and pollution control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Section 10-65(c) of this article. Erosion, sedimentation, and pollution control plans, together with supporting data, must demonstrate affirmatively that the land disturbing activity proposed will be carried out in such a manner that the provisions of Sections 10-64(b) and 10-64(c) of this article will be met. Applications for a permit will not be accepted unless accompanied by copies of the applicant’s erosion, sedimentation, and pollution control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD Rule 391-3-7-.10.
- (3) In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, if such fees shall not exceed \$80.00 per acre of land-disturbing activity. These fees shall be calculated and paid by the primary permittee as defined in the State General Permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. 12-7-8 half of such fees levied shall be submitted to the Division; except that all fees due from an entity

which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. 12-7-17 shall be submitted in full to the Division, regardless of the existence of a Local Issuing Authority in the jurisdiction.

- (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, sedimentation, and pollution control plan. The District shall approve or disapprove a plan within 35 calendar days of receipt. Failure of the District to act within 35 calendar days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Local Issuing Authority. No permit will be issued unless the plan has been approved by the District, and any variances required by 10-64(c), paragraphs (15), (16) and (17) have been obtained, all fees have been paid, and bonding, if required as per Section 10-65(b)(6), has been obtained. Such review will not be required if the Local Issuing Authority and the District have entered into an agreement which allows the Local Issuing Authority to conduct such review and approval of the plan without referring the application and plan to the District. The Local Issuing Authority with plan review authority shall approve or disapprove a revised Plan submittal within 35 calendar days of receipt. Failure of the Local Issuing Authority with plan review authority to act within 35 calendar days shall be considered an approval of the revised Plan submittal.
- (5) 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 the application under consideration, the Local Issuing Authority may deny the permit application.
- (6) 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 section 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 Sections 10-64(b) and 10-64(c) of this article, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The "Manual for Erosion and Sediment Control in Georgia" is hereby incorporated by reference into this article. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control, and storm water management facilities, local ordinances, and State laws. Maps, drawings, and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the Commission and in consultation with the Division and the Stakeholder Advisory Board created pursuant to O.C.G.A. 12-7-20.
- (2) Data required for site plan shall include all the information required from the appropriate Erosion,

Sedimentation, and Pollution Control Plan Review Checklist established by the Commission as of January 1, of the year in which the land-disturbing activity was permitted.

(d) *Permits.*

- (1) Permits shall be issued or denied as soon as practicable but in any event not later than forty-five calendar days after receipt by the Local Issuing Authority of a completed application, providing variances and bonding are obtained, where necessary, and all applicable fees have been paid prior to permit issuance. The permit shall include conditions under which the activity may be undertaken.
- (2) No permit shall be issued by the Local Issuing Authority unless the erosion, sedimentation, and pollution control plan has been approved by the District and the Local Issuing Authority has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Section 10-64(c), paragraphs (15), (16) and (17) are obtained, bonding requirements, if necessary, as per Section 10-65(b)(6) are met, and all ordinances, 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 issuing authority, 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 erosion, sedimentation, and pollution control 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.
- (6) The Local Issuing Authority may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of application in light of O.C.G.A. 12-7-7 (f) (1).
- (7) No permit shall be issued unless the applicant provides a statement by the tax commissioner of Monroe County and the city clerk or other tax collector of the city certifying that all ad valorem taxes levied against the property and due and owing have been paid.

Sec. 10-66. Inspection and enforcement.

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

installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he or she shall be deemed in violation of this ordinance.

- (b) The Local Issuing Authority must amend its ordinances to the extent appropriate within 12 months of any amendments to the Erosion and Sedimentation Act of 1975.
- (c) The City Manager, or his or her designee(s) shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- (d) No person shall refuse entry or access to any authorized representative or agent of the Local Issuing Authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his or her official duties.
- (e) The District, or the Commission, or both shall semi-annually review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to O.C.G.A. 12-7-8 (a). The District, or the Commission, or both may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion, sedimentation, and pollution control program. The District, or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.
- (f) The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to 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 90 calendar days within which to take the necessary corrective action to retain certification as a Local Issuing Authority. If the county or municipality does not take necessary corrective action within 90 calendar days after notification by the Division, the Division shall revoke the certification of the county or municipality as a Local Issuing Authority.

Sec. 10-67. 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 ordinance without first obtaining said permit, the person shall be subject to revocation of his business license, work permit, or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the Local Issuing Authority.

(b) *Stop-work orders.*

(1) For the first and second violations of the provisions of this ordinance, the Director or the Local Issuing Authority shall issue a written warning to the violator. The violator shall have five calendar days to correct the violation. If the violation is not corrected within five calendar 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; however, 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;

(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 except for the installation and maintenance of temporary or permanent erosion and sediment controls.

(c) *Bond forfeiture.* If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of Section 10-65(b)(6). The Local Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.

(d) *Monetary penalties.*

Any person who violates any provisions of this ordinance, or any permit condition or limitation established pursuant to this ordinance, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the Director issued as provided in this ordinance shall be liable for a civil penalty not to exceed \$1,000.00 per day. The Municipal Court shall be authorized to impose penalty not to exceed

\$1,000.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.

Sec. 10-68. Education and certification.

- (a) Persons involved in land development design, review, permitting, construction, monitoring, or inspection, or any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. 12-7-20.
- (b) For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the State General Permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the Commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land-disturbance site or multiple sites within a larger common plan 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-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of O.C.G.A. 12-7-19, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in paragraph (4) of subsection (b) of O.C.G.A. 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

Sec. 10-69. Administrative appeal, judicial review.

- (a) *Administrative remedies.* The suspension, revocation, modification or grant with condition of a permit by the Local Issuing Authority, upon finding that the holder is not in compliance with the approved erosion, sediment, and pollution control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the Planning Commission within 15 calendar days after receipt by the Local Issuing Authority of written notice of appeal.
- (b) *Judicial review.* Any person, aggrieved by a decision or order of the local issuing authority, after exhausting his administrative remedies, shall have the right to appeal de novo to the Superior Court of Monroe County, Georgia.

Sec. 10-70. Effectivity, validity, and liability.

- (a) This ordinance shall become effective on the first day of February, 2017.
- (b) Liability.

- a. Neither the approval of a plan under the provisions of this ordinance, nor the compliance with provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law, nor impose any liability upon the Local Issuing Authority or District for damage to any person or property.
- b. The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.
- c. No provision of this ordinance shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved thereunder or pollute any Waters of the State as defined thereby.

Secs. 10-71—10-75. Reserved.

ARTICLE III. WATERSHED PROTECTION

DIVISION 1. GENERALLY

Secs. 10-76—10-85. Reserved.

DIVISION 2. TOBESOFKEE CREEK RESERVOIR*

Sec. 10-86. Title.

This division shall be known as the “City of Forsyth Tobesofkee Creek Watershed Reservoir Regulations.”

Sec. 10-87. Definitions.

The following definitions shall apply with regard to the interpretation of this division:

City means the municipal corporation of Forsyth, Georgia, and its officers, agents, employees, representatives, and where applicable, its elected officials.

Owner means the legal land owner of property adjacent to the city’s Tobesofkee Watershed Reservoir property; as such owners existed as of the 6th day of May, 1986, and their successors upon any conveyance of the adjacent property in conformity with the provisions of this division. The term “owner,” when the context so allows or requires, may also mean those “closely related” to the owner, as to individuals meaning any person who is a parent, grandparent, child, grandchild, brother, sister, husband or wife, by blood or law; and as to a corporation or business entity, “closely related” will mean and include its officers and partners. And “owner” shall also include, where the context allows or requires, a guest or invitee of an owner, but only in the presence of owner or one closely related as defined herein, and not in such numbers as to fall within the meaning of the term “general public.”

General public means all persons other than owner as defined herein.

Person means any person, individual, firm, partnership, corporation, or entity, including governmental entity (other than the City of Forsyth).

Watershed reservoir property means the land and the easements acquired by the city for the ownership, operations and maintenance of the water impoundment known as the City of Forsyth Tobesokee Creek Reservoir and all structures thereon, and as accepted by the city by the resolution of the City of Forsyth of May 6, 1986, and any other acquisitions by the city, whether of fee simple or of essentials related to the ownership, operations, and maintenance of the Tobesofkee Creek Reservoir.

Sec. 10-88. Recreational use restricted to adjacent property owners.

The Tobesofkee Creek Reservoir is and shall be used solely for raw water supply storage and intake, and there is and shall be no public access to the lake and recreational use will and is strictly restricted to property owners bordering the perimeter of the watershed property.

Sec. 10-89. Prohibited acts at reservoir and on reservoir property.

Without in any way limiting the purpose and intent of Section 10-88, the following is and shall be expressly prohibited both to the general public and to owners of adjacent property at the reservoir and on reservoir property:

- (1) The possession or consumption of alcohol, drugs or any controlled substances;
- (2) Wading, swimming or bathing;
- (3) The possession or use of firearms, ammunition, archery equipment including bows and arrows, loaded projectile firing devices or explosives, of any kind;
- (4) The operations or use of any audio or noise producing devices in such a manner as to unreasonably annoy or endanger other individuals;
- (5) Pets;
- (6) Soliciting;
- (7) Glass containers of any kind;
- (8) Littering or dumping;
- (9) Boats with gasoline motors;
- (10) Boats in excess of sixteen (16) feet;
- (11) Sailboats and inner tubes;
- (12) Cleaning of boats with soaps or solvents;
- (13) Any boats that are not properly registered by the State of Georgia or that do not carry appropriate flotation devices;

- (14) Any unlicensed vehicles or unlicensed persons operating licensed vehicles;
- (15) Trail bikes, minibikes, go-carts or motorcycles that are not equipped and licensed for street use;
- (16) The discharge of any pollutant;
- (17) Destruction, injury, defacement or removal of any property of the city;
- (18) Withdrawal of water from the watershed.

Sec. 10-90. Activities permitted only to adjacent owners.

The following is expressly prohibited at the reservoir and reservoir property, except to adjacent owners: Fishing from roads, banks, dams or boats.

Sec. 10-91. User identification.

Persons using the reservoir facility will be required to show proper identification upon the request of any agent or representative of the city, and any agent or representative of the Department Of Natural Resources, and any law enforcement officer.

Sec. 10-92. Permit required for access to reservoir.

- (a) The Tobesofkee Creek Reservoir may be used only by those adjacent owners who have secured the proper permits from the City of Forsyth, using the forms provided by the city and in substantially the form attached hereto and incorporated herein by reference.* Only adjacent owners as defined in this division, including those “closely related”, or guests, or the successors of owners upon any conveyance of the adjacent property, and only when granted by appropriate affirmative vote of the Mayor And Council, shall be allowed permits for access to the reservoir.
- (b) In making decisions as to the grant or denial of any access permit, the council shall consider the following:
 - (1) The adjacent owner must own a minimum of ten (10) acres, with a minimum common boundary with the reservoir property of at least five hundred (500) feet;
 - (2) Soil erosion and sedimentation controls must be assured, by a registered engineer, in writing, in accordance with state EPD standards;
 - (3) Septic tanks and absorption fields must meet all state standards, and all improvements, including wells and sewage/septic systems must be at least above five hundred ten (510) feet mean sea level and no closer to the reservoir property than three hundred (300) feet.
 - (4) Building density shall not be greater than one (1) principal dwelling unit per ten (10) acres. Only single-family units will be allowed.
 - (5) No commercial development shall be permitted, with the exception of a “home occupation” as defined in the city zoning code and if allowed by the city board of zoning appeals.

- (6) A buffer (defined as meaning a natural or enhanced vegetated area with only limited minor land disturbances, such as trails and picnic areas) shall be maintained for a distance of one hundred fifty (150) feet from the reservoir boundary.

- (c) Access of any permitted person from adjacent property to the watershed shall be at such point as the adjacent property abuts the watershed property, or in reasonable proximity thereto, but shall not encroach upon any other adjacent owner without the express permission of such adjacent owner, nor shall any permitted owner have any rights or access to adjacent property not owned by the permitted owner as it abuts the reservoir.

- (d) The adjacent owners do not own any shoreline of the watershed, and under no circumstances are any docks, decks, boat moors, or any type of structure of any kind whatsoever to be allowed to encroach onto the watershed property or into the watershed reservoir.

Sec. 10-93. Hold harmless provisions.

The city shall be held harmless from any claims, costs, losses or damages which the adjacent owners may at any time have against the city arising out of or in any way connected with the use of reservoir facilities. The city is not an insurer of adjacent owners, or any other persons coming upon the watershed property of the city; and no users of the watershed property, whether adjacent owners with permits, or trespassers, shall have any rights or claims or causes of action against the city.

Sec. 10-94. Noncompliance; revocation of permit, fine, expulsion.

- (a) Any noncompliance by a permitted adjacent owner with any of the regulations set by this division, as stated herein or as may be amended from time to time, shall result in the city having the right to suspend, revoke, or otherwise limit any permits, after reasonable notice to such offender, and after the right of the offender, upon due notice, to appear before the council and explain any extenuating or mitigating circumstances.

- (b) Further, the city reserves the right to fine, and/or expel any persons, whether permitted or trespasser, for the violation of any rule or regulation of the city governing the watershed reservoir and the city shall not be prohibited or limited from seeking any other remedies as may be provided by law.

Secs. 10-95—10-120. Reserved.