

**AN ORDINANCE TO AMEND THE SOIL EROSION AND
SEDIMENTATION CONTROL ORDINANCE OF THE CITY OF COMER**

THE COUNCIL OF THE CITY OF COMER
HEREBY ORDAINS THAT:

WHEREAS, the Mayor and City Council have determined that it is in the best interests of and consistent with the convenience and necessity of the City of Comer to amend its city code, the following action is taken:

THEREFORE, the Mayor and City Council ordain as follows:

SECTION 1. THE CODE OF THE CITY OF COMER, GEORGIA, IS HEREBY AMENDED BY STRIKING AND REPLACING SECTIONS 35-101 THROUGH 35-108 WITH A NEW SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE, SECTIONS 35-101 THROUGH 35-110, TO READ AS FOLLOWS:

"City of Comer, Georgia Soil Erosion And Sedimentation Control Ordinance

SECTION 35-101 TITLE

This ordinance will be known as the City of Comer Soil Erosion and Sedimentation Control Ordinance.

SECTION 35-102 DEFINITIONS

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

1. **Best Management Practices (BMP's):** A collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control. The term "properly designed" means designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. 12-7-6 subsection (b).
2. **Board:** The Board of Natural Resources.
3. **Buffer:** The area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.
4. **Commission:** The State Soil & Water Conservation Commission.
5. **Cut:** A portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface. Also known as excavation.
6. **Department:** The Department of Natural Resources.
7. **Director:** The Director of the Environmental Protection Division of the Department of Natural Resources.
8. **District:** The Broad River Soil and Water Conservation District.
9. **Division:** The Environmental Protection Division of the Department of Natural Resources.
10. **Drainage Structure:** A device composed of a virtually nonerodible material such as

concrete, steel, plastic or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm-water management, drainage control, or flood control purposes.

11. **Erosion:** The process by which land surface is worn away by the action of wind, water, ice or gravity.
12. **Erosion and Sedimentation Control Plan:** A plan for the control of soil erosion and sedimentation resulting from a land- disturbing activity. Also known as the “plan”.
13. **Fill:** A portion of land surface to which soil or other solid material has been added; the depth above the original ground.
14. **Finished Grade:** The final elevation and contour of the ground after cutting or filling and conforming to the proposed design.
15. **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.
16. **Ground Elevation:** The original elevation of the ground surface prior to cutting or filling.
17. **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 35-103, Paragraph 5.
18. **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.
19. **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.
20. **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.
21. **Natural Ground Surface:** The ground surface in its original state before any grading, excavation or filling.
22. **Nephelometric Turbidity Units (NTU):** Numerical units of measure based upon photometric analytical techniques for measuring the light scattered by finely divided particles of a substance in suspension. This technique is used to estimate the extent of turbidity in water in which colloiddally dispersed particles are present.
23. **Operator:** The party or parties that have: (A) operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or (B) day-to-day operational control of those activities that are necessary to ensure compliance with a storm-water pollution prevention plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the storm-water pollution prevention plan or to comply with other permit conditions.
24. **Permit:** The authorization necessary to conduct a land-disturbing activity under the provisions of this ordinance.
25. **Person:** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of this State, any

- interstate body or any other legal entity.
26. **Project:** The entire proposed development project regardless of the size of the area of land to be disturbed.
 27. **Qualified Personnel:** Any person who meets or exceeds the education and training requirements of O.C.G.A. 12-7-19.
 28. **Roadway Drainage Structure:** A device such as a bridge, culvert, or ditch, composed of a virtually nonerrodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.
 29. **Sediment:** Solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, ice, or gravity as a product of erosion.
 30. **Sedimentation:** The process by which eroded material is transported and deposited by the action of water, wind, ice or gravity.
 31. **Soil and Water Conservation District Approved Plan:** An erosion and sedimentation control plan approved in writing by the Broad River soil and water conservation district.
 32. **Stabilization:** The process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.
 33. **State General Permit:** The National Pollution Discharge Elimination System general permit or permits for storm-water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.
 34. **State Waters:** Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.
 35. **Structural Erosion and Sedimentation Control Practices:** Practices for the stabilization of erodible or sediment-producing areas by utilizing the mechanical properties of matter for the purpose of either changing the surface of the land or storing, regulating or disposing of runoff to prevent excessive sediment loss. Examples of structural erosion and sediment control practices are riprap, sediment basins, dikes, level spreaders, waterways or outlets, diversions, grade stabilization structures, sediment traps and land grading, etc. Such practices can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.
 36. **Trout Streams:** All streams or portions of streams within the watershed as designated by the Game and Fish Division of the Georgia Department of Natural Resources under the provisions of the Georgia Water Quality Control Act, O.C.G.A. 12-5-20 et. seq. 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.
 37. **Vegetative Erosion and Sedimentation Control Measures:** Measures for the stabilization of erodible or sediment-producing areas by covering the soil with:
 - a. Permanent seeding, sprigging or planting, producing long-term vegetative cover; or
 - b. Temporary seeding, producing short-term vegetative cover; or

c. Sodding, covering areas with a turf of perennial sod-forming grass. Such measures can be found in the publication *Manual for Erosion and Sediment Control in Georgia*.

38. **Watercourse:** Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a definite channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.
39. **Wetlands:** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

SECTION 35-103 EXEMPTIONS

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

1. Surface mining, as the same is defined in O.C.G.A. 12-4-72, "Mineral Resources and Caves Act";
2. Granite quarrying and land clearing for such quarrying;
3. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
4. The construction of 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 Section 35-104 of this ordinance 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 Section 35-104 of this ordinance and the buffer zones provided by this section shall be enforced by the issuing authority;
5. Agricultural operations as defined in O.C.G.A. 1-3-3, "definitions", to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aqua culture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;
6. Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise

prohibited in a buffer, as established in paragraphs (15) and (16) of Section 35-104 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;

7. Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;
8. Any project involving less than one acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "State Waters" excludes channels and drainageways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainageway, must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained herein shall prevent the Local Issuing Authority from regulating any such project which is not specifically exempted by paragraphs 1, 2, 3, 4, 5, 6, 7, 9 or 10 of this section;
9. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of Department of Transportation or State Tollway Authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. 12-7-7.1; except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the local issuing authority, the local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;
10. Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission. Any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and
11. Any public water system reservoir.

SECTION 35-104

MINIMUM REQUIREMENTS FOR EROSION AND SEDIMENTATION

CONTROL USING BEST MANAGEMENT PRACTICES

A. GENERAL PROVISIONS

Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities. Therefore, plans for those land-disturbing activities which are not exempted by this ordinance shall contain provisions for application of soil erosion and sedimentation control measures and practices. The provisions shall be incorporated into the erosion and sedimentation control plans. Soil erosion and sedimentation control measures and practices shall conform to the minimum requirements of Section 35-104 B. & C. of this ordinance. The application of measures and practices shall apply to all features of the site, including street and utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sedimentation pollution during all stages of any land-disturbing activity.

B. MINIMUM REQUIREMENTS/BMPs

1. Best management practices as set forth in Section 35-104 B. & C. of this ordinance shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with paragraph (2) of this subsection or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to subsection (f) of O.C.G.A. 12-5-30, the "Georgia Water Quality Control Act". As used in this subsection the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in O.C.G.A. 12-7-6 subsection (b).
2. A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by 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 ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the Director. This paragraph shall not apply to any land disturbance associated with the construction of single family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than **one** acre.
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.

C. The rules and regulations, ordinances, or

resolutions adopted pursuant to this chapter for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the *Manual for Erosion and Sediment Control in Georgia* published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

1. Stripping of vegetation, regrading and other development activities shall be conducted in a

- manner so as to minimize erosion;
2. Cut-fill operations must be kept to a minimum;
 3. Development plans must conform to topography and soil type so as to create the lowest practical erosion potential;
 4. Whenever feasible, natural vegetation shall be retained, protected and supplemented;
 5. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
 6. Disturbed soil shall be stabilized as quickly as practicable;
 7. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
 8. Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
 9. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. 12-7-1 et. seq.;
 10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
 11. Cuts and fills may not endanger adjoining property;
 12. Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
 13. Grading equipment must cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;
 14. Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on-site or preclude sedimentation of adjacent waters beyond the levels specified in Section 35-104 B. 2. of this ordinance;
 15. Except as provided in paragraph (16) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director pursuant to O.C.G.A. 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; provided, however, the buffers of at least 25 feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the "Georgia Water Quality Control Act", shall remain in force unless a variance is granted by the Director as provided in this paragraph. The following requirements shall apply to any such buffer:
 - a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

- b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines; and
16. There is established a 50 foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of Title 12, the "Georgia Water Quality Control Act", except where a roadway drainage structure must be constructed ; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25 foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the Board, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The Director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:
- a. No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and
 - b. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented: (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.
- D. Nothing contained in this chapter 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 Section 35-104 B. & C. of this ordinance.
- E. The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this ordinance or the terms of the permit.

SECTION 35-105 APPLICATION/PERMIT PROCESS

A. GENERAL

The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of the Local Issuing Authority that affect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this ordinance, and other ordinances which regulate the development of land within the jurisdictional boundaries of the Local Issuing Authority. However, the operator is the only party who may obtain a permit.

B. APPLICATION REQUIREMENTS

1. No person shall conduct any land-disturbing activity within the City of Comer's jurisdictional boundaries of the without first obtaining a permit from the Office of the City Clerk to perform such activity.
2. The application for a permit shall be submitted to the Office of the City Clerk and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, as a minimum, the data specified in Section 35-105 C. of this ordinance. Soil erosion and sedimentation control plans shall conform to the provisions of Section 35-104 B. & C. of this ordinance. Applications for a permit will not be accepted unless accompanied by (9) copies of the applicant's soil erosion and sedimentation control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan or that such a visit was not required in accordance with rules and regulations established by the board.
3. A fee, in the amount of Thirty Dollars (\$30.00) shall be charged for each acre or fraction thereof in the project area.
4. In addition to the local permitting fees, fees will also be assessed pursuant to paragraph (5) subsection (a) of O.C.G.A. 12-5-23, provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land disturbance permit. In a jurisdiction that is certified pursuant to subsection (a) of O.C.G.A. 12-7-8 half of such fees levied shall be submitted to the division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of O.C.G.A. 12-7-17 shall be submitted in full to the division, regardless of the existence of a local issuing authority in the jurisdiction.
5. Immediately upon receipt of an application and plan for a permit, the Local Issuing Authority shall refer the application and plan to the District for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan. A District shall approve or disapprove a plan within 35 days of receipt. Failure of a District to act within 35 days shall be considered an approval of the pending plan. The results of the District review shall be forwarded to the Issuing Authority. No permit will be issued unless the plan has been approved by the District, and any variances required by Section 35-104 C. 15. & 16. and bonding, if required as per Section 35-105 B.7. , have been obtained. Such review will not be required if the Issuing Authority and the District have entered into an agreement which allows the Issuing Authority to conduct such review and approval of the plan without referring the application and plan to the District.
6. If a permit applicant has had two or more violations of previous permits, this ordinance section, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the Local Issuing Authority may deny the permit application.
7. The Local Issuing Authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this ordinance 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 Section 35-104

B. & C. of this ordinance. Conformance with the minimum requirements may be attained through the use of design criteria in the current issue of the *Manual for Erosion and Sediment Control in Georgia*, published by the State Soil and Water Conservation Commission as a guide; or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The *Manual for Erosion and Sediment Control in Georgia* is hereby incorporated by reference into this ordinance. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and storm water management facilities, local ordinances and State laws.

2. Data Required for Site Plan
 - a. Narrative or notes, and other information: Notes or narrative to be located on the site plan in general notes or in erosion and sediment control notes.
 - b. Description of existing land use at project site and description of proposed project.
 - c. Name, address, and phone number of the property owner.
 - d. Name and phone number of 24-hour local contact who is responsible for erosion and sedimentation controls.
 - e. Size of project, or phase under construction, in acres.
 - f. Activity schedule showing anticipated starting and completion dates for the project. Include the statement in **bold letters**, that “the installation of erosion and sedimentation control measures and practices shall occur prior to or concurrent with land-disturbing activities.”
 - g. Stormwater and sedimentation management systems-storage capacity, hydrologic study, and calculations, including off-site drainage areas.
 - h. Vegetative plan for all temporary and permanent vegetative measures, including species, planting dates, and seeding, fertilizer, lime, and mulching rates. The vegetative plan should show options for year-round seeding.
 - i. Detail drawings for all structural practices. Specifications may follow guidelines set forth in the *Manual for Erosion and Sediment Control in Georgia*.
 - j. Maintenance statement - “Erosion and sedimentation control measures will be maintained at all times. If full implementation of the approved plan does not provide for effective erosion and sediment control, additional erosion and sediment control measures shall be implemented to control or treat the sediment source.”
3. Maps, drawings, and supportive computations shall bear the signature/seal of a registered or certified professional in engineering, architecture, landscape architecture, land surveying, or erosion and sedimentation control. After December 31, 2006, all persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements as developed by the commission pursuant to O.C.G.A. 12-7-20. The certified plans shall contain:
 - a. Graphic scale and north point or arrow indicating magnetic north.
 - b. Vicinity maps showing location of project and existing streets.
 - c. Boundary line survey.
 - d. Delineation of disturbed areas within project boundary.
 - e. Existing and planned contours, with an interval in accordance with the following:

Map Scale	Ground Slope	Contour Interval, ft.
1 in. = 100 ft. or larger scale	Flat 0-2% Rolling 2-8% Steep 8% +	0.5 or 1 1 or 2 2, 5 or 10

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

D. PERMITS

1. Permits shall be issued or denied as soon as practicable but in any event not later than forty-five (45) days after receipt by the Local Issuing Authority of a completed application, providing variances and bonding are obtained, where necessary.
2. No permit shall be issued by the Local Issuing Authority unless the erosion and sedimentation control plan has been approved by the District and the Local Issuing Authority has affirmatively determined that the plan is in compliance with this ordinance, any variances required by Section 35-104 C. 15. & 16. are obtained, bonding requirements, if necessary, as per Section 35-105 B.7 are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the Local Issuing Authority are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
3. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
4. The permit may be suspended, revoked, or modified by the Local Issuing Authority, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this ordinance. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

SECTION 35-106 INSPECTION AND ENFORCEMENT

- A. The Erosion Control Enforcement Officer will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the Local Issuing Authority shall regulate both primary and secondary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this ordinance, a written notice to comply shall be served upon

- that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this ordinance.
- B. The City of Comer 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.
 - C. No person shall refuse entry or access to any authorized representative or agent of the Issuing Authority, the Commission, the District, or Division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
 - D. The Districts or the Commission or both shall periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to O.C.G.A. 12-7-8 (a). The Districts or the Commission or both may provide technical assistance to any county or municipality for the purpose of improving the effectiveness of the county's or municipality's erosion and sedimentation control program. The Districts or the Commission shall notify the Division and request investigation by the Division if any deficient or ineffective local program is found.
 - E. The Board, on or before December 31, 2003, shall promulgate rules and regulations setting forth the requirements and standards for certification and the procedures for decertification of a local issuing authority. The Division may periodically review the actions of counties and municipalities which have been certified as Local Issuing Authorities pursuant to Code Section 12-7-8 (a). Such review may include, but shall not be limited to, review of the administration and enforcement of a governing authority's ordinance and review of conformance with an agreement, if any, between the district and the governing authority. If such review indicates that the governing authority of any county or municipality certified pursuant to O.C.G.A. 12-7-8 (a) has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. 12-7-7 (e), the Division shall notify the governing authority of the county or municipality in writing. The governing authority of any county or municipality so notified shall have 30 days within which to take the necessary corrective action to retain certification as a Local Issuing Authority. If the county or municipality does not take necessary corrective action within 30 days after notification by the division, the division may revoke the certification of the county or municipality as a Local Issuing Authority.

SECTION 35-107 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 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 days to correct the violation. If the violation is not corrected within five days, the Director or the Local Issuing Authority shall issue a stop-work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state or if the land-disturbing activities are conducted without obtaining the necessary permit, the Director or the Local Issuing Authority shall issue an immediate stop-work order in lieu of a warning;
 - 2. For a third and each subsequent violation, the Director or the Local Issuing Authority shall issue an immediate stop-work order; and;

3. All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
 4. When a violation in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the local issuing authority or by the director or his or her designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the local issuing authority or by the director or his or her designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.
- C. **BOND FORFEITURE** If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this 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 35-105 B.7. The Issuing Authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
- D. **MONETARY PENALTIES**
1. 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 \$2,500.00 per day. For the purpose of enforcing the provisions of this ordinance, notwithstanding any provisions in any City charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed \$2,500.00 for each violation. Each day during which violation or failure or refusal to comply continues shall be a separate violation.
 2. The following penalties shall apply to land-disturbing activities performed in violation of any provision of this ordinance, any rules and regulations adopted pursuant hereto, or any permit condition or limitation established pursuant to this ordinance;
 - (a) There shall be a minimum penalty of \$250.00 per day for each violation involving the construction of a single-family dwelling by or under contract with the owner for his or her own occupancy; and;
 - (b) There shall be a minimum penalty of \$1,000.00 per day for each violation involving land-disturbing activities other than as provided in subsection (a) of this paragraph.

SECTION 35-108 EDUCATION AND CERTIFICATION

After December 31, 2006, all persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, 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.

SECTION 35-109 ADMINISTRATIVE APPEAL / JUDICIAL REVIEW

A. **ADMINISTRATIVE REMEDIES**

The suspension, revocation, modification or grant with condition of a permit by the Issuing Authority upon finding that the holder is not in compliance with the approved erosion and sediment control plan; or that the holder is in violation of permit conditions; or that the holder is in violation of any ordinance; shall entitle the person submitting the plan or holding the permit to a hearing before the City of Comer within

30 (thirty) days after receipt by the Issuing Authority of written notice of appeal.

B. JUDICIAL REVIEW

Any person, aggrieved by a decision or order of the Issuing Authority, after exhausting his administrative remedies, shall have the right to appeal de novo to the Superior Court of Madison County, Georgia.

SECTION 35-110 EFFECTIVITY, VALIDITY AND LIABILITY

A. EFFECTIVITY

This ordinance shall become effective on the 4th day of April, 2006.

B. VALIDITY

If any section, paragraph, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decisions shall not effect the remaining portions of this ordinance.

C. LIABILITY

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

SECTION 2. LIABILITY

Neither the approval of any action 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 Mayor or City Council for damage to any person or property.

SECTION 3. CONFLICTS BETWEEN SPECIFIC AND GENERAL PROVISIONS.

Where there is an apparent conflict in this Ordinance between specific and general provisions, it is the intention hereof that the specific shall control.

SECTION 4. SEVERABILITY.

If any section, provision, or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this Ordinance would have been adopted had such invalid portion not been included herein.

SECTION 5. REPEAL OF CONFLICTING PROVISIONS.

All ordinances or parts of ordinances in conflict with this ordinance, and not preserved hereby, are

hereby repealed.

SECTION 6. EFFECTIVE DATE

This Ordinance shall become effective immediately after its passage and approval in the manner prescribed by law.

Passed and approved this 5 day of September, 2006, at a meeting of the Mayor and Council of the City of Comer, Georgia.

Attest:

William E. Burroughs, Mayor, City of Comer

Stephen H. Sorrells, City Clerk
[CITY SEAL]

Approved as to Legal Form:

Victor Y. Johnson, City Attorney