

EXHIBIT A

Division III. Application and Permit Process. Sec. 9-21.

General.

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

Sec. 9-22. Permit Application Requirements.

No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the City of Powder Springs without first obtaining a permit from the City of Powder Springs to perform such activity and providing a copy of Notice of Intent submitted to EPD, if applicable. The following permit applications procedures are hereby established and shall control processing and issuance of permits under this article:

- (a) **Plan and data.** The application for a permit shall be submitted to the City of Powder Springs 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 Sec. 9-23 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 this article will be met. Applications for a permit will not be accepted unless accompanied by four 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.
- (b) **Fees.** 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~~ accordance with subsection (a) of O.C.G.A. 12-7-8 half of such fees levied shall be submitted to the division and half shall be submitted to the City of Powder Springs; 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.

- (c) ~~District~~ **City of Powder Springs review of plans.** Following receipt of an application and plan for a permit and following completion of local review for compliance, 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 deny 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 this article have been obtained, all fees have been paid, and bonding, if required per this article, have been obtained. Such review will not be required if the local issuing authority and the district have entered into an agreement which allows the local issuing authority to conduct such review and approval of the plan without referring the application and plan to the district. The local issuing authority with plan review authority~~ **City of Powder Springs** shall approve or disapprove a revised plan ~~submittal~~ within 35 calendar days of receipt. Failure of the ~~local issuing authority with plan review authority~~ **City of Powder Springs** to act within 35 calendar days shall be considered an approval of the revised plan submittal.
- (d) **Denial for violations.** If a permit applicant has had 2 or more violations of previous permits, this article, or the Erosion and Sedimentation Act, as amended, within 3 years prior to the date of filing the application under consideration, the ~~local issuing authority~~ **City of Powder Springs** may deny the permit application.
- ~~(e)~~ **Bond.** The ~~local issuing authority~~ **City of Powder Springs** 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~~ **City of Powder Springs 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.~~

Sec. 9-23. Plan Requirements.

All erosion, sedimentation and pollution control plans shall comply with the following requirements:

- (a) Plans must be prepared to meet the minimum requirements 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.
- (b) The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and 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.

- (c) 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.
- (d) 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.

Sec. 9-24. Permits.

Permits shall be issued or denied as soon as practicable but in any event not later than 45 calendar days after receipt by the ~~local issuing authority~~ City of Powder Springs 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.

- (a) **Permit requires plan approval.** No permit shall be issued by the ~~local issuing authority~~ City of Powder Springs 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~~ City of Powder ~~is~~ in compliance with this article, any variances required are obtained, bonding requirements, if necessary, are met and all additional ordinances and rules and regulations in effect within the jurisdictional boundaries of the ~~local issuing authority~~ City of Powder Springs are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
- (b) **Land disturbance consistent with this article.** Any land-disturbing activities by ~~a local issuing authority~~ The City of Powder Springs shall be subject to the same requirements of this article, 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~~ City of Powder Springs.
- (c) **Phasing.** If the tract is to be developed in phases, then a separate permit shall be required for each phase.
- (d) **Suspension, revocation, or modification of permit.** The permit may be suspended, revoked, or modified by the ~~local issuing authority~~ City of Powder Springs, 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 article. 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.
- (e) **Rejection for prior violations.** The ~~local issuing authority~~ City of Powder Springs may reject a permit application if the applicant has had two or more violations of previous permits or the Erosion and Sedimentation Act permit requirements within three years prior to the date of the application, in light of O.C.G.A. 12-7-7 (f) (1).

[Secs. 9-25 to 9-30 Reserved].

Division IV. Inspection and Enforcement. Sec. 9-

31. Inspections.

- (a) **Inspections and regulation of permittees.** The city 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~~ City of Powder Springs shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit.
- (b) **Permittee responsibilities.** 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.
- (c) **Notice to comply for non-compliance.** If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this article, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article.

Sec. 9-32. Required Amendment to this Article.

The ~~local issuing authority~~ City of Powder Springs shall amend its ordinances to the extent appropriate within 12 months of any amendments to the Erosion and Sedimentation Act of 1975.

Sec. 9-33. Investigations.

The city shall have the power to conduct such investigations as it may reasonably deem necessary to carry out duties as prescribed in this article, 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.

Sec. 9-34. No Refusal of Access.

No person shall refuse entry or access to any authorized representative or agent of the ~~local issuing authority~~ City of Powder Springs, 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.

Sec. 9-35. Review of Actions.

- (a) **Review by district or commission.** 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.
- (b) **Review of local issuing authority actions.** 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 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 municipality does not take necessary corrective action within 90 calendar days after notification by the division, the division shall revoke the certification of the municipality as a local issuing authority.

Sec. 9-36. Failure to Obtain a Permit for Land-Disturbing Activity.

If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this article without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the jurisdictional boundaries of the ~~local issuing authority~~ City of Powder Springs.

Sec. 9-37. Stop Work Orders.

For the first and second violations of the provisions of this article, the director or ~~the local issuing authority~~ Community Development or his/her designee shall issue a written warning to the violator. The violator shall have five business days to correct the violation. If the violation is not corrected within five business days, the director ~~or the local issuing authority of~~ Community Development 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.

- (a) For a third and each subsequent violation, the director ~~or the local issuing authority of~~ Community Development shall issue an immediate stop-work order; and
- (b) All stop-work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

- (c) 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~~ City of Powder Springs 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~~ City of Powder Springs 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.

Sec. 9-38. Bond Forfeiture.

If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this article and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of this article. The ~~local issuing authority~~ City of Powder Springs 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.

Sec. 9-39. Monetary Penalties.

Any person who violates any provisions of this article, or any permit condition or limitation established pursuant to this article, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the director issued as provided in this article shall be liable for a civil penalty not to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this article, notwithstanding any provisions in any city charter to the contrary, municipal courts shall be authorized to impose penalty not to exceed \$2,500.00 for each violation. Each day during which a violation, or failure or refusal to comply continues, shall be a separate violation.

[Sec. 9-40 Reserved].

Division V. Education and Certification.

Sec. 9-41. Education and Training Certification Requirements.

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

Sec. 9-42. On-site Responsibility.

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

[Secs. 9-43 to 9-50 Reserved].

Division VI. Legal Status Provisions.

Sec. 9-51. Administrative Remedies.

The suspension, revocation, modification or grant with condition of a permit by the ~~local issuing authority~~ City of Powder Springs 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 Mayor and Council of the City of Powder

Springs within 30 calendar days after receipt by the ~~local issuing authority~~ City of Powder Springs of written notice of appeal.

Sec. 9-52. 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 Cobb County.

Sec. 9-54. Validity.

Should any section, paragraph, clause, phrase, or provision of this article be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this article or development code.

Sec. 9-55. Liability.

- (a) Neither the approval of a plan under the provisions of this article, nor the compliance with provisions of this article shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the ~~local issuing authority~~ City of Powder Springs 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 article or the terms of the permit.
- (c) No provision of this article 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. 9-56 to 9-60 Reserved].