

STATE OF GEORGIA

COUNTY OF CLAYTON

ORDINANCE NO. 2018-23

AN ORDINANCE TO AMEND THE CODE OF CLAYTON COUNTY, GEORGIA, AS AMENDED, SPECIFICALLY, CODE OF CLAYTON COUNTY, GEORGIA, CHAPTER 38 “ENVIRONMENT”, ARTICLE II “SOIL EROSION AND SEDIMENT CONTROL”; TO REPEAL CONFLICTING LAWS, ORDINANCES, AND RESOLUTIONS; TO PROVIDE SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

NOW THEREFORE, BE IT ORDAINED BY THE CLAYTON COUNTY BOARD OF COMMISSIONERS AND IT IS HEREBY ORDAINED

Section 1. The Code of Clayton County, Georgia, as amended, is hereby further amended by adding the following definitions to Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-26 “Definitions” as follows:

Sec. 38-26. Definitions

....

Coastal Marshlands: Shall have the same meaning as in O.C.G.A. 12-5-282.

....

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

Section 2. The Code of Clayton County, Georgia, as amended, is hereby further amended by striking the definitions of “department,” “design professional,” “director,” “final stabilization” and “trout streams” in Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-26 “Definitions” in their entirety and adding the below definitions to Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-26 “Definitions” to read as follows:

....

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 or an authorized representative.

....

Final Stabilization: All soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or 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.

....

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.

Section 3. The Code of Clayton County, Georgia, as amended, is hereby further amended by deleting in its entirety subsection (d) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-27 “Exemptions” and replacing it with a new subsection (d) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-27 “Exemptions” to read as follows:

Sec. 38-27. – Exemptions.

....

(d) The construction of single-family residences, when such construction disturbs less than one (1) 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 (1) 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

Section 4. The Code of Clayton County, Georgia, as amended, is hereby further amended by deleting in its entirety subsection (b)(5) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-28 “Minimum requirements for erosion, sedimentation and pollution control using best management practices” and replacing it with a new subsection (b)(5) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-28 “Minimum requirements for erosion, sedimentation and pollution control using best management practices” to read as follows:

....

(5) The Local Issuing Authority may set more stringent buffer requirements than stated in subsections (c)(15),(16) and (17), in light of O.C.G.A. § 12-7-6 (c).

Section 5. The Code of Clayton County, Georgia, as amended, is hereby further amended by deleting in its entirety subsection (c)(15) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-28 “Minimum requirements for erosion, sedimentation and pollution control using best management practices” and replacing it with

a new subsection (c)(15) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-28 “Minimum requirements for erosion, sedimentation and pollution control using best management practices” to read as follows:

(c)....

(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:

Section 6. The Code of Clayton County, Georgia, as amended, is hereby further amended by adding subsection (c)(17) to Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-28 “Minimum requirements for erosion, sedimentation and pollution control using best management practices” to read as follows:

(c)....

(17). There is established a 25 foot buffer along coastal marshlands, as measured horizontally from the coastal marshland-upland interface, as determined in accordance with Chapter 5 of Title 12 of this title, the “Coastal Marshlands Protection Act of 1970.” And the rules and regulations promulgated thereunder, 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 Code Section 12-2-8, where an alteration within the buffer area has been authorized pursuant to Code Section 12-5-286, for maintenance of any currently serviceable structure, landscaping, or hardscaping, including bridges, roads, parking lots, golf courses, golf cart paths, retaining walls, bulkheads, and patios; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, where a drainage

structure or roadway drainage structure is constructed or maintained; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented, on the landward side of any currently serviceable shoreline stabilization structure, or for the maintenance of any manmade storm-water detention basin, golf course pond, or impoundment that is located entirely within the property of a single individual, partnership, or corporation; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented. For the purposes of this paragraph maintenance shall be defined as actions necessary or appropriate for retaining or restoring a currently serviceable improvement to the specified operable condition to achieve its maximum useful life. Maintenance includes emergency reconstruction of recently damaged parts of a currently serviceable structure so long as it occurs within a reasonable period of time after damage occurs. Maintenance does not include any modification that changes the character, scope or size of the original design and serviceable shall be defined as usable in its current state or with minor maintenance but not so degraded as to essentially require reconstruction.

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; 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

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, however, 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, however, 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 Act 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; provided, however, that 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 391-3-7-.01(r), provided that the total area of buffer impacts is less than 5,000 square feet are 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 days prior to the commencement of land disturbing activities.

Section 7. The Code of Clayton County, Georgia, as amended, is hereby further amended by deleting in its entirety subsection (b)(4) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-29 “Application/permit process” and replacing it with a new subsection (b)(4) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-29 “Application/permit process” to read as follows:

(b)....

(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 days of receipt. Failure of the 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 Local Issuing Authority. No permit will be issued unless the plan has been approved by the District, and any variances required subsection 38-28(c)(15), (16) and (17) have been obtained, all fees have been paid, and bonding, if required as per paragraph (6) of this subsection (b) 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 shall approve or disapprove a revised Plan submittal within 35 days of receipt. Failure of the Local Issuing Authority with plan review authority to act within 35 days shall be considered an approval of the revised Plan submittal.

Section 8. The Code of Clayton County, Georgia, as amended, is hereby further amended by deleting in its entirety subsection (a) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-34 “Effectivity, validity and liability” and replacing it with a new subsection (a) of Chapter 38 “Environment”, Article II “Soil Erosion and Sediment Control”, Sec. 38-34 “Effectivity, validity and liability” to read as follows:

(a) Effectivity. This division shall become effective on the 20th day of March, 2018.

Section 9. All laws, ordinances and resolutions, or parts thereof, which conflict with the provisions of this Ordinance are hereby repealed.

Section 10. If this Ordinance in whole or in part is determined to be unconstitutional by any court of competent jurisdiction, such unconstitutionality shall not

affect the remainder of this enactment, and such remainder shall remain in full force and effect.

Section 11. This Ordinance shall become effective immediately upon its approval by the Board of Commissioners.

SO ORDAINED, this the 20th day of March, 2018.

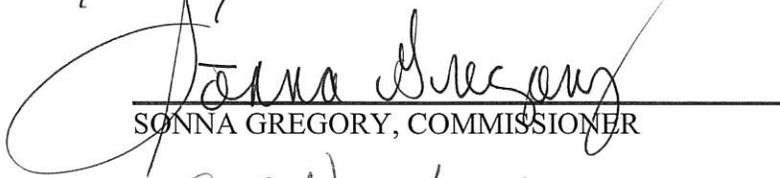
CLAYTON COUNTY BOARD OF COMMISSIONERS



JEFFREY E. TURNER, CHAIRMAN

 (absent for vote)

MICHAEL EDMONDSON, VICE CHAIRMAN



SONNA GREGORY, COMMISSIONER



GAIL HAMBRICK, COMMISSIONER



FELICIA FRANKLIN WARNER, COMMISSIONER

ATTEST:



SANDRA T. DAVIS, CLERK