

## **ORDINANCE NO. XXXX**

### **AN ORDINANCE REGULATING ENVIRONMENTAL PERMITS RELATED TO LAND DISTURBANCE WITHIN THE CITY OF FOLEY**

**WHEREAS**, the City of Foley, Alabama adopted Ordinance No. 993-07 on the 20<sup>th</sup> day of August, 2007, providing for erosion and sediment control.

**WHEREAS**, the City of Foley, Alabama adopted Ordinance No. 1009-07 on the 1<sup>st</sup> day of October, 2007, providing for tree and natural feature preservation and restoration.

**WHEREAS**, the City of Foley, Alabama amended Ordinance No. 993-07 under Ordinance No. 1022-08 on the 21<sup>st</sup> day of January, 2008, providing fees and maintenance in the erosion and sediment control ordinance and rescinding Ordinance No. 860-05.

**WHEREAS**, the City Council of the City of Foley, Alabama deems it to be in the best interest of public health, safety and the general welfare of its citizens to establish regulations for environmental matters related to land disturbance; and

**WHEREAS**, it is in the best interest of the citizens of the City of Foley and the continued development of the area to implement satisfactory controls for construction best management practices including but not limited to erosion and sediment controls and tree planting requirements for land disturbance within the City of Foley.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA AS FOLLOWS:**

#### **SECTION I: TITLE**

This Ordinance shall be titled ORD. NO. XXXX ENVIRONMENTAL PERMITS RELATED TO LAND DISTURBANCE WITHIN THE CITY OF FOLEY.

#### **SECTION II: JURISDICTION**

The provisions of this Ordinance shall apply to all lands within the corporate limits of the City of Foley and subdivision developments within the Planning Jurisdiction of the City of Foley.

#### **SECTION III: PURPOSE**

The intent of this Ordinance is to provide minimum standards to ensure effective storm water management, drainage management, tree protection, tree restoration and construction best management practices for individual residential dwellings, developments and any other activity that results in more than five hundred (500) square feet of land disturbance with the exceptions for land disturbances as noted in Section V.

#### **SECTION IV: DEFINITIONS**

For the purposes of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this Ordinance:

1. "ADEM" means the Alabama Department of Environmental Management.
2. "Alabama Handbook" means the latest edition of the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas. A copy of the latest edition can be found on the Alabama Soil and Water Conservation Committee's (ASWCC) web page ([www.swcc.state.al.us](http://www.swcc.state.al.us)).
3. "Best Management Practices" or "BMPs" mean implementation and continued maintenance of appropriate structural and non-structural practices and management strategies to prevent and minimize the introduction of pollutants to Stormwater and to treat Stormwater to remove pollutants prior to discharge.
4. "Caliper" means the diameter or thickness of the main stem of a young tree or sapling as measured at six inches above ground.
5. "Circumference" means the distance around the periphery of a tree at 4 ½ feet above existing grade.
6. "City" means the City of Foley, Alabama.
7. "Clearing" means any activity that removes the vegetative surface cover.
8. "Code Enforcement Officer" means the City employee who carries out the City's code enforcement program whereby individuals in violation of City codes and related regulations are identified, investigated, and corrected utilizing appropriate enforcement measures. This includes the Environmental Manager and Environmental Assistant positions within the City.
9. "Common Plan of Development or Sale" means any announcement or piece of documentation (e.g., sign, public notice, or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (e.g., boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. Individual lots within a common plan of development are required to acquire ADEM NPDES General Permit coverage for Land Disturbing Activity since cumulatively, the lots have potential to disturb more than one acre at a time.
10. "Construction Best Management Practices Plan" or "CBMP Plan" means a plan that includes research, planning considerations, systems, procedures, processes, activities and practices implemented for the prevention and/or minimization of pollutants in Stormwater to the maximum extent practicable, and collection, storage, treatment, handling, transport, distribution, land application or disposal of construction Stormwater and onsite management of construction

waste generated by the Land Disturbing Activity, and to comply with the requirements of the City of Foley.

11. "Diameter Breast Height" means the diameter, in inches, of a tree trunk measured at 4 ½ feet above existing grade. DBH is also referred to as the diameter of a tree.
12. "Erosion" means the process by which land surface is worn away by the action of wind, water, ice and/or gravity.
13. "Erosion Control" means measures that prevent and/or minimize erosion.
14. "Final Stabilization" means the application and establishment of the permanent ground cover (vegetative, erosion resistant hard or soft material or impervious structures) planned for the site to permanently eliminate soil erosion to the maximum extent practicable. Established vegetation will be considered final if 100% of the soil surface is uniformly covered in permanent vegetation with a density of 85% or greater. Permanent vegetation shall consist of: permanent grasses, planted trees, shrubs, landscaped flower beds, perennial vines; an agricultural or a perennial crop of vegetation appropriate for the region. Final stabilization applies to each phase of construction.
15. "Grading" means excavation or fill of material, including the resulting conditions thereof.
16. "Heritage Tree" means a healthy, protected native tree and its root system with a diameter at breast height equal to or greater than 30" or 7'-10" circumference, whichever dimension is less. Also redbuds and dogwoods with a diameter at breast height equal to or greater than 10" or 30" circumference, whichever dimension is less.
17. "Land Disturbing Activity" means any and all activities which results in more than five hundred (500) square feet of land disturbance and/or change to the existing storm water drainage characteristics of land.
18. "Land Disturbance" means the disturbance of soils associated with clearing, grading, excavating, filling of land, or other similar activities which may result in soil erosion.
19. "NPDES" means National Pollutant Discharge Elimination System.
20. "Ordinance" means this ordinance regulating environmental permits related to land disturbance.
21. "Overstory Tree" means a tree which, at maturity, comprises the canopy of a natural forest and which are generally greater than fifty (50) feet at mature height.
22. "Permittee" means any person who obtains an environmental permit from the City of Foley.
23. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous

liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; sediment, solid wastes and other residues that result from constructing a building or structure; and/or noxious or offensive matter of any kind.

24. "Sedimentation" means the process by which eroded material is transported and deposited by the action of wind, water, ice and/or gravity.
25. "Sediment Control" means measures that prevent and/or minimize eroded sediments from leaving the site.
26. "Silviculture" means the care and cultivation of forest trees; forestry.
27. "Site Plan" means a plan describing for a particular site where the building(s), driveway, roads, parking (if applicable) and stormwater management facilities (if applicable) are to be located and where BMPs are to be located and trees and vegetation are to be planted.
28. "Stabilize" means the application and establishment of the ground cover (vegetative, erosion resistant hard or soft material or impervious structures) planned for the site to eliminate soil erosion to the maximum extent practicable.
29. "Stormwater" means runoff, accumulated precipitation, process water, and other wastewater generated directly or indirectly as a result of Land Disturbing Activity, the operation of a construction material management site, including but not limited to, precipitation, upgradient or offsite water that cannot be diverted away from the site, and wash down water associated with normal construction activities. Stormwater does not mean discharges authorized by the Department via other permits or regulations.
30. "Storm Water Management" means all natural and man-made elements used to convey storm water from the first point of impact within the construction site to a suitable outlet location.
31. "Temporary Stabilize" means the application and establishment of temporary ground cover (vegetative, erosion resistant hard or soft materials or impervious structures) for the purpose of temporarily reducing raindrop impact and sheet erosion in areas where final stabilization cannot be established due to project phasing, seasonal limitations or other project related restrictions.
32. "Understory Tree" means a tree which, at maturity, comprises the sub-canopy of a natural forest. These are generally less than fifty (50) feet at a mature height.
33. "Wetland" means land where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface (Cowardin, December 1979).

## **SECTION V: APPLICABILITY & EXCEPTIONS**

All land disturbing activities shall follow best management practices to minimize pollutants. This Ordinance shall apply to residential dwellings and any other land disturbance activity which disturbs five hundred (500) square feet or greater within the City of Foley and for subdivision developments within the Planning Jurisdiction of the City of Foley; and, undertaken by any person on any land within the City of Foley's city limits, except for the following:

1. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
2. Any nursery, agricultural and silvicultural operations.
3. Any landfills or mining operations permitted by ADEM.
4. Any public utility construction and maintenance activities within the public rights-of-way.

## **SECTION VI: PERMIT APPLICATION, PLAN AND FEE REQUIRED**

1. An Erosion and Sediment Control Permit for residential dwellings and other small land disturbance activity which disturbs five hundred (500) square feet or greater but less than ½ acre (21,780 square feet) within the City of Foley shall be required. No person, firm, business or corporation shall engage in any Land Disturbing Activity prior to obtaining the permit from the City of Foley Building Department.
  - a. The Erosion and Sediment Control Permit shall include submittal of the permit application and a site plan (as defined). A fee of twenty-five dollars (\$25.00) shall be charged and collected by the City of Foley Building Department for the issuance of the Erosion and Sediment Control Permit.
  - b. For single family and duplex residential land disturbance, the site plan shall include a minimum of two trees (overstory tree or understory tree) to be planted according to requirements.
  - c. The site plan shall include BMPs that are adequate and effective in controlling pollutants, to include sediment, on site. At a minimum, all sites are required to install a construction entrance, detail permanent stabilization, and include sanitary waste facilities and solid waste containers. When construction is complete and the site is permanently stabilized, the site is required to remove all temporary BMPs.
2. An Environmental Permit for land disturbance ½ acre and greater within the City of Foley and for subdivision developments within the Planning Jurisdiction of the City of Foley shall be required. No person, firm, business or corporation shall engage in any Land Disturbing Activity prior to obtaining the permit from the City of Foley Environmental Division.
  - a. The Environmental Permit shall include submittal of the permit application, a construction best management practices plan (See Section VII), and a tree survey and a landscape plan (See Section IX). A fee of one hundred twenty-five dollars (\$125.00) shall be charged and collected by the City of Foley Environmental Division for the issuance of the Environmental Permit.
  - b. For sites that disturb one acre or greater or are less than one (1) acre but part of a common plan of development, applications for the Environmental Permit shall be

accompanied by a copy of the approval for the ADEM NPDES Construction General Permit.

## **SECTION VII: CONSTRUCTION BEST MANAGEMENT PRACTICES PLAN MINIMUM REQUIREMENTS**

For the purposes of this Ordinance, the following are the minimum requirements for the Construction Best Management Practices Plan (CBMPP):

1. At a minimum the site's CBMPP shall meet all conditions and qualifications of the ADEM NPDES Construction General Permit and BMP design should be based on the guidance in the Alabama Handbook.
2. Best Management Practices (BMPs) shall be required for all land disturbing activities. It shall be the sole responsibility of the contractor/or permittee to promptly implement effective BMPs in accordance with the permittee's land disturbance permit and submitted CBMPP prior to commencing the Land Disturbing Activity. The permittee shall be solely responsible for ensuring that all BMPs are implemented and maintained for the entire duration of the Land Disturbing Activity. The permittee shall also be solely responsible for ensuring that the BMPs are in accordance with established industry standards, good engineering practices, and all standards as set out in the Alabama Handbook.
3. The permittee shall ensure proper onsite containment and disposal of all construction building materials, supplies, trash, debris, fertilizers, pesticides, herbicides, detergents sanitary waste and any other solid waste.
4. The permittee shall ensure proper onsite containment and disposal of any pollutants resulting from equipment and vehicle washing, concrete, paint and other washout water.
5. The permittee shall minimize the discharge of any pollutants resulting from a spill or leak from, including but not limited to vehicles, mechanical equipment, and chemical or fuel storage.
6. The permittee shall stabilize all construction entrances and exits to minimize off-site tracking of sediment from vehicles.
7. The permittee shall minimize the generation of dust during construction.
8. The permittee shall minimize the disturbance of steep slopes, unless infeasible.
9. The permittee shall minimize the amount of soil exposure and compaction during construction activity.
10. The permittee shall Temporarily Stabilize disturbed areas immediately whenever work toward project completion and Final Stabilization of any portion of the site has temporarily ceased on any portion of the site and will not resume for a period exceeding thirteen (13) calendar days.
11. The permittee shall provide the necessary measures to ensure that drainage structures important to overall Storm Water Management and control are not adversely affected by clearing, grading, or any other land disturbing activities and shall permanently stabilize any right-of-ways disturbed by during construction.

12. All onsite areas disturbed during construction shall be permanently stabilized.
13. The permittee shall, with property owner permission, remove any offsite sediments from adjacent properties and stabilize any areas disturbed during the removal. If the removal involves streams or wetlands, proper Federal and State permits shall be required prior to removal.
14. The permittee shall ensure all construction waste and debris, silt fences, wattles, inlet protection, and other temporary BMPs shall be removed prior to final inspection.
15. Any permitted land disturbance site that has continued compliance issues and/or offsite impacts may be issued a Stop Work Order; ceasing all activity except BMP installation and maintenance. At that time the permittee may be required to submit an updated CBMP Plan prepared by a Qualified Credentialed Professional.

## **SECTION VIII: INSPECTION AND MAINTENANCE REQUIREMENTS**

For the purposes of this Ordinance, the following are the minimum requirements for CBMPP Inspections:

1. The permittee shall ensure proper implementation, daily observation, regular inspection and continual maintenance of effective BMPs to prevent offsite impacts and impacts to downstream water quality.
2. In the event the BMP (s) are found to be in need of maintenance or improvements, the permittee shall commence and implement all necessary maintenance and corrective measures to the BMP (s) within forty-eight (48) hours of notice unless prevented by unsafe weather conditions.

## **SECTION IX: LANDSCAPE PLAN AND TREE SURVEY**

For the purpose of the Ordinance, the following are the minimum requirements for the tree survey and landscape plan:

1. Tree Survey: All reasonable steps shall be taken to preserve heritage trees. Native trees in floodplains and wetlands shall be left in a natural state unless otherwise directed or permitted by state or federal agencies.
  - a. If the site contains no trees (overstory or understory), the survey is not required, but that must be stated on the landscape plan.
  - b. The survey shall include all heritage trees with tree name, location and DBH with indication of preservation or removal.
  - c. The survey shall show identify areas of tree preservation and removal with trees over 24" in DBH identified.
  - d. The survey shall include measures for tree protection, if applicable.
2. Landscape Plan:
  - a. The landscape plan may be designed by the permittee.
  - b. The plan shall have a minimum density of ten (10) native trees per acre of development. The tree density may include all preserved and planted trees, as well as, trees located in buffers, parking areas, site perimeter, individual lots and common areas.
  - c. All disturbed areas not covered by structures and infrastructure shall include vegetative cover that accomplishes permanent stabilization.

- d. The plan shall include planting standards to include the following requirements:
  - i. All tree plantings shall be installed to current nursery standards.
  - ii. Trees selected for planting must be free from injury, pests, disease, nutritional disorders or root defects, and must be of good vigor in order to assure a reasonable expectation of survivability.
  - iii. Overstory tree plantings shall measure a minimum of three (3) inches, four (4) feet above grade and shall measure a minimum of eight (8) feet clear trunk.
  - iv. Understory trees shall have an initial caliper diameter of at least one (1) inch and shall measure a minimum of five (5) feet of clear trunk.
  - v. No overstory trees shall be planted within twenty (20) feet of overhead electrical lines.
  - vi. All plantings that die or are destroyed must be replaced during the next planting season.
  - vii. Maintenance of the plantings is the responsibility of the property owner.

#### **SECTION X: ENFORCEMENT**

1. Upon inspection by the Environmental Division, if there are violations of this Ordinance, a verbal warning shall be issued to the site contact on the permit requiring compliance with this Ordinance within 48 hours of the notice or as soon as safe conditions allow.
2. Whenever the City of Foley determines that sedimentation has occurred offsite onto right-of-way, in-stream or into stormwater management facilities, the sediments shall be removed or stabilized based on a determination by the City.
3. Failure to comply with any section of this Ordinance is hereby deemed a violation and shall be sufficient cause for the City of Foley, through a Code Enforcement Officer, Environmental Manager or Environmental Assistant, to issue an order suspending all work (a "Stop Work Order") on the land disturbing site until satisfactory measures are taken to comply with this Ordinance.

#### **SECTION XI: CRIMINAL PROSECUTION**

1. Any person that has violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and be punished by a fine of not less than one hundred dollars (\$100.00), but not more than five hundred dollars (\$500.00), or imprisonment not to exceed one-hundred and eighty days (180), or both.
2. The City may recover all attorneys' fees court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

#### **SECTION XII: ABROGATION AND GREATER RESTRICTIONS**

This Ordinance is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **SECTION XIII: INTERFERENCE**

No person shall hinder, prevent, delay or interfere with the City while engaged in carrying out the execution or enforcement of this Ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.



**SECTION XIV: SEVERABILITY**

Should any section or provision of this article be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

**SECTION XV: EFFECTIVE DATE.**

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of the City of Foley and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FOLEY,  
ALABAMA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

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**JOHN E. KONIAR, MAYOR**

**ATTEST:**

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**VICTORIA SOUTHERN, CITY CLERK**