

ORDINANCE NO. 2009-02

AN ORDINANCE REGULATING LAND DISTURBANCES IN THE TOWN OF
MAGNOLIA SPRINGS AND ITS JURISDICTION; PRESCRIBING CERTAIN
DUTIES AND CONDITIONS; AND PROVIDING PENALTIES FOR THE
VIOLATION OF THIS ORDINANCE

— **WHEREAS**, the Town Council of the Town of Magnolia Springs finds that soil erosion and other consequences of unregulated land disturbance cause pollution, a positive danger to health, and a material public nuisance; and

WHEREAS, the Town Council of the Town of Magnolia Springs recognizes the need to protect the public health and welfare by regulating land disturbances and preventing soil erosion and other consequences of unregulated land disturbances; and

WHEREAS, the Town Council of the Town of Magnolia Springs acknowledges the need to protect the Magnolia River, a vital resource for the Town of Magnolia Springs, from pollution caused by soil erosion and other consequences of unregulated land disturbances; and

WHEREAS, the Town Council of the Town of Magnolia Springs recognizes that prevention, minimization, and control of stormwater runoff from land disturbance, and the nutrients and sediment it can carry, is a priority both during and after construction activities, in order to preserve the public health and promote the prosperity of residents of the Town of Magnolia Springs.

NOW, THEREFORE BE IT ORDAINED by the Town Council of the Town of Magnolia Springs, Alabama, as follows:

— **Section 1. Purpose and Intent**

It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution, particularly from construction and post-construction stormwater runoff; control the rate, quality, and volume of stormwater originating from development and redevelopment sites so that surface water and groundwater are protected; prevent and control soil erosion; protect spawning grounds; protect fish and aquatic life; preserve ground cover and scenic beauty; and promote sound environmental practices.

Section 2. Definitions

Words and phrases used in this article shall have the meanings as set forth in this section. Words and phrases not defined in this section but defined elsewhere in the zoning ordinances shall be given the meanings as set forth in such ordinances. All other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise.

Agricultural activity: Planting, growing, cultivating and harvesting crops for human or livestock consumption including sod farms and silviculture.

Applicant: A property owner or agent of a property owner who has filed an application for a Land Disturbance and Erosion Control Permit.

Best management practice (BMP): Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.

— **Construction site:** An area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

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

Erosion and sediment control plan: A plan developed to address pollution caused by soil erosion and sedimentation during land disturbing construction activity. The erosion and sediment control plan for a major or minor project must contain the elements described in Section 7 of this Ordinance.

Impervious cover: Those surfaces that cannot effectively infiltrate rainfall.

Infiltration: The process of percolating stormwater into the subsoil.

Land disturbing activity: Any activity that changes the quality, volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil; placement of fill materials; paving; construction; substantial removal of vegetation; or any activity that bares soil or rock or involves the diversion or piping of any natural or manmade watercourse.

Major Project: All Residential and Non-Residential Sites (including, but not limited to, areas of disturbance greater than or equal to one (1) acre) which do not qualify as minor projects. Major projects must obtain a Land Disturbance and Erosion Control Permit, the application for which must include an erosion and sediment control plan containing the elements described in Section 7(b) of this Ordinance.

Minor Project: Minor projects include: single-family homes with a footprint of 2,500 square feet or less and are not part of a subdivision or phased development project, along with accessory structures, with a total area of disturbance less than one (1) acre. Minor projects must obtain a Land Use Certificate, the application for which must include an erosion and sediment control plan containing the elements described in Section 7(a) of this Ordinance.

Post-construction stormwater runoff: Any stormwater runoff leaving a site following completion of a land disturbing construction activity.

Qualified Credentialed Inspector (QCI): An operator, operator employee, or operator designated qualified person who has successfully completed initial training and annual refresher Qualified Credentialed Inspection Program (QCIP) training, and holds a valid certification from a department approved cooperating training entity.

Qualified Credentialed Professional (QCP): A staff member of the Alabama Department of Environmental Management (ADEM) designated by the Director of ADEM, a licensed Professional Engineer, an Alabama Natural Resources Conservation Service professional designated by the State Conservationist, a Certified Professional in Erosion and Sediment Control, or other registered professionals (including, but not limited to, geologists, soil scientists, land surveyors, landscape architects).

Responsible Party: Any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns that is named on a stormwater maintenance agreement as responsible for long-term operation and maintenance of one or more stormwater BMPs.

Sediment: Settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

Site: The entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.

Stormwater Runoff: Any water leaving a site as a result of a rain or other precipitation event.

Town of Magnolia Springs or Town: Any employee or official of the Town of Magnolia Springs, Alabama, or their agents or designees.

Water(s): Includes, but is not limited to, water on or beneath the surface of the ground, including natural or artificial watercourses, streams, rivers, lakes, ponds, or diffused surface water and water percolating, standing or flowing beneath the surface of the ground.

Watercourse: A natural or artificial channel through which water flows.

Section 3. General Design Principles

The following principles apply to all land disturbing activities within the jurisdiction of the Town of Magnolia Springs, Alabama and shall be considered when preparing construction plans and/or submissions required under this ordinance. The Town encourages the incorporation of Low Impact Development design principles into all land disturbance projects.

- a. To minimize the potential for soil erosion, development shall fit the topography and soils of the site to the maximum extent practicable. Areas with extreme slopes where cuts and fill would be required should be avoided. Impervious cover should be minimized.
- b. Natural vegetation shall be maintained and protected wherever and whenever possible. Areas immediately adjacent to watercourses, wetlands and lakes shall be left undisturbed wherever possible so that the smallest practical area of land will be exposed for the shortest practical period of time during development.
- c. Sediment basins, silt traps, filters and other BMPs shall be installed prior to the beginning of construction and inspected and maintained as necessary to remove as much sediment as possible from runoff leaving the site or entering watercourses, wetlands, lakes or reservoirs.
- d. The selection of soil erosion and sedimentation control measures should be based on the size of the project, the frequency of climatic events likely to accelerate erosion, the season during which the project is being constructed and the potential for damage should erosion and sedimentation occur.
- e. In the design of erosion and sedimentation control measures and BMPs, the requirements for proper maintenance will be considered.
- f. Provision shall be made to accommodate the runoff caused by altered surface and soil conditions both during and after development. The amount and rate of runoff leaving a site after development shall be no more than the amount and rate of pre-construction runoff. Drainage ways shall be designed so that their final gradients and resultant velocities will not cause erosion.
- g. Provision should be made for the proper transport of soil from the site without tracking or spilling soil along the transport route.
- h. Permanent vegetation and erosion control structures should be installed and temporary structures removed prior to the issuance of final occupancy permits.
- i. Any land disturbance activity which takes place in a right-of-way requires approval from the Town.
- j. Pasturing or outside yarding of livestock should be avoided on all lands within one hundred (100) feet of a watercourse, and new pasturing or outside yarding of livestock is prohibited within one hundred (100) feet of the Magnolia River, Weeks Creek, Nolte Creek, Eslava Creek, Spring Branch, and Schoolhouse Branch.

Section 4. Design Criteria, Standards and Specifications

All erosion and sediment control measures, including, but not limited to those required to comply with this ordinance, shall at minimum meet the design criteria, standards and specifications given in the most current version of the Alabama Handbook for Erosion Control, Sediment Control and Storm Water Management on Construction Sites and Urban Areas.

Section 5. Specific Requirements

Control of erosion and sediment through the entire duration of the land disturbing activity, including control of post-construction runoff, is the responsibility of the applicant. The following measures shall be utilized where required to provide the necessary erosion control.

- a. Runoff from off-site and flowing through the land in question may be diverted around the land disturbing activity by means of swales, channels, ditches, culverts or storm sewers. The diversion may be a temporary installation, utilized only until the land disturbing activity is complete, or it may be a permanent part of the proposed improvement on the land. Such diversion shall not be such that it causes drainage or erosion problems downstream and shall not involve impacts to existing wetlands or natural waterways, not covered by existing permits.
- b. Any detention basin proposed for the site should be utilized during construction as a sediment basin to trap as much soil as possible. Such basins shall be designed for this purpose, utilizing over excavation for temporary sediment storage, temporary perforated standpipes and/or stone filters as required by proper engineering design and in accordance with the most current version of the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction

Sites and in Urban Areas. Such basins shall be properly maintained throughout their period of use.

- c. Temporary sediment traps may be required in areas where runoff exits the site and is likely to carry sediment from eroded soils on the site. The temporary traps shall be sized proportionate to the expected flow rate from the site. Such traps shall be properly maintained throughout their period of use.
- d. Ingress and egress to the site shall be by way of coarse stone drive(s) of sufficient length to cause soil picked up by the tires of vehicles to be dropped before the vehicle leaves the site. Drives shall be designed and situated so that they provide maximum protection against tracking of soil or mud onto the roadway. For single-family and duplex home sites the stone drive should coincide with the final location of the drive to the residence.
- e. Drain inlets and entrances to culverts shall be protected with an installation of acceptable inlet protection.
- f. All disturbed ground left inactive for a period of thirteen (13) days shall be seeded, sodded or stabilized with mulch or equivalent. A permanent vegetative cover shall be established on all disturbed ground that will be left inactive for a period of six months or longer.
- g. Storage piles of soil left for longer than three (3) days shall be completely encircled with silt fence. If left inactive or unused for longer than twenty-one (21) days the pile shall be seeded, sodded, or covered with a mulching fabric or tarpaulins.
- h. Stone check dams shall be used in open drainage courses to slow velocities of the runoff and shall be properly maintained throughout their period of use.
- i. Based on individual site characteristics, silt fences shall be installed along the down slope edges of all disturbed areas on the site. Silt fence shall be installed in such a manner to prevent sediment from leaving the site and shall be properly maintained throughout their period of use.
- j. Prevention of wetland degradation. Temporary sediment barriers shall be installed where needed on all exposed slopes which meet or exceed four horizontal to one vertical (4:1) and are within fifty (50) feet of wetlands, waters of the state, or any surface water feature not bounded entirely by the limits of the development site. These shall be placed and maintained such that drainage will not overflow or bypass the barrier and shall remain in place until the slope is leveled or permanently stabilized.
- k. Dust control. All development which will result in exposure of bare soil during dry periods shall follow short-term stabilization methods as follows:
 1. Maintain soils in a damp condition as determined by sight or touch.
 2. Establish a stabilized surface through watering or other approved methods.
 - a. Stabilization. Within ten (10) days of ceasing activity, an operator shall implement at least one (1) of the following long term stabilization techniques for any disturbed surface area where construction activities are not scheduled to occur for at least thirty (30) days:
 1. Re-vegetation with permanent vegetation that results in seventy-five percent (75%) ground coverage provided that an active watering system is in place at all times.
 2. Establish a stabilized surface through watering with physical access restriction surrounding the area or other approved methods.

Section 6. Maintenance of Erosion Control Measures During Construction Activity

All erosion control measures shall be maintained throughout the course of the construction or until the growth of vegetation has made them unnecessary. If silt fence is temporarily removed to allow access to a portion of the site it shall be re-installed at the end of the same work day. The applicant is responsible for the maintenance of all erosion control measures throughout the life of the project.

Section 7. Erosion and Sediment Control Plan

An erosion and sediment control plan shall be submitted with each application and shall be available for review by members of the public. The applicant shall certify that all land disturbance activity shall be done in accordance with the erosion and sediment control plan as approved by the Town of Magnolia Springs. The Town of Magnolia Springs may ask the applicant to supplement information contained in the application.

- a. **Minor Projects** –The erosion and sediment control plan for minor projects shall be made a part of the site plan provided with the application for a Land Use Certificate. It shall be prepared by an Alabama Licensed Professional Land Surveyor, Engineer, Architect, Landscape Architect, a Certified Professional in Erosion and Sediment Control, a QCI, a licensed home builder or a licensed general contractor. The site plan shall show, at a minimum, the direction of surface slopes, any watercourse on the lot, and the location of all erosion control installations proposed.
- b. **Major Projects** –The erosion and sediment control plan for major projects shall be made a part of the application for a Land Disturbance and Erosion Control Permit shall conform to the following:
 1. The plan shall be prepared and certified by an Alabama Licensed Professional Land Surveyor, Engineer, Architect, Landscape Architect or QCP.
 2. The plan shall be drawn to a scale adequate to clearly show the site and the required information. In no case shall the plan be drawn to a scale less than 1"=100'.
 3. The plan may incorporate one or more sheets as necessary to clearly convey the intent of the plan. The plan may also incorporate text to explain any specifics of the plan, cover the specifications for the materials required, or convey the development phasing.
 4. At a minimum, the plan shall show all existing and proposed:
 - a. Site Boundaries, lots, etc.
 - b. All watercourses (with sizes), ponds, lakes, and wetlands.
 - c. Apparent floodplains, floodway fringes and floodways.
 - d. Soil types and their erodability. The information provided in the Soil Survey of Baldwin County, Alabama as published by the U.S. Dept. of Agriculture, Natural Resources Conservation Service, is appropriate.
 - e. Vegetative cover such as crops, grass, weeds, and/or trees. The use of exotic or invasive species as proposed vegetative cover is discouraged.
 - f. Utilities, structures, road pavements and other improvements.
 - g. Existing contours at an interval not greater than two (2) feet. An adequate number of spot elevations may be provided in lieu of the contours.
 - h. Locations and dimensions (where applicable) of all proposed erosion control measures.
 - i. A plan for controlling post-construction stormwater runoff from the site.

Section 8. BMP Maintenance Agreement

Prior to issuance of a Land Disturbance and Erosion Control Permit by the Town of Magnolia Springs, an applicant shall submit a maintenance agreement in accordance with the following:

1. The applicant shall be responsible for the operation and maintenance of post-construction BMPs and shall pass such responsibility to any successor owner.
2. If an erosion control plan requires structural or nonstructural BMPs, the applicant shall execute a stormwater BMP maintenance agreement. The agreement shall be recorded in the Baldwin County Probate Court. This agreement shall, at a minimum:
 - a. Designate the responsible party or parties which shall be permanently responsible for maintenance of the structural and nonstructural BMPs required by the plan.
 - b. Include provisions that pass the responsibility for such maintenance to successors in title.
 - c. Grant the Town of Magnolia Springs and its representatives the right of entry for the purposes of inspecting all stormwater BMPs at reasonable times and in a reasonable manner, This includes the right to enter a property when the Town of Magnolia Springs has a reasonable basis to believe that a violation of this Ordinance is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this Ordinance.

Section 9. Performance Bond or Guarantee

- (1) No permits shall be issued unless the applicant furnishes a performance bond or guarantee of 150 percent of the Engineer of Record's construction cost estimate for erosion and sediment control. This is to ensure that action can be taken by the Town of Magnolia Springs, at the applicant's expense, should the applicant fail to initiate or maintain those measures identified in the approved stormwater management design plan, after being given notice and reasonable time to cure the deficiencies. . If the Town of Magnolia Springs takes such action upon such failure by the applicant, the Town of Magnolia Springs shall collect from the applicant the difference should the amount of reasonable cost of such action exceed the amount of the security held.
- (2) The performance bond or guarantee furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be returned to the applicant within sixty (60) days of project completion. The applicant shall notify the Town of Magnolia Springs upon completion of the project.
- (3) At the discretion of the Town of Magnolia Springs, the performance bond or guarantee may be extended beyond the time period specified above to cover a reasonable period of time for testing the practices during storm events and for initial maintenance activities. For the purposes of this section, such time shall not exceed 2 years.
- (4) The Town of Magnolia Springs shall have the discretion to adopt provisions for a partial pro-rata release of the performance bond or guarantee on the completion of various stages or phases of development.

Section 10. Undisturbed Riparian Buffer Zone

No land-disturbing activity during periods of construction or improvement to land shall be permitted within 75 feet of a perennial or intermittent surface stream.

1. The width of the undisturbed buffer zone is measured horizontally from the top of bank to the landward side of the watercourse.
2. This section shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
3. Removal of invasive species, undergrowth and selective thinning of trees smaller than four inches is allowed within the undisturbed buffer zone.
4. As part of an application for a Land Disturbance and Erosion Control Permit, an applicant may petition for a variance to use the applicant's land in a manner otherwise prohibited by this section. A variance may be granted if the applicant meets all of the following criteria:
 - a. Unnecessary hardships would result from strict application of this section.
 - b. The hardships result from conditions that are peculiar to the property, such as the location, size, shape, or topography of the property.
 - c. The hardships did not result from actions taken by the applicant.
 - d. The requested variance is consistent with the spirit, purpose, and intent of this section; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely providing that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance.
5. Reasonable and appropriate conditions and safeguards may be imposed on any variance granted.

Section 11. Permits

- a. **Permit Conditions** – All Land Disturbance and Erosion Control Permits shall require the applicant to:
 1. Notify the Town of Magnolia Springs at least twenty-four (24) hours before beginning any land-disturbing activity for any major project.
 2. Notify the Town of Magnolia Springs of any modifications to the erosion and sediment control plan within seven (7) days of change.
 3. Install and maintain all erosion control measures as identified in the erosion and sediment control plan.

4. Maintain all road drainage systems, storm water drainage systems and other facilities as identified in the erosion and sediment control plan.
 5. Remove sediment resulting from land disturbing activities from adjacent surfaces and/or drainage courses in accordance with all State and Federal statutes, regulations, and guidance documents.
 6. Allow the Town of Magnolia Springs to enter the site to verify compliance with the erosion and sediment control plan.
 7. Submit a revised plan for approval if the nature of the project changes from that proposed under the permit.
 8. Submit copies of all necessary state and federal permits associated with the project to the Town of Magnolia Springs.
- b. **Permit Fees** – All fees for a Land Disturbance and Erosion Control Permit shall be paid prior to permit issuance
 - c. **Length of Permit Validity** – In the event that the land disturbing activities are not started within six (6) months and/or the work is not completed within two (2) years from the date of the permit, said permit shall become invalid and a new permit shall be obtained.
 - d. **Suspension, Modification and Revocation** – The Town of Magnolia Springs may suspend, modify or revoke the permits provided for under this ordinance at any time and at the Town's discretion.

Section 12. Enforcement

The Town of Magnolia Springs is authorized to take the following actions in order to enforce the terms of this ordinance:

- a. **Stop Work Order** – The Town of Magnolia Springs may issue a stop work order in accordance with this ordinance for any work not conforming to the requirements of this ordinance. The stop work order may be lifted only after the Town has determined that the work has been made to conform to the ordinance.
- b. **Notice of Violation** -- If the Town of Magnolia Springs determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management design plan, a recorded stormwater management maintenance agreement, or the provisions of this ordinance, it may issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- (1) The name and address of the owner or the applicant or the responsible person;
 - (2) The address or other description of the site upon which the violation is occurring;
 - (3) A statement specifying the nature of the violation;
 - (4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management design plan, the stormwater maintenance agreement, or this ordinance and the date for the completion of such remedial action; and
 - (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed.
- c. **Penalties for Violation** – Any person who commits, takes part in, or assists in any violation of any provision of this article is guilty of a misdemeanor and may be fined not more than five hundred dollars (\$500.00) for each offense and subject to imprisonment not exceeding six (6) months or both. Each violation of this article shall be a separate offense, and in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The Town of Magnolia Springs shall have jurisdiction to enjoin a violation of this article. All costs, fees (including without limitation, reasonable attorneys' fees), and expenses in connection with such action shall be assessed as damages against the violator. In the event of a violation, the Town of Magnolia Springs shall have the power to order

restoration of the disturbed area. If the responsible person or agent does not complete such restoration within a reasonable time following the order of the Town, the Town shall have the authority to restore the affected wetlands to the prior condition and the person or agent responsible for the violation shall be held liable to the Town for the cost of such restoration.

Section 13. Exemptions

This ordinance shall apply to any land-disturbing activity undertaken by any person on any land except for the following activities. These activities may nevertheless be subject to regulation by State and Federal agencies.

- a. The construction of single-family residences that are not part of a subdivision or phased development project that is otherwise subject to this ordinance, when such construction is located on lots exceeding three (3) acres and construction activity disturbs less than one (1) acre and does not drain into a watercourse.
- b. Surface mining.
- c. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work and other related activities which result in minimal soil erosion.
- d. Agricultural activities as defined herein.
- e. Any project performed by a governmental entity duly authorized by federal or state law.
- f. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation; or any road construction or maintenance project, or both, undertaken by any county or municipality.
- g. Forestry land management practices, including harvesting; provided, however, that the then-current Alabama's Best Management Practices for Forestry are followed.

Section 14. Publishing and Effective Date

The Town Clerk shall cause this Ordinance to be immediately published by posting copies thereof in three (3) public places within the Town, one of which shall be in the Office of the Mayor, and two (2) other public places, and after such posting, which posting and publication is in accordance with the provisions of Section 11-45-8, Code of Alabama, (1975), this Ordinance shall take effect.

Section 15. Compliance with Other Requirements of Law

Compliance with the permitting requirements with this division shall not excuse any person, entity or governmental agency from complying with all other requirements of law, including without limitation, holding a valid franchise of the Town of Magnolia Springs.

Section 16. Indemnity

The Town of Magnolia Springs shall not be liable or responsible for any acts or damages that may occur in the performance of any work by the holder of a permit, and the issuance of a permit by the Town of Magnolia Springs shall be deemed an agreement on the part of the permittee to indemnify the Town and hold it harmless against any and all liability, loss, cost, damage or expense that may accrue to the Town because of the negligence or misconduct in the performance of any work by the permittee.


Section 17. Severability

If the provisions of any article, section, subsection, paragraph, or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph or clause of this ordinance.

Section 18. Repeal of Prior Ordinance.

Ordinance 2008-05 adopted by the governing body of the Town of Magnolia Springs, Alabama on April 22, 2008; respectively, shall be and hereby is repealed, such repeal to become effective on the effective date of this Ordinance

Adopted and approved this, the 26th day of May, 2009.


Charles S. Houser - Mayor

Attest:



Karen S. Biel - Town Clerk

TOWN OF MAGNOLIA SPRINGS, ALABAMA Certificate of Publication. This is to certify that **Ordinance Number 2009-02**, Town of Magnolia Springs, Alabama was published by posting on at least three (3) Bulletin Boards in the Town from **May 27, 2009** to **May 31, 2009**.



Karen S. Biel - Town Clerk