

ARTICLE VII
FULTON COUNTY STREAM BUFFER PROTECTION ORDINANCE

Sec 26-426. Title

This article shall be known as the "Fulton County Stream Buffer Protection Ordinance."

Sec. 26-427. Intent and Purpose

The intent of this Article is to establish regulations and procedures that govern all land uses and related development activities adjacent to streams within unincorporated Fulton County. These regulations shall require undisturbed buffers and impervious surface setbacks adjacent to streams.

The purpose of undisturbed buffers and impervious surface setbacks are:

- (1) to protect, restore and maintain the chemical, physical and biological integrity of streams and their water resources;
- (2) to remove pollutants delivered in urban storm water;
- (3) to protect public water supplies;
- (4) to maintain base flow of streams;
- (5) to minimize erosion and control sedimentation;
- (6) to provide infiltration for storm water runoff;
- (7) to minimize impervious surfaces close to streams; and
- (8) to provide riparian wildlife habitats and promote desirable aquatic habitat.

Further, this article authorizes the Department of Environment and Community Development to draft and amend, as necessary, Administrative Guidelines for the enforcement of the Fulton County Stream Buffer Protection Ordinance.

Sec.26-428. Definitions

Unless otherwise expressly stated, the following terms shall have the meaning indicated herein.

Administrative Guidelines – means a Fulton County document that contains technical specifications and mitigation measures (i.e. stream bank restoration); and stream buffer variance appeal procedures and required documentation.

Affected Area - means all of unincorporated Fulton County.

Applicant - means any person who seeks permission to engage in any regulated activity on any property within the affected area that contains any protected areas, as those terms are defined herein.

Board of Commissioners - means the Board of Commissioners of Fulton County, Georgia.

Concept Plan- means a drawing that shows the proposed layout of a development in sufficient detail to indicate its workability and feasibility, but is not in final form for recording, pursuant to these regulations. The concept plan is the first stage in securing a Land Disturbance Permit.

Director - means the Director or his/her designee of the Fulton County Department of Environment and Community Development.

Existing Structure - means a land use which, prior to the effective date of this ordinance, is: (1) completed; (2) under construction; (3) permitted by Fulton County; or (4) the subject of a completed land disturbance permit application which has been submitted for approval to Fulton County and where a concept plan approval was granted (with all required supporting documentation).

Fees - means permit processing and/or costs that may be established by the Director.

Fulton County Action - means any review or approval of plans, site plans, improvements, permits, or any other government-related decision, that constitutes an action.

Georgia Erosion and Sedimentation Act (GESA) - means the latest edition of the GESA that establishes rules and regulations for best management practices for erosion and sedimentation control in the State of Georgia (O.C.G.A. 12-7-1 et seq.).

Impervious Surface - means any gravel, paved, hardened, or structural surface, including, but not limited to, buildings, driveways, walkways, parking areas, patios, decks, streets, swimming pools, dams, tennis courts, or other similar materials and structures as identified by Fulton County.

Land Disturbing Activity - means any grading, scraping, excavating, or filling of land; clearing of vegetation; and any construction, rebuilding, or alteration of a structure which involves disturbance of the land in and around the structure

Land Disturbance Permit - means an official authorization issued by the Department, allowing defoliation or alteration of a site or the commencement of any construction activities, including but not limited to, clearing, grubbing, dredging, grading, excavating, transporting, and filling of land, but not including agricultural practices as defined in the O.C.G.A.1-3-3.

Large Water Supply Watershed - means a watershed containing 100 square miles or more of land within the drainage basin upstream of a governmentally owned public drinking water supply intake.

Metropolitan River Protection Act (MRPA) - means the latest edition of the MRPA that establishes a 2000-foot River Corridor along both sides of the banks of the Chattahoochee River and its impoundments within the Atlanta Regional Commission's planning area (O.C.G.A. 12-5-440 et seq.).

North Fulton County - Unincorporated Fulton County north of the corporate limits of the City of Atlanta.

Person - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality, or other similar legal entities.

Point of Wrested Vegetation - means point where vegetation has been persistently twisted or bent (wrested) by normal stream flow or wave action.

Private Project - means any other project not defined as a public project.

Protection Area - means any and all land and vegetation within the undisturbed buffer and impervious surface setback.

Public Project - means any local, state or federal government utility that is being built and funded (in full or in part) by a government authority.

Reservoir Boundary - means the edge of a water supply reservoir defined by its normal pool elevation.

Riparian – belonging to or related to the bank of a river, stream, lake, pond or impoundment.

Septic Tank (onsite sanitary sewer system) - means a Fulton County Health Department approved watertight structure installed underground to receive sewage from a building affecting separation and organic decomposition of sewage solids and discharging effluent to an absorption field or other element, of an onsite sewage management system.

Setback – the area extending beyond any buffer applicable to the stream in which no impervious surface is allowed.

Small Water Supply Watershed - means a watershed that contains less than 100 square miles of land within the drainage basin upstream of a public drinking water supply intake.

South Fulton County – Unincorporated Fulton County south of the corporate limits of the City of Atlanta.

State Waters - means as defined by Georgia Erosion Sedimentation Act, any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

Stream - means beginning at 1) the location of a spring, seep, or groundwater outflow that sustains flow; or 2) a point in the channel with a drainage area of 25 acres or more; or 3) where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the Fulton County Department of Environment and Community Development may require field studies to verify the existence of a stream.

Top of Bank – means intersecting point between the stream channel and the break in the stream bank slope or the highest point of the stream channel.

Undisturbed Buffer - means a naturally vegetated strip of land where no improvements shall take place or have been made and which lies adjacent to a stream, river, or lake and provides such functions as protecting water quality, providing wildlife habitat, and storing flood waters.

Utilities - means water or sewer systems, water or sewer pumping stations, electric power/transmission lines, fuel pipelines, telephone lines, roads, driveways, bridges, river and lake access facilities, railroads, and other similarly functions/uses as identified by Fulton County.

USGS Blueline Stream – means a perennial stream that is depicted on a United States Geological Survey (USGS) 7.5-minute quadrangle map (scale 1:24,000) with a solid blue line.

Water Supply Reservoir - means a public-owned impoundment of water for the primary purpose of providing water to one or more public drinking water systems. This excludes multi-purpose reservoirs owned by the United States Army Corps of Engineers (COE).

Water Supply Watershed - means the area of land within the drainage basin upstream of a public drinking water supply intake.

Sec. 26-429. Protection Criteria

(a) Buffer and Setback Requirements

Streams in all watersheds within unincorporated North Fulton County shall require a minimum 50-foot undisturbed buffer on each side of the stream as measured from the top of bank. Streams in all watersheds within unincorporated South Fulton County shall require a minimum 75-foot undisturbed buffer on each side of the stream as measured from the top of bank.

An additional 25-foot setback shall be maintained adjacent to the undisturbed buffer in which all impervious surfaces shall be prohibited. Storm water retention or detention facilities are prohibited within the stream channel.

(b) Small Water Supply Watershed Protection Standards

The following applies to these small water supply watersheds in unincorporated Fulton County: Big Creek Watershed, Whitewater Creek Watershed, Line Creek Watershed, Cedar Creek Watershed, and Bear Creek Watershed

- (1) All USGS blueline streams located within an upstream 7.0 mile radius of public-owned drinking water supply intakes and reservoirs require a 100-foot undisturbed buffer on each side, as measured from the point of wretched vegetation and an additional 50-foot setback adjacent to the undisturbed buffer in which all impervious cover shall be prohibited. Septic tanks and septic tank drain fields are prohibited within the undisturbed buffer and setback area;
- (2) All USGS blueline streams located outside of the 7.0 mile radius arc are required to have buffers and setbacks as described in Sec. 26-429(a). Septic tanks and septic tank drain fields are prohibited in the undisturbed buffer and setback area;
- (3) The impervious surface area, including all public and private structures, utilities, or facilities, of the entire water supply watershed shall be limited to 25%, or existing use, whichever is greater, unless other Best Management Practices, as approved by the Georgia Department of Natural Resources have been implemented;
- (4) Within these watersheds, new facilities which handle hazardous materials of the types listed in Section 312 of the Resource Conservation and Recovery Act of 1976 (excluding underground storage tanks) and in amounts determined by the Georgia Department of Natural Resources of 10,000 pounds or more on any one day shall perform their operations on impervious surfaces and in conformance with any applicable local, State and Federal spill prevention requirements and fire code requirements;

- (5) New hazardous waste treatment or disposal facilities are prohibited;
- (6) New sanitary landfills are allowed only if they have synthetic liners and leachate collection systems;
- (7) For small water supply watersheds that contain a reservoir, a buffer shall be maintained 150 feet from the reservoir boundary;

(c) Large Water Supply Watershed Protection Standards – Chattahoochee River

New facilities located within a 7.0 mile radius upstream of the Chattahoochee River watershed water supply intake, and within unincorporated Fulton County which handle hazardous materials of the types listed in Section 312 of the Resource Conservation and Recovery Act of 1976 (excluding underground storage tanks) and amounts determined by the Georgia Department of Natural Resources of 10,000 pounds or more on any one day, shall perform their operations on impervious surfaces and in conformance with any applicable local, State and Federal spill prevention requirements and fire code requirements.

Sec. 26-430. Applicability

This article shall apply to all land development activity on property containing a stream protection area as defined in Sections 26-428 and 26-429 of this ordinance. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under State or Fulton County law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under State law or from other applicable local, State or Federal regulations.

(a) Grandfather Provisions

- (1) Any legal residential lot of record existing prior to May 4, 2005 that does not change use, zoning classification or size is exempt from the requirements in Sec. 26-429 but shall be in compliance with requirements of the ordinance (applicable to North Fulton County or South Fulton County) existing prior to May 4, 2005.
- (2) Any zoning application, use permit application, concept plan that is a part of a zoning or use permit application; residential, commercial or industrial permit or subdivision application submitted to the County prior to the effective date of this ordinance is exempt from the buffer and setback requirements in Sec. 26-429 as of the effective date of this ordinance for the following time periods for the corresponding development sizes listed below:
 - (a) 25 lots or less, legally recorded within 18 months as of May 4, 2005
 - (b) 25 acres or less, legally recorded within 18 months as of May 4, 2005
 - (c) 250 lots or less, legally recorded within 24 months as of May 4, 2005
 - (d) 250 acres or less, legally recorded within 24 months as of May 4, 2005
 - (e) greater than 250 lots, legally recorded within 36 months as of May 4, 2005
 - (f) greater than 250 acres, legally recorded within 36 months as of May 4, 2005

(b) Exemptions

The following activities may be exempt from the requirements set forth in Sec. 26-429 of this ordinance. Exemption of these activities does not constitute an exemption for any other activity proposed on a property:

- (1) A perpendicular stream crossing by a driveway, transportation route, or utility lines;
- (2) A transportation route where buffer intrusion is the only option to provide access to a property;
- (3) Unpaved foot trails and paths;
- (4) Paved foot trails and paths for public use no greater than 10 feet wide;
- (5) Public water supply intake or public wastewater outfall structures;
- (6) Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
- (7) Utility line easements running parallel with the stream, except that all easements (permanent and construction) and land disturbance shall be required to meet the minimum buffer protection requirement. This includes such impervious cover as necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material except for access for the uses specifically cited in the above subsection;
- (8) Land development activities within a dedicated transportation right-of-way existing as of the effective date of this ordinance or approved under the terms of this ordinance;
- (9) Forestry or silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer;
- (10) Minor land-disturbing activities for the intent of emergency erosion control and bank stabilization activities (i.e. for the purposes of corrective maintenance; measures for health, safety and welfare; post storm; or other disaster relief) if Fulton County is notified in writing about the activity and the disturbance area is less than 5,000 square feet.

Sec. 26-431. Variance Procedures

No variance shall be granted to the undisturbed buffer and/or setback requirements contained in this article unless the Director (or, in the event of an appeal, the Board of Zoning Appeals) determines that a hardship exists and relief, if granted, meets the general purpose and intent of this article. There shall be two levels of variance appeals: Level One and Secondary. Secs. 26-431 (c) and (d) provide the

intent of the Level One and Secondary Variance appeal processes. Sec. 26-431(a) and (b) establish the criteria to validate the basis for an appeal to the stream buffer protection standards and specify the submittal requirements for the appeal processes. The minimum Environmental Protection Division (EPD) State Waters buffer protection standards are applicable notwithstanding Fulton County variance appeals. Mitigation measures (i.e. stream bank restoration) required to offset impacts due to variances are outlined in the Administrative Guidelines for this ordinance.

(a) Variance Hardship Criteria

Variance requests shall only be considered if a request meets any of the following hardship criteria, including the applicant's statement and explanation of the hardship under which a variance is submitted to deviate from the stream buffer protection standards of Sec. 26-429:

- (1) For public and private properties that have unusual shape or topography of the property at the time of the adoption of this ordinance and there is no opportunity for development under any design configuration in accordance with the land use designation assigned to the subject property; or
- (2) For private development projects that involve the construction or repair of a structure which, by its nature, must be located within the buffer. Such structures include dams, docks, boat launches, and stabilization of areas to access water; or
- (3) For public and private projects involving paved foot trails greater than 10 feet wide and viewing areas, providing that impacts to the buffer are minimal (at the discretion of the Director); or
- (4) For public and private projects with buffer and/or setback intrusion that demonstrates that the completed project results in maintained and/or improved water quality downstream; and, yields no increase in storm water runoff.

(b) Variance Submittal Requirements

- (1) In accordance with Sec. 26-431(a), variances from the undisturbed buffer and setback requirements of this ordinance may be sought by a property owner by filing an application following the minimum submittal requirements and procedures as set forth in the Administrative Guidelines for this ordinance. An administrative filing fee shall be assessed at the time of application.
- (2) In the event that a concept plan or rezoning application (which includes a stream that is subject to this ordinance) is in the review process (where upon the concept plan or rezoning application has not yet been approved by a Fulton County action) and, wherein the applicant is seeking relief from the stream buffer protection standards as described in Sec. 26-429, the concept plan shall not be approved by Fulton County until either:
 - (a) The applicant shows the required stream buffer protection standards on the subject rezoning application and concept plan without any reduction or deviation, or

(b) A variance to the stream buffer protection standards has been granted and the rezoning application and concept plan reflects the intent and design of the relief from the required stream buffer protection standards.

(3) Notwithstanding any other provision of this section, no relief to the undisturbed buffer and setback area protection requirements shall be allowed on any USGS Blueline streams on all land within a Small Supply Watershed Protection Area. In addition, notwithstanding any other provision of this Section, the minimum standards, rules, and regulations of the Metropolitan River Protection Act (O.C.G.A. 12-5-440 et seq.) the Georgia Erosion and Sedimentation Act (O.C.G.A. 12-7-1, et seq.), and the Georgia Planning Act Part V Environmental Planning Criteria (O.C.G.A. 12-2-8 (b) are applicable and supersede this ordinance if and when a conflict exists.

(4) Notwithstanding any of the provisions of this section, land disturbing activities related to or involving forestry shall comply with the latest edition of the “Best Management Practices for Forested Wetlands in Georgia” and “Recommended Best Management Practices for Forestry in Georgia.” Land disturbing activities related to or involving agriculture shall comply with the latest edition of the “Agricultural Best Management Practices for Protecting Water Quality in Georgia.”

(c) Level One Variances

A Level One Variance is a hardship-based appeal subject to the Director’s decision. This process is governed by the criteria established in Sec. 26-431(a) and allows applicants to petition the County to consider one of the following requests. Considering the merit of the application including all facts and the information provided, the Director may approve or disapprove the request with or without conditions for the following:

- (1) Unincorporated North Fulton County - Reduce a maximum of 15 feet of the setback area
Unincorporated South Fulton County - Reduce a maximum of 15 feet of the setback area and reduce a maximum of 25 feet of the undisturbed buffer.
- (2) Construction of storm water retention or detention facilities within the undisturbed buffer area and stream channel excluding all USGS Blueline streams, where water quality-related facilities shall not be allowed in the stream. Notwithstanding any other provision of this subsection, no in-stream detention/retention shall be allowed in a FEMA designated A or AE flood zone, unless first approved by FEMA.

(d) Secondary Variances

A Secondary Variance is a hardship based-appeal subject to the Board of Zoning Appeals decision. This process is governed by criteria established in Sec. 26-431(a) and allows applicants to petition the County to consider one of the following below requests. Considering the merit of the application including all facts and the information provided, the Board of Zoning Appeals may approve or disapprove the request with or without conditions for the following:

- (1) Reduction of the setback area or undisturbed buffer greater than the distances specified in Sec. 26-431(c)(1);

During the Secondary Variance procedure residents will be notified of the proposed impact in accordance with Fulton County Zoning Resolution requirements.

(e) Judicial Review

(1) Appeal of a Level One Variance Decision

The Director's determination and decision shall conclude the Level One Variance. Any person may appeal a Level One Variance decision of the Director to the Board of Zoning Appeals. An appeal of the Director's decision shall be filed in writing within 30 days after the final decision of the Director.

(2) Appeal of Secondary Variance Decision

Any person may appeal the Board of Zoning Appeals' decision to the Fulton County Superior Court. The Decision of the Board of Zoning Appeals constitutes a final Fulton County action. An appeal of this decision shall be filed in writing within 30 days after the final decision of the Board of Zoning Appeals.

Sec. 26-432. Inspections

The County Department of Environment and Community Development is authorized to conduct inspections of the sites of regulated activities to determine that the regulated activities are being conducted in accordance with the requirements of this article. No person shall refuse reasonable entry or access to any authorized representative or agent of the county who requests entry for purposes of inspection, nor shall any person obstruct, hamper or interfere with such representative while in the process of conducting official duties.

Sec. 26-433. Violations, Enforcement and Penalties

- (1) Any person found to be in violation of any provision of this ordinance shall be served written notice by the Director stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. Such person shall, within the period of time stated in the notice, take all necessary action to correct the violation and shall permanently cease such violation. The Director shall assess a maximum penalty up to \$1,000.00 per day for each violation involving unauthorized undisturbed buffer or impervious surface setback encroachment. Each day during which the violation continues shall be a separate violation.
- (2) If any violation of any provision of this ordinance continues beyond the correction period stated in the notice provided, an immediate stop-work order shall be issued by the Director. Such order shall be given to the owner of the property, his authorized agent, or the person or persons in charge of the activity on the property and shall be posted upon the property. The stop work order shall state the conditions under which work may be resumed.
- (3) In addition to any other remedies set forth in this ordinance, any person found in violation of any provision of this article shall be issued a citation by Fulton County and may be prosecuted

and punished as provided by law for the violation of an ordinance. Each day in which a violation continues shall constitute a separate violation.

- (4) If the Director determines that a threat to public safety or welfare exists as a result of a violation of this article and any person has failed to take corrective action within the time period stated in the notice provided, Fulton County may take such remedial action as is necessary to protect the public safety or welfare. Such remedial action may include entering the property where a violation is present, correcting the violation, and placing a lien on the property to secure payment and reimbursement of any and all expenses incurred by Fulton County to correct such violation.

Sec. 26-434. Liability

Neither the approval of a plan or issuance of a permit for any regulated activity under the provisions of this ordinance, or compliance with the provisions of this article shall relieve any person from responsibility or liability for:

- (1) any damage to any person, property, tributary or other water body; or
- (2) noncompliance with any other local, State or Federal ordinances, statutes, rules or regulations.

Sec. 26-435. Severability

It is declared to be the intent of the Board of Commissioners that, if any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; such holding shall not affect the validity of the remaining portions hereof.

Sec. 26-436. Effective Date

This ordinance shall be effective immediately upon adoption by the Board of Commissioners of Fulton County, Georgia.

PASSED AND ADOPTED this the 4th day of May , 2005.

**BOARD OF COMMISSIONERS
FULTON COUNTY, GEORGIA**

By: _____
Karen Handel, District 1 (At Large), Chairman

ATTEST:

Mark Massey, Clerk to the Commission

APPROVED AS TO FORM:

Overtis Hicks Brantley, County Attorney