# COUNTY DEPARTMENT AGENDA REQUEST

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| Department: | Stormwater Management | Presenter(s): | Vanessa Birrell |
| Meeting Date: | Thursday, November 18, 2010 | Type of Request: | Consent |

Wording for the Agenda:

Consideration of adoption of Ordinance 2010-09, proposed amendments to Fayette County Code, Chapter 8, Development Regulations, by amending Articles V and VII.

Background/History/Details:

Proposed amendments to Chapter 8, Fayette County Development Regulations are in conjection with the recently adopted amendments to the Fayette County Subdivision Regulations and reflect county department reorganization made in early 2009 that moved stormwater management and environmental program functions from the Public Works Department to the Stormwater Management Department.

Amendments to Article V, Nonresidential Landscape Requirements, adds a definition section; clarifies when a landscape plan is required; adds wording to reflect current policies; and deletes zoning buffer requirements that are referenced in current zoning regulations .

Variance procedures and a penalty section have been added to the Watershed Protection Ordinance. Other amendments to this ordinance satisfy Department of Community Affairs environmental planning requirements. Amendments to these articles include content rearrangement to simplify use and understanding of submittal requirements and department name changes.

What action are you seeking from the Board of Commissioners?

Adoption of Ordinance 2010-09, proposed amendments to Fayette County Code, Chapter 8, Development Regulations, Articles V and VII.

If this item requires funding, please describe:

Not applicable.

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| Has this issue come before the Commissioners in the past? | Yes | If so, when? | Wednesday, November 3, 2010 |
| Do you need audio-visual for the presentation? | No | Back-up Material Submitted? | Yes |

## STAFF USE ONLY

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| Approved by Finance | Not Applicable | Reviewed by Legal | |
| Approved by Purchasing | Not Applicable | Approved by County Clerk | Yes |
| Administrator's Approval | Yes | | |

Staff Notes:

STATE OF GEORGIA
FAYETTE COUNTY

ORDINANCE NO. 2010-09

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, FAYETTE COUNTY, GEORGIA CHAPTER 8, DEVELOPMENT REGULATIONS, ARTICLE VII, WATERSHED PROTECTION; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

**WHEREAS,** the duly elected governing authority of Fayette County is the Board of Commissioners thereof;

**WHEREAS,** the governing authority desires to amend the provision that provides for the regulation of soil erosion and sedimentation control for land disturbance activities as allowed by the State of Georgia;

**WHEREAS,** the health, safety, and welfare of the citizens of Fayette County, Georgia shall be improved and protected by adoption and implementation of this Ordinance.

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY, GEORGIA AND IT IS HEREBY ORDAINED BY AUTHORITY THEREOF:**

**Section 1.** That Chapter 8, Development Regulations, Article VII. Watershed Protection Ordinance of the Code of Ordinances, Fayette County, is hereby deleted in its entirety and replaced by a new Article VII. entitled "Fayette County Watershed Protection Ordinance" to read as follows:

## ARTICLE VII. WATERSHED PROTECTION ORDINANCE

### Section 8-201. **Introduction**

It is hereby determined that buffers adjacent to streams provide numerous benefits including:

1. Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources,
2. Removing pollutants delivered in urban stormwater,
3. Reducing erosion and controlling sedimentation,
4. Protecting and stabilizing stream banks,
5. Providing for infiltration of stormwater runoff,
6. Maintaining base flow of streams,
7. Contributing organic matter that is a source of food and energy for the aquatic ecosystem,

8. Providing tree canopy to shade streams and promote desirable aquatic habitat,
9. Providing riparian wildlife habitat,
10. Furnishing scenic value and recreational opportunity; and
11. Providing opportunities for the protection and restoration of greenspace.

Section 8-202. **Definitions**

**Base Flood.** The flood having a one (1) percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

**Base Flood Elevation.** The highest water surface elevation anticipated at any given point during the base flood.

**Canopy Tree.** Any tree having reached a relatively tall height compared to surrounding trees and vegetation and providing shade from its foliage mass; also individual or tree groups forming an overhead cover. Examples include oak, maple, hickory, beech, pecan, sycamore, sweet gum, poplar, ash, river birch, long leaf pine, and loblolly pine trees.

**Ground Cover.** A plant with a low-growing, spreading habit, grown specifically to cover the ground, generally not attaining a height of more than two (2) feet.

**Impervious Surface.** The area where a man-made structure or surface prevents the infiltration of storm water into the ground below the structure and/or surface. Examples include buildings, paved roads, paved driveways, paved parking lots, swimming pools, or patios.

**Large Water Supply Watershed.** A watershed area which is greater than 100 square miles as defined by the Georgia Department of Natural Resources Environmental Protection Division.

**Natural Vegetation.** Natural vegetation is a generally undisturbed, maintenance-free, self-perpetuating stand of vegetation comprised of indigenous shrubs, flowers, wild grasses, and trees.

**Nitrification Field.** A nitrification field shall be any area used for the on-site disposal of wastewater.

**Pollutant**. Any substance as certain chemicals or waste products, that renders the air, soil, water or other natural resource harmful or unsuitable.

**Reservoir.** A reservoir shall be an existing or future impoundment of water for water supply purposes as identified by Resolution of the Fayette County Board of Commissioners.

**Shrub.** A plant with persistent woody stems and a relatively low growth habit, distinguished from a tree by producing several basal stems instead of a single trunk.

**Small Water Supply Watershed.** A watershed area which is less than 100 square miles as defined by the Georgia Department of Natural Resources Environmental Protection Division.

**State Water.** Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other water bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state that are not entirely confined and retained completely upon the property of a single individual, home owners association, partnership, or corporation. (Amended June 9, 2005)

**Stream Bank**. The uppermost part of the bank marked by a break in slope (as defined by the Georgia Department of Natural Resources Environmental Protection Division). A stream bank is not necessarily the water's edge.

**Tree.** A self supporting perennial plant having one (1) or more stems or trunks, that, at maturity, has one or more stems or trunks that attain a diameter of at least two (2) inches, a more or less definitely formed crown of foliage; and a height of ten (10) feet or more.

**Tributaries and Streams.** State waters, whether named or unnamed, that continuously flow to major water supply streams.

**Utility.** A public or private water or sewer piping systems, water or sewer pumping stations, electric power lines, fuel pipelines, telephone lines, roads, driveways, bridges, river/lake access facilities, storm water systems and railroads or other utilities identified by a local government.

**Understory Tree.** Any tree, which is of relatively lesser height and spread than surrounding canopy trees, but still provides shade and a degree of protection to the earth and vegetation beneath it. Examples include dogwood, cherry, red bud, sassafras, crabapple, pear, American holly, red cedar, and magnolia trees.

**Water Supply Reservoir.** A governmentally-owned impoundment of water for the primary purpose of providing water to one or more governmentally owned public drinking water systems. This excludes the multipurpose reservoirs owned by the U.S. Army Corps of Engineers.

**Water Supply Watershed.** The area of land upstream of a governmentally-owned public drinking water intake.

**Watershed Buffer.** The area of a parcel set aside to provide a separation between the use(s) on the parcel and adjoining parcel(s) and a state waters requiring a buffer through the use of natural vegetation, replanting, and supplemental plantings.

**Watershed Setback.** The area of a parcel where all structures, septic tanks, nitrification fields and any impervious surfaces shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

**Wrested Vegetation.** Wrested vegetation is vegetation that has been disturbed, moved, or removed by flowing water creating a clear demarcation between water flow and vegetative growth.

Section 8-203. **General Provisions**

(a) **Purpose and Intent.** Ordinance is to help ensure the public health, safety, environment, and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; to preserve stream water quality; and to comply with the laws of the State of Georgia pursuant to O.C.G.A. 12-2-8 by provisions :

1. Create buffers and setbacks along state waters in Fayette County for stream bank stabilization, water resource protection, and protection of aquatic and riparian habitat.

2. Minimize land development within such buffers and setbacks by limiting development activities within these protected areas and by requiring authorization for any such activities.

(b) **Applicability.** The following large and small water supply watersheds, designated major water supply streams, named tributaries, minor unnamed streams, and waters requiring a state buffer located in and out of the large and small water supply watersheds shall be governed by this Article. This Ordinance shall be applicable to any parcel within unincorporated Fayette County that has been created/reconfigured after May 28, 1987, unless it is a minor revision to a Recorded Final Plat/Minor Subdivision Plat as defined in Article XIII of the Fayette County Developmental Regulations.

(c) **Designation of Ordinance Administrator.** The Stormwater Management Director shall administer and implement the provisions of this ordinance.

(d) **Compatibility with Other Regulations**. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, covenant, deed restriction or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or impose higher protective standards for human health or the environment shall control.

(e) **Severability**. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

(f) **Watershed Buffer/Setback Access.** Vegetation within a watershed buffer/setback area shall not be disturbed except for access and utilities approved by The Fayette County Stormwater Management Department.

(g) **Water Supply Watersheds:** Fayette County contains one (1) large water supply watershed and four (4) small water supply watersheds as indicated on the Fayette County Watershed Protection Map,

1. The Flint River is the only large water supply watershed in Fayette County where intakes for Fayette County, Clayton County and the City of Griffin are located. This water supply watershed does not contain a reservoir.

2. The four (4) small water supply watersheds are:

a. Line Creek Watershed where Fayette County and Coweta County intakes are located. This water supply watershed is the location of the proposed Lake McIntosh (a water supply reservoir);

b. Flat Creek Watershed where a Fayette County intake is located. Flat Creek is a named tributary that flows into Lake Kedron and then into Lake Peachtree (both are water supply reservoirs);

c. Whitewater Creek Watershed where Fayette County and the City of Fayetteville intakes are located. This water supply watershed does not contain a reservoir; and

d. Horton Creek Watershed where a Fayette County intake is located. Antioch Creek and Woolsey Creek are named tributaries that flow into Lake Horton (a water supply reservoir).

(h) **State Waters Determination.** For purposes of this ordinance, the Stormwater Management Department shall make state water determinations, but will not delineate said waters. Recorded drainage easements and ditches/swales used for conveying wet-weather flows (i.e., no base flow) shall not require a watershed buffer.

Section 8-204. **Minimum Watershed Protection Requirements.** The following watershed buffer and setback requirements shall be required on all state waters requiring a buffer within unincorporated Fayette County.

No sewage treatment facility, dumping, discharging, releasing, spraying, distributing of any toxic or other pollutant is allowed onto the watershed buffer and setback.

Watershed buffer areas may be hand thinned or hand trimmed of vegetation in accordance with the Fayette County Soil Erosion and Sedimentation Control Ordinance.

Pervious hiking trails and picnic areas will be allowed within the natural watershed buffer and setback. Any land disturbance activities are subject to Article IX and Article IV.

The watershed buffer shall only constitute 50 percent of a livestock containment area.

The watershed buffer shall only extend for 1,000 feet from the wrested vegetation of state waters requiring a buffer. If the watershed buffer exceeds the said 1,000 feet then the 1,000 feet will become the watershed buffer and watershed setback will not be applied.

For (c), (d) and (e) only the watershed buffer may be reduced to 100 feet for activities that do not require grubbing or tilling, such as tree harvesting without stump removal, if and only if, a copy of documentation submitted to Forestry Commission is submitted to Fayette County Stormwater Management prior to requesting a reduction in the watershed buffer.

(a) The following shall apply to any property within 1,000 feet of a reservoir:

1. Minimum watershed buffer 150 feet as measured from the normal pool elevation or base flood elevation, whichever is greater.

(b) The following shall apply to Antioch Creek, Flat Creek, Gin Branch, Haddock Creek, Horton Creek, Line Creek, Trickum Creek, and Woolsey Creek located within Lake Horton, Lake Kedron/Lake Peachtree and Line Creek Reservoirs watersheds:

1. Minimum watershed buffer is 100 feet as measured from the wrested vegetation.

2. Minimum watershed setback is 50 feet as measured from the buffer.

(c) The following shall apply to the Flint River, Whitewater Creek and all state waters requiring a watershed buffer within 1,000 feet of the above named streams:

1. Minimum watershed buffer is 400 feet as measured from the wrested vegetation or is the 100 feet from the base flood elevation, whichever is greater.
2. Minimum watershed setback is 50 feet as measured from the buffer.

(d) The following shall apply to Ginger Cake Creek, Pelham Creek, Perry Creek, South Camp Creek, Sandy Creek, Shoal Creek, Tar Creek, and Whitewater Creek within the Whitewater Creek Watershed; Gay Creek, Morning Creek, Murphy Creek, North Camp Creek, and Nash Creek, within the Flint River Watershed; and all other state waters requiring a buffer within 1000 feet of the above named streams:

1. Minimum watershed buffer is 200 feet from wrested vegetation or 100 feet from base flood elevation, whichever is greater.

2. Minimum watershed setback is 50 feet as measured from the buffer.

(e) The_following shall apply to all other perennial streams within the Flint River Watershed, the Whitewater Creek Watershed and all state waters requiring a buffer within 1,000 feet of these minor perennial streams.

1. Minimum l watershed buffer - 100 feet from wrested vegetation or 50 feet from 100-year flood plain elevation, whichever is greater. Minimum watershed setback is 50 feet as measured from the buffer.

(f) All state waters requiring a buffer not otherwise protected by Section 208(a)-(e) of this ordinance shall meet the following requirements.

1. Minimum watershed buffer shall be maintained for 50 feet from wrested vegetation measured horizontally from both side of the stream.

2. Minimum watershed setback 25 feet as measured from the buffer.

3. This section of the ordinance shall not apply to the following activities:

a. Agricultural operation as defined in Section 8-243(5) of Fayette County's Soil Erosion and Sedimentation Control Ordinance; and

b. Forestry land management practices as defines in Section 8-243(6) of Fayette County's Soil Erosion and Sedimentation Control Ordinance.

(g) The following restrictions shall apply specifically to Large Water Supply Watersheds as identified in the ordinance:

1. New facilities located within seven (7) miles of a water supply intake or water supply reservoir, which handle hazardous materials of the types and amounts determined by the Department of Natural Resources, shall perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the Department of Natural Resources.

(h) The following restrictions shall apply specifically to Small Water Supply Watersheds as identified in the ordinance:

1. New facilities located within seven (7) miles of a water supply intake or water supply reservoir, which handle hazardous materials of the types and amounts determined by the Department of Natural Resources, shall perform their operations on impermeable surface having spill and leak collection systems as prescribed by the Department of Natural Resources.

2. The impervious surface area, including all public and private structures, utilities, or facilities, of the entire water supply watershed shall be limited to 25 percent, or existing use, whichever is greater.

3. New hazardous waste treatment or disposal facilities are prohibited.

Section 8-205. **Other Water Quality Considerations**. Owner Responsibility. It shall be the responsibility of every owner, developer or builder to present required plans and to comply with Article IX.

Section 8-206. **Watershed Buffer Protection and Replacement.** Vegetation within a watershed buffer, as defined in this Ordinance, shall not be disturbed except as indicated herein. Where a watershed buffer area is otherwise disturbed, it shall be replanted according to this Ordinance.

(a) Watershed Buffer Replacement Plan Requirements. A Watershed Buffer Replacement Plan is required for the replacement/replanting of natural vegetation:

1. A landscape plan shall be prepared by a landscape architect registered in the State of Georgia.

2. A landscape plan shall show two (2) canopy trees with a minimum trunk caliper of two and one half (2 ½) inches (at six [6] inches from the ground) for every 1,000 square feet of disturbed buffer area on the site.

3. A landscape plan shall show one (1) understory tree with a minimum trunk caliper on one (1) inch (at six [6] inches from the ground) for every 1,000 square feet of disturbed buffer area on the site.

4. Required trees shall be randomly placed so that the mature canopy covers the buffer area. All disturbed buffer areas shall be 100 percent covered with deciduous trees, shrubs, and/or ground cover (not requiring mowing).

(b) Watershed Buffer Replacement Plan Check Sheet. A Watershed Buffer Replacement plan shall contain the following information:

1. Name, address, and telephone number of property owner.

2. Name, address, telephone number, and seal of landscape architect who prepared the plan.

3. Site location map, north point, and scale of drawings.

4. Show all pertinent site features: buildings, walks, drives, underground utilities, water bodies, etc.

5. Show all property lines, distances to bodies of water and/or streams, and the limits of the natural buffer areas.

6. Show calculations on the plan for: total area, buffer area disturbed (in inches and square feet). Indicate numbers of canopy and understory trees required by ordinance.

7. Planting key: botanical and common name of all plant materials proposed; quantity of each species, size of plant material (caliper, height, width); condition (i.e. balled and burlapped, container grown, bare root, collected, etc.); and

8. Submit three (3) copies of plans for review. One (1) will be returned upon approval.

Section 8-207. **Variance Procedures** The following variance and appeals procedures shall apply to an owner/operator or developer who has been denied a permit for a development activity or to an owner or developer who has not applied for a permit because it is clear that the proposed development activity would be inconsistent with the provisions of this ordinance. A request for a variance may be submitted by an owner/operator who has been denied a permit by the Fayette County Stormwater Management Department or by an owner/operator or developer who has not previously applied for a permit for the reasons stated herein above.

Variances will be considered only in the following cases:

a. When a property's shape, topography or other physical conditions prevents land development unless a buffer/setback variance is granted.

b. Unusual circumstances, that when strict adherence to the minimal buffer/setback requirements in the ordinance would create an extreme hardship.

(1) Requests for variances from the requirements of this ordinance shall be submitted to the Fayette County Stormwater Management Department. All such requests shall be heard and decided in accordance with plan review procedures established by the Fayette County

Stormwater Management Department. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.

(2) Any person adversely affected by any decision of the Fayette County Stormwater Management Department shall have the right to appeal such decision to the Fayette County Planning Commission as established by Fayette County in accordance with procedures issued by the Fayette County Planning Commission. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.

(3) Any person aggrieved by the decision of the Fayette County Planning Commission may appeal such decision to the Fayette County State Court, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.

(5) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Section are met, no reasonable alternative exists, and the development is protected by methods that minimize buffer disturbances.

(7) In reviewing such requests, the Fayette County Stormwater Management Department and Fayette County Planning Commission shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.

(8) Conditions for Variances:

(a) A variance shall be issued only when all of the following conditions are met:

(i) a finding of good and sufficient cause; and

(ii) a determination that failure to grant the variance would result in exceptional hardship.

(c) Any person to whom a variance is granted shall be given written notice specifying the difference between the current buffer(s) and setback(s) requirements and the buffer(s) and setback(s) allowed by the variance.

(d) The Fayette County Stormwater Management Department shall maintain the records of all appeal actions.

(9) Any person requesting a variance shall, from the time of the request until the time the request is acted upon, submit such information and documentation as Fayette County Stormwater Management Department and Fayette County Planning Commission shall deem necessary to the consideration of the request.

(10) Upon consideration of the factors listed above and the purposes of this Ordinance, Fayette County Stormwater Management Department and the Fayette County Planning Commission may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this Ordinance.

(11) Variances shall not be issued “after the fact.”

(12) At a minimum, a variance request shall include the following information:

a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
d. Documentation of unusual hardship should the buffer be maintained;
e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
f. A calculation of the total area and length of the proposed intrusion;
g. A stormwater management site plan, if applicable; and,
h. Proposed mitigation, for the intrusion. If mitigation is not proposed, the request must explain why.

(13) The following factors will be considered in determining whether to issue a variance:

a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
b. The locations of all streams on the property, including along property boundaries;
c. The location and extent of the proposed buffer or setback intrusion; and,
d. Whether alternative designs are possible which require less intrusion or no intrusion;
e. The long-term and construction water-quality impacts of the proposed variance; and,
f. Whether issuance of the variance is at least as protective of natural resources and the environment.

Section 8-208. **PENALTIES**

In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Fayette County Stormwater Management Department shall first notify the owner/operator or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) to cure such violation. In the event the owner/operator or other responsible person fails to cure such violation after such notice and cure period, the Fayette County Stormwater Management Department may take any one or more of the following actions or impose any one or more of the following penalties.

(1) **Stop Work Order** -The Fayette County Stormwater Management Department may issue a stop work order which shall be served on the owner/operator or other responsible person. The stop work order shall remain in effect until the owner/operator or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work

order may be withdrawn or modified to enable the owner/operator or other responsible person to take the necessary remedial measures to cure such violation or violations.

(2) **Suspension, Revocation or Modification of Permit** - The Fayette County Stormwater Management Department may suspend, revoke or modify any permit authorizing any development on the project. A suspended, revoked or modified permit may be reinstated after the owner/operator or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Fayette County Stormwater Management Department may deem necessary) to enable the owner/operator or other responsible person to take the necessary remedial measures to cure such violations.

(3) **Civil Penalties** - For intentional and flagrant violations of this ordinance or in the event the owner/operator or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the Fayette County Stormwater Management Department shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient), the Fayette County Stormwater Management Department may impose a penalty not to exceed $1,000 (depending on the severity of the violation) for each day the violation is not remediated after receipt of the notice of violation.

(4) **Criminal Penalties** - For intentional and flagrant violations of this ordinance, or in the event the owner/operator or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the Fayette County Stormwater Management Department shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient), the Fayette County Stormwater Management Department may issue a citation to the owner/operator or other responsible person, requiring such person to appear in Fayette County State Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed $2,500.00 per day, per violation or a sentence of imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

**Section 2.** That the preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

**Section 3.** a. It is hereby declared to be the intention of the Board of Commissioners that all Sections, paragraphs, sentences, clauses and phrases of this Article are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no Section,

paragraph, sentence, clause or phrase of this Article is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Article.

c. In the event that any phrase, clause, sentence, paragraph or section of this Article shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or Sections of the Article and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and Sections of the Article shall remain valid, constitutional, enforceable, and of full force and effect.

**Section 4.** All ordinances or resolutions and parts of ordinances or resolutions in conflict herewith are hereby expressly repealed except those provided for herein.

**Section 5.** The effective date of this Ordinance shall be the date of adoption unless otherwise specified herein.

**IT IS SO ORDAINED** THIS ____ DAY OF _____, 2010.

**BOARD OF COMMISSIONERS**
**FAYETTE COUNTY, GEORGIA**

_____
JACK R. SMITH, CHAIRMAN

**ATTEST:**

_____
Carol Chandler, County Clerk

## ARTICLE VII. WATERSHED PROTECTION ORDINANCE

Section 8-201. **Introduction**

***It is hereby determined that buffers adjacent to streams provide numerous benefits including:***

1. ***Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources,***
2. ***Removing pollutants delivered in urban stormwater,***
3. ***Reducing erosion and controlling sedimentation,***
4. ***Protecting and stabilizing stream banks,***
5. ***Providing for infiltration of stormwater runoff,***
6. ***Maintaining base flow of streams,***
7. ***Contributing organic matter that is a source of food and energy for the aquatic ecosystem,***
8. ***Providing tree canopy to shade streams and promote desirable aquatic habitat,***
9. ***Providing riparian wildlife habitat,***
10. ***Furnishing scenic value and recreational opportunity; and,***
11. ***Providing opportunities for the protection and restoration of greenspace.***

***Therefore, Fayette County establishes watershed protection policies where*** ~~watershed protection areas are hereby~~ ***to*** identifi~~ed~~***y***, classifi~~ed~~***y***, and regulate~~d~~ ***watershed protection areas*** for the purpose of insuring the preservation and improvement of water quality and for complying with laws of the **State of Georgia pursuant to O.C.G.A. 12-2-8.**

Section 8-202. **Definitions**

~~The following definitions shall be utilized in the administration of the Watershed Protection Ordinance.~~

**Base Flood.** The flood having a one (1) percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

**Base Flood Elevation.** The highest water surface elevation anticipated at any given point during the base flood.

**Canopy Tree.** Any tree having reached a relatively tall height compared to surrounding trees and vegetation and providing shade ~~and protection to the earth and vegetation beneath it~~ from its foliage mass; also individual or tree groups forming an overhead cover. Examples include oak, ~~red~~ maple, hickory, beech, pecan, sycamore, sweetgum, poplar, ash, river birch, long leaf pine, ***and*** loblolly pine ~~and Virginia pine~~ ***trees***~~.~~

~~**Flood Hazard Area.** The area possibly threatened by periodic flooding as determined by various date, e.g. maps provided by the United States Department of Housing and Urban~~

~~Development, United States Soil Conservation Service, Army Corps of Engineers, or hydrologic studies utilizing generally accepted engineering practices. Flood hazard areas shall include all lands underneath a permanent body of water, e.g. a lake, pond, river, and stream, and all land within the limits of a flood having a 100-year return frequency.~~

**Ground Cover.** ~~Natural plant material such as vines, shrubs, or grasses which would not normally~~ ***A plant with a low-growing, spreading habit, grown specifically to cover the ground, generally not*** attain***ing*** a height of more than two (2) feet.

**Impervious Surface.** ***The area where*** a man-made structure or surface ~~which~~ prevents the infiltration of storm water into the ground below the structure ***and/***or surface. Examples ~~are~~***include*** buildings, paved roads, paved driveways, paved parking lots, swimming pools, or patios.

**Large Water Supply Watershed.** A watershed area ~~which is~~ greater than 100 square miles as defined by the Georgia Department of Natural Resources Environmental Protection Division.

**Natural Vegetation.** Natural vegetation ~~shall connote~~ ***is*** a generally undisturbed, maintenance-free, self-perpetuating stand of vegetation comprised of indigenous shrubs, flowers, wild grasses, and trees.

**Nitrification Field.** A nitrification field shall be ~~defined as~~ any ~~system~~ ***area used*** for the on-site disposal of wastewater.

***Pollutant.Any substance, as certain chemicals or waste products, thatrenders the air, soil, wa ter, or other natural resource harmful or unsuitable.***

**Reservoir.** A reservoir shall be an existing or future impoundment of water for water supply purposes as identified by Resolution of the Fayette County Board of Commissioners.

**Shrub.** ***A plant with persistent woody stems and a relatively low growth habit, distinguished from a tree by producing several basal stems instead of a single trunk.***

**Small Water Supply Watershed.** A watershed area which is less than 100 square miles as defined by the Georgia Department of Natural Resources Environmental Protection Division.

**State Water.** Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other water bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state ~~which~~ ***that*** are not entirely confined and retained completely upon the property of a single individual, home owners association, partnership, or corporation. (Amended June 9, 2005)

**Stream Bank**. The uppermost part of the bank marked by a break in slope (as defined by the Georgia Department of Natural Resources Environmental Protection Division). ***A s***~~S~~tream bank is not necessarily the water's edge.

**Tree.** ***Tree. A self-supporting woody perennial plant that, at maturity, has one (1) or more stems or trunks that attain a diameter of at least three (3) inches; a more or less definitely formed crown of foliage; and a height of 10 feet or more.***

**Tributaries and Streams.** ~~Tributaries and streams~~, ***State waters***, whether named or unnamed, that continuously flow to major water supply streams.

**Utility.** A public or private water or sewer piping systems, water or sewer pumping stations, electric power lines, fuel pipelines, telephone lines, roads, driveways, bridges, river/lake access facilities, storm water systems and railroads or other utilities identified by a local government.

**Understory Tree.** Any tree, which is of relatively lesser height and spread than surrounding canopy trees, but still provides shade and a degree of protection to the earth and vegetation beneath it. Examples include dogwood, cherry, red bud, sassafras, crabapple, pear, American holly, red cedar, and magnolia ***trees***.

**Water Supply Reservoir.** A governmentally-owned impoundment of water for the primary purpose of providing water to one or more governmentally owned public drinking water systems. This excludes the multipurpose reservoirs owned by the U.S. Army Corps of Engineers.

**Water Supply Watershed.** The area of land upstream of a governmentally-owned public drinking water intake.

~~**Natural**~~ ***Watershed*** **Buffer.** ~~A portion~~ ***The area*** of a parcel ~~which shall be~~ set aside to provide a separation between the use(s) on the parcel and adjoining parcels ~~or uses or~~ ***and*** a ~~stream~~ ***state waters requiring a buffer*** through the use of natural vegetation, replanting, and supplemental plantings.

***Watershed Setback. The area of a parcel where all structures, septic tanks, nitrification fields and any impervious surfaces shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.***

***Wrested Vegetation. Wrested vegetation is vegetation that has been disturbed, moved, or removed by flowing water creating a clear demarcation between water flow and vegetative growth..***

*Section 8-203.* ***General Provisions***

(a) ***Purpose and Intent. It is the propose of this Ordinance is to help ensure the public health, safety, environment, and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; to preserve stream water quality; and to comply with the laws of the Sate of Georgia by provisions designed to:***

1. ***Create buffers and setbacks along state waters in Fayette County for stream bank stabilization, water resource protection, and protection of aquatic and riparian habitat.***

2. ***Minimize land development within such buffers and setbacks by limiting development activities within these protected areas and by requiring authorization for any such activities.***

(b) **Applicability.** The following large and small water supply watersheds, ~~and~~ designated major water supply streams, named tributaries, minor unnamed streams, and waters ***requiring a*** state ***buffer*** located in and out of the large and small water supply watersheds shall be governed by this ~~Article~~ ***Ordinance***. ***This Ordinance shall be applicable to any parcel within unincorporated Fayette County that has been created/reconfigured after May 28th, 1987, unless it is a minor revision to a Recorded Final Plat/Minor Subdivision Plat as defined in Article XIII of the Fayette County Developmental Regulations.***

(c) ***Designation of Ordinance Administrator. The Stormwater Management Director shall administer and implement the provisions of this ordinance.***

(d) ***Compatibility with Other Regulations. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, covenant, deed restriction or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or impose higher protective standards for human health or the environment shall control.***

(e) ***Severability. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.***

(f) ***Watershed Buffer/Setback Access. Vegetation within a watershed buffer/setback area shall not be disturbed except for access and utilities approved by The Fayette County Stormwater Management Department.***

~~A. Large Water Supply Watersheds: Fayette County contains one (1) large water supply watershed as indicated on the map, Large and Small Water Supply Watersheds in Fayette County; the Flint River where intakes for Fayette County, Clayton County and the City of Griffin are located. This water supply watershed does not contain a reservoir.~~

(g) ~~**Small**~~ **Water Supply Watersheds: Fayette County contains** one (1) large water supply watershed **and four (4) small water supply watersheds as indicated on the *Fayette County Watershed Protection Map*, ~~Large and Small Water Supply Watersheds in Fayette County~~.**

1. ***The Flint River is the only large water supply watershed in Fayette County where intakes for Fayette County, Clayton County and the City of Griffin are located. This water supply watershed does not contain a reservoir.***

2. The four (4) small water supply watersheds are:

a. Line Creek Watershed where Fayette County and Coweta County intakes are located. This water supply watershed is the location of the proposed Lake McIntosh (a water supply reservoir);

b. Flat Creek Watershed where a Fayette County intake is located. Flat Creek is a named tributary ~~which~~ ***that*** flows into Lake Kedron and then into Lake Peachtree (both are water supply reservoirs);

c. Whitewater Creek Watershed where Fayette County and the City of Fayetteville intakes are located. This water supply watershed does not contain a reservoir; and

*d.* Horton Creek Watershed where a Fayette County intake is located. Antioch Creek and Woolsey Creek are named tributaries that flow into Lake Horton (a water supply reservoir).

~~C. Designated major water supply streams.~~

~~1. Antioch Creek~~

~~2. Flat Creek~~

~~3. Flint River~~

~~4. Horton Creek~~

~~5. Line Creek~~

~~6. Whitewater Creek~~

~~7. Woolsey Creek~~

~~D. The following named tributaries to water supply streams are as follows:~~

~~1. Broadnax Creek~~

~~2. Gay Creek~~

~~3. Gin Branch~~

~~4. Gingercake Creek~~

~~5. Haddock Creek~~

~~6. Morning Creek~~

~~7. Murphy Creek~~

~~8. Nash Creek~~

~~9. North Camp Creek~~

~~10. Pelham Creek~~

~~11. Perry Creek~~

~~12. Sandy Creek~~

~~13. Shoal Creek~~

~~14. South Camp Creek~~

~~15. Tar Creek~~

~~16. Trickum Creek~~

~~E. Any and all minor unnamed streams which are indicated as perennial on the 1963 (Photo Revised 1982) U.S.G.S. Quad Sheets.~~

~~F. State Waters~~

(h) ***State Waters Determination. For purposes of this ordinance, the Stormwater Management Department shall make state ~~and~~ water determinations, but will not delineate said waters. Recorded drainage easements and ditches/swales used for conveying wet-weather flows (i.e., no base flow) shall not require a watershed buffer.***

~~**Restrictions.**~~ ***Minumum Watershed Protection Requirements.*** The following ***watershed buffer and setback requirements*** ~~restrictions~~ shall ***be required*** ~~apply to Large Water Supply Watersheds, Small Water Supply Watersheds and All Areas Outside of the Large and Small Water Supply Watersheds~~ ***all state waters requiring a buffer within unincorporated Fayette County.***

***No sewage treatment facility, dumping, discharging, releasing, spraying, distributing of any toxic or other pollutant is allowed onto the watershed buffer and setback.***

***Watershed*** buffer areas may be ***hand*** thinned or ***hand*** trimmed of vegetation in accordance with the Fayette County Soil Erosion and Sedimentation Control Ordinance.

Pervious hiking trails and picnic areas will be allowed within the natural watershed buffer and setback. Any land disturbance activities are subject to ~~Fayette County Erosion and Sedimentation Control Ordinance (~~Article IX~~, Development Regulations)~~ and ~~Flood Plain Regulations (~~Article IV~~, Development Regulations).~~

***The watershed buffer shall only constitute 50 percent of a livestock containment area.***

***The watershed buffer shall only extend for 1,000 feet from the wrested vegetation of state waters requiring a buffer. If the watershed buffer exceeds the said 1,000 feet then the 1,000 feet will become the watershed buffer and a watershed setback will not be applied.***

***For (c), (d) and (e) only*** the ~~natural~~ ***watershed*** buffer ~~shall~~ ***may*** be reduced to 100 feet ~~as measured from the stream bank,~~ for activities that do not require grubbing or tilling, such as tree harvesting with ~~no~~ ***without*** stump removal, i***f and only if, a copy of documentation submitted to Forestry Commission is submitted to Fayette County Stormwater Management prior to requesting a reduction in the watershed buffer.***

(a) ***The following shall apply to a*****ny property within 1,000 feet of a reservoir:**

~~1. Permitted residential use:~~

~~a. Minimum lot size – Three (3) acres~~

a. ~~No multi-family residential or manufactured home park allowed~~.

2. Minimum ~~natural~~ ***watershed*** buffer 150 feet as measured from the normal pool elevation or ~~the natural buffer shall be considered the 100-year flood plain~~ ***base flood*** elevation, whichever is greater.

a. ~~Minimum setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the normal pool elevation or the setback shall be considered the 100-year flood plain elevation, whichever is greater .~~

~~3. Permitted agricultural use:~~

~~a. Minimum natural ***watershed*** buffer ***and watershed setback*** - 150 feet as measured from the normal pool elevation or the natural buffer shall be considered the 100-year flood plain ***base flood*** elevation, whichever is greater.~~

~~b. Minimum ***watershed*** setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the normal pool elevation or the setback shall be considered the 100-year flood plain elevation, whichever is greater.~~

~~4. No chemical treatment (herbicides, pesticides, fertilizers, or paint) or livestock allowed in the natural ***watershed*** buffer.~~

~~5. Commercial - no commercial structures or use of any nature.~~

~~6. Industrial - no industrial structures or use of any nature.~~

~~7. Permitted recreational :~~

~~a. Minimum natural buffer - 150 feet as measured from the normal pool elevation or the natural buffer shall be considered the 100-year flood plain elevation, whichever is greater.~~

b. ~~Minimum setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the normal pool elevation or the setback shall be considered the 100-year flood plain elevation, whichever is greater.~~

~~c. Pervious hiking trails and picnic areas will be allowed within the natural buffer and setback. Any land disturbance activities are subject to Fayette County Erosion and Sedimentation Control Ordinance (Article IX, Development Regulations) and Flood Plain Regulations (Article IV, Development Regulations).~~

~~d. No chemical treatment (herbicides, pesticides, fertilizers, or paint) allowed in the natural buffer.~~

(b) ~~Other areas within a reservoir drainage basin including major water supply streams, tributaries, and minor streams shall be regulated as follows:~~ ***The following shall apply to Antioch Creek, Flat Creek, Gin Branch, Haddock Creek, Horton Creek, Line Creek, Trickum Creek, and Woolsey Creek located within Lake Horton, Lake Kedron/Lake Peachtree and Line Creek Reservoirs watersheds:***

~~1. Permitted residential use:~~

a. ~~Minimum lot size per zoning district~~.

~~b. No multi-family residential or manufactured home park allowed.~~

c. Minimum ~~natural~~ ***watershed*** buffer ***is***100 feet as measured from the ~~stream bank~~ ***wrested vegetation***.

d. Minimum ***watershed*** setback ~~for all structures, nitrification fields and impervious surfaces~~ ***is*** ~~1~~50 feet as measured from the ~~stream bank~~ ***buffer***.

~~2. Permitted agricultural use:~~

~~a. Minimum natural buffer - 100 feet as measured from the stream bank.~~

~~b. Minimum setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the stream bank.~~

~~c. No chemical treatment (herbicides, pesticides, fertilizers, or paint) or livestock allowed in the natural buffer.~~

~~3. Permitted commercial use:~~

~~a. Minimum lot size - Two (2) acres~~

~~b. Minimum natural buffer - 100 feet as measured from the stream bank.~~

~~c. Minimum setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the stream bank.~~

~~4. Permitted industrial use:~~

~~a. Minimum lot size - Five (5) acres~~

~~b. Minimum natural buffer - 100 feet as measured from the stream bank~~

~~c. Minimum setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the stream bank~~

~~5. Permitted recreational :~~

~~a. Minimum natural buffer - 100 feet as measured from the stream bank~~

~~b. Minimum setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the stream bank~~

~~c. Pervious hiking trails and picnic areas will be allowed within the natural buffer and setback. Any land disturbance activities are subject to Fayette County Erosion and Sedimentation Control Ordinance (Article IX, Development Regulations) and Flood Plain Regulations (Article IV, Development Regulations).~~

(c) ~~If a reservoir is not constructed on or adjacent to a major water supply stream,~~ ***T***he following shall apply **to** ***the Flint River, Whitewater Creek and all state waters requiring a watershed buffer*** within 1,000 feet of ~~a major water supply~~ ***the above named streams*****:**

~~1. Permitted residential and commercial use:~~

~~a.~~ Minimum ~~Natural~~ ***watershed*** Buffer ***is*** 400 feet as measured from the ~~stream bank~~ ***wrested vegetation*** or ***is*** 100 feet from the ~~100-year flood plain~~ ***base flood*** elevation, whichever is greater.

~~b. Minimum lot size - residential - per zoning ordinance and commercial: two (2) acres.~~

***c.*** Minimum ***watershed*** setback ~~for all structures, nitrification fields and impervious surfaces - 450 feet as measured from the stream bank or 150 feet from 100-year flood plain elevation, whichever is greater~~ ***is 50 feet as measured from the buffer.***

~~2. No industrial, multi-family residential, or manufactured home park uses shall be permitted.~~

~~3. Permitted agricultural use:~~

~~a. Minimum natural buffer - 400 feet as measured from the stream bank or 100 feet from 100-year flood plain elevation, whichever is greater.~~

~~b. Minimum setback for all structures, nitrification fields and impervious surfaces - 450 feet as measured from the stream bank or 150 feet from 100-year flood plain elevation, whichever is greater.~~

~~c. The natural buffer shall be reduced to 100 feet as measured from the stream bank, for activities that do not require grubbing or tilling, such as tree harvesting with no stump removal.~~

~~d. No chemical treatment (herbicides, pesticides, fertilizers, or paint) or livestock allowed in the natural buffer.~~

~~4. Permitted recreational :~~

~~a. Minimum natural buffer - 400 feet as measured from the stream bank or 100 feet from 100-year flood plain elevation, whichever is greater.~~

~~b. Minimum setback for all structures, nitrification fields and impervious surfaces - 450 feet as measured from the stream bank or 150 feet from 100-year flood plain elevation, whichever is greater.~~

~~c. Pervious hiking trails and picnic areas will be allowed within the natural buffer. Any land disturbance activities are subject to Fayette County Erosion~~

~~and Sedimentation Control Ordinance (Article IX, Development Regulations) and the Flood Plain Regulations (Article IV, Development Regulations).~~

~~d. No chemical treatment (herbicides, pesticides, fertilizers, or paint) allowed in the buffer, natural or undisturbed.~~

(d) ~~If a reservoir is not constructed on or adjacent to a major water supply stream,~~ The following shall apply to ***Ginger Cake Creek, Pelham Creek, Perry Creek, South Camp Creek, Sandy Creek, Shoal Creek, Tar Creek, and Whitewater Creek within the Whitewater Creek Watershed; Gay Creek, Morning Creek, Murphy Creek, North Camp Creek, and Nash Creek, within the Flint River Watershed; and all other state waters requiring a buffer*** ~~named~~ within 1000 feet of the ***above*** named ***streams:***

~~1. Permitted residential use:~~

***a.*** ~~Minimum lot size per zoning district.~~

b. Minimum ~~natural~~ ***watershed*** buffer - 200 feet ~~as measured from the stream bank~~ ***from wrested vegetation*** or 100 feet from ~~100 year flood plain~~ ***base flood*** elevation, whichever is greater.

c. Minimum ***watershed*** setback ~~for all structures, nitrification fields and impervious surfaces~~ - ~~250 feet as measured from the stream bank~~ ~~***from wrested vegetation***~~ or 150 feet from 100 year flood plain ~~***base flood***~~ elevation, ~~whichever is greater.~~ ***50 feet as measured from the buffer.***

~~d. No multi-family residential or manufactured home park allowed.~~

~~2. Permitted commercial use:~~

~~a. Minimum lot size - two (2) acres~~

~~b. Minimum natural buffer - 200 feet as measured from the stream bank or 100 feet from 1100 year flood plain elevation, whichever is greater.~~

~~c. Minimum setback for all structures, nitrification fields and impervious surfaces - 250 feet as measured from the stream bank or 150 feet from 100 year flood plain elevation, whichever is greater.~~

~~3. Permitted industrial :~~

~~a. Minimum lot size - five (5) acres~~

~~b. Minimum natural buffer - 200 feet - as measured from the stream bank or 100 feet from 100 year flood plain elevation, whichever is greater.~~

~~c. Minimum setback for all structures, nitrification fields and impervious surfaces - 250 feet as measured from the stream bank or 150 feet from 100-year flood plain elevation, whichever is greater.~~

~~4. Permitted agricultural :~~

~~a. Minimum natural buffer - 200 feet as measured from the stream bank or 100 feet from 100-year flood plain elevation, whichever is greater.~~

~~b. Minimum setback for all structures, nitrification fields and impervious surfaces - 250 feet as measured from the stream bank or 150 feet from 100-year flood plain elevation, whichever is greater.~~

~~c. The natural buffer shall be reduced to 100 feet, as measured from the stream bank - for activities that do not require grubbing or tilling, such as tree harvesting with no stump removal.~~

~~d. No chemical treatment (herbicides, pesticides, fertilizers, or paint) or livestock allowed in the natural buffer.~~

~~5. Permitted recreational use:~~

~~a. Minimum natural buffer - 200 feet as measured from the stream bank or 100 feet from 100-year flood plain elevation, whichever is greater.~~

~~b. Minimum setback for all structures, nitrification fields and impervious surfaces - 250 feet as measured from the stream bank or 150 feet from 100-year flood plain elevation, whichever is greater.~~

~~c. Pervious hiking trails and picnic areas will be allowed within the natural buffer. Any land disturbance activities are subject to Fayette County Erosion and Sedimentation Control Ordinance (Article IX, Development Regulations) and Flood Plain Regulations (Article IV, Development Regulations).~~

~~d. No chemical treatment (herbicides, pesticides, fertilizers, or paint) allowed in the natural buffer.~~

(e) ~~If a reservoir is not constructed on or adjacent to a major water supply stream,~~ The following shall apply to all other ~~minor~~ ***perennial*** streams within ***the Flint River Watershed, the Whitewater Creek Watershed and all state waters requiring a buffer within*** 1,000 feet of a these ~~**minor**~~ ***perennial*** streams.

~~1. Permitted residential, industrial, or commercial use:~~

~~a. Minimum lot size: Residential - per zoning ordinance; commercial: two - two (2) acres; industrial - five (5) acres.~~

~~b.~~ Minimum ~~natural~~ ***watershed*** buffer - 100 feet ~~as measured from the stream bank~~ ***from wrested vegetation*** or 50 feet from 100-year flood plain elevation, whichever is greater.

~~c.~~ Minimum ***watershed*** setback ~~for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the stream bank or 100 feet from 100-year flood plain elevation, whichever is greater.~~ ***is 50 feet as measured from the buffer.***

~~d. No multi-family residential or manufactured home park allowed.~~

~~2. Permitted agricultural use:~~

~~a. Minimum natural buffer - 100 feet as measured from the stream bank or 50 feet from 100-year flood plain elevation, whichever is greater.~~

~~b. Minimum setback for all structures, nitrification fields and impervious surface - 150 feet as measured from the stream bank or 100 feet from 100-year flood plain elevation, whichever is greater.~~

~~c. The natural buffer shall be reduced to 100 feet as measured from the stream bank for activities that do not require grubbing or tilling, such as tree harvesting with no stump removal.~~.

~~d. No chemical treatment (herbicides, pesticides, fertilizers, or paint) or livestock allowed in the natural buffer.~~

~~3. Permitted recreational use:~~

~~a. Minimum natural buffer - 100 feet as measured from the stream bank or 50 feet from 100-year flood plain elevation, whichever is greater.~~

~~b. Minimum setback for all structures, nitrification fields and impervious surfaces - 150 feet as measured from the stream bank or 100 feet from 100-year flood plain elevation, whichever is greater.~~

~~c. Pervious hiking trails and picnic areas will be allowed within the natural buffer. Any land disturbance activities are subject to Fayette County Erosion and Sedimentation Control Ordinance (Article IX, Development Regulations) and the Flood Plain Regulations (Article IV, Development Regulations).~~

~~d. No chemical treatment (herbicides, pesticides, fertilizers, or paint) allowed in the natural buffer.~~

(f) **All state waters *requiring a buffer* not otherwise protected by Section 208(a)-(e) of this ordinance shall meet the following requirements.**

1. ~~An undisturbed~~ ~~natural~~ ***A minimum watershed*** ~~vegetative~~ buffer shall be maintained for 50 feet ~~The buffer applies to both sides of the stream bank and~~

~~shall be measured horizontally from the top of the stream bank~~ ***from wrested vegetation measured horizontally from both side of the stream.***

2. A ***watershed*** setback ~~shall be maintained for the 75 feet~~ ***is 25 feet as measured from the buffer.*** ~~in which all impervious cover shall be prohibited, and grading, filling, and earthmoving shall be minimized. The setback applies to both sides of the stream and shall be measured horizontally from the top of the stream bank .~~

~~3. No septic tanks or septic tank drain fields shall be permitted within the buffer or setback.~~

4. This section of the ordinance shall not apply to the following activities:

   a. Agricultural operation as defined in Section 8-243(5) of Fayette County's Soil Erosion and Sedimentation Control Ordinance; and

   b. Forestry land management practices as defines in Section 8-243(6) of Fayette County's Soil Erosion and Sedimentation Control Ordinance.

(g) The following restrictions shall apply specifically to Large Water Supply Watersheds as identified in the ordinance:

> New facilities located within seven (7) miles of a water supply intake or water supply reservoir, which handle hazardous materials of the types ~~listed in Section 312 of the Resource Conservation and Recovery Act of 1976 (excluding underground storage tanks) in amounts of 10,000 pounds on any one (1) day or more, shall perform their operations on impervious surfaces and in conformance with any applicable federal spill prevention requirements or requirements of the Standard Fire Code.~~ ***and amounts determined by the Department of Natural Resources, shall perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the Department of Natural Resources.***

(h) The following restrictions shall apply specifically to Small Water Supply Watersheds as identified in the ordinance:

1. New facilities located within seven (7) miles of a water supply intake or water supply reservoir, which handle hazardous materials of the types ~~listed in Section 312 of the Resource Conservation and Recovery Act of 1976 (excluding underground storage tanks) in amounts of 10,000 pounds on any one (1) day or more, shall perform their operations on impervious surfaces and in conformance with any applicable federal spill prevention requirements or requirements of the Standard Fire Code.~~ ***and amounts determined by the Department of Natural Resources, shall perform their operations on impermeable surface having spill and leak collection systems as prescribed by the Department of Natural Resources.***

~~2. New landfills must be lined with a synthetic material and have a leachate collection system.~~

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% percent, or existing use, whichever is greater.

4. ***New hazardous waste treatment or disposal facilities are prohibited.***

Section 8-204. **Other *Water* Quality Considerations**.

(a) ***Owner Responsibility.*** It shall be the responsibility of every ***owner,*** developer or builder to present required plans and to comply with Article IX.

(b) ~~***Conflicting Requirements.*** Whenever the zoning district regulations, including lot size requirements, are more restrictive than those contained in this Article, the more restrictive provisions shall prevail.~~

(c) ~~**Nonresidential Requirements.** Nonresidential developments may be required to install any or all of, but not limited to, the following devices:~~

~~1. Oil-water separators~~

~~2. Grease traps~~

~~3. Pre-settling basins~~

(d) ~~No agricultural or recreational activity that does not strictly comply with Georgia Pesticide Act of 1976, Georgia Pesticide Use and Application Act of 1976, and Georgia Laws 1982, House Bill 1780 (O.C.G.A. Section 2-1-4) as amended, or with any and all other laws of the State of Georgia, will be allowed.~~

Section 8-205. ~~**Natural**~~ **Watershed Buffer Protection and Replacement.** Vegetation within a ~~natural~~ ***watershed*** buffer, as defined in this Ordinance, shall not be disturbed except as indicated herein. Where a ~~natural~~ ***watershed*** buffer area is otherwise disturbed, it shall be replanted according to this ~~Article~~ ***Ordinance***.

(a) ~~**Landscape**~~ ***Watershed Buffer Replacement*** **Plan Requirements. A** ~~**landscape**~~ ***Watershed Buffer Replacement*** **Plan is required for the replacement/replanting of natural vegetation:**

1. A landscape plan shall be prepared by a landscape architect registered in the State of Georgia.

2. A landscape plan shall include two (2) canopy trees with a minimum trunk caliper of two and one half (2 ½) inches (at ~~four [4]~~ ***six [6]*** inches from the ground) for every 1,000 square feet of disturbed buffer area on the site.

3. A landscape plan shall include one (1) understory tree with a minimum trunk caliper on one (1) inch (at ~~four [4]~~ ***six [6]*** inches from the ground) for every 1,000 square feet of disturbed buffer area on the site.

~~4.~~ Required trees shall be randomly places so that the mature canopy covers the buffer area.

5. All disturbed buffer areas shall be 100 percent covered with deciduous trees, shrubs, and/or ground cover (not requiring mowing).

(b) **~~Landscape~~ *Watershed Buffer Replacement* Plan Check Sheet. A ~~Landscape~~ *Watershed Buffer Replacement* plan shall contain the following information:**

1. Name, address and telephone number of property owner.

2. Name, address, telephone number and seal of landscape architect who prepared the plan.

3. Site location map, north point, scale of drawings.

4. Show all pertinent site features: buildings, walks, drives, underground utilities, water bodies, etc.

5. Show all property lines, distances to bodies of water and/or streams, and the limits of the natural buffer areas.

6. Show calculations on the plan for: total area, buffer area disturbed (in inches and square feet). Indicate numbers of canopy and understory trees required by ordinance.

7. Planting key: botanical and common name of all plant materials proposed; quantity of each species, size of plant material (caliper, height, width); condition (i.e. balled and burlapped, container grown, bare root, collected, etc.);

8. Submit three (3) copies of plans for review. One (1) will be returned upon approval.

*Section 8-206.* ***Variance Procedures The following variance and appeals procedures shall apply to an owner/operator or developer who has been denied a permit for a development activity or to an owner or developer who has not applied for a permit because it is clear that the proposed development activity would be inconsistent with the provisions of this ordinance. A request for a variance may be submitted by an owner/operator who has been denied a permit by the Fayette County Stormwater Management Department or by an owner/operator or developer who has not previously applied for a permit for the reasons stated herein above.***

***Variances will be considered only in the following cases:***

***a. When a property's shape, topography or other physical conditions prevents land development unless a buffer/setback variance is granted.***

***b.*** ***Unusual circumstances, that when strict adherence to the minimal buffer/setback requirements in the ordinance would create an extreme hardship.***

***(1)*** ***Requests for variances from the requirements of this ordinance shall be submitted to the Fayette County Stormwater Management Department. All such requests shall be heard and decided in accordance with plan review procedures established by the Fayette County Stormwater Management Department. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.***

***(2)*** ***Any person adversely affected by any decision of the Fayette County Stormwater Management Department shall have the right to appeal such decision to the Fayette County Planning Commission as established by Fayette County in accordance with procedures issued by the Fayette County Planning Commission. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.***

***(3)*** ***Any person aggrieved by the decision of the Fayette County Planning Commission may appeal such decision to the Fayette County State Court, as provided in Section 5-4-1 of the Official Code of Georgia Annotated.***

***(5)*** ***Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this Section are met, no reasonable alternative exists, and the development is protected by methods that minimize buffer disturbances.***

***(7)*** ***In reviewing such requests, the Fayette County Stormwater Management Department and Fayette County Planning Commission shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this ordinance.***

***(8)*** ***Conditions for Variances:***

***(a)*** ***A variance shall be issued only when all of the following conditions are met:***

***(i)*** ***a finding of good and sufficient cause; and***

***(ii)*** ***a determination that failure to grant the variance would result in exceptional hardship.***

***(c)*** ***Any person to whom a variance is granted shall be given written notice specifying the difference between the current buffer(s) and setback(s) requirements and the buffer(s) and setback(s) allowed by the variance.***

***(d)*** ***The Fayette County Stormwater Management Department shall maintain the records of all appeal actions.***

***(9)*** ***Any person requesting a variance shall, from the time of the request until the time the request is acted upon, submit such information and documentation as Fayette County Stormwater Management Department and Fayette County Planning Commission shall deem necessary to the consideration of the request.***

***(10)*** ***Upon consideration of the factors listed above and the purposes of this Ordinance, Fayette County Stormwater Management Department and the Fayette County***

***Planning Commission may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this Ordinance.***

***(11) Variances shall not be issued "after the fact."***

***(12) At a minimum, a variance request shall include the following information:***

- ***a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;***
- ***b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;***
- ***c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;***
- ***d. Documentation of unusual hardship should the buffer be maintained;***
- ***e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;***
- ***f. A calculation of the total area and length of the proposed intrusion;***
- ***g. A stormwater management site plan, if applicable; and,***
- ***h. Proposed mitigation, for the intrusion. If mitigation is not proposed, the request must explain why.***

***(13) The following factors will be considered in determining whether to issue a variance:***

- ***a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;***
- ***b. The locations of all streams on the property, including along property boundaries;***
- ***c. The location and extent of the proposed buffer or setback intrusion; and,***
- ***d. Whether alternative designs are possible which require less intrusion or no intrusion;***
- ***e. The long-term and construction water-quality impacts of the proposed variance; and,***
- ***f. Whether issuance of the variance is at least as protective of natural resources and the environment.***

*Section 8-207.* ***PENALTIES***

***In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the Fayette County Stormwater Management Department shall first notify the owner/operator or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) to cure such violation. In the event the owner/operator or other responsible person fails to cure such violation after such notice and cure period, the Fayette County***

***Stormwater Management Department may take any one or more of the following actions or impose any one or more of the following penalties.***

***(1) Stop Work Order -The Fayette County Stormwater Management Department may issue a stop work order which shall be served on the owner/operator or other responsible person. The stop work order shall remain in effect until the owner/operator or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the owner/operator or other responsible person to take the necessary remedial measures to cure such violation or violations.***

***(2) Suspension, Revocation or Modification of Permit - The Fayette County Stormwater Management Department may suspend, revoke or modify any permit authorizing any development on the project. A suspended, revoked or modified permit may be reinstated after the owner/operator or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the Fayette County Stormwater Management Department may deem necessary) to enable the owner/operator or other responsible person to take the necessary remedial measures to cure such violations.***

***(3) Civil Penalties - For intentional and flagrant violations of this ordinance or in the event the owner/operator or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the Fayette County Stormwater Management Department shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient), the Fayette County Stormwater Management Department may impose a penalty not to exceed $1,000 (depending on the severity of the violation) for each day the violation is not remediated after receipt of the notice of violation.***

***(4) Criminal Penalties - For intentional and flagrant violations of this ordinance, or in the event the owner/operator or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the Fayette County Stormwater Management Department shall deem appropriate (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient), the Fayette County Stormwater Management Department may issue a citation to the owner/operator or other responsible person, requiring such person to appear in Fayette County State Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed $2,500.00 per day, per violation or a sentence of imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.***