

ARTICLE VII. WATERSHED PROTECTION

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**Sec. 104-179. 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 habitats;
- (9) Providing riparian wildlife habitat;
- (10) Furnishing scenic value and recreational opportunity; and
- (11) Providing opportunities for the protection and restoration of greenspace.

(Code 1992, § 8-201; Ord. No. 2010-09, § 1, 11-18-2010)

**Sec. 104-180. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

*Canopy tree* means 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* means a plant with a low-growing, spreading habit, grown specifically to cover the ground, generally not attaining a height of more than two feet.

*Impervious surface* means the area where a manmade structure or surface prevents the infiltration of stormwater 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* means a watershed area which is greater than 100 square miles as defined by the state department of natural resources environmental protection division.

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

*Nitrification field* means any area used for the on-site disposal of wastewater.

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

*Reservoir* means a reservoir shall be an existing or future impoundment of water for water supply purposes as identified by resolution of the county board of commissioners.

*Shrub* means 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* means a watershed area which is less than 100 square miles as defined by the state department of natural resources environmental protection division.

*State water* means 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, homeowners' association, partnership, or corporation. (Amended June 9, 2005.)

*Stream bank* means the uppermost part of the bank marked by a break in slope (as defined by the state department of natural resources environmental protection division). A stream bank is not necessarily the water's edge.

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

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

*Understory tree* means 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.

*Utility* means 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, stormwater systems and railroads or other utilities identified by a local government.

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*Water supply reservoir* means 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* means the area of land upstream of a governmentally owned public drinking water intake.

*Watershed buffer* means the area of a parcel set aside to provide a separation between the uses on the parcel and adjoining parcels and state waters requiring a buffer through the use of natural vegetation, replanting, and supplemental plantings.

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

(Code 1992, § 8-202; Ord. of 6-5-2005; Ord. No. 2010-09, § 1, 11-18-2010)

**Sec. 104-181. General provisions.**

- (a) *Purpose and intent.* This article 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 pursuant to O.C.G.A. § 12-2-8 by provisions:
  - (1) Create buffers and setbacks along state waters in the 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 article shall be applicable to any parcel within the unincorporated 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 XV of this chapter.
- (c) *Administration of article.* The stormwater management director shall administer and implement the provisions of this article.
- (d) *Compatibility with other regulations.* This article 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 article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this article 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) *Watershed buffer/setback access.* Vegetation within a watershed buffer/setback area shall not be disturbed except for access and utilities approved by the county stormwater management department.
- (f) *Water supply watersheds* means the county contains one large water supply watershed and four small water supply watersheds as indicated on the county watershed protection map.

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- (1) The Flint River is the only large water supply watershed in the 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 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 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 the 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 county intake is located. Antioch Creek and Woolsey Creek are named tributaries that flow into Lake Horton (a water supply reservoir).
- (g) *State waters determination.* For purposes of this article, 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.

(Code 1992, § 8-203; Ord. No. 2010-09, § 1, 11-18-2010)

**Sec. 104-182. Minimum watershed protection requirements.**

- (a) The following watershed buffer and setback requirements shall be required on all state waters requiring a buffer within the unincorporated county:
  - (1) No sewage treatment facility, dumping, discharging, releasing, spraying, distributing of any toxic or other pollutant is allowed onto the watershed buffer and setback.
  - (2) Watershed buffer areas may be hand thinned or hand trimmed of vegetation in accordance with the county soil erosion and sedimentation control ordinance.
  - (3) Pervious hiking trails and picnic areas will be allowed within the natural watershed buffer and setback. Any land disturbance activities are subject to articles IV and IX of this chapter.
  - (4) The watershed buffer shall only constitute 50 percent of a livestock containment area.
  - (5) The watershed buffer shall only extend for 1,000 feet from the wretched 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.
  - (6) For subsections (c), (d) and (e) of this section 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 the county stormwater management prior to requesting a reduction in the watershed buffer.
- (b) The following shall apply to any property within 1,000 feet of a reservoir: The minimum watershed buffer shall be 150 feet as measured from the normal pool elevation or base flood elevation, whichever is greater.
- (c) 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:

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- (1) Minimum watershed buffer is 100 feet as measured from the wretched vegetation.
  - (2) Minimum watershed setback is 50 feet as measured from the buffer.
- (d) 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 wretched 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.
- (e) 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 1,000 feet of the streams set forth in this subsection:
- (1) Minimum watershed buffer is 200 feet from wretched vegetation or 100 feet from base flood elevation, whichever is greater.
  - (2) Minimum watershed setback is 50 feet as measured from the buffer.
- (f) 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: minimum watershed buffer shall be 100 feet from wretched vegetation or 50 feet from 100-year floodplain elevation, whichever is greater. Minimum watershed setback shall be 50 feet as measured from the buffer.
- (g) All state waters requiring a buffer not otherwise protected by provisions of this article shall meet the following requirements:
- (1) Minimum watershed buffer shall be maintained for 50 feet from wretched vegetation measured horizontally from both side of the stream.
  - (2) Minimum watershed setback 25 feet as measured from the buffer.
  - (3) This section shall not apply to the following activities:
    - a. Agricultural operation as defined in section 104-266(5); and
    - b. Forestry land management practices as defined in section 104-266(6).
- (h) The following restrictions shall apply specifically to large water supply watersheds as identified in this article: new facilities located within seven 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.
- (i) The following restrictions shall apply specifically to small water supply watersheds as identified in this article:
- (1) New facilities located within seven 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.

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(Code 1992, § 8-204; Ord. No. 2010-09, § 1, 11-18-2010)

**Sec. 104-183. 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 of this chapter.

(Code 1992, § 8-205; Ord. No. 2010-09, § 1, 11-18-2010)

**Sec. 104-184. Watershed buffer protection and replacement.**

Vegetation within a watershed buffer, as defined in this article, shall not be disturbed except as indicated herein. Where a watershed buffer area is otherwise disturbed, it shall be replanted according to this article.

- (1) *Watershed buffer replacement plan requirements.* A watershed buffer replacement plan is required for the replacement/replanting of natural vegetation:
  - a. A landscape plan shall be prepared by a landscape architect registered in the state.
  - b. A landscape plan shall show two canopy trees with a minimum trunk caliper of 2½ inches (at six inches from the ground) for every 1,000 square feet of disturbed buffer area on the site.
  - c. A landscape plan shall show one understory tree with a minimum trunk caliper on one inch (at six inches from the ground) for every 1,000 square feet of disturbed buffer area on the site.
  - d. 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).
- (2) *Watershed buffer replacement plan check sheet.* A watershed buffer replacement plan shall contain the following information:
  - a. Name, address, and telephone number of property owner.
  - b. Name, address, telephone number, and seal of landscape architect who prepared the plan.
  - c. Site location map, north point, and scale of drawings.
  - d. Show all pertinent site features: buildings, walks, drives, underground utilities, water bodies, etc.
  - e. Show all property lines, distances to bodies of water and/or streams, and the limits of the natural buffer areas.
  - f. 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.
  - g. 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.).
  - h. Submit three copies of plans for review. One will be returned upon approval.

(Code 1992, § 8-206; Ord. No. 2010-09, § 1, 11-18-2010)

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**Sec. 104-185. Variance procedures.**

- (a) 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 article:
- (1) A request for a variance may be submitted by an owner/operator who has been denied a permit by the county stormwater management department or by an owner/operator or developer who has not previously applied for a permit for the reasons stated hereinabove.
  - (2) 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 this article would create an extreme hardship.
      1. Requests for variances from the requirements of this article shall be submitted to the county stormwater management department. All such requests shall be heard and decided in accordance with plan review procedures established by the 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 county stormwater management department shall have the right to appeal such decision to the county planning commission as established by the county in accordance with procedures issued by the 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 county planning commission may appeal such decision to the county state court, as provided in section 5-4-1 of the Official Code of Georgia Annotated (O.C.G.A. § 5-4-1).
      4. 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.
      5. In reviewing such requests, the county stormwater management department and the county planning commission shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this article.
      6. Conditions for variances.
        - (i) A variance shall be issued only when all of the following conditions are met:
          - A. A finding of good and sufficient cause; and
          - B. A determination that failure to grant the variance would result in exceptional hardship.
        - (ii) Any person to whom a variance is granted shall be given written notice specifying the difference between the current buffers and setbacks requirements and the buffers and setbacks allowed by the variance.
        - (iii) The county stormwater management department shall maintain the records of all appeal actions.

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7. 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 the county stormwater management department and the county planning commission shall deem necessary to the consideration of the request.
8. Upon consideration of the factors listed in subsection (a)(2)b.6 of this section and the purposes of this article, the county stormwater management department and the county planning commission may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this article.
9. Variances shall not be issued "after the fact."
10. At a minimum, a variance request shall include the following information:
  - (i) A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
  - (ii) A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - (iii) 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;
  - (iv) Documentation of unusual hardship should the buffer be maintained;
  - (v) 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;
  - (vi) A calculation of the total area and length of the proposed intrusion;
  - (vii) A stormwater management site plan, if applicable; and
  - (viii) Proposed mitigation, for the intrusion. If mitigation is not proposed, the request must explain why.
11. The following factors will be considered in determining whether to issue a variance:
  - (i) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - (ii) The locations of all streams on the property, including along property boundaries;
  - (iii) The location and extent of the proposed buffer or setback intrusion;
  - (iv) Whether alternative designs are possible which require less intrusion or no intrusion;
  - (v) The long-term and construction water quality impacts of the proposed variance; and
  - (vi) Whether issuance of the variance is at least as protective of natural resources and the environment.

(Code 1992, § 8-207; Ord. No. 2010-09, § 1, 11-18-2010)

**Sec. 104-186. 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

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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 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 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 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 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 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 violations.
- (2) *Suspension, revocation or modification of permit.* The 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 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 violations of this article 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 days, or such greater period as the 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 county stormwater management department may impose a penalty not to exceed \$1,000.00 (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 violations of this article, 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 days, or such greater period as the 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 county stormwater management department may issue a citation to the owner/operator or other responsible person, requiring such person to appear in the 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.

(Code 1992, § 8-208; Ord. No. 2010-09, § 1, 11-18-2010)

**Secs. 104-187—104-210. Reserved.**