

ARTICLE VII. - WATERSHED PROTECTION^[4]

Footnotes:

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Editor's note— Ord. No. 2019-02, § 1, adopted Feb. 28, 2019, repealed the former Art. VII, §§ 104-179—104-186, and enacted a new Art. VII to read as set out herein. The former Art. VII pertained to similar subject matter and derived from Code 1992, §§ 8-201—8-208; Ord. of 6-5-2005; Ord. No. 2010-09, § 1, 11-18-2010.

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.

(Ord. No. 2019-02, § 1, 2-28-2019)

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 elevation means the highest water surface elevation anticipated at any given point during the flood having a one percent chance of being equaled or exceeded in any given year as identified in the Fayette County Flood Insurance Study published by the Federal Emergency Management Agency dated September 28, 2008. When this study indicates a Zone A the base flood elevation is identified from the 2013 Fayette County Flood Study.

Ephemeral stream means a drainage feature with no evidence of base flows in the stream bank.

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 any manmade structure or natural surface that 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, hardscaping to include gravel (any size) or landscaping rocks, covered structures or patios.

Large water-supply watershed means a watershed area that is greater than 100 square miles upstream of a government-owned public drinking water supply intake as defined by the Georgia Department of Natural Resources.

Natural vegetation means 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.

Normal pool elevation means the lowest crest level of overflow on a reservoir or lake with a fixed overflow level (spillway crest elevation).

Perennial stream means a stream that flows in a well-defined channel throughout most of the year under normal climatic conditions.

Pollutant means any liquid, gas, solid, radioactive, hazardous or other substance that, when not used and/or disposed of in accordance with manufacturer's instructions, causes or contributes to pollution

Pollution means contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes, but is not limited to, a change in temperature, taste, color, turbidity or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other pollutant into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare or environment, or to domestic, commercial, industrial, agricultural, recreational and other legitimate beneficial uses, or to livestock, wild animals, birds, fish or aquatic life.

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 that is less than 100 square miles as defined by the Georgia Department of Natural Resources.

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.

Tree means a self-supporting woody perennial plant that, at maturity, has one or more stems or trunks that attain a diameter of at least three 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 through major and minor water-supply watersheds.

Understory tree means a tree that, under normal forest conditions, grows to maturity beneath canopy trees and will generally reach a mature height of at least ten feet, but less than 40 feet. Examples include dogwood, red bud, fringe tree, lusterleaf holly, and red cedar.

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.

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

(Ord. No. 2019-02, § 1, 2-28-2019)

Sec. 104-181. - General provisions.

- (a) *Purpose and intent* . The purpose of this article is to protect, maintain and enhance 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; and
 - (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, lakes and waters requiring a state buffer located in and out of the large and small water supply watersheds shall be governed by this article.
 - (1) This article shall be applicable to any parcel within the unincorporated county that has been created or 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.
 - (2) It shall be the responsibility of every property owner, developer or builder to present required plans and to comply with article IX of this chapter.
- (c) *Administration of article* . The environmental 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* . Vegetation within a watershed buffer area shall not be disturbed unless approved by the environmental management department.
- (f) *Watershed setback*. All buildings, elevated structures, septic tanks, nitrification fields and/or impervious surfaces shall be prohibited within a watershed setback area. Grading, filling and earthmoving shall be minimized within the watershed setback area. Upon recommendation by the Fayette County Environmental Health Director, the environmental management director may allow for a replacement nitrification field in the setback when a property's recorded final plat defines a watershed buffer and setback and the current septic system is failing.
- (g) *Water-supply watersheds* . The county contains one large water-supply watershed and four small water-supply watersheds as indicated on the county watershed protection map.
 - (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. Lake McIntosh (a water-supply reservoir) is located within this watershed.
 - b. Flat Creek Watershed where a Fayette County intake is located. Flat Creek and Gin Branch are named tributaries that flow into Lake Kedron and then into Lake Peachtree (both are water-supply reservoirs).
 - c. Whitewater Creek Watershed where Fayette County and City of Fayetteville intakes are located. This water-supply watershed does not contain a reservoir.
 - 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 article, the environmental management director 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., ephemeral stream) shall not require a watershed buffer.

(Ord. No. 2019-02, § 1, 2-28-2019)

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's soil erosion and sedimentation control ordinance (article IX of this chapter).
 - (3) Pervious hiking trails, four feet wide or less, and pervious picnic areas, 100 square feet or less and with standard-size picnic tables, will be allowed within the watershed buffer and setback, but not within the 25 foot state water buffer unless all federal permits and state variances have been granted. 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 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.
 - (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 the Georgia Forestry Commission is submitted to the environmental management department prior to requesting a reduction in the watershed buffer.
- (b) For any property within 1,000 feet of a water-supply reservoir, the minimum watershed buffer shall be 100 feet as measured from the normal pool elevation. The minimum watershed setback shall be 50 feet as measured from the watershed buffer.
- (c) The following shall apply to these major water-supply streams: Antioch Creek, Flat Creek, Gin Branch, Horton Creek, Line Creek, and Woolsey Creek:
- (1) The minimum watershed buffer is 100 feet as measured from the wrested vegetation; ands
 - (2) The minimum watershed setback is 50 feet as measured from the buffer.
- (d) The following shall apply to these major water-supply streams: Flint River, Whitewater Creek and all state waters requiring a watershed buffer within 1,000 feet of the Flint River and Whitewater Creek:

- (1) The minimum watershed buffer is 400 feet as measured from the wrested vegetation or 100 feet from the base flood elevation, whichever is greater; and
 - (2) The minimum watershed setback is 50 feet as measured from the buffer.
- (e) The following shall apply to these named tributaries: 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, Trickum Creek within the Line Creek Watershed, and all other state waters requiring a buffer within 1,000 feet of the streams set forth in this subsection:
- (1) The minimum watershed buffer is 200 feet from wrested vegetation or 100 feet from base flood elevation, whichever is greater; and
 - (2) The 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 and Whitewater Creek Watersheds and all state waters requiring a buffer within 1,000 feet of the streams named in this section.
- (1) The minimum watershed buffer shall be 100 feet from wrested vegetation or 50 feet from 100-year floodplain elevation, whichever is greater; and
 - (2) The minimum watershed setback shall be 50 feet as measured from the buffer.
- (g) All lakes and state waters requiring a buffer but not otherwise protected by provisions of this article shall meet the following requirements:
- (1) The minimum watershed buffer shall be 50 feet from wrested vegetation measured horizontally from both sides of the stream;
 - (2) The minimum watershed setback shall be 25 feet as measured from the buffer; and
 - (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 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.

(Ord. No. 2019-02, § 1, 2-28-2019)

Sec. 104-183. - 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 and stream/shoreline mitigation plan*. A watershed buffer and stream/shoreline mitigation plan is required for the replacement/replanting of natural vegetation and shall meet the following requirements:
 - a. The plan shall be prepared by a landscape architect registered in the state and approved by the environmental management department prior to execution.
 - b. The plan shall show two canopy trees with a minimum trunk caliper of two and one-half inches (at six inches from the ground) for every 1,000 square feet of disturbed buffer area on the site.
 - c. The 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 overstory covers the buffer area. All disturbed buffer areas shall be 100 percent covered with deciduous trees, shrubs, and/or ground cover.
 - e. The plan shall show stream bank and shoreline restoration and must follow Georgia Environmental Protection Division Streambank and Shoreline Stabilization Guidance.
 - f. Within seven days of the plan's execution, a stamped letter from the landscape architect who designed the plan shall be submitted to Environmental Management.
- (2) *Watershed buffer and stream/shoreline mitigation plan requirements*. A watershed buffer and stream/shoreline mitigation 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. All pertinent site features, including buildings, walks, drives, underground utilities, water bodies, etc.
 - e. All property lines, distances to bodies of water and/or streams, and the limits of the natural buffer areas.
 - f. Total parcels area, buffer area disturbed (square feet and square inches) and numbers of canopy and understory trees required by ordinance.
 - g. Planting key with botanical and common names 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.).

(Ord. No. 2019-02, § 1, 2-28-2019)

Sec. 104-184. - Variance procedures and appeals.

- (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 environmental management department or by an owner/operator or developer who has not previously applied for a permit for the reasons stated hereinabove. A request for a

variance may not be submitted when the recorded final plat defines a watershed buffer and setback.

- (2) Variances will be considered only in the following cases:
 - a. When there are unusual circumstances, such that strict adherence to the minimal buffer/setback requirements in this article would create an extreme hardship.
 - b. When 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.
- (b) *Procedure*. Requests for variances from the requirements of this article shall be submitted to the environmental management department. All such requests shall be heard and decided in accordance with plan review procedures established by the environmental management department. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard.
 - (1) At a minimum, a variance request application shall include:
 - 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. 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.
 - (2) The following factors will be considered in determining whether any of the conditions identified in paragraph (2) of subsection (a) of this section are present:
 - 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;
 - 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.
 - (3) 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 environmental management department and the board of commissioners shall deem necessary to the consideration of the request.
 - (4) Upon consideration of the factors listed in paragraph (2) of this subsection and the purposes of this article, the environmental management department (and the board of commissioners when

considering an appeal pursuant to subsection (c) of this section) may attach such conditions to the granting of variances as they deem necessary or appropriate, consistent with the purposes of this article.

- (5) In reviewing requests pursuant to this section the environmental management department (and the board of commissioners when considering an appeal pursuant to subsection (c) of this section) shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this article.
 - (6) 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.
- (c) *Appeals*. Any person adversely affected by any decision of the environmental management department shall have the right to appeal such decision to the board of commissioners for the county in accordance with procedures issued by the board of commissioners. At a minimum, such procedures shall include notice to all affected parties and the opportunity to be heard. Any person aggrieved by the decision of the board of commissioners may appeal such decision by petitioning for writ of certiorari with the Superior Court of Fayette County, as provided in section 5-4-1 of the Official Code of Georgia Annotated (O.C.G.A. § 5-4-1).

(Ord. No. 2019-02, § 1, 2-28-2019)

Sec. 104-185. - 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 environmental 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 environmental 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 environmental 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 environmental management department may suspend, revoke or modify any permit authorizing any development within the county. 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 environmental 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) *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 environmental 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 environmental management department may issue a citation to the owner/operator or other responsible person, requiring such person to appear in the 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 up to 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Secs. 104-186—104-210. - Reserved.