

Stream Buffer Ordinances

April, 2005

The Etowah Aquatic HCP Stream Buffer Ordinances were developed by a Technical Committee of local government staff from the Etowah watershed. The Steering Committee approved the Technical Committee's recommendations for inclusion in the Etowah Aquatic Habitat Conservation Plan on July 23, 2004, with the understanding that the stream buffer ordinances, once implemented, will help minimize and mitigate take of imperiled aquatic species in the Etowah Watershed, and that these ordinances will be implemented prior to receiving an Incidental Take Permit from US Fish and Wildlife Service.

Technical Committee Members

Several jurisdictions in the Etowah watershed are also part of the Metropolitan North Georgia Water Planning District, and are required to adopt the MNGWPD stream buffer ordinance by April 3, 2005. The Technical Committee for Stream Buffers consisted of Steering Committee representatives from jurisdictions *not* included in the MNGWPD and therefore not required to adopt the MNGWPD ordinance. They developed a stream buffer ordinance for the non-MNGWPD jurisdictions.

The following individuals served on the Technical Committee for Stream Buffers:

Lynn Tully, *Dawson County*
Norman Pope, *Pickens County*
Kevin Flanagan, *Lumpkin County*
Jimmy Moore, *City of Dawsonville*

Technical Committee Staff

Seth Wenger, Institute of Ecology
Laurie Fowler, Institute of Ecology
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Executive Summary

Stream buffer ordinances that protect riparian zones are considered essential tools for ensuring the survival of many aquatic organisms. While some jurisdictions participating in the Etowah Habitat Conservation Plan already have adequate buffer protections in place, many do not. The model stream buffer ordinance of the Metropolitan North Georgia Water Planning District, which many jurisdictions participating in the Etowah Aquatic HCP must adopt in some form, provides a reasonable basis for local stream buffer regulations. The Etowah Steering Committee agreed that:

- Jurisdictions within the MNGWPD should adopt the MNGWPD model ordinance with minor changes, maintaining any existing rules that are more strict than those of the MNGWPD model ordinance (Appendix E-1);
- Jurisdictions outside of the MNGWPD adopt a similar ordinance with a buffer width of at least 50 ft (wider if possible) (Appendix E-2);

It is the understanding of the Steering Committee that these regulations will help minimize and mitigate take of imperiled species in the Etowah basin, and that adopting these regulations will be a requirement for holding an Incidental Take Permit pursuant to the Etowah Aquatic HCP.

Introduction

Naturally vegetated riparian zones are necessary for maintaining healthy aquatic habitat for many organisms, including the imperiled species of the Etowah. A stream buffer ordinance (or riparian buffer ordinance) is a well-accepted policy tool that is widely used for protecting riparian zones from degradation in urbanizing areas. The Etowah Habitat Conservation Plan Steering Committee considers a riparian buffer ordinance an essential policy tool for all jurisdictions participating in the Etowah Aquatic HCP.

Existing Ordinances

In July 2003, the HCP Stream Buffer Technical Committee reviewed stream buffer ordinances from all jurisdictions participating in the development of the Etowah Aquatic HCP. We obtained copies of stream buffer regulations from Bartow County, Cherokee County, Cobb County, Dawson County, Forsyth County, Fulton County, Lumpkin County, Pickens County, and the Cities of Canton, Cartersville, Dallas, Kennesaw, Marietta, Roswell and Woodstock. Emerson and Dawsonville reported that they follow state standards and did not supply copies of regulations; Waleska reported that it has adopted standards consistent with Cherokee County. Holly Springs did not respond to inquiries. Paulding County staff members were friendly and helpful by telephone, but failed to actually supply copies of regulations.

All jurisdictions appear to have complied with state regulations for stream buffers, including the Erosion and Sedimentation Act, the Mountain and River Corridor Protection Act, the Georgia Planning Act (water supply watershed protection) and the Metropolitan River Protection Act. Most counties and a few cities have exceeded these minimum standards by enacting their own stream buffer regulations. These are summarized in the following table:

Jursidiction	Buffer (+ Setback)	Notes
Bartow	50'	
Cherokee	50'	150' on Etowah
Cobb	50-200'	Varies by drainage area, etc.; requires covenant
Forsyth	35'	20' for intermittent and ephemeral streams
Fulton	75' (+ 15')	
Kennesaw	50'	
Roswell	100' (+50')	50'(+25') on "flowing" streams
Waleska	50'	
Woodstock	50'	100' on Little River

Many of the ordinances that exceed state standards lack one or more significant elements, such as clear definitions, intent and purpose sections, and variance procedures. The most complete regulations are those of Fulton County and the City of Roswell. Cobb County has a unique and interesting provision requiring the donation of a restrictive covenant to the county upon permit approval. In other words, stream buffers in Cobb County are protected by a permanent legal mechanism in addition to the regulatory protections themselves.

The remaining jurisdictions have not exceeded the state minimum standards. These jurisdictions include Dawson County, Lumpkin County, Pickens County, Canton, Cartersville, Dallas, Dawsonville, Emerson, and Marietta.

The Model Ordinance of the Metropolitan North Georgia Water Planning District

The MNGWPD has developed a model ordinance for stream buffer protection. All jurisdictions in the district must adopt this ordinance by April 3, 2005. Key features of the ordinance are summarized below.

- The model ordinance establishes a naturally vegetated buffer width of 50', with an additional setback for impervious surfaces of 25'. This is a minimum, and jurisdictions are specifically authorized to exceed it.
- Existing land uses are exempted. This is broadly worded and therefore covers existing land disturbing activities, such as agriculture.
- Variance requests must be accompanied by detailed information.
- The ordinance distinguishes between land disturbing activities and land developing activities where the latter involves the placement or use of impervious surfaces.
- Streams are well-defined, as follows:
- *“Stream” means any stream, beginning at:*
 - *The location of a spring, seep, or groundwater outflow that sustains streamflow; or*
 - *A point in the stream channel with a drainage area of 25 acres or more; or*
 - *Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the (local permitting authority) may require field studies to verify the existence of a stream.*
- The model ordinance clearly prohibits land disturbing activities, septic tanks and drainfields, and all impervious surfaces, including buildings and structures, from the buffer.
- The ordinance includes provisions for penalties and severability, as well as provisions for appeals and judicial review, elements omitted in several of the existing ordinances.

The model ordinance meets the minimum requirements for buffer ordinances recommended in publications of the University of Georgia Institute of Ecology (Wenger 1999, Wenger and Fowler 2000), although wider buffer widths would be preferable. In order to minimize and mitigate take of imperiled aquatic species, jurisdictions within the MNGWPD should adopt the MNGWPD model ordinance with modifications to include any wider buffers or additional stream protections currently in place. For example, Cobb County currently protects 75' buffers on streams draining more than five square miles, 100' buffers on streams draining more than 10 square miles, and 200' buffers on sections of Nickajack Creek. These should remain in force, as should the provisions requiring restrictive covenants on buffer lands.

In addition, three relatively minor changes should be made to the MNGWPD ordinance. The first is to clarify the definition of a stream; the second is to remove a vague exemption for activities in rights of way; and the third is to clarify and strengthen variance procedures. These changes are not essential, but should make the ordinance more

clear and defensible. These changes are highlighted in the “MNGWPD Model Stream Buffer Ordinance with HCP Recommendations Included” (Appendix E-1).

Recommendations for the Non-MNGWPD Jurisdictions

Lumpkin County, Dawson County, Pickens County and the City of Dawsonville are not included in the MNGWPD. Steering Committee representatives from these jurisdictions met to discuss the feasibility of adopting similar stream buffer regulations in those jurisdictions as part of the Etowah Aquatic HCP. Attending were Lynn Tully of Dawson County, Kevin Flanagan of Lumpkin County, Norman Pope of Pickens County, and Jimmy Moore of Dawsonville. .

Historically, stream buffer regulations in these jurisdictions have met with some opposition among property rights advocates, so the Steering Committee representatives advocated a moderate approach. Considering that many waterways in these areas are currently protected by 50’ buffers on trout streams, the participants suggested that a uniform 50’ buffer would be acceptable to property owners. The HCP Advisory Committee, made up of scientists from a number of state and federal resource management agencies including the University of Georgia, US Fish and Wildlife Service and Georgia Department of Natural Resources, agreed that a well-enforced 50’ buffer, while not as protective as wider buffers, would likely be adequate to help minimize and mitigate take of imperiled aquatic species when combined with other regulatory measures, such as improved stormwater management and erosion and sedimentation control. Based on these discussions, the University of Georgia’s Land Use Clinic drafted a new ordinance for the jurisdictions not included in the MNGWPD, and this ordinance was approved by the HCP Steering Committee (Appendix E-2). The non-MNGWPD Etowah jurisdictions should adopt this ordinance with the understanding that it will help minimize and mitigate take of imperiled aquatic species and must be adopted prior to receiving an Incidental Take Permit pursuant to the Etowah Aquatic Habitat Conservation Plan.

Literature Cited

Wenger, S.J. and L. Fowler. 2000. *Protecting Stream and River Corridors: Creating Effective Local Riparian Buffer Ordinances*. Athens, GA: University of Georgia. 68 pp.

Wenger, S.J. 1999. *A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation*. Athens, GA: University of Georgia. 57 pp.

**Appendix E-1 MNGWPD Model Stream Buffer Ordinance with
HCP Recommendations Included**

Appendix E-1. Recommended Changes to the Model Stream Buffer Ordinance of the Metropolitan North Georgia Water Planning District.

Additions are shown in highlighting (shading), and deletions are struck through.

A. Clarification of the definition of stream

“**Stream**” means any stream, beginning at:

1. The location of a spring, seep, or groundwater outflow that sustains streamflow; or
2. A point in the stream channel with a drainage area of 25 acres or more; or
3. Where evidence indicates the presence of a stream in a drainage area of ~~other~~ **less** than 25 acres, the **(local permitting authority)** may require field studies to verify the existence of a stream.

B. Removal of the exemption for activities in rights of way. Utility easements and road crossings are exempted elsewhere, so this broadly-worded section appears unnecessary and problematic.

~~(3) Land development activities within a right-of-way existing at the time this ordinance takes effect or approved under the terms of this ordinance.~~

C. Clarification and strengthening of variance procedures.

5.2. Variance Procedures

Variances from the above buffer and setback requirements may be granted **only** in accordance with the following provisions:

- (1) Where a parcel was platted prior to the effective date of this ordinance, and its shape, topography or other existing physical condition prevents **any** land development consistent with this ordinance, and the **(review and permitting authority)** finds and determines that the requirements of this ordinance prohibit the otherwise lawful use of the property by the owner, the **(appeals board)** of **(local jurisdiction)** may grant a variance from the buffer and setback requirements hereunder, provided ~~such variance require~~ **adequate** mitigation measures **are implemented by the owner** to offset the effects of **such variance** ~~any proposed land development on the parcel.~~
- (2) Except as provided above, the **(appeals board)** of **(local jurisdiction)** shall grant no variance from any provision of this ordinance without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the **(appeals board)**. The **(local jurisdiction)** shall give public notice of each such public hearing in a newspaper of general circulation within **(local jurisdiction)**. The **(local jurisdiction)** shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.

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

- a. ~~When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.~~
- b. ~~Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.~~

Variations will not be considered when, following adoption of this ordinance, actions of any property owner of a given property have created conditions of a hardship on that property.

- (3) 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, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
- (4) 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;
 - f. Whether issuance of the variance is at least as protective of natural resources and the environment.

- (5) An approved variance shall allow a reduction in buffer width only to the extent necessary to provide relief from the conditions which prevented land development activities on the parcel.

**Appendix E-2 HCP Model Stream Buffer Ordinance for
Jurisdictions not Included in MNGWPD**

NOTE: THIS ORDINANCE, WHILE WRITTEN TO BE SPECIFIC TO DAWSON COUNTY, CAN BE MADE APPLICABLE TO ANY NON-MNGWPD LOCAL GOVERNMENT BY SUBSTITUTING REFERENCES TO DAWSON COUNTY WITH REFERENCES TO THE APPROPRIATE LOCAL GOVERNMENT.

DAWSON COUNTY STREAM BUFFER PROTECTION ORDINANCE

Description:

This model ordinance provides a framework for local governments to develop buffer zones for streams, as well as the requirements that minimize land development within those buffers. It is the purpose of these buffer zone requirements to protect and stabilize stream banks, protect water quality and preserve aquatic and riparian habitat.


Note: Italicized text with this symbol  should be interpreted as comments, instructions, or information to assist the local government in tailoring the ordinance. This text would not appear in a final adopted ordinance.

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Section 1. Title

This ordinance shall be known as the Dawson County Stream Buffer Protection Ordinance.”

Section 2. Findings and Purposes

2.1. Findings

Whereas, the Board of Commissioners of Dawson County finds 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
- (11) Providing opportunities for the protection and restoration of greenspace

2.2. Purposes

It is the purpose of this Ordinance is to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:

- (1) Create buffer zones along the streams of Dawson County for the protection of water resources; and,
- (2) Avoid land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

Section 3. Definitions

“Buffer” means, with respect to a stream, a natural or enhanced vegetated area (established by Section 5.1.1 below), lying adjacent to the stream.

“Impervious Cover” means any manmade paved, hardened or structural surface regardless of material. Impervious cover includes but is not limited to rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.

“Land Development” means any land change, including but not limited to clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

“Land Development Activity” means those actions or activities which comprise, facilitate or result in land development.

“Land Disturbance” means any land or vegetation change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.

“Land Disturbance Activity” means those actions or activities which comprise, facilitate or result in land disturbance.

“Floodplain” means any land area susceptible to flooding, which would have at least a one percent probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan; i.e., the regulatory flood.

“Parcel” means any plot, lot or acreage shown as a unit on the latest county tax assessment records.

“Permit” means the permit issued by the Planning Director required for undertaking any land development activity

“Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

“Protection Area, or Stream Protection Area” means, with respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

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

“Setback” means, with respect to a stream, the area established by Section 5.1.2 extending beyond any buffer applicable to the stream.

“**Stream**” means any stream, beginning at:

1. The location of a spring, seep, or groundwater outflow that sustains streamflow; or
2. A point in the stream channel with a drainage area of 25 acres or more; or
4. Where evidence indicates the presence of a stream in a drainage area of ~~other~~ **less** than 25 acres, the Planning Director may require field studies to verify the existence of a stream.

➡ *As a long-term goal, the local jurisdiction can also map its perennial and intermittent streams through field work, prioritizing basins and developing information as time, staffing and budgets permit.*

“**Stream Bank**” means the sloping land that contains the stream channel and the normal flows of the stream.

“**Stream Channel**” means the portion of a watercourse that contains the base flow of the stream.

“**Watershed**” means the land area that drains into a particular stream.

Section 4. Applicability

This ordinance shall apply to all land development activity on property containing a stream protection area as defined in Section 3 of this ordinance. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

4.1. Grandfather Provisions

This ordinance shall not apply to the following activities:

- (1) Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this ordinance.
- (2) Existing development and on-going land disturbance activities including but not limited to existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land disturbance activities on such properties will be subject to all applicable buffer requirements.
- (3) Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of this ordinance.
- (4) Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved within two years of the effective date of this ordinance.

4.2. Exemptions

The following specific activities are exempt from this ordinance. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

- (1) Activities for the purpose of building one of the following:
 - a stream crossing by a driveway, transportation route or utility line;
 - public water supply intake or public wastewater outfall structures;
 - intrusions necessary to provide access to a property;
 - public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
 - unpaved foot trails and paths;
 - activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.
- (2) Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in Item 4.2. (1), above.
- (3) Land development activities by governments within a road right of way existing at the time this ordinance takes effect, or approved under the terms of this ordinance. Development activities will only be allowed if they cannot reasonably be located outside the buffer.
- (4) Within an easement of any utility existing at the time this ordinance takes effect or approved under the terms of this ordinance, land disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.
- (5) Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the (review and permitting authority) on the next business day after commencement of the work. Within 10 days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the (review and permitting authority) to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
- (6) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.

☞ *Unless specifically provided for in a State law, local governments generally do not have permitting or enforcement authority over State and Federal departments, agencies and authorities. Local governments need to address these issues in the context of their overall permitting and enforcement regulations and provide for reporting observed problems, first to the agency performing the activity, then, if no corrective action results, to Georgia EPD.*

After the effective date of this ordinance, it shall apply to new subdividing and platting activities.

Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to Section 5.2 below.

Section 5. Land Development Requirements

5.1. Buffer and Setback Requirements

All land development activity subject to this ordinance shall meet the following requirements:

- (1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.

☞ *The top of the bank is often a clearer landmark than the edge of the water or the end of vegetation, particularly on intermittent streams. The land forming the bank is also considered part of the buffer for purposes of this ordinance.*

- ~~(2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.~~

☞ *Any buffer and setback widths that may be listed are intended as minimums. Local governments are encouraged to adopt wider buffers and setbacks as necessary. A local government has many options in developing wider buffers. One method would be to increase the width as the stream drainage basin increases in size, as Cobb County does. Another method is to offer incentives for voluntary wider buffers. For example, Clayton County allows developers to offset proposed land development with deeper buffers as an alternative to using other stormwater controls.*

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

5.2. Variance Procedures

Variances from the above buffer and setback requirements may be granted in accordance with the following provisions:

(1) Where a parcel was platted prior to the effective date of this ordinance, and its shape, topography or other existing physical condition prevents land development consistent with this ordinance, the Planning Commission of Dawson County may grant a variance from the buffer and setback requirements hereunder, provided ~~such variance require~~ adequate mitigation measures are implemented by the owner to offset the effects of such variance ~~any proposed land development on the parcel.~~ Variances will not be considered when, following adoption of this ordinance, actions of any property owner of a given property have created conditions of a hardship on that property. An approved variance shall allow a reduction in buffer width only to the extent necessary to provide relief from the conditions which prevented land development activities on the parcel.

(2) Except as provided above, the Planning Commission of Dawson County shall grant no variance from any provision of this ordinance without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the Planning Commission. Dawson County shall give public notice of each such public hearing in a newspaper of general circulation within Dawson County. The Dawson County shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.

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

- ~~c. When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.~~
- ~~d. Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.~~

(3) 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;
- j. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- k. 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;
- l. Documentation of the inability to develop the property without a variance;
- m. 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;
- n. A calculation of the total area and length of the proposed intrusion;
- o. A stormwater management site plan, if applicable; and,
- p. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.

- (4) The following factors will be considered in determining whether to issue a variance:
- g. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property that may prevent any land development;
 - h. The locations of all streams on the property, including along property boundaries;
 - i. The location and extent of the proposed buffer or setback intrusion; and,
 - j. Whether alternative designs are possible which require less intrusion or no intrusion;
 - k. The long-term and construction water-quality impacts of the proposed variance;
 - l. Whether issuance of the variance is protective of natural resources and the environment;

Section 6. Compatibility with Other Buffer Regulations and Requirements

This ordinance is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this ordinance should be considered minimum requirements, 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 provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

➡ *Examples of existing legislation and regulations include:*

Metropolitan River Protection Act and Chattahoochee Corridor Plan

Requires a 50-foot undisturbed vegetative buffer and 150-foot impervious surface setback on the Chattahoochee and its impoundments and a 35-foot undisturbed vegetative buffer (all measured from the edge of the water) on perennial tributary streams in a Corridor extending 2000 feet from either bank of the river and its impoundments. The Corridor extends from Buford Dam to the downstream limits of the Atlanta region (Douglas and Fulton Counties). Streams in the basin of the Corridor are required to be protected by buffers, but no required width is specified. (Georgia Code 12-5-440 et seq.)

DNR Part 5 Criteria for Small (under 100 square miles) Water Supply Watersheds

Authorized under Part V of the Georgia Planning Act of 1989, these criteria require 100-foot undisturbed buffers and 150-foot setbacks on all perennial streams within 7 miles upstream of a public water supply reservoir or public water supply intake. Beyond 7 miles, the required buffer is 50 feet and the required setback is 75 feet. Equivalent protection measures can be adopted with approval from Georgia DCA and DNR.

DNR Part 5 Criteria for River Protection

Authorized under the 1991 Mountains and River Corridors Protection Act of 1991, these criteria require a 100-foot buffer along rivers with average annual flows of greater than 400 cfs (excepting the portion of the Chattahoochee referenced above). The buffer is measured from the top of the stream bank.

These examples are partial descriptions of more extensive regulations as of July, 2002. They represent only three of the stricter regulations that already exist.

➡ *While the requirements of this ordinance are intended to apply to all streams in (local jurisdiction), special conditions may exist that require greater protection. Nothing in this ordinance should be construed as preventing the establishment of wider and/or more restrictive buffers and setbacks as required under any other existing or future legislation. In addition, nothing in this ordinance should be construed as preventing the establishment of wider buffers for purposes of protecting greenspace, preserving habitat or other goals that may not be specifically mandated by legislation.*

Section 7. Additional Information Requirements for Development on Buffer Zone Properties

Any permit applications for property requiring buffers and setbacks hereunder must include the following:

- (1) A site plan showing:
 - a. The location of all streams on the property;
 - b. Limits of required stream buffers and setbacks on the property;
 - c. Buffer zone topography with contour lines at no greater than five (5)-foot contour intervals;
 - d. Delineation of forested and open areas in the buffer zone; and,
 - e. Detailed plans of all proposed land development on the site.
- (2) A description any potential development impact on the buffer and setback, and how it will be avoided; and,
- (3) Any other documentation that the Planning Director may reasonably deem necessary for review of the application and to insure that the buffer zone ordinance is addressed in the approval process.

All buffer and setback areas must be recorded on the final plat of the property following plan approval.

Section 8. Responsibility

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this ordinance shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon Dawson County, its officers or employees, for injury or damage to persons or property.

Section 9. Inspection

The Planning Director or authorized representative may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the Planning director or authorized representative in making such inspections. Dawson County shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.

No person shall refuse entry or access to any authorized representative or agent who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out official duties.

Section 10. Violations, Enforcement and Penalties

Any action or inaction which violates the provisions of this ordinance or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this Section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

10.1. Notice of Violation

If the Planning Director or authorized representative determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this ordinance, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured the appropriate permit therefor, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- (1) The name and address of the owner or the applicant or the responsible person;
- (2) The address or other description of the site upon which the violation is occurring;

- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this ordinance and the date for the completion of such remedial action;
- (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the County Commission by filing a written notice of appeal within thirty (30) days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient).

10.2. 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 Planning Director or authorized representative shall first notify the applicant 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 applicant or other responsible person fails to cure such violation after such notice and cure period, the Planning Director or authorized representative 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 Planning Director or other authorized representative may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant 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 applicant or other responsible person to take necessary remedial measures to cure such violation or violations.
- (2) **Withhold Certificate of Occupancy** - The Planning Director or authorized representative may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (3) **Suspension, Revocation or Modification of Permit** - The Planning Director or authorized representative may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant 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 Planning Commission may deem necessary) to enable the applicant or

other responsible person to take the necessary remedial measures to cure such violations.

- (4) **Civil Penalties** - In the event the applicant 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 Planning Commission 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) after the Planning Director or authorized representatives has taken one or more of the actions described above, the **Planning Director** may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (5) **Criminal Penalties** - For intentional and flagrant violations of this ordinance, any authorized representative of the County Commission may issue a citation to the applicant or other responsible person, requiring such person to appear in the Dawson County Magistrate Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or 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 11. Administrative Appeal and Judicial Review

11.1 Administrative Appeal

Any person aggrieved by a decision or order of the Planning Director or the Planning Commission, may appeal in writing to the Planning Director of Dawson County and shall be entitled to a hearing before the County Commission.

11.2. Judicial Review

Any person aggrieved by a decision or order of the County Commission, after exhausting all administrative remedies, shall have the right to appeal de novo to the Dawson County Magistrate Court.

Section 12. Severability

If any article, section, subsection, paragraph, clause, phrase or provision of this ordinance shall be adjudged invalid or held unconstitutional, such decision shall not affect or invalidate the remaining portions of this ordinance.