

Board of Commissioners
Gwinnett County
Lawrenceville, Georgia

A Resolution to Create the Stream Buffer Mitigation Bank Ordinance of Gwinnett County

SMA2005-001

Date of Reading and Adoption: March 22, 2005

At the meeting of the Gwinnett County Board of Commissioners held at the Gwinnett Justice & Administration Center, 75 Langley Drive, Lawrenceville, Georgia.

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<u>Commission Members</u>	<u>Present</u>	<u>Vote</u>
Charles E. Bannister, Chairman	Yes	Aye
Lorraine Green, District 1	Yes	Aye
Bert Nasuti, District 2	Yes	Aye
Mike Beaudreau, District 3	Yes	Aye
Kevin Kenerly, District 4	Yes	Aye

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On motion of Commissioner Green, seconded by Commissioner Nasuti, which carried 5-0, the following resolution was adopted:

A Resolution to Establish the Stream Buffer Mitigation Bank Ordinance of Gwinnett County

SMA2005-001

WHEREAS, the Board of Commissioners of Gwinnett County finds that buffers adjacent to streams provide numerous benefits including:

- Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources
- Removing pollutants delivered in urban stormwater
- Reducing erosion and controlling sedimentation
- Protecting and stabilizing stream banks
- Providing for infiltration of stormwater runoff
- Maintaining base flow of streams
- Contributing organic matter that is a source of food and energy for the aquatic ecosystem
- Providing tree canopy to shade streams and promote desirable aquatic habitat
- Providing riparian wildlife habitat
- Furnishing scenic value and recreational opportunity

- Providing opportunities for the protection and restoration of greenspace

WHEREAS, the Metropolitan North Georgia Water Planning District recommends the adoption of a Stream Buffer Protection Ordinance equivalent to or better than their Model Stream Buffer Protection Ordinance; and,

WHEREAS, the Board of Commissioners has identified a need to facilitate public and private beneficial land development by providing an equitable and efficient approach to the stream buffer mitigation requirements required by the Stream Buffer Protection Ordinance; and,

WHEREAS, the Board of Commissioners finds that the purpose of the following Stream Buffer Mitigation Bank Ordinance is to:

- Protect the health, safety, environment, convenience, order, prosperity and the general welfare of the present and future inhabitants of Gwinnett County;
- Encourage the protection of buffer zones along the streams of Gwinnett County for the protection of water resources;
- Facilitate mitigation of unavoidable impacts to the stream buffers of Gwinnett County;
- Establish the Storm Water Capital Fund and Mitigation Bank as a source of funding the restoration, enhancement and protection of stream buffers in Gwinnett County and for other activities that directly contribute to the restoration, enhancement and protection of the functions provided by stream buffers; and,
- Set forth the mitigation requirements that apply in Gwinnett County as referenced in the Stream Buffer Protection Ordinance.

NOW, THEREFORE BE IT RESOLVED by the Gwinnett County Board of Commissioners, on this 22nd day of March 2005 that the “Stream Buffer Mitigation Bank Ordinance” shall be created to include Article 1 Title, Article 2. Definitions, Article 3. Establishment of the Stream Buffer Mitigation Bank and Storm Water Capital Fund, Article 4. Gwinnett County Stream Buffer Mitigation Bank Procedures Guide, Article 5. Applicability, Article 6. Compatibility with Other Buffer Regulations and Requirements, Article 7. Stream Buffer Mitigation Requirements, Article 8. Additional Information Requirements for Mitigation of Buffer Zone Properties, Article 9. Inspection, Article 10. Enforcement and Administrative Appeal, Article 11. Fees, Article 12 Adoption and Amendment, and Article 13. Severability.

Article 1 Title

This ordinance shall be known as the “Stream Buffer Mitigation Bank Ordinance of Gwinnett County.”

Article 2 Definitions.

“**Applicant**” means a property owner, public agency or private entity seeking participation in the Stream Buffer Mitigation Bank by meeting the specifications of this Ordinance and the criteria and procedures in the Gwinnett County Stream Buffer Mitigation Bank procedures guide, a chapter of the Gwinnett County Storm Water Design Manual.

“Buffer” means the area of land immediately adjacent to the banks of a stream in its existing or enhanced state of vegetation as defined by the Stream Buffer Protection Ordinance.

“Conservation Easement” means a legal agreement or dedication in favor of a government agency or qualified land conservation organization, recorded in the Gwinnett County real property records by the property owner to place restrictions on present and future use of land.

“Creation” means the development of a forested buffer in an area where buffer did not previously exist. Successful creation results in a net gain in buffer acres.

“Department” means the Department of Public Utilities of Gwinnett County, Georgia.

“Director” means the Director of the Department of Public Utilities or the director’s designee.

“Enhancement” means activities conducted within existing forested buffer that heighten, intensify, or improve its function to protect the aquatic resource. Enhancement may include management and control of exotic species such as privet or improving diversity through replanting. Enhancement results in improved function, but does not result in a gain in buffer area.

“Impervious Cover or Impervious Surface” means any paved, hardened or structural surface, including but not limited to , buildings, dams, decks, driveways, parking areas, patios, streets, swimming pools, tennis courts, walkways, and other structures..

“Land Development” means all activities associated with the conversion of land or the expansion or replacement of an existing use to any new use intended for human operation, occupancy or habitation, other than for agricultural purposes devoted strictly to the cultivation of the land, dairying or animal husbandry. Such activities include land disturbance (clearing and grubbing the land of vegetation and stumps, and grading) and the construction of improvements such as but not limited to streets, driveways or parking areas, water or sewer mains, storm water drainage facilities, sidewalks or other structures permanently placed on or in the property. 2. (noun) Where appropriate to the context, the term "development" also may be used to denote a specific subdivision or project which is a single entity or intended to be constructed as in interrelated whole, whether simultaneously or in phases.

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

“Land Disturbance” means any activity which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state, including, but not limited to, clearing, clearing and grubbing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices.

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

“Floodplain” means those lands subject 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.

“Lot” or “Parcel” means a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built

upon.

“Mitigation means the use of any or all of the following actions listed in descending order of preference:

- a) Avoiding the impact by not taking a certain action;
- b) Minimizing the impact by limiting the degree or magnitude of the action by using appropriate technology or by taking affirmative steps to avoid or reduce the impact;
- c) Rectifying the impact by repairing, rehabilitating or restoring the affected stream buffer;
- d) Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;
- e) Compensating for the impact by replacing, enhancing or providing substitute stream buffer protection areas or other activities that restore, maintain or protect stream buffer functions within Gwinnett County;
- f) Monitoring the impact and taking appropriate corrective measures.

“Mitigation Bank” means a property that has been protected in perpetuity, and approved by Gwinnett County expressly for the purpose of providing compensatory mitigation in advance of authorized impacts through the restoration, creation, and/or enhancement of stream buffers or water quality, and in exceptional circumstances, preservation of adjacent stream buffers, and/or other resources contributing toward the proper function of a stream buffer or water quality, or property that is utilized to implement other types of activities that restore, enhance, and protect stream buffer functions or water quality within Gwinnett County.

“Mitigation Banking” means the process of restoring or creating self-sustaining, functioning stream buffers or water quality, or, in exceptional circumstances, preserving high-quality and threatened buffers, or other activities that directly contribute to the restoration, enhancement, and protection of stream buffer functions or water quality as a prior replacement for stream buffers that are expected to be unavoidably impacted by development.

“Mitigation Credit” means a unit of value generally equivalent to 1 acre of created or restored functioning stream buffer.

“Mitigation Costs” means the costs as determined by Gwinnett County for restoration of a riparian buffer and may include planning, design, construction, and property costs. Gwinnett County Mitigation Banking costs are provided in the procedures guide, a chapter of the Gwinnett County Storm Water Design Manual, and are adjusted as needed by the Department.

“Mitigation Plan” means a written document developed based on the criteria in the Gwinnett County Stream Buffer Mitigation Bank procedures guide, a chapter of the Gwinnett County Storm Water Design Manual, and supplemented with graphics (including as-built drawings), that describes in detail the implemented mitigation site, the goals established for the project, how it was implemented, how it will be monitored, the amount of mitigation in the site (credits, acres, etc.), and the criteria by which its success will be determined.

“Monitoring” means evaluating the impacts of development proposals on biologic, hydrologic and geologic systems and assessing the performance of required mitigation.

“Off-site” means outside and not adjacent to the limits of the project area.

“On-site” means within or adjacent to the limits of the project area.

“Permit” means the permit issued by the Department of Planning and Development required for undertaking land development activity.

“Perennial Stream” means a watercourse having a source, terminus, banks and channel through which water flows on a continuous basis as depicted on the most recent United States Geological Survey 7.5-minute quadrangle map (scale 1:24,000).

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

“Procedures Guide” means the Gwinnett County Stream Buffer Mitigation Bank procedures guide, a chapter of the Gwinnett County Storm Water Design Manual, which provides a standardized process for preparing a mitigation plan, coordinating with the Department, obtaining the proper permits, determination of mitigation requirements, conducting a completeness review of the design, monitoring the success of the project, cost of mitigation credits, and payment procedures when utilizing the Stream Buffer Mitigation Bank.

“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 as established by the Gwinnett County Stream Buffer Protection Ordinance.

“Restoration” means the re-establishment or rehabilitation of a buffer with the goal of returning natural or historic functions and characteristics. Restoration may include the conversion of a pasture area to a forested area and result in a gain in buffer function value for protecting aquatic resources.

“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 the Gwinnett County Stream Buffer Protection Ordinance as extending beyond any buffer applicable to the stream.

“Stream” means any stream, beginning at:

1. The location where the normal stream flow has wrested the vegetation. The normal stream flow is any flow that consists solely of base flow or consists of both base flow and direct runoff during any period of the year. Base flow results from the groundwater that enters the stream channel through the soil. This includes spring flows into streams. Direct runoff is the water entering stream channels promptly after rainfall or snow melts; or
2. A point in the stream channel with a drainage area of 20 acres or more; or
3. Where evidence indicates the presence of a stream in a drainage area of other than 20 acres, the Department of Public Utilities may require field studies to verify the existence of a stream.

“Stream Bank” means the confining cut of a stream channel.

“Storm Water Capital Fund” means the fund created to finance and operate, in perpetuity, the Gwinnett County Stream Buffer Mitigation Bank.

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

“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, storm water systems and railroads or other utilities identified by Gwinnett County.

“Variance” means an adjustment in the application of standards as defined in Subsection 4.2 of the Gwinnett County Stream Buffer Protection Ordinance. The Director of the Department of Planning and Development or the director’s designee shall coordinate the review of each variance request with all other affected County departments (must include a recommendation from the Department of Public Utilities) and shall summarize such comments or recommendations as may be received to the Board of Construction Adjustments and Appeals.

“Watercourse” means any natural or artificial waterway, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, gully, ravine, or wash in which water flows either continuously or intermittently, having a definite channel, bed and bank, and included any area adjacent thereto which is subject to inundation by reason of overflow or floodwater.”

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

Article 3 Establishment of the Stream Buffer Mitigation Bank and Storm Water Capital Fund

There is hereby created a Gwinnett County Stream Buffer Mitigation Bank and a Storm Water Capital Fund. The Mitigation Bank will be administered by the Gwinnett County Department of Public Utilities. The Storm Water Capital Fund will be administered by the Gwinnett County Department of Financial Services.

3.1 Source of funds

All monies generated by the sale of credits through the In-lieu Fee Mitigation option described in subsection 7.2 shall be deposited into the Storm Water Capital Fund. All monies received from penalties described in Article 9 of the Gwinnett County Stream Buffer Protection Ordinance shall be deposited into the Fund.

3.2 Use of funds

The Fund shall be budgeted and maintained separately from all other county service funds, for the sole purpose of financing and supporting the creation and perpetual operation of a Stream Buffer Mitigation Bank to serve Gwinnett County, Georgia. The fund may be used to implement projects that will replace the functional loss (for both water quality and quantity) of the forested stream buffer, including but not limited to design and construction of stream restoration projects, property acquisition, engineering and planning studies, and design and construction of storm water Best Management Practices.

3.3 Real Property

All purchases or transfers of real property pursuant to this Ordinance shall be brought before the County Commission for approval. The Director of the Department of Public Utilities may accept, with County Commission approval, donations of real estate, easements and revenue for use in accordance with the provisions of this ordinance.

Article 4 Gwinnett County Stream Buffer Mitigation Bank Procedures Guide

A Gwinnett County Stream Buffer Mitigation Bank procedures guide shall be developed and updated as needed by the Department of Public Utilities as a chapter of the Gwinnett County Storm Water Design Manual. The procedures guide will provide a standardized process for preparing a mitigation plan, coordinating with the Department, obtaining the proper permits, determination of mitigation requirements, conducting a completeness review of the design, monitoring the success of the project, cost of mitigation credits, and payment procedures when utilizing the Stream Buffer Mitigation Bank.

Article 5 Applicability

This ordinance applies to persons who wish to impact a stream buffer protection zone as defined in Gwinnett County's Stream Buffer Protection Ordinance. These requirements are in addition to, and do not replace or supersede, any other applicable mitigation requirements established under state or federal law. The terms of this ordinance apply when an applicant has either:

- a) Received approval from the Department of Public Utilities for a proposed impact to a stream buffer protection zone that is "allowable with mitigation" as defined in the procedures guide, or
- b) Received a variance pursuant to subsection 4.2.2.5 of the Stream Buffer Protection Ordinance and is required to perform mitigation as a condition of a variance approval.

Article 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.

Article 7 Stream Buffer Mitigation Requirements

To achieve stream buffer mitigation that is proportional to the extent of the impact and consistent from project to project, all Applicants requesting mitigation must follow the standardized processes as described in the Gwinnett County Stream Buffer Mitigation Bank procedures guide, available as a chapter of the Gwinnett County Storm Water Design Manual. The applicant will use the criteria outlined in the procedures guide to determine the amount of creation, restoration, enhancement, and / or preservation required relative to the degree of impact. An applicant has

two options for mitigating impacts to an existing stream buffer protection zone as defined in the Gwinnett County Stream Buffer Protection Ordinance. The first option is to perform the mitigation on-site in accordance with the procedures described in Subsection 7.1. The second option is for the applicant to pay a fee to the Gwinnett County Storm Water Capital Fund in accordance with the procedures described in Subsection 7.2.

7.1 On-site Mitigation

An applicant may mitigate impacts to an existing stream buffer by performing an amount of mitigation that is equivalent to the mitigation requirement on-site in accordance with the on-site mitigation procedures in the procedures guide. If the amount of on-site mitigation is not sufficient to satisfy the mitigation requirement, then the applicant will be required to purchase credits from the Gwinnett County Stream Buffer Mitigation Bank as described in subsection 7.2.

7.2 In-lieu Fee Mitigation

An applicant may mitigate impacts to an existing stream buffer by paying a fee to the Storm Water Capital Fund in accordance with the Fee Schedule. The fee will be based on the actual costs of stream buffer restoration and will be approved by the County Commission. The Fee Schedule will be reviewed and revised as necessary to reflect the actual costs of restoration and submitted to the County Commission for review and approval.

Article 8 Additional Information Requirements for Mitigation of Buffer Zone Properties

As described of in the Gwinnett County Stream Buffer Protection Ordinance and Stream Buffer Mitigation Bank procedures guide, any permit applications for property requiring buffers and setbacks hereunder must include the following:

8.1 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 two (2)-foot contour intervals;
- d) Delineation of forested and open areas in the buffer zone; and,
- e) Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback;

8.2 Description:

A description of all proposed land development within the buffer and setback; and,

8.3 Documentation:

Any other documentation that the Department of Public Utilities 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 following the plan approval process.

Article 9 Inspection of On-site Mitigation Projects

Either the Department of Public Utilities or the Department of Planning and Development may

perform inspections of the on-site mitigation project and shall make a final inspection following completion of the work. The permittee shall assist representatives of either department in making such inspections. Both the Director of the Department of Public Utilities and the Director of the Department of Planning and Development or the director's designee shall have the authority to conduct such investigations as he or she may reasonably deem necessary to carry out the 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.

Article 10 Enforcement and Administrative Appeal

This ordinance shall be administered, interpreted, and enforced by both the Director of the Department of Public Utilities and the Director of the Department of Planning and Development or the director's designee. Any action or inaction that violates the provisions of this ordinance or the requirements of an approved plan or permit shall be subject to the enforcement actions or penalties outlined in Articles 9 and 10 of the Gwinnett County Stream Buffer Protection Ordinance. Any such action or inaction that is continuous with respect to time is deemed to be a public nuisance and also may be abated by injunctive or other equitable relief. The imposition of any of the enforcement actions or penalties described herein shall not prevent such equitable relief.

Article 11 Fees

- 11.1 Application filing, permit, inspection, in-lieu and other fees shall be as may be established from time-to-time by the Board of Commissioners.
- 11.2 Permit fees, if any, shall be submitted as a prerequisite to issuance of the permit. Non-payment as a result of submission of a check having insufficient funds on account, or for any other reason, shall cause the permit to be voided and re-issuance subject to penalty as may be established by the Board of Commissioners.
- 11.3 Application fees, if any, shall be submitted with the application and upon acceptance of said submission for review and consideration shall not be refundable. Failure to pay a required application fee shall cause the application to be returned to the applicant without acceptance for review or consideration by the County.
- 11.4 Following the approval of development plans, and prior to authorization to begin construction, the developer shall provide the Department of Public Utilities such fees as may be established from time-to-time by the Board of Commissioners. Such fees shall not be refundable following issuance of a Development Permit, except upon approval of the Board of Commissioners.

11.5 Prior to approval of a Final Plat or Certificate of Occupancy, the developer shall provide to the Department of Public Utilities such fees and performance and/or maintenance bonds as shall be required by this ordinance or established from time-to-time by the Board of Commissioners.

Article 12 Adoption and Amendment

12.1 Effective Date

11.1.1 These Regulations shall be in full force and effect on April 1, 2005, following the adoption by the Board of Commissioners of Gwinnett County, Georgia, and shall apply to any land disturbance permit for which an application is received after the effective date of these Regulations.

11.1.2 Nothing in these Regulations shall be construed to affect the validity of any building permit lawfully issued prior to the effective date of these Regulations.

12.2 Amendments

11.2.1 These Regulations may be amended from time-to-time by resolution of the Board of Commissioners of Gwinnett County. Such amendments shall be effective as of their date of adoption unless otherwise stated in the adopting resolution.

11.2.2 Any subdivision or other project for which a valid and complete application for a Development Permit shall have been received prior to the adoption of an amendment to these Regulations may, at the developer's option, proceed to completion and building permits may be issued as though no amendment had been approved, provided that the Development Permit is or can be issued within 90 calendar days of said amendment and all time frames associated with said permit are observed.

12.2.3 Any subdivision or other project for which a Development Permit has been issued prior to the adoption of an amendment to these Regulations may, at the developer's option, proceed to completion and building permits may be issued as though no amendment had been approved.

12.2.4 Any subdivision or other project for which only a Clearing, Clearing and Grubbing, or Grading Permit shall have been issued prior to adoption of an amendment to these Regulations shall be brought into conformance with the amendment (if applicable) prior to issuance of a Development Permit.

12.2.5 No amendment to these Regulations shall be construed to affect the validity of any building permit lawfully issued prior to the adoption of said amendment.

Article 13 Severability

If any Article, provision or clause of any part of this ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to effect the portions of this ordinance not so held to be invalid, or the application of this ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this ordinance would have been adopted had such invalid portion not been included herein.

BE IT FURTHER RESOLVED that this resolution becomes effective upon its adoption.

BE IT FURTHER RESOLVED that all regulations or parts of regulations in conflict with this resolution are hereby rescinded to the extent of said conflict.

Attest:

Approved As To Form:

County Clerk

Date

County Attorney's Office

Date

Gwinnett County Board of Commissioners

Charles E. Bannister, Chairman

Date Signed: _____

DBC: C: SMA2005-001B