

# Stream Buffer Regulations – MNGWPD Model, Current DeKalb County, Commissioner Rader and P&D Staff Recommendations

## Key

Black	MNGWPD Model Stream Buffer Protection Ordinance 09.25.03
Blue	Commissioner Rader's Recommendations 08.12.08
Red	Planning and Development Staff's Recommendations 08.12.2008
Green	Current County Requirements (per Chapter 14, Article II)

## Section 1. Title

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

## Section 2. Findings and Purposes

### 2.1. Findings

Whereas, the Board of Commissioners of DeKalb 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 DeKalb County for the protection of water resources; and,
- (2) Minimize 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.

*Buffer area* means that portion of a lot set aside for open space and/or visual screening purposes, pursuant to the applicable provisions of the DeKalb County Code and all conditions of zoning, to separate different use districts, or to separate uses on one (1) property uses on another property of the same use district or a different use district. (Article I, Section 14-1)

*Buffer, stream* means the portion of a lot and/or area of land immediately adjacent to the banks of streams as regulated by the I and development regulations of the DeKalb County Code. (Article I, Section 14-1)

*Buffer zone, state* means the area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat. (Article I, Section 14-1)

**“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 DeKalb County Planning and Development 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
3. Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, DeKalb County Planning and Development may require field studies to verify the existence of a stream.

*Stream* means natural, running water flowing continuously or intermittently in a channel on or below the surface of the ground, and shall include, but not be limited to, all streams depicted on the 1995 DeKalb County Geographic Information System (GIS) map maintained by the DeKalb County GIS director. No stream shall be excluded from this definition due to its failure to be identified on the map. Field verification shall be performed to make a final determination as to the existence of a stream where a dispute exists. Such field verification shall be performed by the chief executive officer. (Article I, Section 14-1)

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

*Streambank* means as measured horizontally from that point where vegetation has been wrested by normal stream flow or wave action. (Article I, Section 14-1)

**“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 within a right-of-way existing at the time this ordinance takes effect or approved under the terms of this ordinance.
- (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.

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 (add Lot Coverage) 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.
- (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.
- (3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.
- (4) Residential lot coverage may not exceed 35% of the lot. Non-residential lot coverage may not exceed 80% of the lot. Site plan must show the existing and proposed lot coverage. The proposed additions or new construction shall not exceed the maximum allowable lot coverage.

### **Section 14-42 Water quality control**

- (i) Stream buffers shall be established along all streams throughout the county.
  - (1) Stream buffers shall consist of an undisturbed stream buffer a minimum of seventy-five (75) feet from each stream bank and shall preserve any existing mature riparian forest that can provide shade, leaf litter, woody debris and erosion protection to the stream. Land use in the stream buffer is limited to stormwater channels, footpaths, and utility or roadway crossings, except as otherwise provided below.
  - (2) Within the stream buffer, the director may approve specific encroachments of multi-use trails that are part of a Master Plan for Multi-Use Trails in DeKalb County approved by the board of commissioners. Such encroachments shall be limited to specific locations not less than twenty-five (25) feet from the banks of state waters when, after study of alternative trail alignments, the director determines that there is no feasible alternative to the proposed encroachment. Such encroachments shall be designed to minimize impervious surfaces and shall incorporate BMPs and other mitigation practices that minimize the impact of encroachments on water quality.

(3) The stormwater discharge crossing a stream buffer or state buffer zone shall be designed to ensure that sheet flow is established through the stream buffer and prevent channelized flow through the stream buffer.

(4) Piping of streams shall not be allowed in a stream buffer except where a variance is granted as provided in section 14-34(b)(3). However, perpendicular crossings of roads and utility crossings such as sewer pipes and water pipes may be allowed, but should be kept to an absolute minimum. Within transitional buffer zones, a property owner may remove unwanted ground cover (e.g. poison ivy) using hand tools, and in conformance with section 14-38(b)(4)c.15.

## **5.2. Variance Procedures**

Section 14-34 Issuance of notice violation; variances; specification of time period for correction; appeals.

### *c) Variances.*

(1) Except as further limited herein, an applicant may request a variance from the terms of the requirements of sections 14-37, 14-38, 14-40, and 14-42 of Chapter 14. The director shall have no power to consider or to grant variances which are the responsibility of the director of the EPD pursuant to O.C.G.A. § 12-2-8 and other relevant state statutes and regulations. The director is authorized to consider applications for variances pursuant to this section within the seventy-five-foot stream buffer required at section 14-42(i)(2), but not within the twenty-five-foot state buffer zone adjacent to waters of the state set forth in section 14-38(b)(4)c.15. Where variances involving the same project are requested from both the director of the EPD and the director, the director shall take no action on any such request for variance until the director of the EPD grants the variance or otherwise approves the request pending before the EPD. Receiving a variance from the director of the EPD does not obligate the director to permit the project to proceed if the project does not also meet all the other requirements of this article. No variance from the provisions of Chapter 14 shall be authorized except as specifically authorized in this section or specifically authorized in another section of Chapter 14.

(2) Applications for variances authorized in subsection (1) above shall be made in writing to the director and shall contain all of those materials and documents required by the director that are necessary to demonstrate that said request meets the criteria for granting variances.

(3) In considering a request for a variance to the terms of this article authorized in subsection (1) above, the director shall use all of the following criteria:

(A) The request, while not strictly meeting the requirements of Chapter 14, will in the judgment of the director be at least as protective of natural resources and the environment as would a plan which met the strict application of these requirements. In making such a judgment, the director shall examine whether the request will be at least as protective of the natural resources and the environment with regard to the following factors:

- (i) Stream bank or soil stabilization;
- (ii) Trapping of sediment in surface runoff;

- (iii) Removal of nutrients, heavy metals, pesticides and other pollutants from surface runoff;
  - (iv) Terrestrial habitat, food chain, and migration corridor;
  - (v) Buffering of flood flows;
  - (vi) Infiltration of surface runoff;
  - (vii) Noise and visual buffers;
  - (viii) Downstream water quality; and
  - (ix) Impact on threatened and endangered species, as those species are designated by law or federal or state regulation.
- (B) By reason of exceptional topographic or other relevant physical conditions of the subject property that were not created by the owner or applicant, there is no opportunity for any development under any design configuration unless a variance is granted.
- (C) The request does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privileges inconsistent with the limitations upon other properties that are similarly situated.
- (D) The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the area in which the property is located.
- (E) The literal interpretation and strict application of the applicable provisions or requirements of Chapter 14 would cause an extreme hardship, provided the hardship was not created by the owner.
- (4) The director's decision shall be in writing, shall state the basis for the decision, and shall be made no more than thirty (30) days following application.

All stream buffer variances shall be considered for approval with a mitigation plan. All proposed mitigation plans shall be designed and stamped by Georgia licensed design professionals. Proposed mitigation plans shall be non-structural when applicable and designed to improve quality of the stream and the associated buffer. Mitigation plan shall include planting schedule, channel protection design and enhancement/improvement as approved the Director of Planning and Development.

Stream buffer variance for existing residential additions shall be considered by the Planning and Development Director for approval. In such cases, the applicant shall prove the hardship and provide proper evidence in the application. No buffer variance shall be approved within the existing or year 2025 built-out condition flood plain. Existing residences shall be in existence when the ordinance was enacted by DeKalb County to include the seventy-five foot stream buffer.

New subdivisions shall be designed and sketch platted to avoid any encroachments into the county's fifty feet (50') and state twenty-five feet (25') steam buffer. No administrative stream buffer variance shall be issued for such cases.

In case of redevelopment, the applicant shall make an effort to remove all existing encroachments within the buffer. When it is not economically feasible to achieve complete removal of encroachments within the buffer, a variance will be considered. In such cases, at least an eighty percent (80%) reduction of encroachment shall be achieved. This variance application shall include a mitigation plan. The Director has the discretion to deny such application when the mitigation plan is not satisfactory.

Stream buffer variances for paths or trails as part of the multi-use trails shall be considered by the Director for approval. In such cases, the trails shall be designed to minimize the impervious area and encroachments within the buffer. A mitigation plan shall be proposed to negate the impact of the trail and improve the quality of life of the affected stream.

All stream buffer variances shall be considered for approval with a mitigation plan. All proposed mitigation plans shall be designed and stamped by Georgia licensed design professionals. Proposed mitigation plans shall be non-structural when applicable and designed to improve the quality of the stream and the associated buffer. Mitigation plan shall include planting schedule, channel protection design and enhancement/improvement as approved the Director of Planning and Development.

All proposed encroachments shall be considered in conjunction with the lot coverage calculation and shall not exceed the allowable maximum lot coverage.

The Director has the discretion to deny any variance application based on the condition of the stream on the property, upstream and downstream condition of the stream and the stream that are listed in 303(d) registry of the State of Georgia. An applicant shall not plan a development based on an anticipated stream buffer variance approval. It is the responsibility of the applicant to obtain the variance prior to planning any development.

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, and DeKalb County Planning and Development finds and determines that the requirements of this ordinance prohibit the otherwise lawful use of the property by the owner, the Zoning Board of Appeals of DeKalb County may grant a variance from the buffer and setback requirements hereunder, provided such variance require mitigation measures to offset the effects of any proposed land development on the parcel.

(2) Except as provided above, the Zoning Board of Appeals of DeKalb 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 Zoning Board of Appeals. DeKalb County shall give public notice of each such public hearing in a newspaper of general circulation within DeKalb County. DeKalb 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.

### Procedural recommendations

1. District commissioner notified same day of the submittal of request Planning and Development Department
2. Property where administrative stream buffer variance is requested is posted within 48 hours of submittal of request to Planning and Development Department
3. Posting documentation to indicate:
  - Address
  - Remedy requested: administrative stream buffer variance
  - Date of submittal of request
  - Notation of administrative procedure: granted at discretion of Director of Planning and Development

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. **The applicant is responsible for providing proof of hardship. The proof shall demonstrate the difficult site conditions and possible alternate designs.**

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. **No buffer variance shall be approved within the existing or year 2025 built-out condition flood plain (see Flood Plain Ordinance).**

**Stream buffer variances for existing homes that are built prior to enactment of the DeKalb County's 50" stream buffer shall be considered.**

Applicant shall make effort to remove all existing encroachments within the buffer. When it is not economically feasible to achieve complete removal of encroachments within the buffer, a variance will be considered. In such cases, at least an eighty percent (80%) reduction of encroachment shall be achieved. A maximum allowable encroachment shall be limited to 20%.

(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. **Site plan must clearly show justification for variance request.**
- 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.

### **5.2.1 Administrative Variance Procedures**

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

#### **New Single-Family Residential**

- (1) No variance shall be issued to a lot in a new subdivision. Sketch plats shall not be approved with the assumption of future stream buffer variance approval. A variance will be considered for an existing lot if the homeowner proves that without the variance, the particular lot is not buildable. A variance shall be limited to 50% of DeKalb County's 50' buffer. If the homeowner is not able to build a home within the maximum 50% variance, the lot is not buildable.—OR—
- (2) no variance shall be considered.

#### **New Multifamily Residential, Commercial and Institutional**

- (1) No variance shall be considered. Property owner should be aware of this when rezoning application is submitted and reviewed for stream buffer encroachments. (This includes apartments, educational institutions, churches and shopping malls/service stations, condominiums, etc.)

#### **Existing Residential**

- consideration of stream buffer variance when no present encroachments exist into the buffer.
- (1) Stream buffer variance is limited to elevated decks with no roof or slab floor. Size of deck to be governed by lot coverage and proximity to stream. No variance shall be issued for more than 50% of County buffer.—OR— Combining options #1 and #2, stream buffer variance will be considered when homeowner proves hardship. Variance to be limited to 20% of County buffer, and in addition, mitigation plan by licensed design professional required.—OR
  - existing buffer encroachment with part of existing footprint within stream buffer.
  - no additional variance considered.

#### **Existing Multi-family Residential, Commercial, Institutional**

*Including apartments, educational institutions, churches and shopping malls/service stations, and condominiums, this provision is more stringent due to increased allowable percentage of lot coverage.*

- **Complete demolition and redevelopment w/ existing encroachments into the buffer**

1. No stream buffer variance considered. All existing encroachments to be removed from the buffer. Density/height variance will be considered to compensate area within the buffer. OR/
2. Combine options #1 and #2-stream buffer variance to be considered with mitigation. Mitigation excludes structural improvements, and includes improvements to existing stream such as stream bank restoration/enhancement of stream, re-vegetation and planting within buffer. 25% of maximum County stream buffer variance will be considered and variance shall be no less than 50% of previously encroached impervious area. Mitigation plan shall not require perpetual maintenance, and be developed by licensed design professional.

- **Complete demolition and redevelopment-No existing encroachments in stream buffer**

1. No stream buffer variance to be considered
  - **Addition of structures or other impervious area-No existing encroachments in stream buffer**
    1. No stream buffer variance to be considered
  - **Addition of Structures or other impervious area-Existing encroachment in stream buffer**
    1. No stream buffer variance to be considered

Stream buffer variances for paths or trails as part of the multi-use trails shall be considered by the Director of Planning and Development for approval. In such cases, the trails shall be designed to minimize the impervious area and encroachments within the buffer.

## **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.

## **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 in the buffer and of all proposed impervious cover within the setback;
- (2) A description of all proposed land development within the buffer and setback; and,
- (3) Any other documentation that the (review and permitting authority) 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 DeKalb County, its officers or employees, for injury or damage to persons or property.

## **Section 9. Inspection**

The DeKalb County Planning and Development Department 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 DeKalb County Planning and Development Department in making such inspections. DeKalb 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 DeKalb County Planning and Development Department 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 therefore, 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 DeKalb County Planning and Development Department 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 Dekalb County Planning and Development Department 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 Dekalb County Planning and Development 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 Dekalb County Planning and Development Department 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 Dekalb County Planning and Development Department 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 Dekalb County Planning and Development Department 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 Dekalb County Planning and Development Department 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 Dekalb County Planning and Development 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) after the Dekalb County Planning and Development Department has taken one or more of the actions described above, the Dekalb County Planning and Development Department may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unheeded after receipt of the notice of violation.

(5) **Criminal Penalties** - For intentional and flagrant violations of this ordinance, the Dekalb County Planning and Development Department may issue a citation to the applicant or other responsible person, requiring such person to appear in **(appropriate municipal, magistrate or recorders)** 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 DeKalb County Planning and Development Department, may appeal in writing within \_\_\_ days after the issuance of such decision or order to the **(designated official)** of DeKalb County and shall be entitled to a hearing before the **(designated appeals body)** of DeKalb County within \_\_\_ days of receipt of the written appeal.

### **11.2. Judicial Review**

Any person aggrieved by a decision or order of DeKalb County Planning and Development Department, after exhausting all administrative remedies, shall have the right to appeal de novo to the \_\_\_ court of DeKalb County.

## **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.