

WETLANDS

An Ordinance to Protect the Wetlands of the City of Duluth, Georgia

I. Purpose

The wetlands in the City of Duluth are indispensable and fragile natural resources with significant development constraints due to flooding, erosion, and soils limitations. In their natural state, wetlands serve man and nature. They provide habitat areas for fish, wildlife and vegetation; water quality maintenance and pollution control; flood control; erosion control; natural resource education; scientific study; and open space and recreational opportunities. In addition, the wise management of forested wetlands is essential to the economic well being of many communities within the State of Georgia.

Nationally, a considerable number of these important natural resources have been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts. Piecemeal or cumulative losses will, over time, destroy additional wetlands. Damaging or destroying wetlands threatens public safety and the general welfare.

The purpose of this ordinance is to promote wetlands protection, while taking into account varying ecological, economic development, recreational and aesthetic values. Activities that may damage wetlands should be located on upland sites to the greatest degree practicable as determined through a permitting process.

II. Definitions

- A. Wetlands: those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. The ecological parameters for designating wetlands include hydric soils, hydrophytic vegetation, and hydrological conditions that involve a temporary or permanent source of water to cause soil saturation.
- B. Generalized Wetlands Map: the current U.S. Fish and Wildlife Service National Wetlands Inventory maps for the City of Duluth, Georgia.
- C. Jurisdictional Wetland: an area that meets the definitional requirements for wetlands as determined by the U.S. Army Corps of Engineers.
- D. Jurisdictional Wetland Determination: a delineation of jurisdictional wetland boundaries by the U.S. Army Corps of Engineers, as required by Section 404 of the Clean Water Act, 33 U.S.C. § 1344, as amended.
- E. Regulated Activity: Any activity which will, or which may reasonably be expected to, result in the discharge of dredged or fill material into waters of the U.S. excepting those activities exempted in Section 404 of the Federal Clean Water Act.

III. Establishment of the Wetlands Protection District

The Wetlands Protection District is hereby established which shall correspond to all lands within the jurisdiction of the City of Duluth, Georgia that are mapped as wetland areas by the U.S. Fish and Wildlife Service National Wetlands Inventory Maps. This map shall be

referred to as the Generalized Wetlands Map and is hereby adopted by reference and declared to be a part of this ordinance, together with all explanatory matter thereon and attached thereto.

The Generalized Wetlands Map does not represent the boundaries of jurisdictional wetlands within City of Duluth and cannot serve as a substitute for a delineation of wetland boundaries by the U.S. Army Corps of Engineers, as required by Section 404 of the Clean Water Act, as amended. Any local government action under this ordinance does not relieve the landowner from federal or state permitting requirements.

IV. Protection Criteria

Requirement for Local Permit or Permission: No regulated activity will be permitted within the Wetlands Protection District without written permission or a permit from the City of Duluth. If the area proposed for development is located within 50 feet of a Wetlands Protection District boundary, as determined by the City of Duluth Planning Director using the Generalized Wetlands Map, a U.S. Army Corps of Engineers determination shall be required. If the Corps determines that wetlands are present on the proposed development site, the local permit or permission will not be granted until a Section 404 Permit or Letter of Permission is issued.

V. Permitted Uses

The following uses shall be allowed as of right within the Wetlands Protection District to the extent that they are not prohibited by any other ordinance or law, including laws of trespass, and provided they do not require structures, grading, fill, draining, or dredging except as provided herein. [The activities listed in this section are exempted from Section 404 regulations provided they do not have impacts on a navigable waterway that would necessitate acquisition of an individual 404 permit. However, under Section 10 of the Rivers and Harbors Act, a permit may be required in some circumstances.]

1. Conservation or preservation of soil, water, vegetation, fish and other wildlife, provided it does not affect waters of Georgia or of the United States in such a way that would require an individual 404 Permit.
2. Outdoor passive recreational activities, including fishing, bird watching, hiking, boating, horseback riding, and canoeing.
3. Forestry practices applied in accordance with best management practices approved by the Georgia Forestry Commission and as specified in Section 404 of the Clean Water Act.
4. The cultivation of agricultural crops. Agricultural activities shall be subject to best management practices approved by the Georgia Department of Agriculture.
5. The pasturing of livestock, provided that riparian wetlands are protected, that soil profiles are not disturbed and that approved agricultural Best Management Practices are followed.
6. Education, scientific research, and nature trails.

VI. Prohibited Uses

The following uses are not permitted within the Wetlands Protection District.

1. Receiving areas for toxic or hazardous waste or other contaminants; and

2. Hazardous or sanitary waste landfills.

ADMINISTRATION AND ENFORCEMENT

VI. Administration and Enforcement Procedures

A. Site Plans. Application for a local development permit within the Groundwater Recharge Areas shall include a site plan, drawn at a scale of 1" = 50', with the following information:

- a. A map of all planned excavation and fill, including calculations of the volume of cut and fill involved, cross-sectional drawings showing existing and proposed grades. Elevations, horizontal scale and vertical scale must be shown on the cross-sectional drawings.
- b. A map of any wetland boundaries occurring within the site must be provided. This boundary may be included on other maps provided by the applicant.
- c. Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site and adjacent to the site for a distance of 50 feet.
- d. The orientation and distance from the boundaries of the proposed site to the nearest bank of an affected perennial stream or water body.
- e. Elevations of the site and adjacent lands within 50 feet of the site at contour intervals of no greater than two feet; and no greater than one foot for slopes less than or equal to two percent.
- f. Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic materials.
- g. All proposed temporary disruptions or diversions of local hydrology.

B. Activities to Comply with Site Plan. All development activities or site work conducted after approval of the site plan shall conform with the specifications of said site plan. Significant changes to the site plan that would alter the amount and velocity of stormwater runoff from the site, increase the amount of impervious surface within the development, alter the overall density of development, result in a considerable increase in the amount of excavation, fill or removal of the overall appearance of the development as proposed, can be amended only with the approval of the Director of Planning and Development. Minor changes, such as the realignment of streets or minor alterations to drainage structures and other infrastructure to meet unexpected conditions are exempted from this requirement.

C. Exemptions to Site Plan Requirements. The following activities and developments are exempt from the requirement for detailed site plans.

1. Single-family detached homes constructed within a subdivision of fewer than five parcels.
2. Repairs to a facility that is part of a previously approved and permitted development.
3. Construction of minor structures, such as sheds or additions to single family residences.

D. Review Procedures. The application shall be made to the City of Duluth Planning and Development Department and will be reviewed within 15 (fifteen) days. At the time of the application, the applicant shall pay a filing fee as specified by City of Duluth

Planning and Development Department. Filing fees up to the larger of \$500 or \$1000 per acre may be required to evaluate the application. This fee may be used to retain expert consultants who will provide services pertaining to functional assessment, mitigation, and wetland boundary determinations, as deemed necessary by the Director of Planning and Development. The review period shall include the preparation of findings (approval, approval with conditions, or disapproval) by the Director of Planning and Development. The applicant will receive written notification of the findings of the Director of Planning and Development. If the review process is not completed within 30 days, the application is considered to be approved. Decisions of the Director of Planning and Development may be appealed to the City Council.

E. Duration of Permit Validity.

1. If construction described in the development permit has not commenced within 6 months from the date of issuance, the permit shall expire.
2. If construction described in the development permit is suspended or abandoned after work has commenced, the permit shall expire 6 months after the date that work ceased.
3. Written notice of pending expiration of the development permit shall be issued by the Director of Planning and Development.

F. Penalties.

- a. When a building or other structure has been constructed in violation of this section, the violator may be required to remove the structure at the discretion of the Director of Planning and Development.
- b. When removal of vegetative cover, excavation, or fill has taken place in violation of this section, the violator may be required to restore the affected land to its original contours and to restore vegetation, as far as practicable, at the discretion of the Director of Planning and Development.
- c. If the Director of Planning and Development discovers a violation of this ordinance that also constitutes a violation of any provision of the Clean Water Act as amended, the City Council shall issue written notification of the violation to the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the landowner.

G. Suspension, Revocation. The Director of Planning and Development may suspend or revoke a permit if he finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. The Director of Planning and Development shall cause notice of denial, issuance, conditional issuance, revocation or suspension of a permit to be published in a daily newspaper having a broad circulation in the area where the wetland is located.

H. Judicial Review.

- a. Jurisdiction. All final decisions of the City of Duluth concerning denial, approval or conditional approval of a permit shall be reviewable in the Gwinnett County Superior Court.
- b. Alternative Actions. Based on these proceedings and the decision of the Gwinnett County Superior Court, the City Council or its designee may, within the time specified by the Gwinnett County Superior Court, elect to:
 1. Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;

2. Approve the permit application with lesser restrictions or conditions (i.e., grant a variance); or
3. Institute other appropriate actions ordered by the court that fall within the jurisdiction of the City Council.

I. Amendments. These regulations and the Pollution Susceptibility Map may from time to time be amended in accordance with procedures and requirements in the general statutes and as new information becomes available.

J. Separability and Abrogation. All sections and subsections of this ordinance are considered separate and distinct. Should any section, subsection, paragraph or part of this ordinance be declared by a court of jurisdiction to be invalid for any reason, it shall not invalidate any other section, subsection, paragraph, or part of this ordinance.

APPROVED by the Mayor and Council of the City of Duluth, this 9th day of October, 2000.

Mayor Shirley Fanning-Lasseter

Those councilmembers voting in favor:

Those councilmembers voting in opposition:

ATTEST:

Teresa S. Lynn, City Clerk