

CITY OF DULUTH
Stream Buffer Protection Ordinance

WHEREAS, the Metropolitan North Georgia Water Planning District recommends the adoption of a **Stream Buffer Protection Ordinance**; and,

WHEREAS, the **Planning and Development Department** reviewed this amendment and recommended its approval on March 28, 2005;

WHEREAS, the **Council of the City of Duluth** finds that the purpose of the following Stream Buffer Protection Ordinance is to protect the health, safety, environment, convenience, order, prosperity and the general welfare of the present and future inhabitants of City of Duluth; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:

- Create buffer zones along the streams of the **City of Duluth** for the protection of water resources; and,
- Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

NOW, THEREFORE BE IT RESOLVED by the **Council of the City of Duluth**, on this 1st day of April, 2005 that the "Stream Buffer Protection Ordinance" be adopted as Article VIII of Chapter 16 of the Duluth Code, "Water Protection," and

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BE IT FURTHER RESOLVED that all regulations or parts of regulations in conflict with this resolution are hereby rescinded to the extent of said conflict.

NOW THEREFORE, The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinance is hereby amended as follows:

Exhibit "A"
Meeting of the M & C
April 11, 2005

STREAM BUFFER PROTECTION ORDINANCE

Article 1 Title.

This ordinance shall be known as the “**Stream Buffer Protection Ordinance of City of Duluth.**”

Article 2 Definitions.

“**Buffer**” means, with the area of land immediately adjacent to the banks of a stream in its existing or enhanced state of vegetation (established by Subsection 4.1.1 herein).

“**Chattahoochee Corridor**” means all land within 2000 feet of the banks of the Chattahoochee River, including any impoundments thereon, or within the floodplain, whichever is greater, from directly below Buford Dam downstream to the downstream limits of Fulton and Douglas counties, including the entire bed of the river and any improvements and all islands therein.

“**Department**” means the Department of Planning and Development.

“**Director**” means the Director of Planning and Development or the director’s designee.

“**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 currently adopted land use plan; i.e., the regulatory flood.

“**Flowing Stream**” means any stream that is portrayed on the most current United States Geologic Survey 7.5 minute quadrangle for the affected 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.

“**Impervious Surface**” means materials that do not allow for water penetration such as concrete and asphalt.

“**Land Development**” means 1. (verb) 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 that 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 that comprise, facilitate or result in land disturbance.

"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.

"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).

"Permit" means the permit issued by the Department of Planning and Development required for undertaking 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, state agency, municipality or other political subdivision of the State of Georgia, interstate body or any other legal entity.

"Pervious Surface" means materials that do allow for water penetration such as mulch, crushed stone, elevated boardwalks with spacing between boards, and specially formulated pervious concrete designed to allow for water penetration.

"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 Subsection 4.1.2 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 Planning and Development may require field studies to verify the existence of a stream.

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

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

“Trail, Multi-use” means a hard surface (concrete, asphalt, boardwalk, etc.) transportation structure specifically constructed for alternative transportation such as walking, biking, roller blading, etc. and not intended to transport motorized vehicles such as cars, trucks, motorcycles, etc.

“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 Department of Planning and Development.

“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 Applicability.

This ordinance shall apply to all land development activity on property containing a stream protection area as defined in Article 2 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.

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

3.1 Grandfather Provisions

This ordinance shall not apply to the following activities:

- 3.1.1 Work consisting of the repair, maintenance or replacement within the same disturbed area of any lawful use of land that is zoned and approved for such use on or before the effective date of this ordinance.
- 3.1.2 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.
- 3.1.3 Any lawful land development activity that is under construction, has a valid permit, or has submitted a valid and complete application for a permit as of the effective date of this ordinance provided that the permit is or can be issued within 90 calendar days of the effective date of this ordinance and all time frames associated with said permit are observed.
- 3.1.4 Any lawful land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as a house in a subdivision or a building in an office park or other phased development that has a valid Preliminary Plat Permit per Subsection 3.1.3 herein, or an approved Concept Plan, or has submitted a valid and complete application for approval of a Concept Plan and receives approval within 90 calendar days as of the effective date of this ordinance provided that the future permit is or can be issued within 2 calendar years of the effective date of this ordinance and all time frames associated with said permit are observed.

3.2 Exemptions

The following specific activities are exempt from this ordinance, however any activity within a state waters' buffer must meet State requirements:

- 3.2.1 Activities for the purpose of building one of the following:
 - a stream crossing by a driveway, transportation route including but not limited to bike paths and pedestrian trails, or utility line;
 - public water supply intake or public wastewater outfall structures;
 - land development 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;
- storm water outfalls to the stream, by pipe or channel, necessary to protect the buffer from erosion caused by high flow velocities due to steep slopes.
- 3.2.2 Public sewer line installation in easements running parallel with the stream where necessary, except that all easements (permanent and construction) and land disturbance within a state waters' buffer must meet State requirements. 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 subsection 3.2.1, above.
- 3.2.3 Land development activities within a dedicated transportation right-of-way existing at the time this ordinance takes effect or approved under the terms of this ordinance.
- 3.2.4 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.
- 3.2.5 Emergency work necessary to preserve life or property. However, when emergency work is performed under this subsection, the person performing it shall report such work to the Department of Planning and Development on the next business day after commencement of the work. Within 10 business days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the Department of Planning and Development 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.
- 3.2.6 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.

- 3.2.7 Pervious surface multi-use trails no more than 12 feet in width and activities related to construction of a multi-use trail no more than 12 feet in width, provided the trail complies with the requirements of the City of Duluth Soil, Erosion And Sedimentation Control Ordinance.
- 3.2.8 Detention/Water Quality ponds provided said ponds comply with all other local, state and federal requirements including but limited to the Floodplain Management Ordinance, the Soil Erosion and Sedimentation Control Ordinance, U.S Army Corp of Engineers wetlands regulations.

Article 4 Land Development Requirements.

4.1. Buffer and Setback Requirements

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

- 4.1.1 An undisturbed buffer shall be maintained for 50n (fifty) feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank. The land forming the bank is also considered part of the buffer for purposes of this ordinance.
- 4.1.2 An additional setback shall be maintained for 25 (twenty-five) feet, measured horizontally, beyond the undisturbed buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.
- 4.1.3 No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

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 4.2 herein.

4.2. Variance procedures

Variance requests from the requirements of this ordinance shall be submitted on an application form as prescribed by the Director of the Department of Planning and Development or the director's designee, along with such fees as shall be established by the Mayor and City Council. 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 City of Duluth departments and shall forward such comments or recommendations as may be received to the Zoning Board of Appeals for action in their normal course of business. The review must include a recommendation from the Department of Planning and Development.

This section describes how to apply for a variance from this ordinance, however any activity within a state waters' buffer must meet State requirements

Variances may be granted in accordance with the following provisions:

- 4.2.1 The project involves the construction of one (1) single family home for residential use by the owner of the subject property on a parcel that 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 the Department of 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 may grant a variance from the buffer and setback requirements hereunder, provided such variance requires mitigation measures to offset the effects of any proposed land development on the parcel. The Zoning Board of Appeals is authorized to use a consent agenda to fulfill the terms of this Subsection.
- 4.2.2 Except as provided above, the Zoning Board of Appeals 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 Board. The Department of Planning and Development shall follow the Public Hearing, or “notice”, requirements for a variance to be heard by the Zoning Board of Appeals as provided in the City Duluth Zoning Ordinance in Article 18.

No application or reapplication for a variance affecting the same stream segment on a property shall be heard within 12 (twelve) months from the date of last action by the Zoning Board of Appeals unless such 12-month period is waived by the Zoning Board of Appeals, and in no case may such application or reapplication be reconsidered in less than six months from the date of last action by the Zoning Board of Appeals.

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.

Variances will be considered only in the following cases:

- 4.2.2.1 The applicant provides evidence that impacts to the buffer have been avoided or minimized to the fullest extent practicable; and
- 4.2.2.2 The project involves the construction or repair of a structure that, by its nature, must be located within the buffer. Such structures include dams and detention/retention ponds; or
- 4.2.2.3 Paved recreational foot trails and viewing areas, providing that impacts to the buffer are minimal; or
- 4.2.2.4 The proposed land disturbing activity within the buffer will receive a permit from the United States Army Corps of Engineers (USACE) under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section

- 1344, and the Corps of Engineers has received a mitigation plan to be implemented as a condition of such a permit. In addition, land disturbing activities in the buffer that are outside the USACE's jurisdiction must be mitigated; or
- 4.2.2.5 The buffer intrusion is mitigated using the procedure established in the Gwinnett County Storm Water Design Manual; or
 - 4.2.2.6 A valid and complete application for rezoning of the property is submitted prior to the effective date of this ordinance and approval of the rezoning by the Board of Commissioners occurs after the effective date of this ordinance application, and the variance request is consistent with the intent of this Ordinance factoring into account the property owner's reliance on standards in effect at the time of the rezoning.
- 4.2.3 At a minimum, a variance request shall include the following information:
- 4.2.3.1 A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
 - 4.2.3.2 A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
 - 4.2.3.3 A dated 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;
 - 4.2.3.4 Documentation that impacts to the buffer have been avoided or minimized to the fullest extent practicable;
 - 4.2.3.5 A calculation of the total area and length of the proposed intrusion;
 - 4.2.3.6 A stormwater management site plan, if applicable;
 - 4.2.3.7 Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed;
 - 4.2.3.8 A description of the project, with details of the buffer disturbance, including estimated length of time for the disturbance and justification for why the disturbance is necessary;
 - 4.2.3.9 Any other reasonable information related to the project that the Department Planning and Development may deem necessary to effectively evaluate the variance request;
 - 4.2.3.10 A copy of the permit application, supporting documentation, and proposed mitigation plan as submitted to the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C.

- Section 1344, if applicable;
- 4.2.3.11 A copy of the permit application, supporting documentation, and proposed mitigation plan as submitted to the Georgia Environmental Protection Division for a variance from the state waters' buffer; and
 - 4.2.3.12 A buffer mitigation plan in accordance with the procedure outlined in the Gwinnett County Storm Water Design Manual.
- 4.2.4 The following factors will be considered in determining whether to issue a variance:
- 4.2.4.1 The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
 - 4.2.4.2 The locations of all streams on the property, including along property boundaries as determined from field inspection;
 - 4.2.4.3 The location and extent of the proposed buffer or setback intrusion; and,
 - 4.2.4.4 Whether alternative designs are possible which require less intrusion or no intrusion;
 - 4.2.4.5 The long-term and construction water-quality impacts of the proposed variance;
 - 4.2.4.6 Whether issuance of the variance is at least as protective of natural resources and the environment;
 - 4.2.4.7 The value of mitigation activities as calculated in accordance with the Gwinnett County Storm Water Design Manual.

Article 5. Special Buffer Regulations and Requirements.

In addition to the provisions of this ordinance, the following requirements shall apply. Whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

The grandfather provisions and variances sections of this ordinance do not apply to this Article. However, applicable exemptions are given below.

5.2. Chattahoochee Corridor

- 5.2.1. Vegetation shall be left in its natural state, and impervious surfaces shall not be permitted, for a distance of fifty (50) horizontal feet as measured from both banks of the Chattahoochee River and its impoundments, and for a distance of thirty-five (35) horizontal feet as measured from both banks of all other flowing stream channels within the Chattahoochee Corridor, except for footpaths, designated public access areas, river or stream crossings by transportation facilities, public water supply intake structures, public wastewater treatment plant outfalls and utility line crossings.

5.2.2. Subject and in addition to the restrictions set forth in 5.2.1 herein, impervious surfaces and structures shall not be permitted within, on or over any land that is one-hundred-fifty (150) horizontal feet or less from either bank of the Chattahoochee River and its impoundments, except for footpaths, designated public access areas, river or stream crossings by transportation facilities, public water supply intake structures, public wastewater treatment plant outfalls and water supply and sewerage manholes that are designed and built at grade, unless it is determined by the Atlanta Regional Commission, after consideration by a Committee of the Atlanta Regional Commission as authorized by the Atlanta Regional Commission, and based in part upon the affidavit of, and substantial evidence submitted by, a registered professional engineer qualified in water quality and hydrology that the impervious surfaces and structures will not be harmful to the water and land resources of the Chattahoochee Corridor, will not significantly impede the natural flow of flood waters and will not result in significant land erosion, stream bank erosion, siltation or water pollution.

5.2.3. Not including the impervious surfaces and structures that are excepted above, any impervious surfaces or structures that, in the judgment of the Atlanta Regional Commission, must legally be permitted within, on or over any land that is one-hundred-fifty (150) horizontal feet or less from either bank of the Chattahoochee River and its impoundments on lots of record as of March 16, 1973 for the portion of the Chattahoochee Corridor between Buford Dam and the downstream limit of the City of Atlanta water intake, which were designated by the local governing authority for a single-family detached residential use, shall meet the following standard:

5.2.3.1. For each one (1) foot incursion into the one-hundred-fifty (150) foot impervious surface buffer, one (1) foot of natural vegetation shall be added to the fifty (50) foot natural vegetation buffer. In the event that the Atlanta Regional Commission determines that legal, physical, biological or hydrologic conditions on the site prevent the addition of all the required natural vegetation, substitute measures satisfactory to the Atlanta Regional Commission shall be taken to provide an equivalent level of land and water resource protection.

5.3 Exemptions

The following specific activities are exempt from this ordinance, however any activity within a state waters' buffer must meet State requirements:

- 5.3.1 Pervious surface multi-use trails no more than 12 feet in width and activities related to construction of a multi-use trail no more than 12 feet in width, provided the trail complies with the requirements of the City of Duluth Soil, Erosion and Sedimentation Control Ordinance.
- 5.3.2 Detention/Water Quality ponds provided said ponds comply with all other local, state and federal requirements including but limited to the

Floodplain Management Ordinance, the Soil Erosion and Sedimentation Control Ordinance, U.S Army Corp of Engineers wetlands regulations.

Article 6. Additional Information Requirements for Development on Buffer Zone Properties.

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

6.1 A site plan showing:

- 6.1.1 The location of all streams on the property;
- 6.1.2 Limits of required stream buffers and setbacks on the property;
- 6.1.3 Buffer zone topography with contour lines at no greater than two (2)-foot contour intervals;
- 6.1.4 Delineation of forested and open areas in the buffer zone; and,
- 6.1.5 Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback;

6.2 Description

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

6.3 Documentation

Any other documentation that the Department of Planning and Development 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.

Article 7. 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 City of Duluth, its officers or employees, for injury or damage to persons or property.

Article 8. Inspection.

The Department of Public Works or the Department of Planning and Development 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 representatives of either department in making such inspections. Both the Director of the Department of Public Works or the Department of Planning and

Development or either directors' 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 9. Violations, Enforcement and Penalties.

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 herein. 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.

9.1 Enforcement Procedures

The following are the enforcement procedures authorized by this ordinance. In the event the owner or responsible person fails to correct the violations after the deadline contained in the Notice of Violation, the Director of Public Works or the Director of the Department of Planning and Development or either directors' designee are authorized to take or impose any one or more of the additional actions contained herein.

9.1.1 Notices of Violation

Enforcement shall begin with the issuance of a written Notice of Violation to the owner or responsible person by the Director of Public Works or the Director of the Department of Public Utilities or the Director of the Department Planning and Development or either directors' designee. The notice may be delivered personally or sent by first class mail. The Notice of Violation shall contain at least the following information:

- 9.1.1.1 The name and address of the owner or responsible person;
- 9.1.1.2 The location or address of the site upon which the violation is occurring;
- 9.1.1.3 description of the nature of the violation;
- 9.1.1.4 description of the remedial actions or measures necessary to bring an action or inaction into compliance with a permit, approved plan or this ordinance;
- 9.1.1.5 The deadline or completion date of any such remedial actions or measures; and
- 9.1.1.6 A statement of the penalty or penalties that may be assessed

against the owner or responsible person to whom the Notice of Violation is directed.

9.1.2 Stop Work Orders.

The Director of the Department of Planning and Development or the Director of Public Works or either directors' designee is authorized to issue Stop Work Orders to an owner or responsible person. Stop Work Orders are effective immediately and shall remain in effect until the necessary corrective actions or remedial measures as set forth in the Notice of Violation have occurred. Stop Work Orders may be withdrawn or modified by the Director of the Department of Planning and Development or the director's designee in order to enable an owner or responsible person to take necessary remedial actions or measures to correct the violations.

9.1.3 Refusal to Issue Certificates of Occupancy or Completion.

The Director of the Planning and Development or the Director of Department of Public Works or either directors' designee is authorized to refuse to issue Certificates of Occupancy or Completion for the building or other improvements constructed or being constructed on a site until the owner or responsible person has taken the remedial actions or measures as set forth in the Notice of Violation or has otherwise corrected the violations described therein.

9.1.4 Suspension, Revocation, or Modification of Permit.

The Director of Planning and Development or the Director of Public Works Department or either directors' designee is authorized to suspend, revoke or modify a permit that was issued authorizing land disturbing activities or development. The Director of Planning and Development or the Department of Public Works or either directors' designee is authorized to reinstate a suspended, revoked or modified permit after the owner or responsible person has taken the remedial actions or measures stated in the Notice of Violation or has otherwise corrected the violations described therein. The Director of the Department of Planning and Development or the Director of Public Works or either directors' designee is also authorized to reinstate such permit, which may include conditions as the Director of the Department Planning and Development or the Director of Public Works or either directors' designee may deem necessary, to enable the owner or responsible person to take the necessary remedial actions or measures to correct the violations.

9.1.5 Refusal to Approve Final Subdivision Plats.

The Director of the Department of Planning and Development or the Director of Public Works or either directors' designee is authorized to refuse to approve Final Plats until the owner or responsible person has taken the remedial actions or measures set forth in the Notice of Violation or has otherwise corrected the violations described therein.

9.1.6 Issuance of Citations or Summons to Court.

The Director of the Department of Planning and Development or the Director of Public Works or either directors' designee are authorized to issue a citation or summons to the owner or responsible person requiring such person to appear in a court of competent jurisdiction to answer charges for violations of this ordinance.

9.2 Legal Penalties and/or Remedies.

9.2.1 Fine and/or Sentence.

Any person convicted by a court of competent jurisdiction of violating any provision of this ordinance shall be guilty of violating a duly adopted ordinance of the county and shall be punished either by a fine not less than \$100 per day and not greater than \$1,000 per day, or by a sentence of imprisonment not to exceed 60 days in jail, or both a fine and jail or work alternate. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

9.2.2 Other Legal Remedies.

In any case in which a violation of this ordinance has occurred, the county, in addition to other remedies provided by law, may petition for a restraining order, injunction, abatement, or take any other appropriate legal action or proceeding through a court of competent jurisdiction to prevent, restrain, or abate such unlawful use or activity.

9.3 Petition

In any case in which any land is, or is proposed to be, used or activities are undertaken in violation of this ordinance or any amendment thereto adopted by the Mayor and City Council in addition to other remedies provided by law, may petition for a restraining order, injunction, abatement, or take any other appropriate legal action or proceeding through a court of competent jurisdiction to prevent, restrain, or abate such unlawful use or activity.

Article 10. Administrative Appeal and Judicial Review.

10.1 Administration

This ordinance shall be administered, interpreted, and enforced by the Director of the Department of Planning and Development and the Director of Public Works or either directors' designee.

10.2 Administrative Appeal

Appeals of the interpretation by Director of the Department of Planning and Development or the Director of Public Works or either directors' designee of the requirements of this ordinance shall first be submitted in writing (on a form provided by the Department of Planning and Development) to either director who

shall review the request in a timely manner and receive comments from other affected departments. Such appeal shall be made within fifteen days after the decision to be appealed. The appeal thereupon shall be forwarded to the Board of Appeals for action in their normal course of business.

10.3. Judicial Review

Any person aggrieved by a decision or order of the Director of the Department of Planning and Development or the Director of Public Works or either directors' designee, after exhausting all administrative remedies, shall have the right to appeal certiorari to the Superior Court of Gwinnett County.

Article 11. Adoption and Amendment.

11.1 Effective Date

- 11.1.1 This ordinance shall be in full force and effect on April 11, 2005, following the adoption by the City of Duluth City Council and shall apply to any land disturbance permit for which an application is received after the effective date of this ordinance.
- 11.1.2 Nothing in this ordinance shall be construed to affect the validity of any building permit lawfully issued prior to the effective date of this ordinance and any plans submitted and reviewed by the Director of Planning and Development as to meeting this criteria.

11.2 Amendments

- 11.2.1 This ordinance may be amended from time-to-time by resolution of the City of Duluth City Council. 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 this ordinance 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.
- 11.2.3 Any subdivision or other project for which a Development Permit has been issued prior to the adoption of an amendment to this ordinance may, at the developer's option, proceed to completion and building permits may be issued as though no amendment had been approved.
- 11.2.4 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 this ordinance shall be brought into conformance with the

amendment (if applicable) prior to issuance of a Development Permit.

11.2.5 No amendment to this ordinance 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.

IT IS SO ORDAINED THIS 11th DAY OF April, 2005.

Shirley James Lassiter
Mayor

Those voting for:

Those voting against:

May S. Harvey

Council Member

Bois Krouse

Council Member

Robert M. Murrin

Council Member

James T. Dugan

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

ATTEST:

Gene S. [Signature]
City Clerk