

AN ORDINANCE TO AMEND THE CODE OF ATHENS-CLARKE COUNTY, GEORGIA WITH RESPECT TO **PLANNING – PROTECTED ENVIRONMENTAL AREAS**; AND FOR OTHER PURPOSES.

The Commission of Athens-Clarke County hereby ordains as follows:

SECTION 1. Title 8, entitled “Planning,” of the Code of Athens-Clarke County, Georgia is hereby amended by deleting Chapter 8-6, entitled “Protected Environmental Areas,” in its entirety and substituting the following in lieu thereof:

**“Chapter 8-6. Protected Environmental Areas.**

Article 1. Statement of Intent; Definitions.

- Sec. 8-6-1. Purpose and intent.
- Sec. 8-6-2. Definitions.
- Sec. 8-6-3. Approval and permit required.
- Sec. 8-6-4. Establishment of Environmental Areas.
- Sec. 8-6-5. Official map.

Article 2. Riparian Buffers and Floodplains.

- Sec. 8-6-6. Land disturbing activity standards for floodplains.
- Sec. 8-6-7. Land disturbing activity standards for riparian buffer areas.

Article 3. Wetlands, Groundwater Recharge, and Water Supply.

- Sec. 8-6-8. Land disturbing activity standards for wetlands.
- Sec. 8-6-9. Land disturbing standards for significant groundwater recharge areas.
- Sec. 8-6-10. Water supply watersheds and water supply intakes.

Article 4. Minimum Buildable Area, Variances, and Violations.

- Sec. 8-6-11. Minimum buildable area required.
- Sec. 8-6-12. Variances for floodplain and riparian buffer areas, except protected rivers.
- Sec. 8-6-13. Penalties for violation.

**ARTICLE 1. STATEMENT OF INTENT; DEFINITIONS.**

**Section 8-6-1. Purpose and Intent.** The purpose of this Chapter is to protect the quality of the community’s waterways and to provide for the appropriate development of sites in and adjacent to floodplains, riparian areas, wetlands, significant groundwater recharge areas, water supply watersheds and water supply intake areas. The streams and rivers of Athens-Clarke County supply much of the water required by Athens-Clarke citizens for drinking and other governmental and industrial uses. The quality of the groundwater that is used for drinking, agricultural and industrial purposes in Athens-Clarke County is connected with the quality of the surface water in the streams and rivers of Athens-Clarke County. Furthermore, the people of Athens-Clarke County use the surface waters for fishing, canoeing, and other recreational and economic purposes. The Commission finds that the protection of the streams and rivers of Athens-Clarke County is vital to the health, safety, and economic welfare of its citizens.

Furthermore, it is the intent of this Chapter to establish buffer areas adjacent to stream systems and rivers as well as all other state waters and to protect the integrity of floodplain in Athens-Clarke County. The purposes of these protective measures are to: protect public and private water supplies and restore and maintain the chemical, physical and biological integrity of water resources, trap sediment and other pollutants in surface runoff, stabilize stream banks, protect riparian wetlands,

minimize the impact of floods, maintain base flow of streams and rivers, protect wildlife habitat, and furnish scenic and recreational opportunities.

It is not the intent of this section to repeal or preclude other regulations that affect the quality of the communities waterways, including, but not limited to regulations such as the Soil Erosion and Sedimentation Control Ordinance (Chapter 8-3, Athens-Clarke County Code), Flood Protection (Chapter 8-2, Athens-Clarke County Code) or Storm Water Management (Chapter 5-4, Athens-Clarke County Code). The standards and requirements are not superseded by these standards. If the provisions of this chapter conflict with these or other regulations of Athens-Clarke County, State or Federal regulations including the protection of Wetlands as defined by the U.S. Army Corps of Engineers, the more restrictive of the regulations shall govern.

**Section 8-6-2. General Regulations.** The following definitions shall apply to the provisions of this Chapter.

*Agriculture:* The raising, harvesting, or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including but not limited to chickens, hens and turkeys; producing plants, trees, fowl, or animals, the production of aqua culture, horticultural, dairy livestock, poultry, eggs and avian products; farm buildings and farm ponds.

*Best Management Practices (BMPs):* Conservation practices or management measures which control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment and runoff. For the purposes of this ordinance, Best Management Practices shall be considered to be the most recent publication of those practices or measures officially promulgated by the State of Georgia, the Federal Government or the Unified Government of Athens-Clarke County.

*Buffer:* With respect to a stream, creek, river or other body of water a natural or enhanced vegetated area lying adjacent to the body of water.

*Buildable Area:* The portion of a lot remaining and available for the construction of a building or structure after required setbacks, yards, environmental buffers, wetlands, floodplains, and easements, have been provided.

*Drought:* A condition of moisture deficit sufficient to have an adverse effect on vegetation, animals, and humans over a sizeable area.

*Ephemeral Stream* – Ephemeral (stormwater) stream means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

*Hazardous waste:* Any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act, which are in force and effect on February 1, 1988, codified as 40 C.F.R. Section 261.3.

*Hazardous Material:* Any substance or material that, by reason of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment as codified in 40 C.F.R. 370.

*Intermittent Stream:* Intermittent stream means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff.

*Jurisdictional wetlands:* An area that meets the definitional requirements for wetland boundaries by the U.S. Army Corps of Engineers, as required by the Clean Water Act, 33 U.S.C. Section 1344, as amended.

*Jurisdictional wetlands 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, as amended.

*Large Water Supply Watershed:* A watershed containing 100 square miles or more of land within the drainage basin upstream of a governmentally owned public drinking water supply intake.

*Lot:* A unit of land created by a subdivision, which complies with all applicable laws at the time such lots were created.

*Perennial Stream:* Perennial stream means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff.

*Pollution susceptibility:* The relative vulnerability of an aquifer to being polluted from spills, discharges, leaks, impoundments, applications of chemicals, injections and other human activities in the recharge area. All of Athens-Clarke County is located within a low pollution susceptibility area.

*Pollution susceptibility maps:* Maps of relative vulnerability to pollution prepared by the Department of Natural Resources, using the DRASTIC methodology. (Georgia Department of Natural Resources Hydrologic Atlas 20: Groundwater Pollution Susceptibility Map of Georgia.)

*Protected stream:* Any perennial stream or intermittent stream that has a stream channel with perennial or intermittent stream flow as defined hereinafter. A stream channel with perennial or intermittent stream flow is one, which satisfies any one of the following criteria:

1. Any stream identified on the most recent edition of the Natural Resources Conservation Service Soil Survey Map: or
2. A channel that originates from a spring, seep, or other groundwater outflow not caused by construction, that sustains water flow during periods of high water tables: or
3. A point within a stream channel with a drainage area of 25 acres or more.

In the event of a disagreement as to whether or not any of the above criteria have been met, or in the event that evidence supporting or negating the existence of a protected stream is inconclusive, then the Planning Director shall make the determination using evidence from a physical inspection of the site applying the adopted *Stream Classification Protocol* as defined in this Chapter.

*Protected River:* A river or waterway with an average annual flow exceeding 400 cubic feet per second (cfs) as determined by the appropriate U.S. Geological Survey documents or by field data, site evaluations or other appropriate evidence. The area between the top of the riverbank and the edge of the river shall be included within the boundaries of the protected river.

*Protected River Corridor:* All the land, inclusive of islands not regulated under the Metropolitan River Protection Act (O.C.G.A 12-5-440 through 13-5-457), or the Coastal Marshlands Protection Act

(O.C.G.A. 12-5-280 through 12-5-293), in areas of a protected river and being within 100 feet horizontally on both sides of the river as measured from the river banks. The 100-foot buffer shall be measured horizontally from the uppermost part of the riverbanks, usually marked by a break in slope. Although not within the measured 100-foot wide buffer, the area between the top of the bank and the edge of the river shall be treated by Athens-Clarke County in the same manner as the river corridor and shall be included within the River Corridor Protection District. Because stream channels move due to natural process such as meandering, riverbank erosion, and jumping of channels, the river corridor may shift with time. For purposes of these standards, the river corridor shall be considered to be fixed at its position at the beginning of each review period for the Athens-Clarke County Comprehensive Plan. Any shift in the location of the protected river after the review period will be shown by revision of the boundaries of the river corridor at the time of the next Comprehensive Plan review by the Department of Community Affairs.

*Public utility or utilities* A service or services provided by a public utility company or a private entity which provides such service or services and all equipment and structures necessary to provide such services.

*Regulated activity for wetlands:* 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.

*River Bank:* The rising ground, bordering a river, which serves to confine the water to the natural channel during the normal course of flow, usually marked by a break in slope.

*Single-family Dwelling:* A detached residential unit other than a Class "B" manufactured home, hotel or motel, designed for, and occupied by, one family only.

*State Waters:* Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within, or forming a part of, the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

*Stream Bank:* The sloping land that contains the stream channel and normal flows of the stream.

*Stream Channel:* The portion of a watercourse that contains the base flow of the stream.

*Stream Classification Protocol:* This protocol refers to the *Athens-Clarke County Manual for Identification of Streams*, which manual is incorporated into this Chapter by reference and adopted by the Mayor and Commission as part of this Chapter. A copy of this manual, dated November 3, 2004, is on record and available for public inspection at the Athens-Clarke County Department of Transportation and Public Works. This manual and accompanying field form can be used to identify points on the landscape that represent stream origins as well as stream, channel and flow characteristics resulting from these varying sources of water.

*Timber Production and Forestry:* The use of land for the raising and harvesting of timber, pulp woods, and other forestry products for commercial purposes. Excluded from this definition shall be the cutting of timber associated with land development and construction.

*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.

### **Section 8-6-3. Environmental Areas Review Permits and Approval of Permits.**

(a) An Environmental Areas Review Permit is required for all activity which meets the following thresholds and which occurs or is proposed to occur within either the Floodplains, Riparian Buffer Areas, including protected rivers, wetlands, or significant groundwater recharge areas.

- (1) Any proposed change of use of any property. Change of use, as used herein, shall be defined in a manner consistent with that employed in the administration of the Athens-Clarke County zoning ordinance.
- (2) Any subdivision of a tract or parcel into two or more parcels or proposed modification or adjustment of a parcel line where either Floodplains or Riparian Buffer Areas are present on any of the properties affected by the subdivision or adjustment of property line.
- (3) Any proposed water treatment facility, purification facility, or stormwater management facility.
- (4) Road and Utility Construction.
- (5) Excavation and Fill where the fill or excavation combined is equal to or greater than 10 cubic yards.
- (6) Any work requiring a building permit to be issued by Athens-Clarke County other than permits required for ordinary repair and maintenance or work that occurs entirely within the interior of a building or structure but does not entail a change of the use of the building or structure.
- (7) Any substantial clearing of vegetation which alters the nature and characteristics of the existing vegetation on site unless the clearing meets the definition of Timber Production or Agriculture.
- (8) Any increase in impervious surface equal to or more than either 10% of the existing impervious surface on the existing lot of record or 10,000 square feet, whichever is less.

(b) An Environmental Areas Review Permit is not required for the following activities:

- (1) Ordinary maintenance of buildings and yards, planting and maintenance of non-commercial home gardens and the cutting of firewood for personal use provided that no live trees are removed within 25 feet of a stream bank. (i.e. fewer than 2 cords of wood per year). Routine repair and maintenance of existing roadways and utility facilities.
- (2) Timber production, Surface Mining, Granite Quarry. Although not requiring an Environmental Areas Review Permit, all activities associated with Timber Production shall comply with the best management practices as specified in *Georgia's Best Management Practices for Forestry* available from the Georgia Forestry Commission. All activities associated with Timber Production, Surface Mining, or Granite Quarry shall not impair the quality of the water as defined by the Federal Clean Water Act, and shall comply with all State and Federal laws and all regulations promulgated by the Georgia Forestry Commission.
- (3) Any action taken by Athens-Clarke County or other governmental entity in an emergency to mitigate an existing or potential hazard.
- (4) Any land-disturbing activities conducted by any electric membership corporation or any public utility under the regulatory jurisdiction of the Public Service Commission.
- (5) Agricultural production and management. Although not requiring an Environmental Areas Review Permit, all Agricultural production and management shall comply with the best

management practices established by the Georgia Soil and Water Conservation commission, shall not impair the quality of the water as defined by the Federal Clean Water Act, and shall comply with all State and Federal laws and all regulations promulgated by the Georgia Department of Agriculture, including the Best Management Practices established by the Natural Resources Conservation Service.

- (6) Existing buildings, structures or on-going land-use activities do not require an Environmental Areas Review as long as at the time of construction the existing building or structures obtained the appropriate construction related permits (i.e. building permits). An Environmental Areas Review permit shall be required if the previously permitted land-use activities have ceased for a period of more than one year.
- (c) Application and Plans Required. A complete application and the following plans are required for any activity that meets the thresholds established in 8-6-3 A:
- (1) A site plan containing the following information:
    - a. The location and extent of Environmental Areas, as established in 8-6-4. Plans shall indicate the extent and boundaries of floodplain, riparian buffers, wetlands, or significant groundwater recharge areas. The applicant may request the department to field verify the applicants delineation of protected streams and buffers. The field review by the department will be valid for up to six months.
    - b. The location and extent of Topography, with areas having slopes greater than 25 percent delineated.
    - c. The location and extent of all existing non-natural features including buildings, structures, foundations, parking areas, driveways, walls, and fences.
    - d. The location and extent of any easements or other physical encumbrances on the property.
    - e. The location and extent of all proposed construction including clearing, construction of buildings, impervious surfaces (driveways, paving, patios and sidewalks), roads, walls, fences and other accessory structures.
    - f. Buildable Area.
  - (2) The application form shall be made available at the Athens-Clarke County Planning Department. As part of the application process, the boundaries of all environmental areas shall be clearly marked in the field for review by Athens-Clarke County staff and shall remain clearly marked for the duration of the proposed activity. Ongoing activities shall be marked in a manner approved by staff.
  - (3) The application and plans shall clearly demonstrate how the proposed activity within the Environmental Areas meets the requirements of this chapter.
- (d) Criteria for Approval: An Application for an Environmental Areas Review Permit shall be issued by the Planning Director when the Applicant demonstrates the following:
- (1) That all Environmental Areas have been properly identified and indicated on the plans submitted.
  - (2) That the proposed activity is in compliance with the requirements of this chapter.

**Section 8-6-4. Establishment of Environmental Areas.** For the purposes of this chapter, the following shall be used to determine classifications of Environmental Areas. The type of regulation applicable to a specific land area depends upon the classification in which the land is placed. In the event that land meets the criteria for more than one type of Environmental Area, then the more restrictive of the Standards for Activities shall apply.

- (a) Floodplains: Floodplains are identified by the Federal Emergency Management Agency (FEMA) on such agency's current official Flood Insurance Rate Maps or identified and defined through standard engineering analysis by other government agencies or a licensed professional engineer, but not yet incorporated into the FEMA Flood Insurance Rate Maps.
- (b) Wetlands: Wetlands are hereby established which shall correspond to all lands within Athens-Clarke County that are mapped as wetland areas by the U.S. Fish and Wildlife Service National Wetland Inventory (NWI) maps. The locations of the wetland areas identified by the NWI maps shall be incorporated on the Athens-Clarke County Environmental Areas Map as described in Section 8-6-5. The Environmental Areas Map does not necessarily represent the boundaries of jurisdictional wetlands within Athens-Clarke County 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.
- (c) Riparian Buffer Areas: As set forth in the following table, areas adjacent to protected rivers, streams and bodies of water. If a Hydrologic Feature meets more than one definition, then the more stringent definition of Riparian Buffer shall apply. The buffer width is measure horizontally, on both banks (as applicable) of the stream or body water from the top of stream bank.

Hydrologic Feature	Riparian Buffer Width
Protected River	100 ft.
Upper North Oconee River and Sandy Creek	100 ft.
Protected Streams in Industrial ("I") zones as defined in Title 9 of ACC Code	150 ft.
All Other Protected Streams	75 ft.
Lake or pond	25 ft.
State Waters	25 ft.

- (d) Significant Groundwater Recharge Areas: Areas identified as significant groundwater recharge areas by the Georgia Department of Natural Resources, and as indicated on the environmental areas map and by the Georgia Department of Natural Resources in Hydrologic Atlas 18, 1989 Edition.
- (e) Water Supply watersheds and water supply intake areas: As defined and adopted in Section 8-6-5 and indicated on the environmental areas map.

**Section 8-6-5. Official Map.**

- (a) Environmental Areas Map: An Environmental Areas Map required by the Georgia Planning Act Part V shall be incorporated by reference with the text of this Ordinance. The Athens-Clarke County Environmental Areas Map is established as a reference and educational tool. For purposes of this ordinance, field data and evaluations of the site at the time of application for an Environmental Review Permit will supersede information found on the Environmental Areas Map. Copies of the Map will be maintained in the offices of the Athens-Clarke County Planning Department for public inspection and copies shall be available for sale.
- (b) For any application for an environmental areas review permit, the delineation of environmental areas on the site map, as approved by the planning director and based upon field data and evaluations of the site at the time of application, shall supersede the Athens-Clarke County Environmental Areas Map in determining what areas are subject to the requirements of this chapter. Nothing in this subparagraph (b) shall be construed to change the riparian buffer areas as described in subsection 8-6-4(c) above.
- (c) The boundaries of all environmental areas shall be clearly marked in the field for the duration of land-disturbing activities on the property.

## **ARTICLE 2. RIPARIAN BUFFERS AND FLOODPLAINS.**

### **Section 8-6-6. Standards for Activities within the Floodplains.**

(a) Permitted Activities. Applications for Environmental Areas Review Permits where the proposed activity or activities is proposed to occur within a Floodplain shall be evaluated against the following criteria:

- (1) Subdivisions of land: All lots modified by lot line adjustments or new lots created from existing lots which contain Protected Environmental Areas must demonstrate that the proposed lots contain a Buildable Area of sufficient size to accommodate a single-family dwelling, regardless of the extent of the uses allowed by the underlying zoning. The demonstration of the Buildable Area does not establish or secure the ability of the owner or subsequent owners to construct on the site.
- (2) Standards for water treatment or purification
  - a. The restoration or enhancement of floodplains must meet the Federal and State standards and be conducted in accordance with State and Federal standards and guidelines.
  - b. Measures to remove or abate nuisances or any other violation of State or Federal statute, administrative rule or Athens-Clarke County ordinance must demonstrate that manner of removal or abatement does not create a further negative impact on the Floodplain or violate additional Athens-Clarke County ordinances.
- (3) New transportation or utility stream crossings must meet the following criteria:
  - a. Water and sewerlines must run parallel to existing streams and rivers. The location of water and sewerlines shall be located as far from the bank as the physical constraints of the site allows.
  - b. All crossings shall be made at a right angle unless demonstrated that a right angle is not feasible.
  - c. An installation and maintenance plan for the transportation or utility stream crossing shall accompany the Environmental Areas Review Application.
  - d. Construction of transportation and utilities shall meet all requirements of the Erosion and Sedimentation Control Act as amended.
  - e. Utilities shall not impair the drinking quality of the water, as defined by the Federal Clean Water Act, as amended.
- (4) Excavation and fill. Any modification to the floodplain that includes excavation and fill must demonstrate that it has satisfied the requirements established in Chapter 8-2 (Flood Protection) including, but not limited to the requirement for adjustments to the FEMA map.
  - a. No net fill in any floodplain is allowed. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal. Any modification to the floodplain must satisfy the conditions established in Chapter 8-2 (Flood Protection).
  - b. Excavation areas shall not exceed fill areas by more than 50% of the square footage of the proposed improvements.
  - c. Installation and maintenance of the facilities shall be such as to protect the integrity of the floodplain area
  - d. Excavation to balance a fill shall be located on the same parcel as the fill. If it is demonstrated that if such excavation is not possible, and the Director of Athens-Clarke County Public Works Department concurs, then the excavation shall be located in the same drainage basin and as close as possible to the fill site, and the proposed excavation must not increase the flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.
  - e. Temporary fills which are necessary for construction may be permitted during construction and must be located upslope except in association with permitted uses

and removed prior to the issuance of a Certificate of Occupancy or the initiation of the use of the parcel.

- f. New culverts, stream crossings and transportation projects shall be designed as balanced cut and fill projects or designed not to raise the design flood elevation. Such projects shall be designed to minimize the area of fill in Floodplains and to minimize erosive velocities of water as defined by the Georgia Erosion and Sediment Control Manual. Stream crossings shall be perpendicular to the protected stream..
- g. Excavation and fill required for the construction of detention facilities, levees, or other such structures shall be designed to reduce or mitigate flood impacts and improve the conditions of the Environmental Areas. Levees shall not be used to create additional buildable areas.
- h. These standards are in addition to and do not supersede those actions required in Chapter 8-2 (Floodplain Protection).

(5) Buildings and Construction:

- a. Additions to existing buildings or structures must not exceed 10% of the current square footage of the total square footage of all of the buildings or structures located within the floodplain and must meet the requirements of Chapter 8-2 (Flood Protection). Provided that the applicant demonstrates that the proposed additions and those additions constructed with benefit of all previous Environmental Areas Review Permits are less than or equal to 10% of the square footage of the sum of the square footage of those building and structures extant at the time of the first Environmental Areas Review Permit.
- b. The construction of one single-family dwelling on existing lot of record provided that the following criteria are met:
  - 1. The dwelling shall be located within the Buildable Area on the parcel.
  - 2. Septic Tanks shall not be located within the floodplain.
  - 3. Septic tank drainfields and other forms of on-site wastewater treatment shall not be located within the floodplain.
  - 4. Best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resulting sedimentation, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control in Georgia," published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity is permitted.
  - 5. The stripping of vegetation, regrading, and other development activities shall be conducted in a manner to minimize erosion and shall be limited to that necessary for the construction of the single-family dwelling.
  - 6. Cut and fill operations shall be limited to that necessary for the construction of the single-family dwelling.
  - 7. Development plans must conform to topography and soil type, so as to create the lowest practicable erosion potential.
  - 8. Whenever feasible, natural vegetation shall be retained, protected and supplemented.
  - 9. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum.
  - 10. Disturbed soil shall be stabilized as in accordance with Georgia Manual for Sediment & Erosion Control.
  - 11. Temporary vegetation or mulching shall be employed to protect exposed critical areas during the development.
  - 12. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. Section 12-7-1 et seq.

13. Adequate provisions must be provided to minimize damage from surface water to cut face of excavation or the sloping surfaces of fills.
14. Cuts and fills may not endanger adjoining property.
15. Fills may not encroach upon natural watercourses or constructed channels so as to adversely affect other property owners.
16. Grading equipment must cross-flowing streams by the means of bridges or culverts, except where such methods are not feasible; provided, in any case, that such crossings must be kept to a minimum.
17. Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on site or preclude sedimentation of adjacent waters beyond the levels specified in O.C.G.A. Section 12-7-6(a).
18. The impervious area footprint of the house and accessory structures within a floodplain must be less than 2,500 square feet.

(6) Criteria for the clearing of vegetation.

- a. Native vegetation shall be retained, protected and supplemented within the Flood Plain. Limited non-mechanical clearing of vegetation is allowed within the flood plain, provided that the vegetation removed is less than 6-inch (DBH) and is not within 25' of the stream bank.
- b. No removal of living trees shall be removed within 25 feet of the bank.

(7) Impervious Surfaces: Increases in Impervious Surface, including increases to or construction of parking lots, may be located at an elevation no lower than one foot below the elevation of the one-hundred year floodplain.

(b) Prohibited Activities within Floodplains:

- (1) Handling areas for the receiving and storage of hazardous waste as defined by the State of Georgia.
- (2) Hazardous waste and solid waste landfills.
- (3) Agricultural waste pits.
- (4) New buildings, new structures or other impervious improvements that encroach into the floodplain that require a grading permit or a building permit except as specified in 8-6-6-(a) 5.

**Section 8-6-7. Standards for Activities within the Riparian Buffers.**

(a) Permitted Activities.

- (1) Subdivisions of land: All lots modified by lot line adjustments or new lots created from existing lots which contain Protected Environmental Areas must demonstrate that the proposed lots contain a Buildable Area of sufficient size to accommodate a single-family dwelling, regardless of the extent of the uses allowed by the underlying zoning. The demonstration of the Buildable Area does not establish or secure the ability of the owner or subsequent owners to construct on the site.
- (2) Standards for water treatment facilities or purification facilities
  - a. The restoration or enhancement of Riparian Buffers must meet the Federal and State standards and be conducted in accordance with State and Federal standards and guidelines.
  - b. Measures to remove or abate nuisances or any other violation of State or Federal statute, administrative rule or Athens-Clarke County ordinance must demonstrate that manner of removal or abatement does not create a further negative impact on the

Riparian Buffers or violate additional Athens-Clarke County ordinances.

- (3) New transportation or utility stream crossings must meet the following criteria:
- a. Water and sewerlines must run parallel to existing streams and rivers. The location of water and sewerlines shall be located as far from the bank as the physical constraints of the site allows.
  - b. All crossings shall be made at a right angle unless demonstrated that a right angle is not feasible
  - c. The installation and maintenance of the facility shall be conducted in such a manner as to protect the integrity of the floodplain area. An installation and maintenance plan shall accompany the Environmental Areas Review Application.
  - d. Construction of transportation and utilities shall meet all requirements of the Erosion and Sedimentation Control Act as amended.
  - e. Utilities shall not impair the drinking quality of the water, as defined by the Federal Clean Water Act, as amended.
- (4) The construction of one single-family dwelling on existing lot of record provided that the following criteria are met:
- a. If the proposed construction is located within a Protected River Corridor, the dwelling shall be located on a lot that is no less than two acres in size.
  - b. The dwelling shall be located within the Buildable Area on the parcel.
  - c. Septic Tanks shall not be located within the Riparian Buffer.
  - d. Septic tank drainfields and other forms of on-site wastewater treatment shall not be located within the Riparian Buffer.
  - e. Best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resulting sedimentation, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control in Georgia," published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity is permitted.
  - f. The stripping of vegetation, regrading, and other development activities shall be conducted in a manner to minimize erosion and shall be limited to that necessary for the construction of the single-family dwelling.
  - g. Cut and fill operations shall be limited to that necessary for the construction of the single-family dwelling.
  - h. Development plans must conform to topography and soil type, so as to create the lowest practicable erosion potential.
  - i. Whenever feasible, natural vegetation shall be retained, protected and supplemented.
  - j. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum.
  - k. Disturbed soil shall be stabilized as in accordance with Georgia Manual for Sediment & Erosion Control.
  - l. Temporary vegetation or mulching shall be employed to protect exposed critical areas during the development.
  - m. To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. Section 12-7-1 et seq.
  - n. Adequate provisions must be provided to minimize damage from surface water to cut face of excavation or the sloping surfaces of fills.
  - o. Cuts and fills may not endanger adjoining property.
  - p. Fills may not encroach upon natural watercourses or constructed channels so as to adversely affect other property owners.

- q. Grading equipment must cross flowing streams by the means of bridges or culverts, except where such methods are not feasible; provided, in any case, that such crossings must be kept to a minimum.
- r. Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on site or preclude sedimentation of adjacent waters beyond the levels specified in O.C.G.A. Section 12-7-6(a).
- s. The impervious area footprint of the house and accessory structures within a riparian buffer must be less than 2,500 square feet.

(5) Criteria for clearing vegetation within the riparian Buffer for permitted activities:

- a. Native vegetation shall be retained, protected, and supplemented within the Environmental Area. Limited non-mechanical clearing of vegetation is allowed within riparian buffer, provided that the vegetation removed is less than 6-inch (DBH) and is not within 25' of the stream bank.
- b. No removal of living trees within 25 feet of the stream bank.

(b) Prohibited Activities within Riparian Buffers:

- (1) Any new structures, land disturbance activities, or impervious surfaces other than those specifically permitted in this chapter.
- (2) Handling areas for the receiving and storage of hazardous waste as defined by the State of Georgia.
- (3) Hazardous waste and solid waste landfills.
- (4) Agricultural waste pits
- (5) Parking Lots
- (6) Those activities not specifically listed in 8-6-7(a).

### **ARTICLE 3. WETLANDS, GROUNDWATER RECHARGE, AND WATER SUPPLY.**

#### **Section. 8-6-8. Land disturbing activity standards for wetlands.**

(a) Determination of U.S. Army Corps of Engineers (USACE) jurisdiction. A determination of the USACE jurisdiction shall be made prior to the issuance of any environmental areas review permit for a land disturbing activity, as follows:

- (1) The Athens-Clarke County Planning Staff or their designated agents shall compare applications for an environmental areas permit with the generalized wetlands map and shall determine whether local permitting shall proceed or be deferred pending a USACE determination.
- (2) A local permit may be issued without requiring a jurisdictional wetlands determination by the USACE when the activity being proposed meets either of the following tests:
  - a. It is not the type of activity that would cause the alteration of a wetland; or
  - b. The proposed location of the activity is not near or within a protected wetland boundary as shown on the environmental areas map.

(3) A local permit must be deferred pending a jurisdictional wetlands determination by the USACE. This action must be taken when the activity being proposed fails both of the above tests; i.e., it is a type of activity that would cause alteration of wetlands and the proposed location of the activity is near or within a wetland boundary. In this case, the local permit shall be issued only after a letter of permission or Section 404 Permit is obtained from the USACE by the applicant.

(b) Permitted uses. Only those activities permitted by the U.S. Army Corps of Engineers through individual Section 404 Permits or Letters of Permission under the Federal Clean Water Act are allowed in wetlands as delineated by the USACE.

(c) Prohibited uses. No land disturbing activity not authorized by the U.S. Army Corps of Engineers through individual Section 404 Permits or Letters of Permission shall be allowed in wetlands as delineated by the USACE.

(d) No action by Athens-Clarke County under this chapter relieves the landowner from federal or state permitting requirements. No local permit or permission will be granted for a proposed

development project that appears to contain wetlands or be located near wetlands so as to potentially alter them until the U.S. Army Corps of Engineers has determined whether or not jurisdictional wetlands exist on the site.

**Section 8-6-9. Land disturbing standards for significant groundwater recharge areas.** The groundwater recharge area district is hereby established which shall correspond to all lands within Athens-Clarke County, Georgia that are mapped as significant groundwater recharge areas by the Georgia Department of Natural Resources in Hydrologic Atlas 18, 1989 Edition and shown as a groundwater recharge area on the environmental areas map. All land disturbing activities in areas indicated as significant groundwater recharge areas shall comply with the following standards:

- (a) New waste disposal facilities must have synthetic liners and leachate collection systems.
- (b) No land disposal of hazardous waste shall be permitted.
- (c) The handling, storage and disposal of hazardous materials shall take place on an impermeable surface having spill and leak protection approved by the Georgia Department of Natural Resources, Environmental Protection Division (EPD).
- (d) New aboveground chemical or petroleum storage tanks larger than 650 gallons must have secondary containment for 110 percent of tank volume or 110 percent of the largest tanks in a cluster of tanks. Tanks used for agricultural purposes are exempt if they comply with all federal regulations.
- (e) New agricultural waste impoundment sites shall be lined if they are within a low pollution susceptibility area and exceed 50 acre-feet. As a minimum, the liner shall be constructed of compacted clay having a thickness of one foot and a vertical hydraulic conductivity of less than  $5 \times 10^{-7}$  cm/sec or other criteria established by the Natural Resources Conservation Service.
- (f) Permanent stormwater infiltration basins shall not be constructed in areas having high pollution susceptibility.
- (g) No construction may proceed on a building or mobile home to be served by a septic tank unless the Athens-Clarke County Health Department first approves the proposed septic tank installation as meeting the requirements of the Georgia Department of Human Resource Manual for On-Site Sewage Management (hereinafter DHR Manual) and paragraphs (h) and (i) below.
- (h) New homes served by a septic tank/drainfield system shall be on lots having minimum size limitations as follows, based on application of Table MT-1 of the DHR Manual (hereafter DHR Table MT-1). The minimums set forth in DHR Table MT-1 may be increased further based on consideration of other factors (set forth in Sections A-F) of the DHR Manual, pages M-1 and M-2: One hundred ten percent of the subdivision minimum lot size calculated based on application of DHR Table MT-1 if they are within a low pollution susceptibility area.
- (i) New mobile home parks served by septic tank/drainfield systems shall have lots or spaces having minimum size limitations as follows, based on application of Table MT-2 of the DHR Manual (hereinafter DHR Table MT-2). The minimums set forth in DHR Table MT-2 may be increased further based on consideration of other factors (set forth in Sections A-F) of the DHR Manual, pages M-1 and M-2:  
One hundred ten percent of the subdivision minimum lot or space size calculated based on application of DHR Table MT-2 if they are within a low pollution susceptibility area.
- (j) New facilities that handle hazardous materials of the types listed in Section 312 of the Resource Conservation and Recovery Act of 1976 (excluding underground storage tanks) and in amounts of 10,000 pounds or more on any one day shall perform their operations on impervious surfaces and in conformance with any applicable federal spill prevention requirements and local fire code requirements.
- (k) Each recharge area shall be determined to have a pollution susceptibility of high, medium, or low based on the Georgia Pollution Susceptibility Map, Hydrologic Atlas 20, 1992 Edition. Said map is hereby adopted and made a part of this chapter by reference. All of Athens-Clarke County is located within a low pollution susceptibility area, as indicated on the Georgia Pollution Susceptibility Map, Hydrologic Atlas 20, 1992 Edition.

**Section 8-6-10. Water supply watershed and water supply intakes.** The water supply watersheds within Athens-Clarke County are all classified as Large Watersheds with no reservoirs within the jurisdiction. The Middle Oconee River Water Supply Watershed District, the North Oconee River Water Supply Watershed District, the Savannah River Water Supply Watershed District, and the

Oconee River Water Supply Watershed District are all large water supply watersheds. Intakes for Athens-Clarke County are located on the North Oconee River and on the Middle Oconee River. This water supply watershed does not contain a reservoir within Athens-Clarke County.

The following regulations shall apply to the above mentioned watersheds: New facilities, located within seven (7) miles of the water supply intake or water supply reservoir, which handle hazardous materials of the types listed in Section 312 of the Resource Conservation and Recovery Act of 1976 (excluding underground storage tanks) and amounts of 10,000 pounds or more on any one day, shall perform their operations on impervious surface and in conformance with any applicable federal spill prevention requirements or the requirements of the Standard Fire Prevention Code.

#### **ARTICLE 4. MINIMUM BUILDABLE AREA, VARIANCE, AND VIOLATIONS.**

**Section 8-6-11. Minimum buildable area required.** All lots modified by lot line adjustments or new lots created from existing lots which contain floodplains, wetlands, riparian buffer areas, or significant groundwater recharge areas must contain a buildable area of a sufficient size to accommodate the uses permitted in the underlying zone, unless the action is for open space or conservation purposes. This section shall apply even if the effect is to prohibit further division of lots that are larger than the minimum size permitted in the zoning ordinance.

**Section 8-6-12. Variances for Environmental Areas.** Where there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, character, topography; and the special conditions and circumstances do not result from the actions of the applicant; and the benefits of granting the variance will be greater than any negative impacts on the Environmental Areas or will further the purpose and intent of the Environmental Areas Protection Ordinance; and the Variance for Environmental Areas requested is the minimum variance that will make possible the legal use of the land, building or structure, the Athens-Clarke County Hearings Board established in Title 9 (Zoning) of this Code may grant a variance. In granting a variance, the Athens-Clarke County Hearings Board may approve or approve with conditions applications for variance that protect the integrity of the Environmental Areas as well as the best interests of the surrounding property and property owners and the community as a whole. Properties within Protected River Corridors, as defined in this chapter, are not eligible for variances. Variances for the 25-foot buffer on all state waters are subject to the provisions of Chapter 8-3 and cannot be granted by the hearings board.

(a) Application. Variances shall be heard by the Hearings Board in accordance with Section 9-21-3. Such application shall be accompanied by the following:

- (1) Site plans prepared in accordance with 8-6-3.
- (2) A statement and evidence demonstrating that the following criteria are met:
  - a. There are unique or unusual circumstances that apply to this site which do not typically exist for parcels which contain Environmental Areas
  - b. The approval of the application is necessary for the preservation of property rights
  - c. That the proposal's benefits will be greater than any negative impacts on the Environmental Areas, on adjacent uses and will further the purpose and intent of this ordinance;
  - d. And the circumstances or conditions have not been willfully or purposefully self-imposed
- (3) Proposed mitigation plan that offsets the effects of the proposed encroachment during site preparation, construction and post-construction phases.

(b) No variances shall be issued unless the Hearings Board determines that the circumstances documented in 8-6-13 A (2) exist and that the requirements of this ordinance represent an

extreme hardship for the landowner such that little or no reasonable economic use of the land is available without a variance.

- (c) Any variance issued by the Hearings Board shall meet the following conditions
- (1) The width of the encroachment on the Environmental Area is the minimum necessary to provide relief; and
  - (2) The encroachment will not result in violations of any other local, state and federal laws, and will not impair water quality as defined by the Clean Water Act
- (d) Planning Staff Permit: Minor Variances for Protected Streams with Riparian Buffers of 50 feet or greater.
- (1) A Minor Variance is a reduction of up to 10% of the buffer width over a portion of a property in exchange for an increase in buffer width elsewhere on the same property such that the average buffer width remains the same for the protected stream. No Minor Variance can decrease the buffer width more than 10% of total buffer width. A property owner may request a Minor Variance from the requirements of the Riparian Buffer by submitting the appropriate application to the Athens-Clarke County Planning Department. Such applications are to be processed following the procedures for Staff Permits established in Section 9-4-7 of this code.
  - (2) Each applicant for a Minor Variance must submit documentation that the variance, if approved, will not result in a reduction in water quality. All Minor Variances shall adhere to the following criteria:
    - a. The width of the Riparian Buffer shall be reduced by the minimum amount necessary, and the width of the buffer shall never be reduced more than 25 feet.
    - b. Reductions in the width of the Riparian Buffer shall be balanced by corresponding increases in the Riparian Buffer elsewhere on the same property, such that there is no net reduction in the total Riparian Buffer area. .
    - c. The Land disturbing activities must comply with the requirements of Chapter 8-3 and all applicable best management practices.
- (e) Variances to the Protected Environmental Areas regulations do not preclude other regulations that affect the quality of the community's waterways, including, but not limited to regulations such as the Soil Erosion and Sedimentation Control Ordinance (Chapter 8-3, Athens-Clarke County Code), Flood Protection (Chapter 8-2, Athens-Clarke County Code) or Storm Water Management (Chapter 5-4, Athens-Clarke County Code). The standards and requirements are not superseded by these standards. If the granting of a variance conflicts with these or other regulations of Athens-Clarke County, State or Federal regulations, including the protection of Wetlands as defined by the U.S. Army Corps of Engineers, the more restrictive of the regulations shall govern.

**Section 8-6-13. Penalties for Violation.** Any person, firm or corporation, whether as principal, agent, employee, or otherwise, violating or causing the violation of any of the provisions of this Chapter has committed an infraction, and upon conviction thereof is punishable as prescribed in Section 1-1-5 of the Athens-Clarke County Code. Such person, firm or corporation is guilty of a separate violation for each and every day during any portion of which any violation of this Chapter is committed or continued by such person, firm or corporation.”

SECTION 2. Severability. In the event any one or more of the provisions of this ordinance shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of the Mayor and Commission of Athens-Clarke County that such illegality or invalidity shall not affect any other provision hereof, but this ordinance shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

SECTION 3. Repealer. Except as specifically provided for hereinabove, all ordinances or parts of ordinances in conflict herewith are hereby repealed.