

**ARTICLE 26
STREAM BUFFER PROTECTION**

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Sec. 26.1. Findings.

The Governing Body finds that buffers adjacent to streams provide numerous benefits including:

- (a) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources; and
- (b) Removing pollutants delivered in urban stormwater; and
- (c) Reducing erosion and controlling sedimentation; and
- (d) Protecting and stabilizing stream banks; and
- (e) Providing for infiltration of stormwater runoff; and
- (f) Maintaining base flow of streams; and
- (g) Contributing organic matter that is a source of food and energy for the aquatic ecosystem; and
- (h) Providing tree canopy to shade streams and promote desirable aquatic habitat; and
- (i) Providing riparian wildlife habitat; and
- (j) Furnishing scenic value and recreational opportunity; and
- (k) Providing opportunities for the protection and restoration of greenspace.

Sec. 26.2. Purposes.

It is the purpose of this Article to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:

- (a) Create buffer zones along the streams of the City of Flowery Branch for the protection of water resources; and,
- (b) Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.
- (c) Require the proper installation and maintenance of on-site sewage management systems, or septic tanks to minimize their negative effects on water quality.

Sec. 26.3. Definitions.

Buffer: With respect to a stream, a natural or enhanced vegetated area (established by this Article), lying adjacent to the stream.

Impervious cover: Any manmade paved, hardened or structural surface regardless of material. Impervious cover includes but is not limited to rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.

Land development: Any land change, including but not limited to clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

Land development activity: Those actions or activities which comprise, facilitate or result in land development.

Land disturbance: Any land or vegetation change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.

Land-disturbance activity: Those actions or activities which comprise, facilitate or result in land disturbance.

Floodplain: Any land area susceptible to flooding, which would have at least a one percent probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current FEMA Flood Insurance Rate Map (FIRM) pertaining to the areas within the City of Flowery Branch.

Parcel: any plot, lot or acreage shown as a unit on the latest county tax assessment records.

Permit: The permit issued by the City of Flowery Branch required for undertaking any land development activity.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

Protection area or stream protection area: With respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

Riparian: Belonging or related to the bank of a river, stream, lake, pond or impoundment.

Setback: With respect to a stream, the area established by this Article extending beyond any buffer applicable to the stream.

Stream: Any stream, beginning at: the location of a spring, seep, or groundwater outflow that sustains streamflow; or a point in the stream channel with a drainage area of 25 acres or more. Where evidence indicates the presence of a stream in a drainage area of less than 25 acres, the City of Flowery Branch may require field studies to verify the existence of a stream. Streams are further defined as intermittent and perennial.

Stream, intermittent: A stream that flows in a well-defined channel during wet seasons of the year but not for the entire year. They generally exhibit signs of water velocity sufficient to move soil material, litter, and fine debris. They are usually identified as blue lines separated by three dots on the United States Geological Survey (USGS) topographical map and as black lines separated by two or more dots on a Department of Natural Resources Conservation Service (NRCS) soil map. Aquatic organisms such as some fish often are difficult to find or not present at all in these streams.

Stream, perennial: A stream which flows in a well-defined channel throughout most of the year under normal climactic conditions. Some may dry up during drought periods or due to excessive upstream uses. They are usually identified as solid blue lines on the United States Geological Survey (USGS) topographical map and as solid black lines separated by one dot on a Department of Natural Resources Conservation Service (NRCS) soil map. Aquatic organisms such as some fish are normally present and easily found in these streams.

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

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

Watershed: The land area that drains into a particular stream.

Sec. 26.4. Applicability.

This Article shall apply to all land development activity on property containing a Protection Area or Stream Protection Area as defined in this Article. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law. Approval or exemption from requirements established in this Article do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

Sec. 26.5. Grandfather Provisions.

This Article shall not apply to the following activities, when such activities were lawfully established prior to the effective date of this Article or its predecessor ordinance:

- (a) Work consisting of the repair or maintenance of any lawful use of land that was zoned and approved for such use.
- (b) 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.
- (c) Any land development activity that was under construction, fully approved for development, scheduled for permit approval or had been submitted for approval.
- (d) Land development activity that has not been submitted for approval, but that is part of a Planned Unit Development (PUD) that has been conceptually approved.

Sec. 26.6. Exemptions.

The following specific activities are exempt from this Article. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

- (a) Activities for the purpose of building one of the following:
 - 1. A stream crossing by a driveway, transportation route or utility line;
 - 2. Public water supply intake or public wastewater outfall structures;
 - 3. Intrusions necessary to provide access to a property;
 - 4. Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
 - 5. Unpaved foot trails and/or impervious paths;
 - 6. 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.
- (b) Public sewer line easements paralleling the stream, except that all easements (permanent and construction) and land disturbance should be at least 50 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths (unless impervious) or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in this Section.
- (c) Land development activities within a right-of-way existing at the time this ordinance was first effective, or which are permitted under the terms of this Article.
- (d) Within an easement of any utility existing at the time this Article first took effect or approved under the terms of this Article, 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.
- (e) 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 Zoning Administrator on the next business day after commencement of

the work. Within 10 days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the City 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.

- (f) Forestry and silviculture activities 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.

Sec. 26.7. Buffer and Setback Requirements.

All land development activity subject to this ordinance shall meet the following requirements. Any land development activity within a buffer established in this Article or any impervious cover within a setback established in this Article is prohibited unless exempted, grandfather, or a variance is granted pursuant to this zoning ordinance.

- (a) Buffer. An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.
- (b) Additional setback. An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

Sec. 26.8. Septic Tanks.

No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

Sec. 26.9. Buffers and Setbacks Shown on Plats.

All buffer and setback areas required by this Article shall be designated on any recorded final plat of the property approved after the date this Article first applied.

Sec. 26.10. Responsibility and Liability.

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this Article 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 the City of Flowery Branch, its officers or employees, for injury or damage to persons or property.

Sec. 26.11. Inspection.

- (a) Authorized. The City of Flowery Branch 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 City of Flowery Branch shall have the authority to conduct such investigations as it may reasonably deem

necessary to carry out its duties as prescribed in this zoning 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.

- (b) Cooperation of Permittee. 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. The permittee shall assist the City in making such inspections.

Sec. 26.12. Enforcement.

Any action or inaction which violates the provisions of this Article or the requirements of an approved site plan or permit pursuant to this Article may be subject to the enforcement actions provided in this zoning ordinance.

Sec. 26.13. Variances.

Variances to the provisions of this Article may be filed and shall be processed in accordance with the requirements of Article 37 of this zoning ordinance.