



Ken Wright – Mayor
Denis Shortal – City Council Post 1
Adrian Bonser – City Council Post 2
Tom Taylor – City Council Post 3
Robert Wittenstein – City Council Post 4
Danny Ross – City Council Post 5
John Heneghan – City Council Post 6

Warren Hutmacher – City Manager
Brian Anderson – City Attorney

MEMORANDUM

TO: Mayor and City Council

FROM: Rich Edinger, P.E., City Engineer

CC: Mike Tuller, AICP, Community Development Director

DATE: November 23, 2009

RE: Erosion and Sedimentation Control Ordinance Amendment

Pursuant to changes in the state erosion and sediment control law promulgated by the General Assembly in July, 2009, attached is an amendment to Chapter 14, Land Development and Environmental Protection, Section 11, Erosion and Sediment Control, for the City Council's consideration. Since the City is a certified local issuing authority (LIA), it must review, revise, or amend its erosion and sediment control ordinance within 12 months of any amendment to the state law. The Georgia EPD has written the City a letter advising it of the changes it needs to make and establishing a July 1, 2010 deadline for City Council action.

The proposed changes remove the state waters buffer from state waters defined as "ephemeral", thereby allowing development activities in these state waters without a variance. This change codifies long-standing EPD policy guidance on this issue, which the City has been following as it administers its LIA responsibilities.

Note that the City's stream buffer may still apply depending on the nature of the channel bed and whether the ditch in question meets the City's definition of "stream".

Staff recommends amending Chapter 14 Land Development and Environmental Protection, Section 11. The attached ordinance would ensure the City of Dunwoody Code of Ordinances follows the state guidelines. This change was first read at the November Work Session.

AN ORDINANCE AMENDING CHAPTER 14, LAND DEVELOPMENT AND ENVIRONMENTAL PROTECTION, SECTION 11 (SOIL EROSION AND SEDIMENT CONTROL), PROVIDING FOR AN EXEMPTION TO THE STATE WATERS BUFFER REQUIREMENT AS LEGISLATED BY THE 2009 GEORGIA GENERAL ASSEMBLY

WHEREAS, the Georgia General Assembly amended Code Section 12-7-6 of the Official Code of Georgia Annotated, relating to best management practices for control of soil erosion and sedimentation and minimum requirements for rules, regulations, ordinances, or resolutions, so as to change certain provisions relating to 25 foot buffers along state waters; and,

WHEREAS, The Georgia Department of Natural Resources Environmental Protection Divisions has revised its model erosion and sedimentation control ordinance to reflect said changes; and

WHEREAS, Per O.C.G.A. § 12-7-8(a)(2), the City of Dunwoody, as a certified local issuing authority, must review, revise, or amend its erosion and sediment control ordinance within 12 months of any amendment to the state law; and,

WHEREAS, This Ordinance shall become effective upon its adoption; and,

WHEREAS, The City of Dunwoody City Council demands progressive and responsible government.

THEREFORE, Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Chapter 14, Article 2 (Environmental Control), Section 11 (Soil Erosion and Sedimentation Control) is hereby amended by revising Section 11(b)(4)(C)(xv) to read as follows:

- (xv) Except as provided in paragraph (xvi) of this subsection, there is established a twenty-five foot state buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the Director of the Environmental Protection Division determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the Director of the Environmental Protection Division pursuant to O.C.G.A. § 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or along any ephemeral stream. As used in this provision, the term 'ephemeral stream' means a stream that, under normal circumstances, has water flowing only during and for a short duration after precipitation events; that has the channel located above the ground-water table year round; for which ground water is not a source of water; and for which runoff from precipitation is the primary source of water flow. Unless exempted as along an ephemeral stream, ~~provided, however,~~ the buffers of at least twenty-five (25) feet established pursuant to part 6 of Article 5, Chapter 5 of Title 12, the

“Georgia Water Quality Control Act,” shall remain in force unless a variance is granted by the Director of the Environmental Protection Divisions as provided in this paragraph. The following requirements shall apply to any such buffer:

1. No land disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and,
2. The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within twenty-five (25) degrees of perpendicular to the stream; cause a width of disturbance of not more than fifty (50) feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented; (i) Stream crossings for water lines; or (ii) Stream crossings for sewer lines.

Section 2: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ___ day of _____, 2009.

Approved:

Ken Wright, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk
(Seal)

Brian Anderson, City Attorney