

1    **ORDINANCE ESTABLISHING STANDARDS FOR PROTECTION OF WETLANDS WITHIN UNINCORPORATED**  
2                   **FULTON COUNTY; PROVIDING PROCEDURES FOR A LAND DISTURBANCE PERMIT**

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4           **WHEREAS**, the Board of Commissioners of Fulton County finds that the natural resources and  
5 environment of Fulton County are of vital importance to Fulton County and its citizens; and

6           **WHEREAS**, the Board of Commissioners of Fulton County finds that the health, safety and general welfare  
7 of the citizens of Fulton County shall benefit from the adoption of wetlands protection requirements within Fulton  
8 County;

9           **WHEREAS**, local governments should acknowledge the importance of wetlands for the public good in the  
10 land-use planning process as mandated by the Georgia Planning Act of 1989 including O.C.G.A §12-2-8 and  
11 regulations promulgated thereunder;

12           **NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of Fulton County, Georgia, as  
13 follows:

14    **Section 1.**     **Title.**

15           This ordinance shall be known as the "Fulton County Wetlands Protection Ordinance."

16    **Section 2.**     **Intent and Purpose.**

17    The wetlands of Fulton County, Georgia are important to the environment and shall be protected. The purpose of  
18 this ordinance is to recognize and require adherence to Federal regulations and procedures that govern the  
19 development of land that contain wetlands within unincorporated Fulton County, Georgia. The regulations contained  
20 in this Ordinance are created under the requirement of the Clean Water Act (33 U.S.C. §1344), ("CWA"). Any  
21 Fulton County government action under this ordinance does not relieve the landowner from federal or state  
22 permitting requirements. In the event of a conflict between or among any provisions of this Ordinance, the Clean  
23 Water Act or any other ordinance, resolution or regulation of Fulton County, the most restrictive requirement shall

1 apply. It is not the intent of this ordinance to regulate individual properties where activities will not impact wetlands  
2 and do not require a land disturbance permit.

3 **Section 3. Definitions.**

4 All words in these standards have their customary dictionary definitions except as specifically defined  
5 herein. The words "shall" and "must" are mandatory, and the words "may" and "should" are permissive.

- 6 A. **"Anaerobic"** means not having molecular oxygen (O<sub>2</sub>) present.
- 7 B. **"Applicant"** means any person who seeks permission to engage in any regulated activity on any  
8 land that contains wetland areas, as those terms are defined herein.
- 9 C. **"COE"** means United States Army Corps of Engineers.
- 10 D. **"Director"** means the Director or his/her designee of the Fulton County Department of  
11 Environment and Community Development.
- 12 E. **"Generalized Wetlands Map"** means the latest edition of the Fulton County Government maps for  
13 unincorporated Fulton County, Georgia generated from National Wetlands Inventory mapping.
- 14 F. **"Hydrophytic vegetation"** means any plant growing in water or in soil that is at least periodically  
15 anaerobic as a result of saturation; plants typically found in wet habitats.
- 16 G. **"Jurisdictional wetlands determination"** means a delineation of jurisdictional wetlands  
17 boundaries by the U.S. Army Corps of Engineers, as required by Section 404 of the Clean Water  
18 Act (33 U.S.C. §1344, as amended).
- 19 H. **"Jurisdictional wetlands"** means a wetlands area that meets the definitional requirements for  
20 wetlands as determined by the United States Army Corps of Engineers.
- 21 I. **"National Wetlands Inventory (NWI) maps"** means a series of maps produced by the U.S. Fish  
22 and Wildlife Service showing the location and classification of wetlands in standard topographical  
23 areas. A wetlands inventory area does not necessarily represent jurisdictional wetlands and shall  
24 not serve as a substitute for a jurisdictional wetland determination or a wetland delineation.

1 J. **“Regulated Activity”** means any activity which will, or which may reasonably be expected to  
2 result in the discharge of dredged or fill material into waters of the United States excepting those  
3 activities exempted in Section 404 of the Federal Clean Water Act.

4 K. **“Wetlands”** as defined by the United States Army Corps of Engineers and the United States  
5 Environmental Protection Agency means an area that is inundated or saturated by surfacewater or  
6 groundwater at a frequency and duration sufficient to support, and under normal circumstances  
7 does support, a prevalence of vegetation typically adapted for life in saturated soil conditions,  
8 commonly know as hydrophytic vegetation. Wetlands generally include swamps, marshes, bogs  
9 and similar areas. The ecological parameters for designating wetlands include hydric soils,  
10 hydrophytic vegetation, and hydrological conditions that involve a temporary or permanent sources  
11 of water to cause soil saturation.

12 L. **“Wetlands delineation”** means the establishment of wetlands boundaries by a representative of  
13 the United States Army Corps of Engineers, an authority designated by the COE, or the Director,  
14 as required by Section 404 of the Clean Water Act, (33 U.S.C. §1344), as amended. Wetlands  
15 shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology, in  
16 accordance with the techniques outlined in the COE, Wetlands Delineation Manual (Technical  
17 Report Y-87-1, January 1987).

18 **Section 4. Establishment of the Wetlands Protection District.**

19 The Wetlands Protection District is hereby established which shall correspond to all lands within the  
20 jurisdiction of unincorporated Fulton County, Georgia that are identified, designated and mapped as wetland areas  
21 by Fulton County Government. This map shall be referred to as the Generalized Wetlands Map and is hereby  
22 adopted by reference and declared to be a part of this ordinance, together with all explanatory matter thereon and  
23 attached thereto.

1 The Generalized Wetlands Map and the established Wetlands Protection District do not necessarily  
2 represent the boundaries of jurisdictional wetlands within unincorporated Fulton County, Georgia and shall not  
3 serve as a substitute for a delineation of wetland boundaries approved by the COE, as required by Section 404 of  
4 the Clean Water Act, as amended. Any local government action under this ordinance shall not relieve the  
5 landowner from federal or state permitting requirements.

6 The Generalized Wetlands Map is available in the Department of Environment and Community  
7 Development and incorporated by reference.

8 **Section 5. Benefits.**

9 Important benefits to Fulton County citizens that are derived from wetlands protection include:

- 10 (i) Flood control
- 11 (ii) Erosion control
- 12 (iii) Improved water quality due to the retention of sediment, nutrients, and toxic materials
- 13 (iv) Aesthetics
- 14 (v) Recreational and natural resource education opportunities
- 15 (vi) Open space

16 **Section 6. Authority and Applicability.**

17 Terms and provision of the Wetlands Protections Ordinance, established herein, shall apply to all activities  
18 which require the issuance of a land disturbance permit on any real property within unincorporated Fulton County.  
19 No land disturbance permit shall be issued by the Department of Environment and Community Development, (or  
20 any successor to that Department) without it being determined that the proposed development is in conformance  
21 with the provisions of these regulations.

22 The terms and provisions of these regulations shall also apply to construction of new single family detached  
23 and duplex dwellings, including additions, renovations and/or alterations to existing single family detached and

1 duplex dwellings where the total land disturbance activity is greater than 5,000 square feet and/or proposes impact  
2 to COE delineated wetlands.

3 **Section 7. Land Disturbance Permit Procedures.**

4 Jurisdictional wetlands shall be protected according to the regulation of the State of Georgia, COE,  
5 Environmental Protection Agency and all other applicable State and Federal Regulations. Under current federal law  
6 and state policy, alterations or degradation of wetlands should be avoided unless it can be demonstrated that there  
7 will be no long-term impacts or net loss of wetlands. Any unavoidable degradation or loss must be mitigated  
8 through the restoration, creation, enhancement or preservation of other waters of the United States.

9 If the applicant can provide to the Director a valid COE wetlands delineation that verifies that the proposed  
10 activity is not located within jurisdictional wetlands, or if the applicant can provide a valid COE permit or letter that  
11 authorizes the proposed activity within jurisdictional wetlands, then the Director shall follow current procedures for  
12 issuing a land disturbance permit. If such evidence of compliance with COE permitting requirements is not  
13 provided, then the procedures are as follows:

14 A. The Director shall consult the Generalized Wetlands Map to assess whether the proposed activity is  
15 located in the Wetlands Protection District or within 100 feet of the Wetlands Protection District.

16 B. Prior to the issuance of a land disturbance permit, the Director shall require the applicant to submit  
17 the Fulton County Certification/Indemnification for Federally Designated Wetlands form (see  
18 Wetland Protection Procedures: For All Projects Contemplating Alteration or Degradation of  
19 Wetland Areas) as verification of whether or not jurisdictional wetlands are located within the parcel  
20 proposing a land disturbance activity and if any impacts to the wetlands are being proposed:

21 1. If the Director determines that the proposed activity is of a type that could not result in a  
22 disturbance of wetlands or if the proposed activity is not located in the Wetlands Protection  
23 District or within 100 feet of the Wetlands Protection District, the Director shall follow  
24 current procedures for issuing a land disturbance permit.

- 1                   2.       If the Director determines that the proposed activity is located in the Wetlands Protection  
2                   District or within 100 feet of the Wetlands Protection District and that the proposed activity  
3                   is of a type that could result in a disturbance of wetlands, a COE jurisdictional wetlands  
4                   determination shall be required prior to issuance of a land disturbance permit.
- 5                   3.       If the COE determines that a permit or letter of permission is required, a land disturbance  
6                   permit shall be issued only following issuance of a COE permit or Letter of Permission. If  
7                   the COE determines that the proposed activity would not require a COE permit or Letter of  
8                   Permission, the Director shall proceed with current procedures for issuing a land  
9                   disturbance permit based on documentation of the COE determination. If the COE  
10                  determines that wetlands mitigation is required, the applicant shall perform mitigation in  
11                  unincorporated Fulton County, unless such action conflicts with the direction of COE.
- 12                 4.       If under any of the provision of this section a conflict occurs between the Director and the  
13                 applicant with regards to the proposed activity being a type that could result in a  
14                 disturbance of wetlands, the applicant shall provide the Director with the appropriate COE  
15                 documentation to resolve the conflict.

16       **Section 8.       Penalties.**

17                 The applicant shall be subjected to state and federal penalties for non compliance.

18       **Section 9.       Effective Date.**

19                 This Ordinance shall become effective on all Land Disturbance Permit applications submitted sixty (60)  
20       days after approval by the Board of Commissioners of Fulton County.

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**Section 10.   Validity.**

Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance in whole or any part thereof other than the part so declared invalid.

ENACTED, THIS fifth day of June, 2002.

ATTEST:

SPONSORED BY:

\_\_\_\_\_  
Clerk to Commission

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William "Bill" Edwards, Commissioner  
District 7

APPROVED AS TO FORM:

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Overtis Hicks Brantley, County Attorney