EXHIBIT A

ARTICLE V. STREAM BUFFER PROTECTION

DIVISION 1. GENERALLY

Sec. 20-381. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Buffer means, with respect to a stream, or a state water, a natural or enhanced vegetated area lying adjacent to the stream or state water.

Director means the director of the city community development department.

Impervious cover means any manmade paved, hardened or structural surface regardless of material. Impervious cover includes, but is not limited to:

(1) Rooftops;

(2) Buildings;

(3) Streets;

(4) Roads;

(5) Decks;

(6) Swimming pools; and

(7) Any concrete or asphalt.

Land development means any land change including, but not limited to:

(1) Clearing, grubbing, stripping or the removal of vegetation;

(2) Dredging, grading or excavating;

(3) Transporting and filling of land;

(4) Construction;

(5) Paving; and

(6) Any other activity related to installing ~~installation of~~ impervious cover.

Land development activity means those actions or activities which comprise, facilitate or result in land development.

Land disturbance means any land or vegetation change including, but not limited to:

(1) Clearing, grubbing, stripping or the removal of vegetation;

(2) Dredging, grading or excavating;

(3) Transporting and filling of land, that does not involve construction;

(4) Paving; or

(5) Any other installation of impervious cover.

Land disturbance activity means those actions or activities which comprise, facilitate or result in land disturbance.

Floodplain means any land area susceptible to flooding, which would have at least a one percent probability of a flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan (i.e., the regulatory flood).

Non-Federal Water Supply Reservoir means a governmentally owned impoundment of water for the primary purpose of providing water to one or more governmentally owned public drinking water systems. This excludes the multipurpose reservoirs owned by the U.S. Army Corps of Engineers.

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

Permit means the permit issued by the city community development department required for undertaking any land development activity.

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.

Protected Small Water Supply Watershed means the corridors of streams in a small water supply watershed within a seven-mile radius upstream of a governmentally owned public drinking water supply intake or a non-federal water supply reservoir. A map of the Protected Small Water Supply Watersheds is available upon request from the [local jurisdiction] based on the regional map prepared by the Metropolitan North Georgia Water Planning District.

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 section 20-426 extending beyond any buffer applicable to the stream.

Small Water Supply Watershed means a watershed that has less than 100 square miles of land within the drainage basin upstream of a governmentally owned public drinking water supply intake or a non-federal water supply reservoir.

State waters means any and all rivers, streams, creeks, branches, lakes, ditches, 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 means any stream, beginning at:

(1) The location of a spring, seep, or groundwater outflow that sustains streamflow; or

(2) A point in the stream channel with a drainage area of 25 acres or more.

(3) Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the city community development department may require a level II GaSWCC (Georgia Soil and Water Conservation Commission) erosion control certified designer to submit field studies to ~~verify~~ determine the existence of a stream.

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

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

Watershed means the land area that drains into a particular stream.

Sec. 20-382. Findings and purposes.

(a) *Findings.* The city community development department finds that buffers adjacent to state waters ~~streams~~ provide numerous benefits including:

(1) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources.

(2) Removing pollutants delivered in urban stormwater.

(3) Reducing erosion and controlling sedimentation.

(4) Protecting and stabilizing stream banks.

(5) Providing for the infiltration of stormwater runoff.

(6) Maintaining base flow of streams.

(7) Contributing organic matter that is a source of food and energy for the aquatic ecosystem.

(8) Providing tree canopy to shade streams and promote desirable aquatic habitat.

(9) Providing riparian wildlife habitat.

(10) Furnishing scenic value and recreational opportunity.

(11) Providing opportunities for the protection and restoration of greenspace.

(b) *Purposes.* The purpose of this article is to:

(1) Protect the public health, safety, environment and general welfare;

(2) Minimize public and private losses due to erosion, siltation and water pollution; and

(3) Maintain ~~stream~~ state water quality by provisions designed to:

a. Create buffer zones along ~~the city~~state waters within the city ~~streams~~ 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.

Sec. 20-383. Applicability.

(a) *Generally.* This article shall apply to all land development activity on property containing a ~~stream~~ state water protection area as defined in section 20-381. 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. When applying the provisions of this ordinance to buffer and setback requirements in protected small water supply watersheds, the effective date for these requirements shall be December 20, 2021.

(1) *Grandfather provisions.* Except as provided in subsection (c) below, ~~This~~ this article shall not apply to the following activities:

a. Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before ~~the effective date of the ordinance from which this article is derived~~December 7, 2006.

b. Existing development and ongoing 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, and a predetermination of continuing applicability by the Community Development Director, or designee, as required in subsection (d) below.

c. Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of ~~the effective date of the ordinance from which this article is derived~~December 7, 2006.

d. Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved ~~within two years of the effective date of the ordinance from which this article is derived~~as of December 7, 2006.

(2) *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:
    (i) Boat ramps;
    (ii) Docks;
    (iii) Foot trails leading directly to the river;
    (iv) Fishing platforms; and
    (v) Overlooks;
5. Unpaved foot trails and paths; and
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 creek, except that all easements (permanent and construction) and land disturbance should be at least 25 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 or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in subsection (a)(2)a of this section.

c. Land development activities within a right-of-way existing at the time the ordinance from which this article is derived takes effect or approved under the terms of this article.

d. Within an easement of any utility existing at the time the ordinance from which this article is derived takes 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:

1. Manholes;
2. Vents; and
3. Valve structures.

e. Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the city on the next business day after commencement of the work. Within ten 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 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.

g. After the effective date of the ordinance from which this article is derived, it shall apply to new subdividing and platting activities.

(b) *Prohibited; exception.* 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 20-427.

(c) *Best Management Practices.* Any land disturbance or land development activity that may be allowed or permitted within a grandfathered area as described in subsection (a)(1) above must be conducted in accordance with the following best management practices:

(1) Appropriate allowances must be made for any disturbance or development (e.g., structures, pools, walls, foundations) that encroaches into the seventy-five-foot impervious setback or the fifty-foot undisturbed City stream buffer.

(2) All paved surfaces within the seventy-five-foot impervious setback or the fifty-foot undisturbed City stream buffer shall be constructed of pervious materials.

(3) An approved sediment control barrier shall be installed as far as possible from the twenty-five-foot undisturbed State buffer prior to beginning any construction.

(4) A drainage plan to treat and mitigate stormwater run-off shall be submitted to the City's Community Development Department for review and approval prior to beginning any construction.

(5) A landscape plan to revegetate the disturbed areas within the fifty-foot undisturbed City stream buffer shall be submitted to the City's Arborist for review and approval prior to beginning any construction.

(d) *Predetermination requirement*. The applicability of any exemption available hereunder to any requirement of this article, including those exemptions listed in subsection (a)(2) above, shall be subject to the predetermination of the Community Development Director, or designee, prior to commencing the proposed activity. The city shall adopt an administrative process for private property owners to request and receive a determination by the Community Development Director, or designee, regarding the applicability of any exemption that may be available to limit in any way the requirements of this article. Such determination shall be provided to the property owner requesting it at no cost to the property owner. In the event a private property owner does not avail themselves of the administrative process identified in this paragraph and takes independent action as if they were exempted from some or all of the requirements of this article without a predetermination having been made, the property owner shall be deemed to have forfeited their right to pursue such an available administrative remedy and the City shall have all enforcement options available under law, including but not limited to, a five-year hold on an approval of any building permit or land disturbance permit for the subject property. In addition, if some or all the requirements related to the exclusion(s) of this article are not implemented, the city shall have all enforcement options available under law, including but not limited to, a five-year hold on an approval of any building permit or land disturbance permit for the subject property.

Secs. 20-384—20-402. Reserved.

DIVISION 2. VIOLATIONS, ENFORCEMENT AND PENALTIES

Sec. 20-403. Violation subject to equitable relief.

Any action or inaction which violates the provisions of this article or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this division. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described section 20-405 shall not prevent such equitable relief.

Sec. 20-404. Notice of violation.

(a) *Required.* If the city determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this article, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured the appropriate permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

(b) *Contents.* The notice of violation shall contain:

(1) The name and address of the owner or the applicant or the responsible person;

(2) The address or other description of the site upon which the violation is occurring;

(3) A statement specifying the nature of the violation;

(4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this article and the date for the completion of such remedial action;

(5) A statement of the penalty that may be assessed against the person to whom the notice of violation is directed; and

(6) A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 30 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, a 24-hour notice shall be sufficient).

Sec. 20-405. Remedial measures; penalties.

(a) *Failure of remedial measures.* In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the actions or penalties in subsection (c) of this section may be taken or assessed against the person to whom the notice of violation was directed.

(b) *Notice of violation and cure period.* Before taking any of the actions or imposing any of the penalties in subsection (c) of this section, the city shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, a 24-hour notice shall be sufficient), to cure such violation.

(c) *Penalty for failure to cure violation.* In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the city may take any one or more of the following actions or impose any one or more of the following penalties:

(1) *Stop work order.* The city community development department may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation described therein; provided the stop work order may

be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation.

(2) *Withhold certificate of occupancy.* The city may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(3) *Suspension, revocation or modification of permit.* The city may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein; provided such permit may be reinstated (upon such conditions as the city may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

(4) *Civil penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the city shall deem appropriate (except that in the event the violation constitutes an immediate danger to public health or public safety, a 24-hour notice shall be sufficient), after the city has taken one or more of the actions described in subsections (c)(1) through (3) of this section, the city may impose a penalty not to exceed $1,000.00, depending on the severity of the violation, for each day the violation remains unremedied after receipt of the notice of violation.

(5) *Criminal penalties.* For intentional and flagrant violations of this article, the city may issue a citation to the applicant or other responsible person, requiring such person to appear in the appropriate municipal, magistrate or recorders court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed $1,000.00 or imprisonment for 60 days, or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

Sec. 20-406. Appeals.

(a) *To mayor and city council; board of zoning appeals.* Any person aggrieved by a decision or order of the city community development department may appeal in writing within 30 days after the issuance of such decision or order to the director of the department and shall be entitled to a hearing before the mayor and city council within 30 days of receipt of the written appeal. Once established by the mayor and city council, the board of zoning appeals shall hear such appeals.

(b) *To Fulton County Superior Court.* Any person aggrieved by a decision or order of the city, after exhausting all administrative remedies, shall have the right to appeal de novo to the Superior Court of Fulton County.

Secs. 20-407—20-425. Reserved.

DIVISION 3. LAND DEVELOPMENT REQUIREMENTS

Sec. 20-426. Buffer and setback.

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

(1) An undisturbed natural vegetative buffer shall be maintained for 50 feet (or 100 feet in protected small water supply watersheds), measured horizontally, on both banks (as applicable) of the state waters ~~stream~~ as measured from the point of wrested vegetation.

(2) An additional setback shall be maintained for 25 feet (or 50 feet in protected small water supply watersheds), 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.~~

(3) No septic tanks or septic tank drain fields shall be permitted within the undisturbed natural vegetative buffer ~~or the setback~~.

Sec. 20-427. Variance procedures.

Variances from the buffer and setback requirements stated in section 20-426 may be granted in accordance with the following provisions:

(1) Where a parcel was platted prior to the effective date of the ordinance from which this article is derived, and its shape, topography or other existing physical condition prevents land development consistent with this article, and the city finds and determines that the requirements of this article prohibit the otherwise lawful use of the property by the owner, the mayor and city council 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. Once established by the mayor and city council, the board of zoning 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.

(2) Except as provided in subsection (1) of this section, and until such time as the mayor and city council establishes the board of zoning appeals, the mayor and city council shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the mayor and city council.

a. Once established by the mayor and city council, the board of zoning appeals shall grant no variance from any provision of this article 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 of zoning appeals.

b. The city shall give public notice of each such public hearing in a newspaper of general circulation within the city.

c. The city shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.

d. When a variance request is concurrent with a rezoning use permit or a modification application, it shall be considered by the mayor and city council and shall follow the process contained in section 64-1890, concurrent variances of the city zoning ordinance (chapter 64).

e. Variances will be considered only in the following cases:

1. When a property's shape, topography or other physical conditions existing at the time of the adoption of the ordinance from which this article is derived prevents land development unless a buffer variance is granted.

2. Unusual circumstances when strict adherence to the minimal buffer requirements of this article would create an extreme hardship.

Variances will not be considered when, following adoption of the ordinance from which this article is derived, actions of any property owner of a given property have created conditions of a hardship on that property.

(3) At a minimum, a variance request shall include the following information:

a. A site map that includes the locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;

b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;

c. A detailed 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;

d. Documentation of unusual hardship should the buffer be maintained;

e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;

f. A calculation of the total area and length of the proposed intrusion;

g. A stormwater management site plan, if applicable;

h. 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) The following factors will be considered in determining whether to issue a variance:

a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;

b. The locations of all streams on the property, including along property boundaries;

c. The location and extent of the proposed buffer or setback intrusion;

d. Whether alternative designs are possible which require less intrusion or no intrusion;

e. The long-term and construction water quality impacts of the proposed variance; and

f. Whether issuance of the variance is at least as protective of natural resources and the environment.

(5) Any variance approved shall be site-plan specific.

Secs. 20-428—20-446. Reserved.

DIVISION 4. COMPATABILITY WITH OTHER BUFFER REGULATIONS AND REQUIREMENTS

Secs. 20-447. Conflicts; more restrictive standard controls.

This article is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this article should be considered the minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

Sec. 20-448. Additional standards enforced by the city.

(a) Metropolitan River Protection Act and Chattahoochee Corridor Plan.

(1) The Metropolitan River Protection Act and Chattahoochee Corridor Plan require the following on perennial tributary streams in a corridor extending 2,000 feet from either bank of the river and its impoundments (all measured from the edge of the water):

a. A 50-foot undisturbed vegetative buffer;

b. A 150-foot impervious surface setback on the Chattahoochee and its impoundments; and

c. A 35-foot undisturbed vegetative buffer.

(2) The corridor extends from Buford Dam to the downstream limits of the Atlanta region (Douglas and Fulton counties).

(3) Streams in the basin of the corridor are required to be protected by buffers, but no required width is specified (O.C.G.A. § 2-5-440 et seq.).

(b) DNR Part 5 Criteria for Small (under 100 square miles) Water Supply Watersheds Authorized under Part V of the Georgia Planning Act of 1989. These criteria require the following:

(1) A 100-foot undisturbed buffer and a 150-foot setback on all perennial streams within seven miles upstream of a public water supply reservoir or public water supply intake.

(2) Beyond seven miles, the required buffer is 50 feet and the required setback is 75 feet.

Equivalent protection measures can be adopted with approval from Georgia DCA and DNR.

(c) DNR Part 5 Criteria for River Protection Authorized under the 1991 Mountains and River Corridors Protection Act of 1991. These criteria require a 100-foot buffer along rivers with average annual flows of greater than 400 cubic feet per second (cfs), excepting the portion of the Chattahoochee referenced in subsection (a) of this section. The buffer is measured from the top of the stream bank.

(d) Other such state and federal regulations as may be adopted from time to time.

(1) While the requirements of this article are intended to apply to all streams in the city, special conditions may exist that require greater protection. Nothing in this article should be construed as preventing the establishment of wider and more restrictive buffers and setbacks as required under any other existing or future legislation.

(2) In addition, nothing in this article should be construed as preventing the establishment of wider buffers for purposes of protecting greenspace, preserving habitat or other goals that may not be specifically mandated by legislation.

Secs. 20-449—20-467. Reserved.

DIVISION 5. ADDITIONAL INFORMATION REQUIREMENTS FOR DEVELOPMENT ON BUFFER ZONE PROPERTIES

Sec. 20-468. Permit application contents.

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

(1) A site plan showing:

a. The location of all streams on the property; and whether such streams are located within a protected small water supply watershed, which means they are subject to the 100-ft buffer plus 50-ft setback requirement.

b. Limits of required stream buffers and setbacks on the property.

c. Buffer zone topography with contour lines at no greater than five-foot contour intervals.

d. Delineation of forested and open areas in the buffer zone.

e. Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback.

(2) A description of all proposed land development within the buffer and setback.

(3) Any other documentation that the city may reasonably deem necessary for review of the application and to ensure that the buffer zone ordinance is addressed in the approval process.

(4) All buffer and setback areas must be recorded on the final plat of the property following plan approval.

Sec. 20-469. Disclaimer.

(a) *Person's responsibility not relieved solely by compliance with article or other regulations.* 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.

(b) *City not liable for any damage caused by issuance of a permit.* The issuance of any permit hereunder does not serve to impose any liability upon the city, its officers or employees, for injury or damage to persons or property.

Sec. 20-470. Inspection.

(a) *Required.* The city community development department 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 the department in making such inspections.

(b) *Authority; right of entry.* The city community development department shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article, and for this purpose to enter at a 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.

(c) *Refusal.* 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.

Secs. 20-471—20-489. Reserved.