To: DeKalb County Zoning Board of Appeals
From: Jon Schwartz for Amy Taylor, Ted Terry, and Carolyn Tucker
Date: March 31, 2023
Re: ZBA Appeal A-23-1246318

The DeKalb County zoning ordinance states that the planning director "shall in no case grant any development permit for the use, construction or alteration of any land" if the proposed use or alteration would violate any law of the county or state.[1] The zoning ordinance defines "development permit" as any "permit that authorizes land disturbance for the use, construction thereon or alteration of any real property within the unincorporated limits of the county."[2]

The planning director erred by issuing Land Development Permit # 1245564 for the Atlanta public safety training center because the proposed alteration and use of the land – including clearing and grading over 80 acres of forest – will violate state law regulating water quality.

The Georgia Water Quality Control Act ("Water Quality Control Act") states it "shall be unlawful to use any waters of the state for the disposal of … industrial waste … except in such a manner as to conform to and comply with" all rules and regulations established under the Act "and applicable to the waters involved."[3] Industrial waste includes storm water discharged from construction sites with at least five acres of land disturbance.[4]

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[1] Ch. 27, Sec. 7.7.6.

[2] Ch. 27, Sec. 9.1.3.

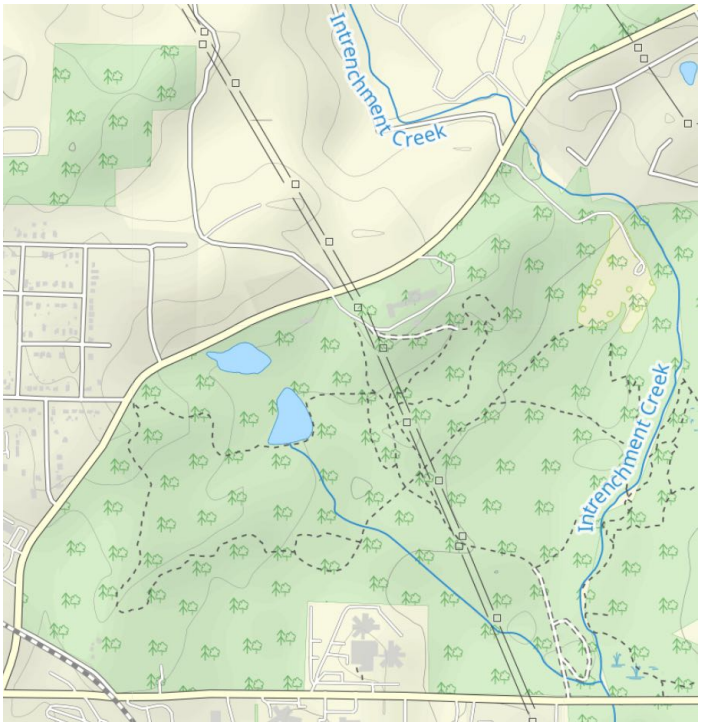
[3] O.C.G.A. § 12-5-29(a).

[4] O.C.G.A. § 12-5-22; Ga. Comp. R. & Regs. 391-3-6-.16(2)(b); 40 C.F.R. § 122.26(b)(14)(x).

Rules and regulations established under the Water Quality Control Act include "Designated Uses and Water Quality Standards" (Ga. Comp. R. & Regs. 391-3-6-.03) and "Storm Water Permit Requirements." (Ga. Comp. R. & Regs. 391-3-6-.16).

Water quality standards specify "the maximum degree of pollution permissible" for each river, stream, creek, branch, and lake in the state.[5] These standards designate a use that must be protected for each water body and specify criteria deemed necessary to protect the designated use.[6]

Stormwater runoff from the training center construction discharges sediment into a tributary stream that flows through the site and into Intrenchment Creek.



[5] O.C.G.A. § 12-5-23(a)(1)(B); Water quality standards codified at Ga. Comp. R. & Regs. 391-3-6-.03.

[6] Ga. Comp. R. & Regs. 391-3-6-.03.

The designated use for the tributary stream and Intrenchment Creek is fishing.[7] Surface waters with a designated use of fishing must support aquatic life, including breeding for aquatic species.[8]

The Clean Water Act requires states to: (1) identify surface waters that don't support their designated use ("impaired waters"), (2) calculate the amount of a pollutant the water body can assimilate without violating water quality criteria, and (3) allocate that capacity among point and nonpoint sources.[9]

Intrenchment Creek doesn't meet water quality standards because sediment degrades the habitat needed to support fish and benthic macroinvertebrate populations.[10] The Georgia Environmental Protection Division ("EPD") ranked Intrenchment Creek's stream health as "very poor" for these species.[11]

EPD established two annual sediment limits for Intrenchment Creek – one for fish and one for benthic macroinvertebrates. The annual sediment limit deemed necessary to support fish is 330.8 tons.[12] The annual sediment limit deemed necessary to support benthic macroinvertebrates is 945.3 tons.[13]

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[7] Ga. Comp. R. & Regs. 391-3-6-.03(14).

[8] Ga. Comp. R. & Regs. 391-3-6-.03(6)(c).

[9] 33 U.S.C. § 1313(d) (CWA § 303(d)).

[10] *EPD 303(d) list of impaired surface waters*; Ga. Comp. R. & Regs. 391-3-6-.03.

[11] *Total Maximum Daily Load Evaluation ("TMDL") for Seventy Stream Segments in the Ocmulgee River Basin for Sediment* (2007) at p. 28 (PDF p. 36); *TMDL Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment* (2017) at p. 33 (PDF p. 42).

[12] 2007 TMDL at p. 98 (PDF p. 106).

[13] 2017 TMDL at p. 58 (PDF p. 67).

Table 24. Total Annual Sediment Loads and the Required Sediment Reduction

Name	Current Load (tons/yr)	WLA (tons/yr)	WLAsw (tons/yr)	LA (tons/yr)	Allowable Total Load (tons/yr)	% Reduction
Barbershela Creek	681.7		180.0	77.2	257.1	62.3
Big Sandy Creek	155.4			155.4	155.4	0.0
Brown Branch	430.1			189.3	189.3	56.0
Butlers Creek	59.7			59.7	59.7	0.0
Cabin Creek	982.4	257.2		223.1	480.3	51.1
Calaparchee Creek	208.5			153.5	153.5	26.4
Carr Branch	58.1		10.2	47.9	58.1	0.0
Cobbs Creek	257.9		82.8	35.5	118.3	54.1
Cole Creek	122.5			56.3	56.3	54.0
Doolittle Creek	712.9		191.4	82.0	273.4	61.6
Dried Indian Creek	367.5		126.5	121.0	247.6	32.6
Eightmile Creek	86.0			34.9	34.9	59.4
Garner Creek	389.0		142.5	61.1	203.6	47.7
Gladesville Creek	181.7			181.7	181.7	0.0
Hansford Branch	26.1			26.1	26.1	0.0
Harmon Pye Branch	88.4			88.4	88.4	0.0
Herds Creek	487.8			487.8	487.8	0.0
Intrenchment Creek	330.8		231.6	99.3	330.8	0.0
Island Shoal Creek	244.7			160.2	160.2	34.5
Little Chehaw Creek	105.7			105.7	105.7	0.0
Little Deer Creek	1,745.4	162.7		134.7	297.4	83.0
Little Deer Creek Tributary	1,333.4			43.7	43.7	96.7
Little Suwannee Cr	943.6		257.7	110.4	368.1	61.0
Long Branch	118.2			101.0	101.0	14.6
Malholms Creek	16.4			16.4	16.4	0.0
Mill Dam Creek	139.9			80.0	80.0	42.8
Mountain Creek	385.3			179.3	179.3	53.5
Phinazee Creek	123.5			111.8	111.8	9.5
Red Creek	606.9			482.0	482.0	20.6
Rock Creek	153.4	43.8		9.3	53.1	65.4
Rocky Creek - Butts	200.6			134.3	134.3	33.1
Rocky Creek - Monroe	396.8			254.6	254.6	35.8
Rocky Creek - Bibb	259.8		77.1	157.2	234.2	9.9

Table 26. Total Allowable Sediment Loads and the Required Sediment Load Reductions

Stream Segment	Station ID	WLA (tons/yr)	WLA_{sw} (tons/yr)	LA (tons/yr)	Current Total Load (tons/yr)	Total Allowable Sediment Load (tons/yr)	Maximum Allowable Daily Load (tons/day)	% Reduction
Not Supporting Segments - Fish Community								
Caney Fork Creek	WRD 1193	-	338.9	569.4	1079.4	908.2	117.7	15.9%
Peeksville Creek	WRD 50	-	117.1	1775.1	3600.7	1892.2	245.2	47.4%
Swan Creek	WRD 68	-	-	2381.3	2381.3	2381.3	308.6	0%
Tributary to Tussahaw Creek	WRD 40	-	53.6	1183.4	1237.0	1237.0	160.3	0%
Tussahaw Creek	WRD 54	5.5	3023.5	33747.7	44583.4	36776.7	4766.3	17.5%
Wolf Creek	WRD 1127	-	757.2	1109.3	1866.6	1866.6	241.9	0%
Not Supporting Segments - Macroinvertebrate Community								
Intrenchment Creek	EPD 45b-212	-	579.3	365.9	945.3	945.3	122.5	0%
Pughs Creek	EPD 45b-193	-	1427.9	1292.2	2857.9	2720.1	352.5	4.8%
Snapfinger Creek	EPD 45b-201	-	2347.6	2025.9	4373.6	4373.6	566.8	0%
South River	EPD 45b-213	-	3088.1	2436.0	5524.2	5524.2	715.9	0%
Tributary to Gum Branch	EPD 65c-38	-	100.7	470.1	657.4	570.8	15.1	13.2%

Definitions:

Current Total Load - Sum of modeled sediment load and approved waste load allocations (WLA)
WLA - waste load allocation for discrete point sources
WLA_{sw} - waste load allocation associated with storm water discharges from a municipal separate storm sewer system (MS4)
LA - portion of the total allowable sediment load attributed to nonpoint sources and natural background sources of sediment
Total Allowable Sediment Load - allowable sediment load calculated using the target sediment yield and the stream's watershed area
Maximum Allowable Daily Load - total allowable sediment load (annual) converted to a daily figure based on the bankfull sediment transport relationship
% Reduction - percent reduction applied to current load in order to meet total allowable sediment load

The total allowable load from these tables is the maximum amount of sediment that can enter Intrenchment Creek's watershed each year "without causing additional impairment to the stream."[14]

The Water Quality Control Act and Clean Water Act require a permit under the National Pollutant Discharge Elimination System ("NPDES") program to discharge stormwater runoff from construction sites with at least one acre of land disturbance.[15] The Water Quality Control Act authorizes the EPD director to issue an NPDES permit "upon condition" that the discharge meets or will meet "all water quality standards, effluent limitations, and all other requirements established" under the Water Quality Control Act.[16]

Atlanta Police Foundation, Inc. obtained coverage under a "general permit" for stormwater discharges from construction sites[17] – but the proposed alteration and use of the land will exceed the effluent limits required by the TMDL Evaluations and will interfere with Intrenchment Creek's capacity to support aquatic life.

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[14] 2007 TMDL at p. 81 (PDF p. 89); 2017 TMDL at p. 51 (PDF p. 60).

[15] 33 U.S.C. §§ 1311(a), 1342(p) 1362(12), 40 C.F.R. §§ 122.1(b)(1), 122.2, 122.26(b)(14)(x); O.C.G.A. § 12-5-30(a); Ga. Comp. R. & Regs. 391-3-6-.16(2)(b).

[16] O.C.G.A. § 12-5-30(a).

[17] *Authorization to Discharge Under the National Pollutant Discharge Elimination System, Storm Water Discharges Associated with Construction Activity for Stand Alone Construction Projects, General Permit No. GAR 100001*, effective August 1, 2018 (Exhibit A).

The 2007 and 2017 pollutant allocations are divided between discharges from point sources (called "wasteload allocation") and runoff from nonpoint sources (called "load allocation").[18] The wasteload allocation is further divided between "waste load allocation for discrete point sources" ("WLA") and "waste load allocation associated with storm water discharges from a municipal separate storm sewer system (MS4)" ("WLASW").

The training center construction site is regulated as a discrete point source ("WLA") that discharges from outfalls into the tributary upstream of Intrenchment Creek. The municipal separate storm sewer system is regulated under an MS4 permit ("WLASW") that doesn't apply to the training center construction site. The 2007 and 2017 wasteload allocations for Intrenchment Creek **allocated all the annual sediment limits** to the municipal separate storm sewer system.[19] This is shown in Tables 24 and 26 (excerpted above on pages 4-5). The "WLA" columns have no sediment load allocations.

This means there is no remaining pollutant allocation for sediment from the training center construction site. The TMDL Evaluations state for future construction sites discharging storm water into impaired waters, compliance with the general permit is "effective implementation" of the wasteload allocation and "demonstrates consistency with the assumptions and requirements of the TMDL."[20] Neither the TMDL Evaluations nor the general permit for construction activity provide any rational basis for this conclusion because the general permit expressly authorizes the discharge of sediment.

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[18] 2017 TMDL at p. 58 (PDF p. 67).

[19] 2017 TMDL at p. 58 (PDF p. 67).

[20] 2017 TMDL at p. 52 (PDF p. 61); See also 2007 TMDL at p. 83 (PDF p. 91) ("The conditions of the [general] permit were established to assure that the storm water runoff from these sites does not cause or contribute sediment to the stream.").

The general permit includes a numeric limit for turbidity discharged from outfalls based on the size of the construction site and drainage area.[21] On any day during construction, Atlanta Police Foundation, Inc. can discharge storm water containing up to 50 nephelometric turbidity units ("ntu"),[22] which measures the amount of light transmission as affected by suspended sediments.[23] On days when Atlanta Police Foundation, Inc. complies with best management practices for erosion control, the 50 ntu limit can be exceeded without violating the general permit.[24]

The general permit requires four additional best management practices for sites that discharge into or within one mile upstream of a biota-impaired stream.[25] This includes Intrenchment Creek,[26] but the general permit doesn't distinguish between discharges into impaired streams with remaining pollutant allocations and discharges into impaired streams without remaining allocations. For streams with no remaining allocation, a permit which authorizes the discharge of sediment cannot ensure consistency with a TMDL that allocated its entire sediment load to other sources.

Atlanta Police Foundation, Inc. did not even include additional best management practices for discharging into an impaired stream.

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[21] *General Permit*, Part III.D.5 at p. 18; Appendix B at p. 46.

[22] Notice of Intent.

[23] Affidavit of Gregory Hubbard; See also, General Permit, Part I.B.23 at p. 6.

[24] *General Permit*, Part III.D.5 at p. 18.

[25] General Permit, Part III.C.2 at p. 15-17.

[26] EPD 303(d) list of impaired surface waters.

The erosion control plan included four additional best management practices which is required for any site proposing to clear over 50 acres at one time,[27] but no additional best management practices were included based on discharging into a biota-impaired stream. Nor is there any explanation of how best management practices are sufficient to implement the 2007 and 2017 wasteload allocations (i.e., how best management practices will prevent the discharge of sediment into Intrenchment Creek).

Even if Atlanta Police Foundation, Inc. complies with the general permit by properly installing and maintaining best management practices for erosion control, sediment discharged from the site during construction will cause additional impairment to Intrenchment Creek and will exceed the wasteload allocations.

"All dischargers into a storm water point source must either be covered by an individual permit, an area wide permit or a general permit issued to the owner or operator of that portion of the system that directly discharges into waters of the State."[28] The proposed training center includes detention ponds that directly discharge to waters of the State, but Georgia Rule & Regulation 391-3-6-.16(8)(a)(6) states, "no permit shall be issued … to a new source or a new discharger, if the discharge from the construction … will cause or contribute to the violation of water quality standards, except as in accordance with Federal Regulations, 40 C.F.R. § 122.4(i)."[29]

[27] *General Permit*, Part IV.D.3 at p. 27; Letter to EPD July 7, 2022.

[28] Ga. Comp. R. & Regs. 391-3-6-.16(3)(a).

[29] Ga. Comp. R. & Regs. 391-3-6-.16(8)(a)(6).

The incorporated federal regulation – 40 C.F.R. § 122.4(i) – prohibits issuing an NPDES permit to a new source or new discharger proposing to discharge into impaired waters if the state has established a pollutant load allocation for the pollutant to be discharged unless the applicant demonstrates there are "sufficient remaining pollutant load allocations to allow for the discharge."

Georgia's NPDES permit program also "must be administered in conformance with" 40 C.F.R. § 122.44,[30] which requires permit limits to be "consistent with the assumptions and requirements of any available wasteload allocation."[31]

The only federal appeals court decision to directly address whether an NPDES permit violated 40 C.F.R. § 122.4(i) was *Friends of Pinto Creek v. United States Environmental Protection Agency.* The permit authorized the discharge of dissolved copper into a creek already impaired by excess copper. The court vacated the permit because there wasn't any showing of sufficient remaining pollutant load allocations from the TMDL to allow for the discharge.[32]

Contrary to Atlanta Police Foundation, Inc.'s claim that "there is sediment load capacity available within the Intrenchment Creek watershed,"[33] there are no remaining pollutant load allocations from the 330-ton and 945-ton annual sediment limits, and the discharge of sediment into Intrenchment Creek already exceeds these annual allowances. After Intrenchment Creek was listed as impaired, EPD removed the total suspended solids limits from the City of Atlanta's NPDES permit for the East Area Water Quality Control Facility and

[30] 40 C.F.R. § 123.25(a)(15).

[31] 40 C.F.R. § 122.44(d)(1)(vii)(B).

[32] *Friends of Pinto Creek v. U.S. E.P.A.*, 504 F.3d 1007, 1011-13 (9th Cir. 2007).

[33] Affidavit of Joseph Severin, P.E., ¶ 25 at p. 6.

Custer Avenue Combined Sewage Control Facility, which discharge partially treated sewage into Intrenchment Creek.[34] These facilities discharge approximately ten tons of suspended solids per year which are not within the annual sediment limits allocated by the TMDL.[35]

The 2017 TMDL Evaluation specifies that if the watershed has "exceeded the total allowable sediment load, new dischargers (WLA) may be allowed if there is sufficient reduction in the nonpoint source loads (LA)."[36] "WLA" refers to wasteload allocation (discharges from point sources) and "LA" refers to load allocation (runoff from nonpoint sources). No such reduction in load allocation has been demonstrated, and it's likely that sediment from nonpoint sources including bank erosion exceeds the TMDL load allocations.

Intrenchment Creek and the streams within its watershed are deeply incised with highly unstable and eroding banks, and a significant portion of the annual sediment load is caused by bank erosion driven by high stream discharges during storms.[37] A USGS report prepared in cooperation with DeKalb County Department of Watershed Management calculated an average of 9,555 tons of sediment load per year in Intrenchment Creek at Constitution Road.[38]

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[34] *NPDES Permit No. GA0037168 for City of Atlanta East Area CSO* at pp. 15 and 17.

[35] Letter from Sarah Ledford.

[36] 2017 TMDL at p. 56 (PDF p. 65).

[37] Letter from Sarah Ledford; City of Atlanta Department of Watershed Management, Nov. 2017 Intrenchment and Sugar Watershed Improvement Plan at p. 3-2 (PDF p. 48).

[38] USGS Scientific Investigations Report, 2021, *Hydrology and Water Quality in 15 Watersheds in DeKalb County, Georgia, 2012–16*, pp. 7, 74-75 (based on measuring 2,775 pounds per acre per year).

The USGS report defines load as the sediment transported past that point during a specified period.[39] Although at any point in time the monitoring data may include sediment discharged into the stream or eroded from stream banks from prior years, the annual average reflects an amount roughly comparable to the average mass of sediment added to Intrenchment Creek per year (except for suspended solids from the City of Atlanta's combined sewer overflows – the USGS data was adjusted to exclude those discharges).[40]

The annual average suspended sediment load in Intrenchment Creek at Constitution Road is over 28 times higher than the combined load and wasteload limits in the 2007 TMDL and over 10 times higher than the effluent limits in the 2017 TMDL.

Georgia's water quality standards also include narrative criteria "deemed to be necessary and applicable to all waters of the State."[41] The narrative criteria for turbidity states: "All waters shall be free from material related to municipal, industrial or other discharges which produce turbidity … or other objectionable conditions which interfere with the designated use of the water body."[42] As established by the 2007 and 2017 TMDL Evaluations, loading over 330.8 tons of sediment per year into Intrenchment Creek's watershed will interfere with the designated use of the water body by lowering the water quality below the level necessary to support fish, and loading over 945.3 tons of sediment per year will lower water quality below the level necessary to support macroinvertebrates.

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[39] USGS at p. 14.

[40] USGS at p. 10.

[41] Ga. Comp. R. & Regs. 391-3-6-.03(5).

[42] Ga. Comp. R. & Regs. 391-3-6-.03(5)(c); O.C.G.A. § 12-5-23(a)(2).

Atlanta Police Foundation, Inc. claims that the "conditions of the NPDES permit were established to assure that the storm water runoff from the Property does not cause or contribute sediment to Intrenchment Creek" and that "by following the guidelines established in the NPDES permit, the development and construction of the Project will not cause or contribute sediment to Intrenchment Creek."[43] But photographs show the sediment-laden tributary flowing into Intrenchment Creek (the training center site is the only land disturbance that discharges sediment into this tributary).

Downstream of training center site, where tributary flows into Intrenchment Creek, March 3, 2023:

[43] Affidavit of James Severin, P.E., ¶¶ 21 and 25.

March 12, 2023:

March 25, 2023:

March 26, 2023:

See also additional photographs with attachments.

EPD's 2017 TMDL Evaluation explains that as "sediment is carried into the stream, it settles to the stream bottom and smothers sensitive organisms."[44]

Gregory Hubbard concluded that sediment from the training center site will contribute to violating water quality standards in Intrenchment Creek because sediment will settle on the fish beds, making it difficult for fish to find their fish beds and protect their eggs; sediment will deplete oxygen, resulting in the death of fish eggs and/or larva; and sediment will settle in the base of Intrenchment Creek and further disrupt the macroinvertebrate population, which is already under duress due to the stream being impaired by sediment pollution.[45]

Elizabeth Sudduth, a stream ecologist specialized in urban streams in the Piedmont, made the following conclusions:[46]

- Construction of the training center will cause turbidity that interferes with the designated use for Intrenchment Creek and cause increased sedimentation that will have detrimental effects on the macroinvertebrates and fish that live in Intrenchment Creek.

- Increased suspended sediment has detrimental effects on aquatic organisms beginning with the loss of algae and then producing cascading effects on the macroinvertebrates and fish, including avoidance of sedimented areas, reduced physiological function, and mortality.

[44] 2017 TMDL Evaluation at p. 70 (PDF p. 79).

[45] Affidavit of Gregory Hubbard, pp. 2-3.

[46] Letter from Elizabeth Sudduth.

- Increased sedimentation decreases preferred habitat for macroinvertebrates and causes shifts in the community towards the few organisms that are tolerant of high sediment conditions.

- Stream macroinvertebrates shift their habitat preferences to primarily bank habitat as sedimentation eliminates rocky habitat on the stream bottom.

- This shift substantially reduces the diversity of stream macroinvertebrates as those that live only on the stream bottom are lost.

- Increased sedimentation in the Georgia Piedmont due to urbanization is associated with homogenization of the fish community, and the loss of fish species requiring rocky stream bottoms for breeding and feeding on macroinvertebrates.

- The impacts of sedimentation on fish include direct damage to gills and other tissues, depleted dissolved oxygen, increased mobility of sediment metals, increased stress levels, increased disease susceptibility, and changes in feeding behavior and embryonic development.

- Intrenchment Creek does not support its designated use of Fishing based because of sediment load capacity.

- Intrenchment Creek does not support the macroinvertebrate community based on the existing sediment loads.

- Increasing the sediment load due to the construction of the proposed training center will exacerbate these impacts and cause serious harm to fish and macroinvertebrates already stressed by existing sediment loads that are higher than the limits set by EPD in the TMDLs.

Sediment discharges from the project site during clearing, grading, and construction violate rules and regulations established under the Water Quality Control Act because there is no remaining pollutant load allocation to allow for the new discharge of sediment, and the sediment will interfere with the designated use which requires water quality to support fish and macroinvertebrates. The Planning Director erred by issuing the land development permit because the zoning ordinance prohibits issuing a "development permit for the use, construction or alteration of any land" if the proposed use or alteration would violate any law of the county or state. [47]

Site Background

The 296-acre project site is the Old Atlanta Prison Farm. This site is within the South River Forest and part of the largest contiguous greenspace inside the perimeter.

The Old Atlanta Prison Farm site includes wetlands and riparian habitat, with Intrenchment Creek creating a passage for wildlife from the South River. Native wildlife on the site includes foxes, beavers, otters, box turtles, amphibians, blue herons, and owls. As the largest greenspace within the perimeter, the site also provides essential habitat for migratory birds.

Photographs on the following two pages were taken within the site:

[47] Ch. 27, Sec. 7.7.6.

Hiking and cycling trail through boxwoods:

Oak tree next to picnic bench placed by film crew:

Lake that is no longer accessible for public use:

The training center "overall tract area" is 296.024 acres. Tract 1 (Parcel 15 081 08 001) is 171.095 acres and includes the 200-foot-wide Georgia Power easement and land to the west of the powerlines. Tract 2 (Parcel 15 082 01 001) is 124.929 acres east of the powerlines.[48]

For context, Piedmont Park is 189 acres.[49] A 2017 report by Atlanta's department of city planning, titled "The Atlanta City Design," called for creating South River Park, finding this was "our last chance for a massive urban park in the city."[50] The Atlanta City Design was adopted into the City of Atlanta Charter in 2017.[51]

The Atlanta City Design identified portions of southeast Atlanta and southwest DeKalb County in the South River watershed as a conservation corridor to be protected from new development. The Atlanta Prison Farm was central to this concept and its protection was emphasized in the report.

The Atlanta City Design stated, "we're going to invest in a 1,200+ acre southeastern reserve organized around the tributaries of the South River. Its full extent will require additional design, but core tracts of land include the city-owned, 300+ acre former Atlanta Prison Farm" and four other 200+ acre tracts.[52]

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[48] Survey, Site Plans and Conditions, Sheet 3 of 3.

[49] https://www.pps.org/places/piedmont-park

[50] https://www.atlcitydesign.com/ and https://online.flowpaper.com/72b006f2/ACDSecondPrintFINAL180820/#page=352

[51] Atlanta City Code, Part I, Sec. 3-601.

[52] https://online.flowpaper.com/72b006f2/ACDSecondPrintFINAL180820/#page=352

Instead of investing in South River Park, the Atlanta City Council voted to authorize a lease with the Atlanta Police Foundation, Inc. to use "approximately 85 acres for improvements related to public safety training facilities and to preserve approximately 265 acres for greenspace…"[53] The ordinance over-stated the site's size, and less than 210 acres are preserved for greenspace (190 acres if the power line easement is excluded).

The site was accessible for public recreation until access to most of the site was closed in April 2021.

The South River Forest would protect a network of natural features in southeast Atlanta and southwest DeKalb County, providing benefits for minority and lower-income neighborhoods.[54] The South River Forest reduces flooding and storm water runoff, filters air pollution, absorbs and stores carbon dioxide from the atmosphere, and mitigates impacts from a changing climate.

Ryan Gravel, who conceived the Atlanta BeltLine, explained that South River Park "could become a nationally significant model for climate and community resiliency… The South River can become its own answer to the damage done to its watershed – if only we can see the big story and then follow through on the vision."

Urban tree canopy lowers surface and air temperatures by providing shade and by transferring water from soil and leaves to the atmosphere. In contrast, buildings and roads absorb sunlight and radiate heat into the air, causing an urban heat island effect where the city becomes hotter than surrounding areas. Lower-income neighborhoods tend to have a more severe heat island effect because these neighborhoods have fewer trees than affluent areas.

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[53] Atlanta Ordinance 21-O-0367.

[54] Affidavit of Margaret Spalding.

Higher temperatures cause health problems including respiratory illness, heat exhaustion, and heat stroke and exacerbate underlying health conditions such as heart disease and diabetes. The National Weather Services identified extreme heat as "the number one weather-related killer" in the United States. Higher temperatures also stress aquatic species, which have adapted to cooler habitat.

Ryan Gravel described the burdens for the "low–income communities of color that have endured both environmental degradation and economic disinvestment for generations." He explained the effect of this disinvestment on the surrounding area, which "is home to at least five landfills (all closed), several correctional facilities, obsolete commercial strips and truckyards, noxious industrial sites, demolished public housing complexes, and isolated dead-end roads."[55]

The Zoning Board of Appeals can change this history of neglect by enforcing the zoning ordinance.

The Zoning Ordinance Applies

Atlanta Police Foundation, Inc. claims to be exempt from the DeKalb County zoning ordinance because the site is owned by the City of Atlanta. This is wrong for three reasons. First, a municipality is exempt from zoning only within its own boundaries, but the proposed training center is within unincorporated DeKalb County. Second, even when a project is exempt from zoning because it's undertaken by a municipality or county within their own boundaries, building regulations must be followed. Third, the site lessee and permit holder for the general permit is Atlanta Police Foundation, Inc. – not the City of Atlanta.

[55] https://saportareport.com/along-the-south-river-large-tracts-of-tree-canopy-under-siege/columnists/guestcolumn/current-guest/

The zoning ordinance states that it "shall apply to all buildings, structures, land and uses within the unincorporated area of DeKalb County, Georgia."[56] Atlanta Police Foundation, Inc. has not cited any case holding that a municipality is exempt from zoning outside its own municipal limits, nor has it cited any case which supports that assertion.

Counties are exempt from municipal zoning regulations, but they are subject to municipal building regulations, including ordinances regulating land-disturbing activities.[57] The prohibition against issuing a permit if the proposed use or alteration would violate any law of the county or state is within DeKalb County's zoning ordinance but issuing a development permit under Chapter 27 § 7.7.6 is not a "zoning decision."[58]

In *City of Decatur v. DeKalb County,* the Georgia Court of Appeals explained that "a county is barred from enforcing its supplementary powers *within* a municipality, as a municipality is imbued with the task of enforcing its supplementary powers *within its own boundaries*."[59] The proposed training center site is not within the City of Atlanta's boundaries, so the City is not exempt from the County's building regulations.

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[56] DeKalb County Code, Ch. 27, Sec. 1.1.7.

[57] *Macon-Bibb Cnty. Hosp. Auth. v. Madison*, 204 Ga. App. 741 (1992); *City of Decatur v. DeKalb Cnty.*, 256 Ga. App. 46 (2002).

[58] DeKalb County Zoning Ordinance, Ch. 27, Sec. 9-1-1; O.C.G.A. § 36-66-3(4).

[59] *City of Decatur v. DeKalb Cnty.*, 256 Ga. App. 46, 48 (2002) (emphasis added).

Conclusion

The Planning Director erred by issuing a land development permit because the proposed construction will add sediment into Intrenchment Creek in violation of state law. Reversing that decision follows the letter and spirit of the County's zoning ordinance, which is intended to "promote the preservation of … forested areas, riverbeds, [and] stream beds" and to "achieve compliance with all applicable state and federal regulations."[60]

Applicants Amy Taylor, Ted Terry, and Carolyn Tucker respectfully request the Zoning Board of Appeals to reverse the Director's decision to issue Land Development Permit # 1245564.

[60] Ch. 27, Sec. 1-1-3 (L), (M).