No. 25-___

IN THE

Supreme Court of the United States

HOMEWOOD ASSOCIATES, INC., *et al.*,

Petitioners,

v.

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Koontz v. St. John's River Water Mgmt. Dist.*, 570 U.S. 595 (2013) and *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024), this Court held that certain monetary exactions tied to an identified piece of property can be subject to the nexus and rough proportionality requirements set forth in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), even where the assessments derive from legislative action, not merely *ad hoc* administrative action.

Picking up where *Koontz* and *Sheetz* left off, this case concerns a constitutional challenge to a legislatively mandated stormwater fee enacted by Respondent, much like fees imposed by municipalities around the country. Here, Respondent provided Petitioners' properties with no benefit, and the fees charged bore no relation to the cost Respondent incurred in relation to each property. For example, for one petitioner, Homewood Village, LLC, quarterly assessed fees totaled over $10,000 in one year. Respondent's property-specific cost amounted to no more than $150 over three years, roughly the cost of inspecting a small culvert.

The petition presents two questions:

- Does the Takings Clause apply to municipal ordinances imposing fees on classes of property outside the permitting context?
- If the answer to Question 1 is yes, does the *Nollan*/*Dolan* framework govern the analysis of such fees?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

1. Petitioner Homewood Village, LLC is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

2. Petitioner Homewood Associates, Inc. is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

3. Petitioner Baxter Harris, Inc. is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

4. Petitioner Bonet Properties, LLC is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

5. Petitioner Hancock-Pulaski Properties, Inc. is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

6. Petitioner L.E. Bonet Properties, LLC is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

7. Petitioner Old South Investment Enterprises, L.L.C. is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

8. Petitioner Tiffany & Tomato, Inc. is a privately held company organized under the laws of the State of Georgia. No publicly held company owns 10% or more of its stock.

9. Respondent Unified Government of Athens-Clarke County is a municipal corporation organized under the laws of the State of Georgia.

RELATED PROCEEDINGS

Superior Court of Athens-Clarke County:

- *Hancock-Pulaski Properties Inc.* v. *Unified Gov't of Athens-Clarke Cnty.*, No. SU17CV 1134 (July 9, 2024)
- *Unified Gov't of Athens-Clarke Cnty.* v. *Homewood Associates, Inc.*, No. SU16CV0845-S (July 9, 2024)

Supreme Court of Georgia:

- *Homewood Associates, Inc.* v. *Unified Gov't of Athens-Clarke Cnty.*, No. S25A0555 (Oct. 15, 2025)

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OPINIONS BELOW

The trial court's opinion granting Respondent's motion for summary judgment is not reported. It is reproduced at Pet. App. 38a.

The Supreme Court of Georgia's decision affirming the trial court's order is reported at 922 S.E.2d 90 (2025). It is reproduced at Pet. App. 1a.

JURISDICTION

The Supreme Court of Georgia issued its decision here on October 15, 2025. It denied Petitioners' timely petition for rehearing on November 13, 2025. Pet. App. 37a. On February 9, 2026, Justice Thomas granted Petitioners' application for an extension of time. This petition is timely because it was filed on March 13, 2026, the deadline set by that extension. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Relevant constitutional and statutory provisions are reproduced in the Appendix. Pet. App. 96a–202a.

STATEMENT OF THE CASE

A. The Proliferation of User Fees

This case concerns a constitutional challenge to a so-called user fee imposed by a municipal corporation. Such fees have been the fastest-growing component of local government revenues for decades. *See* R. Aronson & J. Hilley, Financing State and Local Government 6-7 (4th ed. 1986); Tonantzin Carmona, *Inequitable fines and fees hurt vulnerable communities. Now policymakers have an option for reform*, Brookings (Dec. 17, 2021), *available at* https://www.

brookings.edu/articles/inequitable-fines-and-fees-hurt-vulnerable-communities-now-policymakers-have-an-opportunity-for-reform/. Especially since the Great Recession of 2008, municipalities "operate in an environment of dramatically reduced tax revenue, requiring them to rely increasingly on non-tax forms of revenue, such as exactions or user fees, to finance roads, utilities, schools, and other municipal services." Kenneth Stahl & Kristina Currans, *The Trouble With Traffic Studies: Why Bad Traffic Predictions Are Making Our Cities Worse And What Courts Should Do About It*, 59 Real Property Trust & Estate L.J. 325, 368 (2024) (footnote omitted). Many scholars and policy experts have observed this trend.[1] By one estimate, "[s]tate and local governments collected a combined $570 billion in revenue from charges in 2021, or 14 percent of general revenue. As a group, charges accounted for roughly as much revenue as property taxes and provided more revenue than general sales taxes and individual income taxes." Urban Institute and Brookings Institution, Tax Policy Center Briefing Book, Updated January 2024, https://taxpolicycenter.org/briefing-book/how-do-state-and-local-revenues-charges-work.

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[1] *See* 16 Eugene McQuillin, The Law of Municipal Corporations § 44:24 (rev. ed. 2025); Chris Mai & Maria Katarina E. Rafael, *User Funded? Using Budgets to Examine the Scope and Revenue Impact of Fines and Fees in the Criminal Justice System,* 63 Socio. Persps. 1002, 1002-03 (2020); Laurie Reynolds, *Taxes, Fees, Assessments, Dues, And The "Get What You Pay For" Model of Local Government*, 56 Fla. L. Rev. 373, 408 (2004) ("[T]he breadth and frequency of local fees have increased substantially since their early days."); Patricia L. McCarney, *Increasing Reliance on User Fees and Charges*, in Proposition 2 ½: Its Impact on Massachusetts 351-55 (L. Susskind ed. 1983).

These fees take many forms. Sometimes fees are imposed on real property; in others, they are imposed on intangible property. *See* Duncan Stewart & Lee Shaker, Exploring the Policy Value of Cable Franchise and PEG Fees, 8 J. of Information Pol. 442, 442 (2018). In cases involving real property, municipal practice varies widely. Some fees are imposed on developers at the permitting stage; the City of Nashville tried one of these, prompting a Takings Clause challenge and eventual settlement. *See* State Policy Network, *Fighting Unconstitutional Housing Fees in Nashville*, (Aug. 28, 2025) *available at https://spn.org/fighting-unconstitutional-housing-fees-in-nashville-beacon-center-wins-bob-williams-award-for-best-state-based-litigation/*. Other fees are imposed on developed property; Respondent's fees, described below, are an example. Some fees result from legislative enactments, like the one examined in *Sheetz*; others are imposed by administrative decision, like the one examined in *Koontz*.

The imposition of user fees has triggered significant controversy. As one early study predicted, "[d]iversification amounts to increasing the complexity of the local revenue structure, and this, coupled with the increased use of invisible forms of revenue, is likely to mean a net decrease in accountability to the public." Elaine B. Sharp & David Elkins, *The Impact of Fiscal Limitations: A Tale of Seven Cities*, 47 Public Admin. Rev. 385, 391 (1987). Unsurprisingly, then, litigation has proliferated, especially over stormwater ordinances, the subject of this petition. Reported decisions involve many challenges under federal law, including the Takings Clause, and state law, including claims that a city exceeded its authority or was

unjustly enriched.[2] Just recently, the United States successfully resisted one city's effort to collect stormwater fees under 33 U.S.C. § 1323. *See, e.g.*, *City of Wilmington v. United States*, 68 F.4th 1365 (Fed. Cir. 2023) (holding that city's stormwater fees were not "reasonable service charges" under provisions of the Clean Water Act applicable to federal facilities).

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[2] *See, e.g.*, *Zweig v. Metro. St. Louis Sewer Dist.*, 412 S.W.3d 223 (Mo. Banc 2013) (holding that metropolitan sewer district's charge was an unconstitutional tax); *Lewiston Indep. Sch. Dist. #1 v. City of Lewiston*, 264 P.3d 907 (Idaho 2011) (same); *Bolt v. City of Lansing*, 587 N.W.2d 264 (Mich. 1998) (same); *Moline Mach., LLC v. City of Duluth*, 26 N.W. 3d 875 (Minn. Ct. App. 2025) (rejecting Takings challenge to municipal stormwater fee but finding genuine issue of material fact over whether city exceeded its authority or unjustly retained excess fees), *review granted* (Nov. 26, 2025); *N. Idaho Bldg. Contractors Ass'n v. City of Hayden*, 432 P.3d 976, 988 (Idaho 2018) (remanding case for further consideration of, *inter alia*, Takings Clause challenge to municipal sewer fee); *Tapps Brewing Co., Inc. v. McClung*, No. 31959-4-II, 2005 WL 151932 at *6-8 (Wash. Ct. App. Jan. 25, 2005) (remanding case for consideration that stormwater charge violates Takings Clause). For other exemplary litigation against municipal stormwater fees in lower state courts, *see, e.g.*, *Gluck v. City & Cnty. of San Francisco*, 111 Cal. App. 5th 769 (Cal. Ct. App. 2025) (finding property owners stated claim under state-law proportionality requirement); *Platt Convenience, Inc. v. City of Ann Arbor*, No. 359013, 2024 WL 4428139 (Mich. Ct. App. Oct. 2, 2024) (rejecting state-law challenge to municipal stormwater fee); *Sch. Bd. of Miami-Dade Cnty. v. City of Miami Beach*, 317 So. 3d 1203 (Fla. Dist. Ct. App. 2021) (holding that school district was immune from municipality's stormwater fee); *Green v. Vill. of Winnetka*, 135 N.E.3d 103 (Ill. Ct. App. 2019) (rejecting property owner's challenge to municipal stormwater fee); *Shaarei Tfiloh Congregation v. Mayor & City Council of Balt.*, 237 Md. App. 102 (Md. Ct. Spec. App. 2018) (rejecting religious institution's challenge to stormwater fee).

B. Respondent's User Fee

1. This petition involves a fee allegedly imposed to fund the operation of a municipal stormwater management system. The fee's genesis lies in the federal Clean Water Act of 1972 ("CWA"), 33 U.S.C. § 1251 *et seq*. The CWA regulates, among other things, nonpoint sources of water pollution. *See Cnty. of Maui, Hawaii v. Hawaii Wildlife Fund*, 590 U.S. 165, 170 (2020). Nonpoint sources of water pollution, as the name implies, do "not come from a readily identifiable source." *Id.* at 174. *Cf.* 33 U.S.C. § 1362(14). Stormwater runoff, sometimes called "rainwater runoff," qualifies as one nonpoint source. *Hawaii Wildlife Fund*, 590 U.S. at 175.

"Across the United States, stormwater management is an increasingly important issue." Nathaniel R. Mattison, *The Legal Case for Stormwater Fees in New York City*, 86 Albany L. Rev. 687, 687 (2022-23). So, Respondent, like municipalities around the country, operates a stormwater management system. The CWA and its implementing regulations required Respondent to obtain a Municipal Separate Sewer System ("MS4") National Pollutant Discharge Elimination System ("NPDES") permit. *See City & Cnty. of San Francisco v. Env't Prot. Agency*, 604 U.S. 334, 340 (2025) (discussing NPDES permits); *L.A. Flood Control Dist. v. Nat. Res. Def. Council, Inc.*, 568 U.S. 78, 80 (2013) (discussing the MS4 program). As a condition of the NPDES permit, municipalities must minimize the extent to which pollutants in the stormwater runoff enter open waterways. *See* 40 C.F.R. § 122.34(a).

Starting in 1992, Respondent financed its stormwater management program through general revenue funds. Pet. App. 41a. Roughly a decade later, the

federal government raised its expectations for municipal stormwater management programs like Respondent's in connection with the NPDES permitting process. *Id.* So, in 2003, Respondent began to investigate the possibility of creating a stormwater utility with a fee to fund "the existing and future stormwater needs of the county."[3] *Id.* at 41a–42a.

The next year, Respondent adopted a Stormwater Utility Ordinance ("Ordinance").[4] That ordinance creates a stormwater utility funded by monthly charges on owners of developed property. Three components comprise the charge: (1) a "base charge" allegedly to cover the utility's annual administrative costs; (2) a "quantity charge" allegedly based on the property's impervious surface area and factors affecting the volume and rate of stormwater runoff; and (3) a "quality charge" allegedly based on the differences in pollutants generated by different types of land use. *Id.* at 42a. Under this fee structure, Respondent does not measure the sediment or pollutant load of any property within its jurisdiction. (Pltfs.' SOMF No. 80; Defts' Resp.) *See generally* Joshua Smith, Stormwater Utilities in Georgia at 8-9 (2006) (describing the Athens ordinance), *available at*

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[3] Other cities around the United States have done likewise and continue to consider such fees today. *See, e.g.*, Bristol County, Tennessee; Prince William County, Virginia; Colorado Springs, Colorado. For example in 2024, Billings, Montana shifted its stormwater fee from the property tax statement to a utility bill.

[4] Adoption of the Stormwater Utility Ordinance occurred shortly after Respondent adopted a Stormwater Management Ordinance. The latter ordinance set forth several rules and requirements to control the adverse effects of stormwater runoff and nonpoint source pollution associated with new development and redevelopment. *See* Pet. App. 97a-162a.

https://rivercenter.uga.edu/wp-content/uploads/2021/01/Stormwater-Utilities-in-Georgia.pdf.

These charges are not universally applied. Rather, the Ordinance contains many exemptions and credits. (As explained below, those credits exist in theory but not in fact). For example, the Ordinance expressly exempts roads. Pet. App. 6a. Additionally, property owners can, theoretically at least, apply to reduce their fee. For example, schools receive a marginal credit in return for agreeing to teach a general environmental science curriculum that includes water protection measures. Pet. App. 195a. Yet a city official enjoys unfettered discretion to decide whether to award such credits. Pls. SOMF 83; Defts. Resp. Finally, owners of "undeveloped property," comprising somewhere between 67.5 to 90% of the property in Athens-Clarke County are not assessed any charge irrespective of the quantity or quality of stormwater runoff. *See* D.E. 61, Affidavit of Charles Wilson, Exhibit 22, map of property types in ACC.

2. Petitioners own developed property in Athens-Clarke County. Their fees are burdensome. For example, for one petitioner, Homewood Village, LLC, five-year fees totaled nearly $129,000 and, with late fees, exceeded $200,000. Pet. App. 9a, 94a. As discovery later revealed, Homewood and other petitioners received no corresponding benefit. Respondent does not treat the stormwater. Affidavit of Charles B. Wilson, Exhibit 2; D.E. 70, ACC/Raessler Depo., p. 85-87, Exhibit 2. Rather, Respondent's only cost was the inspection of a small culvert under a road approximately one mile downstream from Homewood's property that took place every three to five years and cost the city roughly $150. Deft's Responses to Pltfs' First Interrogatories at 5-6; D.E. 72, ACC/Kevin Gentry Depo., pp. 40-45.

In 2017, Petitioners filed this action challenging the Ordinance on various grounds.[5] Federal constitutional grounds included, *inter alia*, a claim that the Ordinance violated the Takings Clause of the Fifth Amendment of the United States Constitution.[6]

Respondent defended the Ordinance by reference to the general, indirect, intangible and immeasurable benefit that property owners received from the provision of stormwater services. *See* Deft's Responses to Pltfs' First Interrogatories at 5. *See also McLeod v. Columbia Cnty.*, 599 S.E.2d 152, 155 (Ga. 2004) (embracing the indirect benefit theory to support conclusion that county's stormwater assessment constituted "fee" and not "invalid tax"); *Homewood Vill., LLC v. Unified Gov't of Athens-Clarke Cnty.*, 739 S.E.2d 316, 318 (Ga. 2013) (reaffirming *McLeod*). Respondent could not, however, point to any property-specific benefits received by Petitioners and admitted that it did not seek to measure specific stormwater impacts of particular property parcels when designing the stormwater fee. Deft's Responses to Pltfs' First Interrogatories at 3 ("Defendant has never determined a 'special benefit or service' to any particular property, and it is not required to do so.").

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[5] This challenge was consolidated with a separate proceeding in which Respondent sought to collect the delinquent stormwater fees from Homewood Associates, Inc. *See* Pet. App. 39a.

[6] This case followed proceedings in federal court challenging the constitutionality of the Ordinance. In those federal proceedings, the lower courts declined to intervene on grounds of abstention and comity. *See Homewood Village, LLC v. Unified Gov't of Athens-Clarke Cnty.*, No. 3:15-CV-23 (CDL), 2016 WL 1306554 (M.D. Ga. Apr. 1, 2016), *aff'd*, 677 Fed. Appx. 623 (11th Cir. 2017) (Mem.).

Extensive discovery followed. That discovery revealed several relevant facts:

- Respondent cannot identify the cost of managing any stormwater that emanates from any of the Petitioners' properties. (Pls. SOMF 83; Defts. Resp.)
- None of the benefits claimed by Respondent benefit Petitioners or any individual property owner any differently than the public generally. (Pls. SOMF 83; Defts. Resp.)
- The above-described credit system was illusory. None of the petitioners could receive a credit. D.E. 62, Affidavit of Charles B. Wilson, ACC Response to Fourth Request for Production ¶ 8 in Case No. SU17CV1134. Indeed, Respondent could not identify a single instance in which a credit had ever been awarded. *Id.* The criteria governing credits were so opaque that Petitioners' own expert could not even determine what a property owner needed to do in order to receive a credit. D.E. 54, Charles B. Wilson Affidavit, ¶ 7.
- Undeveloped property contributed to Respondent's costs of maintaining the stormwater system but still was exempt from the fee. Pet. App. 10a.
- Respondent admitted that it refused to issue a liquor license to one Petitioner until he paid Respondent's claim for outstanding stormwater fees. Pet. App. 48a, 88a.
- Stormwater fees finance several services such as the cost of sweeping streets and the labor cost

> for street workers. Deposition of Kevin Gentry, D.E. 72. 59:1–66:13.

Perhaps, most critically, ***discovery also revealed that "to avoid all liability for stormwater fees on the properties at issue, [Petitioners] must return their properties to a pre-developed state."*** Deft's Responses to Pltfs' First Interrogatories at 7 (emphasis added).

Following discovery, the trial court granted Respondent's motion for summary judgment. Pet. App. 38a-89a. In relevant part, it rejected Petitioners' argument that the Ordinance violated the Takings Clause. The trial court rested its decision mainly on Justice Kennedy's opinion in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), and read that separate opinion for the proposition that "the Fifth Amendment's Takings Clause is not triggered by a simple obligation imposed upon a person to pay a monetary sum from unidentified assets." It also rejected Petitioners' invocation of this Court's recent decision in *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024). The trial court distinguished *Sheetz* from this case because *Sheetz* involved a permit fee required to develop property. Likening the assessment here to a user fee, the trial court emphasized this Court's statement in *Koontz v. St. Johns River Water Mgmt. Dist.* that "[i]t is beyond dispute that taxes and user fees are not takings." 570 U.S. 595, 615 (2013) (citations and internal quotations omitted).

On appeal, the Supreme Court of Georgia affirmed. Pet. App. 1a-36a. In relevant part, like the trial court, it rejected Petitioners' claim grounded in the federal Takings Clause. Unlike the trial court, the court below did not rely on Justice Kennedy's separate opinion in *Eastern Enterprises.* Instead, drawing on

its prior decision in another case challenging the Ordinance, it held that Petitioners derived a "special benefit" from the stormwater charge.[7] It also held that, under this Court's Takings jurisprudence, "a fee based on the provision of a service" does not constitute a taking. Like the trial court, the court below stressed the above-quoted line from this Court's decision in *Koontz*, omitting any reference to the Court's application of the Takings Clause to a monetary exaction tied to an identifiable real property.

In a footnote, the Georgia Supreme Court recognized that Petitioners' argument implicated a question left open by this Court in *Sheetz*. Pet. App. 19a-20a n. 11. *Sheetz* held that the Takings Clause does not distinguish between monetary exactions (like impact fees) that are legislatively imposed and those that are administratively imposed. 601 U.S. at 270. But *Sheetz* expressly left open how this Court's *Nollan/Dolan* framework operates when the monetary exaction affects a class of properties rather than a particular development. *Id.* at 270, 280 (citing *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994)). Curiously, while recognizing that this Court left that issue unresolved in *Sheetz*, the court below also concluded, without explanation, that *Sheetz* did "not support an argument that an individualized determination of the amount of benefit received or cost created by each specific property is required before a fee may be imposed." Pet. App. 19a n. 11.

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[7] In that prior decision, the Supreme Court of Georgia held that the Ordinance did not violate Georgia's constitutional rules regulating municipal taxes. *See Homewood Vill., LLC v. Unified Gov't of Athens-Clarke Cnty.*, 739 S.E.2d 316 (2013). The prior case did not involve any federal claims, including the Takings Clause. D.E. 186, p. 19-26.

REASONS FOR GRANTING THE PETITION

The Takings Clause of the United States Constitution provides that "nor shall private property be taken for public use, without just compensation," U.S. Const. Amend. V, and regulates states and localities "through the Fourteenth Amendment," *Tyler v. Hennepin Cnty., Minn.*, 598 U.S. 631, 637 (2023); *see also Chi. B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 236-37, 241 (1897). It "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Tyler*, 598 U.S. at 647**.** *Accord Armstrong v. United States*, 364 U.S. 40, 49 (1960); *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 325 (1893). Its protections extend beyond outright condemnation and expropriation of private property and also guard against indirect ones like certain regulatory and monetary exactions. *Sheetz*, 601 U.S. at 274-76, 280; *Koontz*, 570 U.S. at 604-06, 611-17; *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 324-26 (2002); *Vill. of Norwood v. Baker*, 172 U.S. 269, 279 (1898).

Two terms ago, this Court held in *Sheetz* that the guarantees of the Takings Clause do not distinguish between legislative action and administrative action. 601 U.S. at 270. While resolving that much, *Sheetz* left open how the rough proportionality framework developed in *Nollan* and *Dolan* applied to legislative action directed at classes of property unlike administrative (or other) actions targeting a particular parcel. Every member of this Court recognized that *Sheetz* was leaving open this important question. *Id.* at 280; *id.* at 281 (Sotomayor, J., concurring, joined by Jackson, J.); *id.* at 282 (Gorsuch, J., concurring); *id.* at

284 (Kavanaugh, J., concurring, joined by Kagan and Jackson, JJ.).

This petition picks up where *Sheetz* and *Koontz* left off. It involves an "as-applied" challenge under the Takings Clause to a municipal ordinance that imposes monetary assessments on classes of property. As Part I explains, the petition presents issues of nationwide importance, as municipalities around the country have enacted ordinances imposing similar monetary burdens on private property. The decision below deepens disagreements among states' highest tribunals and federal circuit courts about how to analyze these laws under the Takings Clause. As Part II explains, the petition offers an especially suitable vehicle for resolving important questions left unresolved by *Sheetz* and *Koontz*.

I. The Petition Raises Questions of National Importance Explicitly Left Unresolved by this Court in *Sheetz* that Continue to Divide Courts Around the Country.

A. The treatment of user fees under the Takings Clause requires clarity.

This petition concerns how the framework developed in cases like *Koontz* and *Sheetz* extends beyond pre-development impact fees. Some courts—including the court below—interpret *Koontz* as an "argument stopper." They employ a formalistic approach to the Takings inquiry: does a specific case fit cleanly in *Koontz*'s pre-development permitting context? If so, analyze more; if not, property owner loses. But this is not what the Court said in *Koontz* (or its prior decisions). Adopting a very different (and correct) interpretation of those cases, other lower courts undertake a functional inquiry. The difference

between the two approaches directly affects the outcome of cases. This petition offers a prime chance to settle that confusion among the lower courts.

Many commentators have noted the difficulty of differentiating between monetary exactions, triggering the *Nollan/Dolan* analysis, and certain taxes or user fees that some scholars characterize as "*Per Se* Non-Takings." Nestor M. Davidson & Timothy M. Mulvaney, Per Se *Non-Takings*, 104 Texas L. Rev. 103, 151-52 & nn.275 (2025) (collecting scholarly commentary); Chirstopher Serkin, *Exacting Assessments*: Sheetz *and the Problem of Stategraft*, 2024 Wis. L. Rev. 641, 643 ("[T]he risks of illegal development exactions are no greater than the risks of illegal special assessments and other similar financing tools."). That lack of a clear line "invites a kind of regulatory arbitrage, encouraging local governments to impose costs on captive, in-place property owners instead of developers because of the more deferential constitutional review." Serkin, 2024 Wis. L. Rev. at 645. Justice Kagan foresaw this line-drawing problem in *Koontz* when she observed that "[t]he boundaries of the majority's new rule are uncertain [and] threaten[] to subject a vast array of land-use regulations, applied daily in States and localities throughout the country, to heightened constitutional scrutiny." *Koontz*, 570 U.S. at 620 (Kagan, J. dissenting).

While *some* "property taxes, user fees and similar laws and regulations imposing financial burdens on property owners" may be immune from the scrutiny required by *Nollan*/*Dolan*, the government's mere label slapped onto a monetary assessment cannot predetermine the constitutional analysis. Otherwise, here too, "a State could 'sidestep the Takings Clause'" by cleverly characterizing monetary assessment as a

"user fee." *Tyler*, 598 U.S. at 638 (citing *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 167 (1998)). *Cf. Carpenter v. Shaw*, 280 U.S. 363, 367-68 (1930) ("Where a federal right is concerned we are not bound by the characterization given to a state tax by state courts or Legislatures, or relieved by it from the duty of considering the real nature of the tax and its effect upon the federal right asserted."). *United States v. Sperry Corp.* acknowledged this point: it did not uncritically accept the Government's characterization of the fee in that case as a "user fee." 493 U.S. 52, 60 (1989). Instead, it scrutinized that characterization by putting the burden on the party challenging the fee "to demonstrate that the reality of [the statute] belies its express language before" a court would conclude "that the [monetary assessments] are actually takings." *Id. Accord Eastern Enterprises v. Apfel*, 524 U.S. 498, 523 (1998) (plurality opinion). *Koontz* did likewise when it acknowledged at some point "a land-use permitting charge denominated by the government as a 'tax' becomes 'so arbitrary … that it was not the exertion of taxation but a confiscation of property.'" 570 U.S. at 617 (quoting *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 24-25 (1916)). Early decisions of this Court similarly interpreted the Takings Clause to constrain state monetary assessments when they concern "an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others,—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind." *Myles Salt Co. v. Bd. of Comm'rs of Iberia & St. Mary's Drainage Dist.*, 239 U.S. 478, 485 (1916).[8]

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[8] *See also Village of Norwood*, 172 U.S. at 279 ("[T]he exaction from the owner of private property of the cost of a public

This petition implicates the line that *Sperry* recognized but *Koontz* did not need to demarcate with precision: when does a state-denominated "user fee" become "so arbitrary" that it amounts to a "confiscation of property." *Cf. Pennell v. City of San Jose*, 485 U.S. 1, 23 (1988) (Scalia, J., concurring in part and dissenting in part) ("Subsidies for these groups may well be a good idea, but because of the operation of the Takings Clause our governmental system has required them to be applied, in general, through the process of taxing and spending, where both economic effects and competing priorities are more evident."). Both Chief Justice Roberts and Justice Gorsuch tested that line during the oral argument in *Sheetz*, *see* Transcript of Oral Argument at 22–23, 55, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (Jan. 9, 2024) (No. 22-1074), but the Court's opinion did not resolve the questions raised by both Justices. Here too, this petition picks up where *Sheetz* and *Koontz* left off.

While this Court has never expressly addressed this issue, its jurisprudence hints that *Nollan*/*Dolan* could extend beyond the permitting context. In *Cedar Point Nursery v. Hassid*, the Court determined that the *Nollan*/*Dolan* framework applied to government health and safety inspection regimes. 594 U.S. 139,

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improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking, under the guise of taxation, of private property for public use without just compensation."); *Dane v. Jackson*, 256 U.S. 589, 599 (1921) (recognizing that a state tax can violate the Constitution "where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation"); *Houck v. Little River Dist.*, 239 U.S. 254, 262 (1915) (recognizing constitutional limit on state exaction power).

161 (2021) (explaining that the *Nollan*/*Dolan* test applies to any example of the government conditioning a benefit on access to land for health and safety purposes). Likewise, commentators continue to suggest that *Koontz* can be read expansively.[9]

Lacking clearer guidance from this Court, lower courts have adopted divergent approaches when examining user fees under the Takings Clause. The Idaho Supreme Court's decision in *Hill-Vu Mobile Home Park v. City of Pocatello*, clashes most directly with the decision below. 402 P.3d 1041 (Idaho 2017). Like this case, *Hill-Vu* involved a challenge under the Takings Clause to a city's municipal and water sewer charge. Reversing summary judgment for the city, Idaho's highest court rejected the city's argument that its sewer charge (specifically its "return on investment" assessment) was sheltered from constitutional scrutiny because it qualified as a user fee. Tracking this Court's decision in *Sperry*, the unanimous court in *Hill-Vu* reasoned that "a 'user fee' is a taking if it is not a reasonable fee imposed for the reimbursement of costs of government services." *Id.* at 1050.

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[9] *See, e.g.*, Lee Anne Fennell & Timothy M. Mulvaney, *The Exactions Illusion:* Sheetz*'s Missing Dissent*, 135 YALE L.J. 1143, 1203 (Feb. 28, 2026) ("A broad reading of *Koontz*'s notion of monetary impositions linked to specific parcels of land could play this role, drawing within the compass of exactions scrutiny not only impact fees like those in *Sheetz* but also any legislative requirement that costs landowners money in connection with their particular chunk of land."); Lee Anne Fennell & Edwardo M. Peñalver, *Exactions Creep*, 2013 Supreme Ct. Rev. 287, 300 (2013) ("But even in the absence of such explicit bargaining, most if not all land use law can be framed as deal making given that the laws are conditional in nature and subject to frequent and fine-grained revision.").

Similarly, the North Carolina Supreme Court's decision in *Anderson Creek Partners, L.P. v. Cnty. of Harnett* did not immunize a monetary assessment from scrutiny under the Takings Clause simply because the county deemed it a "use fee." 876 S.E.2d 476 (N.C. 2022). Rather, that court scrutinized that characterization:

> [T]he challenged "capacity use" fees are intended to "cover the cost of expanding the infrastructure of the water and sewer system to accommodate the new development," a description that falls squarely within the definition of "impact fee"… The fees at issue in this case are not water and sewer service fees, paid by customers at a fixed rate in accordance with their monthly metered water and sewer usage for the purpose of paying for the service that they used. In addition, the challenged fees are not "tapon fees" paid at the time that individual lots are connected to the County's water and sewer system. Instead, the fees at issue in this case are intended to provide the County with a contribution toward the cost of expanding its water and sewer infrastructure to account for the additional customers that will be added as a result of the developer's development.

Id. at 489. Thus, North Carolina undertakes a functional analysis to determine if a given fee constitutes the type of exaction befitting heightened scrutiny.

Like the North Carolina Supreme Court, the Ninth Circuit similarly employs a functional approach. In *Zeyen v. Bonneville Joint Dist., #93*, the panel considered whether a supplemental education services

fee constituted a taking. 114 F.4th 1129 (9th Cir. 2024). According to the court, because "each of the fees charged bears a reasonable estimation of providing the related benefit," the charges did not constitute an exaction. *See id.* at 1147. This determination was based, in part, on this Court's decision in *Sperry* where the Court included a requirement that excessive costs might play a role in the categorization of a charge as something other than user fee.[10] Like the Idaho Supreme Court in *Hill-Vu*, but unlike the court below, the Ninth Circuit's approach recognizes that the mere label of "user fee" does not immunize a monetary assessment from constitutional scrutiny under the Takings Clause.

The Sixth Circuit takes the same approach. Judge Murphy's majority opinion in *Knight v. Metropolitan Gov't of Nashville & Davidson Cnty. Tennessee* is instructive. 67 F.4th 816 (6th Cir. 2023). *Knight* reasoned that this Court's unconstitutional conditions doctrine—not the general "use restrictions" balancing test set out in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978)—applied to a city sidewalk ordinance. The fee at issue in *Knight* required would-be land developers to either grant an easement on which they would build a sidewalk or pay an "in lieu" fee that the city would use for sidewalk construction elsewhere. 67 F.4th at 818. The parties disagreed over the type of analysis courts needed to perform on permitting fees of this character. *Id.* Specifically, the plaintiffs argued that the case required a *Nollan*/*Dolan* analysis while the city said

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[10] Some lower courts, not directly relevant under this Court's Rule 10, have embraced a similar view. *See, e.g., Page v. City of Wyandotte*, No. 339008, 2018 WL 6331339 at *6 (Mich. Ct. App. Dec. 4, 2018).

the deferential *Penn Central* balancing test applied. *Id.* Importantly, the court, applying the lessons of *Koontz*, dispatched the city's argument that the sidewalk ordinance could evade *Nollan*/*Dolan* review entirely. *Id.* at 828. Instead, the Sixth Circuit interpreted *Koontz* as applying to in-lieu fees because they "resemble other types of land use exactions." *Id.* (internal quotations omitted). In other words, the court realized that it is the overall character of a fee, not its description, that determines the level of scrutiny. In the Sixth Circuit's view, the fee "applied to [plaintiffs] not because they owned lots in Nashville; it applied to them because they sought to build family homes on those lots." *Id.* at 827.

Unlike the North Carolina Supreme Court, the Idaho Supreme Court, the Ninth Circuit, and the Sixth Circuit, Georgia's highest court undertook a categorical, not a functional, analysis. It simply classified the stormwater fees at issue as one "based on the provision of a service," cited *Koontz*, and stopped there.[11] Yet, because the record here shows that the stormwater fee was used to pay for broad stormwater system improvements, not "charges assessed for the use of particular item or facility," *Anderson Creek*, 876 S.E.2d at 488, review is necessary to create a uniform understanding over which fees trigger the scrutiny demanded by *Nollan* and *Dolan*.

Under the "functional" approach adopted by other courts around the country, the decision below would have come out differently:

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[11] Some courts, not directly relevant under this Court's Rule 10, have endorsed a similarly crabbed view. *See, e.g., City of Gridley v. Superior Ct.*, 104 Cal. App. 5th 1201, 1212-16 (Cal. Ct. App. 2024).

- First, in Idaho, Respondent's mere label of the assessment as a "user fee" would not have ended the argument because there was at least a triable issue over whether it was "a reasonable fee imposed for the reimbursement of the costs of government services." *Hill-Vu*, 402 P.3d at 1050.
- Second, in the Ninth Circuit, the court would have found that the fee here burdens the property interests of landowners beyond a mere monetary contribution because Respondent, by its own admission, requires payment as a condition of property development, with the owner of developed land avoiding the Ordinance if he or she razes the property. In other words, if the municipality demanded the property owner raze his development instead of allowing the "in lieu of" fee based on the property's impact on the overall stormwater system, the Ordinance would be a taking under the Ninth Circuit's reading of this Court's precedent. *See Koontz*, 570 U.S. at 612 ("[a] predicate for any unconstitutional conditions claim is that the government could not have conditionally ordered the person asserting the claim to do what it attempted to pressure that person into doing").
- Third, in the Sixth Circuit, the fee would apply only based on the class of the property *and the development of the property itself*, since Respondent's Ordinance does not apply to undeveloped property within the county.

Justice Gorsuch in *Sheetz* has suggested that these types of class-based fees might fall within the scope of the Court's heightened scrutiny. *See Sheetz*, 601 U.S. at 904 (Gorsuch, J. concurring). This petition presents

the opportunity to elaborate on the concerns that Justice Gorsuch and others identified. As noted above, in this case, Respondent conceded that the Ordinance allows parties to avoid the fee if, and only if, they return their property to an undeveloped state. *See supra* at 10. The Constitution does not allow the state to foist this choice onto property owners. *See Horne v. Dep't of Agric.*, 576 U.S. 350, 365 (2015); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 439 n. 17 (1982).

A very recent district court decision illustrates the outcome-determinative impact of the choice between the functional approach and the formalist approach. *See Crossroads Grp., LLC v. City of Cleveland Heights*, No. 1:23-cv-184, 2026 WL 233966 (N.D. Ohio Jan. 29, 2026). *Crossroads Group* involved a challenge under the Takings Clause to a city's annual residential occupancy fee. A group of property owners not residing within the city attacked a particular element of the fee imposed specifically on them. Like Respondent here, the City-defendant in *Crossroads Group* defended the fee because it constituted a "user fee" and, thus under the City's reading of *Koontz*, was immune from challenge under the Takings Clause. *Id.* at *8. Tracking the Sixth Circuit in *Knight*, the district court rejected the city's categorical argument, employed the *Nollan*/*Dolan* analysis to scrutinize the fee, and entered summary judgment for the property owners on their Takings Claim. *Id.* at *9-11. The diametrically opposed outcomes in *Crossroads Group* (applying *Nollan*/*Dolan* and granting summary judgment to the property owners) and this case (declining to apply *Nollan*/*Dolan* and granting summary judgment to the government) shows the outcome-determinative effect of the choice between the functional approach and the categorical approach.

Other district court decisions similarly illustrate the confusion over how to apply *Koontz* outside the permitting context. For example, in a challenge to an emergency funding bill passed by the District of Columbia to offset the end of federal dollars for the District's health care exchange, the plaintiff health insurer association brought claims under the Takings Clause. *See Am. Council of Life Ins. v. Dist. of Columbia Health Benefit Exch. Auth.*, 73 F. Supp. 3d 65 (D.D.C. 2014) *vacated on other grounds* 815 F.3d 17 (D.C. Cir. 2016). The court wrestled with the then-nascent *Koontz* guidance that appeared to extend the scope of the unconstitutional conditions doctrine beyond physical intrusions. However, the court struggled with an intractable question—does *Koontz* apply where no real property is at issue? The court remarked:

> Even though the *Koontz* majority stressed throughout its opinion that the linkage between the monetary exaction and real property was critical to triggering the *Dolan/Nollan per se* takings analysis, this emphasis was confusingly undermined by the majority's footnote stating that "this case does not implicate the question whether monetary exactions must be tied to a particular parcel of land in order to constitute a taking." Consequently, the dissent cautioned that "[t]he boundaries of the majority's new rule are uncertain." These are the boundaries tested in the instant case, where the HC Assessment is a monetary exaction that is not linked either to any real estate parcel or other "specific, identifiable property interest."

Am. Council of Life Ins., at 97-98 (cleaned up). Ultimately the court reasoned that the plaintiff's alleged property interest was not sufficient to sustain a Takings claim. *Id.* at 98. *See also Santiago-Ramos v. Autoridad de Energia Electrica de P.R.*, No. 11-1987 (JAG/SCC), 2015 WL 846750, at *3-4 (D. P.R. Feb. 26, 2015) (rejecting Takings challenge to utility's rate-fee scheme and reasoning that the link between the payment and a "specific property interest apart from the money itself" served as a key differentiating factor between the actionable payments in *Koontz* and the instant rate fees).

This Petition provides the Court with an opportunity to clarify how lower courts should examine these regulations that operate like permit conditions but lack only the same temporal element. The exaction here is inextricably linked to a specific parcel of real property. As admitted in discovery, Respondent effectively created a condition on that land: ***pay the Ordinance fee or raze your development to incur no charge***. *See supra* at 10. If the fee were imposed prior to development, instead of after, it would require the government to prove an essential nexus and rough proportionality. But the slight temporal wrinkle here—at least according to the Supreme Court of Georgia—allows the fee to wriggle free from constitutional scrutiny. Granting this Petition would therefore instruct lower courts how to differentiate between land use exactions and other fees imposed by the government.

In sum, here, a 1-3-1 split rages among states' highest tribunals and federal appellate courts over how the Takings Clause requires courts to examine the constitutionality of user fees.

B. Lower courts inconsistently apply this Court's exactions precedents.

The formalist/functionalist split aside, even those courts that do consider the merits of challenges to takings have struggled to reach consensus. Throughout its Takings Clause jurisprudence, the Court has wrestled with a tension between protecting individuals from governmental overreach into property rights and deference to local regulation of land within a sovereign's territorial boundaries. *Sheetz* recently resolved one aspect of the tension and expanded the scope of government action subject to Takings scrutiny. Now that monetary assessments in legislative enactments are not categorically immune from heightened scrutiny, lower courts require additional clarity on the framework guiding the constitutional analysis.

Absent that clarity, the decision below deepens confusion that persists among the states' highest tribunals. Viewing this case as one involving a simple service fee, Georgia's highest court remarked, "a fee based on the provision of a service—even assuming it is not based on fully voluntary participation" does not constitute a taking. Pet. App. 19a. It also leaned on oft-quoted language from *Koontz* that "taxes" and "user fees" are not takings protected by the Fifth Amendment. Even then, the lower court decided that unless the fee operated directly as a condition to a permit, the Takings Clause did not apply. *See id.* ("Notably, *Koontz* dealt with the same type of charge raised in *Dolan* and *Sheetz*—a monetary or property-related condition that a government entity imposes as a requirement for a permit—and *Koontz* took pains to differentiate that kind of charge from a tax or user fee.").

Some courts, including Maryland and New York's highest courts, share this categorical view. For example, in *Dabbs v. Anne Arundel Cnty.*, 182 A.3d 798 (Md. 2018), the Maryland Court of Appeals held that a generally applicable water impact fee was not subject to the *Nollan*/*Dolan* test. *Id.* at 811. That decision was based, in part, on the fact that the impact fee was "predetermined, based on a specific monetary schedule, and appli[ed] to any person wishing to develop property in the district." *Id.* The court also gave weight to the fact that there was "no determination as to whether an actual permit will issue to a payor individual with a property interest." For those reasons, Maryland's highest court decided that generally applicable fees fall outside the scope of this Court's rough proportionality and nexus analysis.[12]

While *Dabbs* predates *Sheetz*, a very recent decision by New York's highest court endorses this view. *See Coalition for Fairness in SoHo & NoHo, Inc. v. City of New York*, --N.E.3d--, No. 112, 2026 WL 88133 (N.Y. Jan. 13, 2026). *Coalition for Fairness* involved a challenge under the Takings Clause to a New York City initiative to allow artist occupants of certain "loft" buildings to convert their restricted units into unrestricted units if they paid a one-time fee into an arts fund. A divided New York Court of Appeals rejected this claim, reasoning that the initiative did not burden a constitutionally protected property

[12] This same logic led lower courts in Washington, Arizona, and California to conclude that the *Nollan/Dolan* framework did not apply to such fees. *See Douglass Props. II, LLC v. City of Olympia*, 479 P.3d 1200 (Wash Ct. App. 2021); *Am. Furniture Warehouse Co. v. Town of Gilbert*, 425 P.3d 1099 (Ariz. Ct. App. 2018); *Bldg. Indus. Assoc.-Bay Area v. City of Oakland*, 289 F. Supp. 3d 1056 (N.D. Cal. 2018).

interest and that the fee did not represent an "in lieu of fee" under *Koontz*. *Id.* at *6-8. Rejecting this crabbed view of the Takings Clause, the dissent cited a slew of post-*Koontz* state court decisions for the proposition that the Takings Clause's protections against monetary exactions were not limited to the precise fees or demands at issue in *Koontz*. *Id.* at *16.

Clashing with the results in Maryland and New York (and tracking the dissent in *Coalition for Fairness*), the Supreme Court of North Carolina expressly rejected the reasoning undergirding *Dabbs* and other cases. *See Anderson Creek Partners, L.P. v. County of Harnett*, 876 S.E.2d 476 (N.C. 2022). In the *Anderson* court's view, *Dabbs* focused mainly on the fact the fees were not a prerequisite to obtain a permit of any particular kind. Rejecting that approach, North Carolina's highest court zeroed in on the fundamental elements of claim that should garner a Takings Clause analysis: "the direct link between the government's demand and a specific parcel of property," and the resulting "diminish[ment] without justification the value of the property." *Id.* at 487. That is why the Supreme Court of North Carolina examined the fees as a taking—it diminished the value of the property through the monetary assessment extracted by the government.[13]

In sum, the decision below implicates a 3-1 split among states' highest tribunals over whether the *Nollan*/*Dolan* framework applies to monetary

[13] At least one federal court has reached a similar conclusion. In Colorado, a district court allowed takings claims to proceed over the defendant's objection that uniformly imposed fees cannot constitute a taking. *GRCO LLC v. Granby Ranch Metro. Dist.*, No. 23-cv-1351-RMR-STV, 2023 WL 9104819 (D. Colo. Dec. 21, 2023), *R&R adopted*, 2024 WL 778032 (D. Colo. Feb. 26, 2024).

exactions beyond the precise factual context presented in *Koontz*.

II. The Petition Presents an Especially Good Vehicle for Resolving the Questions.

For four reasons, this petition offers an especially good vehicle for answering the nationally significant questions left open by *Sheetz* and *Koontz*.

First, it cleanly presents the questions following final judgment. The trial judge considered and (erroneously) rejected the federal constitutional challenge. The Supreme Court of Georgia did likewise and issued its decision following the trial court's entry of summary judgment in Respondent's favor. Pet. App. 57a–60a. Thus, the case does not involve interlocutory review or other non-final considerations that might counsel further percolation.

Second, the case presents a fully developed record to consider the Takings issue. The petition comes to this Court following extensive discovery and resolution at the summary judgment stage. Pet. App. 39a. That record offers this Court the opportunity to consider fully the underlying cost-benefit analysis that might bear on the Takings analysis.

Third, this petition offers the best, perhaps the only, opportunity for a federal court to opine on the federal constitutional issue. Doctrines like comity and abstention can preclude lower federal courts from considering federal constitutional challenges to local fee and taxation schemes. 17A Wright & Miller, Federal Practice and Procedure § 4244 (rev. ed. Sept. 2025). Even when those federal constitutional challenges are meritorious, lower federal courts stay their hand because state courts should hear those challenges in the first instance. *See* 28 U.S.C. § 1341.

Justifying this federalist deference is a recognition that *this Court* supplies a sufficient safeguard against state violations of federal constitutional rights. *See Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943); *Matthews v. Rodgers*, 284 U.S. 521, 525-26 (1932). Under such circumstances, this Court's review of state-court rulings like the decision below offers the *only* opportunity to ensure review of the federal constitutional questions by independent federal judges disconnected from the state or local government whose monetary exaction is challenged.[14]

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[14] This procedural history of this case captures this third consideration. Prior proceedings sought to challenge the constitutionality of the Athens-Clarke County fee system in lower federal court. Both at the district and appellate levels, federal courts declined to intervene – not because they disagreed with the merits of the Takings argument but simply out of deference to the state judicial system's prerogative to consider matters in the first instance. *Homewood Vill., LLC v. Unified Gov't of Athens-Clarke Cnty.*, No. 3:15-CV-23 (CDL), 2016 WL 1306554 (M.D. Ga. Apr. 1, 2016), *aff'd*, 677 Fed. Appx. 623 (11th Cir. 2017) (Mem.). That state-level review has now occurred, leaving this Court as the sole remaining institution in the federal judiciary able to opine on the nationally important question of federal constitutional law implicated by the proceedings below. This Court's review ensures meaningful federal consideration of the constitutionality of state schemes such as the one here. Absent that review, state-court decisions about the federal constitutional rights at stake in these cases will not undergo meaningful scrutiny by politically independent federal judges, and litigants will not have the protection of their federal rights in federal court. *Cf. England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964) (the benefit of the district court's role in constructing the record can determine a party's federal rights: "The possibility of appellate review by this Court of a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in the federal courts."); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (district courts have a virtually unflagging obligation to

Finally, this petition complements issues presented to this Court in another pending case. Presently before this Court is a petition in *Sheetz* following this Court's remand. *See* Petition in Case No. 25-958 (*Sheetz v. Cnty. of El Dorado*), docketed Feb. 11, 2026 (hereinafter *Sheetz II*). Like this case, *Sheetz II* involves questions concerning application of the *Nollan*/*Dolan* framework in the context of a legislative enactment. Unlike this case, *Sheetz II* does not involve a fee imposed on already-developed property where the property owner can avoid the fee only by returning the property to its pre-development state. Thus, this Court may choose to grant both petitions to consider both the common and distinct questions, as it has done in the past. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2003) (initially holding petition then later granting with another to consider cases jointly); *ZF Autos. US, Inc. v. Luxshare Ltd.*, 596 U.S. 619 (2022) (same). Alternatively, at a minimum, this Court should hold this petition pending its resolution of *Sheetz II*.

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decide cases subject to their jurisdiction."); *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013) ("Federal courts, … have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" (citing *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821).)

CONCLUSION

Nearly 150 years ago, this Court warned that

> [i]llegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can be obviated only by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to a gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*

Boyd v. United States, 116 U.S. 616, 635 (1886). While *Boyd* concerned other civil liberties, its warning contains a more general lesson applicable to the Takings Clause. The lower court's crabbed construction of that clause represents such a "gradual depreciation" against which *Boyd* warned and deepens disagreements over how the Takings Clause applies to user fees and other monetary assessments outside the predevelopment permitting context. Again, by Respondent's own admission, ***"to avoid all liability for stormwater fees on the properties at issue, [Petitioners] must return their properties to a pre-developed state."*** Deft's Responses to Pltfs' First Interrogatories at 7 (emphasis added). That "stealthy encroachment" misreads *Koontz* to offer a permanent "green light" to any monetary assessment outside the permitting context that the state conveniently happens to label a "user fee." The Takings Clause does

not allow the government to impose that burden on developed property owners.

For the foregoing reasons, the petition for a writ of *certiorari* should be granted or, in the alternative, held for *Sheetz II*.

Respectfully submitted,

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March 13, 2026

APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF GEORGIA

S25A0555

HOMEWOOD ASSOCIATES, INC. *et al.*

v.

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY.

Decided: October 15, 2025

WARREN, Presiding Justice.

This is the second challenge brought by Homewood Village, LLC in this Court alleging that the stormwater utility charge imposed by the Unified Government of Athens-Clarke County ("ACC") is an unconstitutional tax.[1] In the first case, this Court held that ACC's stormwater utility charge is "a fee and not a tax." See *Homewood Village, LLC v. Unified Government of Athens-Clarke County*, 292 Ga. 514 (2013) (*Homewood I*). That holding squarely applies to Appellants' claim in this case that ACC's stormwater utility charge is a tax that violates the taxation uniformity provision of

[1] As explained further below, this charge is established by the Stormwater Management and Stormwater Utility Ordinances adopted by ACC in 2004. See Stormwater Management Ordinance adopted June 1, 2004 (codified as amended at Athens-Clarke County, Ga. Code of Ordinances ch. 5-4, §§ 5-4-1 to 5-4-27); Stormwater Utility Ordinance adopted Dec. 7, 2004 (codified as amended at Athens-Clarke County, Ga. Code of Ordinances ch. 5-5, §§ 5-5-1 to 5-5-12).

Georgia's Constitution, which requires that "all taxation shall be uniform." Ga. Const. of 1983, Art. VII, Sec. I, Par. III(a). And we decline the invitation extended by Homewood Village and the other appellants in this case to overrule *Homewood I*.[2] Because we conclude that the stormwater utility charge imposed by ACC is not a tax, we also conclude that the taxation uniformity provision does not apply to it.

We also reject the additional arguments made by Homewood Village and the other appellants that the stormwater utility charge constitutes an unconstitutional taking under the Georgia and United States Constitutions and that the trial court failed to properly apply the summary judgment standard. Thus, we affirm the trial court's grant of summary judgment to ACC.

1. (a) The following facts are undisputed. Pursuant to the Clean Water Act of 1972, 33 USC § 1251 et seq., the Environmental Protection Agency ("EPA") regulates nonpoint source pollution, including stormwater runoff, to "provide[ ] for the protection and propagation of fish, shellfish, and wildlife and . . . for recreation in and on the water." 33 USC § 1251. ACC operates a municipal storm sewer system, which collects, transports, and discharges stormwater runoff. Stormwater runoff is often heavily polluted, so the Clean Water Act and its implementing regulations require operators of separate storm sewer systems like ACC to obtain a

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[2] Whereas ACC and Homewood Village were the only parties involved in *Homewood I*, Homewood Village is joined in this case by eight other parties who were not part of the first case, including Homewood Associates, Inc. Specifically, Appellants are four corporations, four limited liability companies, and one individual, all of whom own developed commercial or residential properties and are subject to the stormwater utility charge. We refer to these parties collectively as Appellants.

National Pollutant Discharge Elimination System ("NPDES") permit before discharging stormwater runoff into navigable waters. These permits require local governments to minimize the pollutants in stormwater runoff to the maximum extent practicable. ACC is required to maintain an NPDES permit for nonpoint source pollution discharged into open waterways in the County.

From approximately 1992 to 2005, ACC funded its stormwater management program from general revenue funds—that is, through property taxes. In 2003, the federal government imposed a requirement on ACC to meet stricter guidelines for the management of stormwater runoff. ACC began to investigate the possibility of establishing a stormwater utility with a fee to fund "the existing and future stormwater management needs" of the County. See Ga. Const. of 1983, Art. IX, Sec. II, Par. III(a)(6) (authorizing local governments to "provide the following services: ... Storm water and sewage collection and disposal systems"), (d) ("[T]he General Assembly shall act upon the subject matters listed in subparagraph (a) of this Paragraph only by general law.").

On June 1, 2004, ACC adopted a Stormwater Management Ordinance to regulate stormwater runoff in the County. See Stormwater Management Ordinance adopted June 1, 2004 (codified as amended at Athens-Clarke County, Ga. Code of Ordinances ch. 5-4, §§ 5-4-1 to 5-4-27). Later that month, this Court issued its decision in *McLeod v. Columbia County*, 278 Ga. 242 (2004), which involved a Columbia County stormwater-management ordinance that created a stormwater utility funded by monthly stormwater charges paid by owners of developed property based on the amount of impervious surface area on their property. See

McLeod, 278 Ga. at 242. This Court held, among other things, that the Columbia County stormwater utility charge was not a tax and therefore rejected the property owners' claim that the ordinance imposed a non-uniform tax in violation of the taxation uniformity provision. See id. at 243–45. Six months later, in December 2004, ACC adopted a Stormwater Utility Ordinance that created a stormwater utility and established a funding formula, a fee structure, and an enterprise fund to pay for ACC's stormwater management program, including anticipated and unanticipated future capital needs. See Stormwater Utility Ordinance adopted Dec. 7, 2004 (codified as amended at Athens-Clarke County, Ga. Code of Ordinances ch. 5-5, §§ 5-5-1 to 5-5-12).

ACC's Stormwater Utility Ordinance contains detailed findings, including the following:

> Improper management of stormwater runoff may cause erosion of lands, threaten businesses and residences, and other facilities with water damage and may create environmental damage to the rivers, streams and other bodies of water within and adjacent to [the County]. ...
>
> Proper management of stormwater is a key element of having clean water with adequate assimilative capacity for treated wastewater discharges and adequate potable drinking water that are essential support existing and future development in [ACC]. ...
>
> It is practical and equitable to allocate the cost of stormwater management among the owners of properties in proportion to the long-term demands the properties owned impose

> on [ACC's] stormwater management services, systems and facilities which render or result in services and benefits to such properties and the owners thereof. ...
>
> A schedule of stormwater utility service charges based in part on the area of impervious surface located on each property is the most appropriate and equitable means of allocating the cost of stormwater management services, systems and facilities throughout [the County]. ...
>
> The area of impervious surfaces on each property is the most important factor influencing the cost of the stormwater management services, systems and facilities provided by [ACC] or to be provided by [ACC] in the future, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater service charge.

ACC Code of Ordinances § 5-5-2(c), (h), (r), (u), (w).

The Stormwater Utility Ordinance imposes a stormwater utility charge, which the ordinance calls a "fee," on all owners of developed property in the County. The stormwater utility charge has three components: (1) a "base charge," (2) a "quantity charge," and (3) a "quality charge." The base charge is intended to cover the annual administrative and management costs of the stormwater utility. The quantity charge is based on the amount of impervious surface area on the property and its land-use classification, which affect the volume and rate of stormwater runoff. The quality charge is based on the water quality land-use classification of the property, which reflects differences in the level of

services that ACC must provide to treat or compensate for the types of pollutants contained in stormwater runoff from different types of properties.

The Stormwater Utility Ordinance exempts from the stormwater utility charge certain developed properties, including public and private roadways and sidewalks. In addition, "credits" are available to owners of developed property to reduce the quantity charge and the quality charge components of the stormwater utility charge for parcels of property with onsite stormwater management and treatment facilities that meet certain requirements. Owners of undeveloped property do not pay ACC's stormwater utility charge.

Stormwater utility charges generate revenue to pay for flood-prevention measures, minimization of water pollution, and compliance with federal law. Funds not expended in the year calculated and collected are placed in a capital reserve account that the County maintains and manages to address needs that arise, such as repair, construction, and replacement of systems and facilities related to the stormwater utility.

(b) The procedural history of this case is extensive. In 2010, ACC filed a complaint against appellant Homewood Village to recover years of delinquent stormwater utility charges. Homewood Village filed a counterclaim for a declaratory judgment that the stormwater utility charge was unconstitutional, because the charge was a tax rather than a fee, the tax was not uniform, and the charge therefore violated the taxation uniformity provision of the Georgia Constitution. The trial court granted summary judgment to ACC on Homewood Village's taxation uniformity provision claim, and Homewood Village appealed. In 2013, this Court held, among other things, that ACC's stormwater utility charge is a fee rather than a tax

and that the trial court therefore correctly granted summary judgment to ACC on Homewood Village's taxation uniformity provision claim. See *Homewood Village I*, 292 Ga. at 514–15. Homewood Village paid the judgment for delinquent stormwater utility fees.

Several of the appellants in this case, including Homewood Village, then filed a complaint in federal district court alleging that ACC's stormwater utility charge is an unconstitutional tax, and that by collecting it, ACC was violating their rights under the Takings Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Citing comity concerns, the district court abstained from reaching the merits of the constitutional claims and instead dismissed the case without prejudice. See *Homewood Village, LLC v. Unified Gov't of Athens-Clarke County*, No. 3:15-CV-23, 2016 WL 1306554, at *3 (MD Ga. Apr. 1, 2016). That decision was later affirmed. See *Homewood Village, LLC v. Unified Gov't of Athens-Clarke County*, 677 FApp'x 623, 624–25 (11th Cir. 2017).

On April 1, 2016—the same day that the district court dismissed the federal lawsuit—ACC filed a lawsuit against Homewood Associates, Inc., in the Magistrate Court of Athens-Clarke County to recover delinquent stormwater utility charges. Several months later, Homewood Associates filed an answer and counterclaim for declaratory judgment and injunctive relief. Homewood Associates then moved to transfer the case to superior court; ACC consented; and the case was transferred to the Superior Court of Athens-Clarke County (the "trial court"). In December 2017, Appellants (other than Homewood Associates but including Homewood Village) filed a complaint in the

trial court for damages and declaratory and injunctive relief against ACC asserting, among other things, that ACC's stormwater utility charge violates their rights under the taxation uniformity provision of the Georgia Constitution and the Takings Clause of the Fifth Amendment. Appellants and ACC jointly moved to consolidate the December 2017 lawsuit against ACC with ACC's lawsuit against Homewood Associates that had been transferred to the trial court, and the trial court consolidated the two cases for the purposes of discovery and trial. Several rounds of discovery took place from 2018 to 2022.

In July 2022, ACC filed a motion for summary judgment, and Appellants filed a motion for partial summary judgment. Homewood Associates later filed an amended counterclaim, and on the same day, Appellants (with the exception of Homewood Associates), filed a First Amended Complaint. The filings added claims seeking a declaratory judgment that, among other things, all sums collected by ACC in excess of the costs of the stormwater utility constitute uncompensated takings in violation of the Takings Clauses of the Fifth Amendment and the Georgia Constitution. In January 2023, ACC filed a supplemental motion for summary judgment, and Appellants later filed a second motion for partial summary judgment and a motion to strike the affidavit of Hector Cyre, one of ACC's expert witnesses.

In July 2024, the trial court entered an order granting ACC's motion for summary judgment and denying Appellants' motion for partial summary judgment. Because Appellants ultimately did not dispute ACC's mathematical calculations of the fees owed, the trial court entered a Final Order requiring Appellants to pay ACC sums ranging from less than

$1,000 to more than $200,000 each. Appellants filed a timely notice of appeal.[3]

2. Appellants contend that ACC's stormwater utility charge is a non-uniform tax and therefore the ACC ordinances imposing it violate the taxation uniformity provision of the Georgia Constitution. See Ga. Const. of 1983, Art. VII, Sec. I, Par. III(a) ("All taxes shall be levied and collected under general laws and for public purposes only. [Subject to specified exceptions not applicable here,] all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."). "Like statutes, ordinances are presumed to be constitutional," and the burden of proving a constitutional violation rests on the party raising the challenge. *Rockdale County v. U.S. Enterprises, Inc.*, 312 Ga. 752, 761–62 (2021).

The trial court ruled that Appellants failed to show that ACC's stormwater utility charge violated Georgia's taxation uniformity provision. In reaching this conclusion, the trial court relied on *Homewood I*—and with good reason. In *Homewood I*, Homewood Village argued that ACC's stormwater utility charge is an unconstitutional tax. In this case, Homewood Village (and additional appellants) make the same argument—even though this Court squarely held in *Homewood I* that ACC's stormwater utility charge is "a fee and not a tax." See *Homewood I*, 292 Ga. at 514–15. Appellants contend, however, that *Homewood I* does not control in this case and should be overruled. We reject this argument.[4]

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[3] This case was orally argued on April 15, 2025.

[4] In reaching its decision denying Appellants' challenge based on the taxation uniformity provision, the trial court also relied on *McLeod*, in which this Court decided a taxation-uniformity-

In *Homewood I*, this Court in 2013 considered, among other things, a challenge to the very same ACC stormwater utility charge at issue in this case. In that case, we recognized that "[t]he dispositive issue in th[e] appeal [was] whether the [stormwater utility charge] adopted by [ACC] impose[d] a permissible fee rather than an unconstitutional tax," and we held that ACC's ordinances establishing the charge "impose[d] a fee and not a tax." 292 Ga. at 514. In explaining this conclusion, we emphasized that the ACC Stormwater Utility Ordinance

> (1) establishes a Stormwater Utility and ... imposes a utility charge for the stormwater management services; (2) [the charge] applies to residential and non-residential developed property, but not to undeveloped property, which actually contributes to the absorption of stormwater runoff[,] ... and the cost of the stormwater services is properly apportioned based primarily on horizontal impervious surface area; and (3) the properties charged receive a special benefit from the funded stormwater services, which are designed to implement federal and state policies through the control and treatment of polluted stormwater contributed by those properties.

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provision challenge to a stormwater utility charge imposed by Columbia County. See *McLeod*, 278 Ga. at 242. Appellants argue that the trial court erred by relying on *McLeod*, making the same arguments about *McLeod* that they make about *Homewood I*. Because we conclude that *Homewood I* squarely governs this case and decline to overrule it, we need not decide whether any of Appellants' attempts to distinguish *McLeod* from this case are availing, and we decline the invitation to reconsider *McLeod*.

Id. at 515 (cleaned up). We also noted that the Stormwater Utility Ordinance "allows property owners to reduce the amount of the charge by creating and maintaining private stormwater management systems ... and it does not permit the imposition of a lien directly against the property of those who fail to pay the utility charge," which "further underscores the notion that [ACC's Stormwater Utility] Ordinance imposes a fee and not a tax." Id. (cleaned up).

As in *Homewood I*, the "dispositive issue" in this case is whether ACC's stormwater utility charge is a fee rather than a tax, which would be subject to the taxation uniformity provision. See Ga. Const. of 1983, Art. VII, Sec. I, Par. III (requiring that "[a]ll *taxes* shall be levied and collected under general laws and for public purposes" and "all *taxation* shall be uniform" (emphasis added)). Importantly, however, Appellants do not allege that there have been any changes to ACC's stormwater utility charge since *Homewood I*. And they posit a facial challenge to the legal nature of the stormwater utility charge—that is, whether the charge is a tax or not a tax. That question is the very same question we answered in *Homewood I*.

Resisting the conclusion that *Homewood I* controls, Appellants contend that *Homewood I* should not apply to this case because "the record here is materially different from that in ... *Homewood I*." They specifically focus on the question of "special benefit," arguing that "the record evidence here demonstrates" that Appellants receive no special benefit from ACC's stormwater utility ordinance. Compare *Homewood I*, 292 Ga. at 515 (concluding that "the properties charged receive a special benefit from the funded stormwater services, which are designed to ... control and treat[ ] polluted stormwater contributed by those

properties"). However, *Homewood I*—concluding that ACC's stormwater utility ordinance was "much like the Ordinance at issue" in *McLeod*—relied on the holdings in *McLeod* and determined as a matter of law that "the properties charged receive a special benefit from the funded stormwater services." *Homewood I*, 292 Ga at 515 (quoting *McLeod*, 278 Ga. at 244). Given that *Homewood I* determined as a matter of law that the payors of ACC's stormwater utility charge receive a special benefit, and that the stormwater ordinance at issue in this appeal is the same as in *Homewood I,* the holding of that case controls in this case, irrespective of any differences in the record evidence.

The remainder of Appellants' arguments about *Homewood I* are essentially arguments that *Homewood I* was wrong about the ordinance being a fee and not a tax. But we do not reach those arguments because principles of stare decisis warrant retaining *Homewood I*, even if some of us doubt the correctness of our holding in *Homewood I* that this exact same ordinance imposed a fee and not a tax.

When we are asked to reconsider and overrule one of our prior decisions, "stare decisis is the strong default rule." *Wasserman v. Franklin County*, 320 Ga. 624, 645 (2025) (cleaned up).

> Ours is a system of precedent, built on the premise, if not a promise, that future cases will be decided like similar past cases. Sticking to our precedent promotes a system of equal treatment under the law rather than one of arbitrary discretion. Such a system not only yields a body of law that is more stable, predictable, and reliable: it is also the only kind of system that is consistent with the rule of law.

Id. (punctuation and citations omitted). We have declined invitations to reconsider precedent when the party seeking such reconsideration has failed to show that our precedent was "clearly wrong." *Stephens v. State of Ga.*, 321 Ga. 651, 658 (2025). See also *Davis v. Penn Mut. Life Ins. Co.*, 198 Ga. 550, 552 (1944) ("A decision concurred in by the entire bench after argument and careful consideration, and followed in other cases, will not readily be overturned, unless clearly erroneous." (punctuation omitted)). And we will not overrule precedent simply because we "might be impressed with the force of [the appellants'] arguments if the constitutional question presented were now one of first impression." *Fleming v. Rome*, 130 Ga. 383, 384 (1908). See also *Etkind v. Suarez*, 271 Ga. 352, 357 (1999) (declining to overrule a controlling precedent—despite noting that "reasonable minds could and did differ" and indicating that the Court had some "disagreement ... with its analysis"—because the Court was not "writ[ing] on a blank slate").

Applying those considerations here, we note that this Court decided *Homewood I* in 2013.[5] The relevant legal circumstances are the same now as they were in 2013 when Homewood Village litigated *Homewood I* and this Court decided that ACC's stormwater utility charge is a fee and not a tax. And *Homewood I* implicates strong reliance interests: ACC's stormwater utility charge was adopted six months after this Court issued *McLeod* and held that a charge of this kind was not a tax. See *McLeod*, 278 Ga. at 242–45. See also

[5] *Homewood I* is over a decade old and "though we have overruled even older cases when other considerations of stare decisis counseled in favor of doing so," *Homewood I*'s age "does not weigh in favor of its overruling." *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 435 (2021).

Savage v. State, 297 Ga. 627, 647–48 (2015) ("There is nothing wrong with [a county relying on prior decision of this Court]: local governments, businesses, and individuals are entitled to rely on our precedents, particularly in organizing their contractual and financial affairs."). In sum, notwithstanding the doubts some of us may have about the correctness of *Homewood I*'s analysis regarding whether ACC's stormwater utility charge is a fee, that decision was not so "clearly wrong" that considerations of correctness outweigh other considerations such as the similarity of the legal claims and of the parties between this case and *Homewood I*, and the reliance interests at stake in making government decisions. See *Stephens*, 321 Ga. at 658.

We therefore follow *Homewood I* in this case and conclude that ACC's stormwater utility charge is a fee that is not subject to the taxation uniformity provision in Georgia's Constitution. See Ga. Const. of 1983, Art. VII, Sec. I, Par. III(a).

3. Appellants next argue that the trial court erred in granting summary judgment in favor of ACC on Appellants' claim that ACC's stormwater utility charge violates the Georgia and United States Constitutions because it constitutes a taking by the government without just compensation. See Ga. Const. of 1983, Art. I, Sec. III, Par. I(a) ("Except as otherwise provided in this Paragraph, private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid."), (b) ("When private property is taken or damaged by the state or the counties or municipalities ... for any ... public purposes as determined by the General Assembly, just and adequate compensation therefor need not be paid until the same has been finally fixed and determined

as provided by law ... ."); U.S. Const. Amend. V ("[P]rivate property [shall not] be taken for public use, without just compensation.").[6] This argument fails.

(a) First, Appellants have failed to offer any argument that we should analyze their claim based on the Georgia Constitution differently from their claim based on the federal Constitution. In their initial brief, Appellants cite no authority interpreting the Georgia Constitution's Takings Clause, and they make no argument that their claim would be analyzed differently under the Georgia rather than United States Constitution.[7] The most Appellants do to advance their argument specific to the Georgia Constitution is, in their reply brief, point to a concurrence saying that Georgia's Takings Clause *may* be broader (but not deciding that it is, let alone applying a meaning different from the federal Takings Clause). See

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[6] We will refer to these constitutional provisions as "Takings Clauses."

[7] In their amended initial brief, Appellants cite two Georgia cases in this enumeration, neither of which decides a claim based on Georgia's Takings Clause. See *Jekyll Island-State Park Auth. v. Jekyll Citizens Ass'n*, 266 Ga. 152, 153 (1996) (holding that a sentence in a statute providing for fees related to fire service violated constitutional due process requirements because it was "vague and indefinite" and holding that the unconstitutional sentence could be severed because without that sentence, the amount of the fees "will not be unlimited, because the Authority cannot charge fees which substantially exceed the cost of the services," relying on Georgia precedent unrelated to the Takings Clause); *Jones v. City of Atlanta*, 320 Ga. 239, 244–45 (2024) (noting that the plaintiff filed, among other claims, "claims seeking damages for violations of the Due Process and Takings Clauses found in the United States and Georgia Constitutions," but vacating and remanding the trial court's ruling on those claims because the court "failed to correctly apply the standard applicable to motions for judgment on the pleadings").

Diversified Holdings, LLP v. City of Suwanee, 302 Ga. 597, 615 (2017) (Peterson, J., concurring) (observing that "[t]he text of [Georgia's] Just Compensation Clause appears broader than the federal Takings Clause," but "leav[ing] . . . for another day" the question of whether the two clauses should be interpreted the same, because no party "raised or briefed such issues," which "would require our careful consideration of text, context, and history").[8] It is Appellants' burden to explain why the stormwater utility charge is unconstitutional under the Georgia Constitution, and why (as they claim) the Georgia constitutional standard deviates from the federal constitutional standard. See *Rockdale County,* 312 Ga. at 761–62. Because they have not, "we consider [their] claim only through the analytical lens of the federal ... clause." *Morrell v. State*, 318 Ga. 244, 248 n.5 (2024). See also, e.g., *Ellington v. State*, 314 Ga. 335, 342 (2022) ("Despite citing the Georgia Constitution's Confrontation Clause, [Appellant] makes no argument that the Confrontation Clause contained in ... the Georgia Constitution should be construed differently than the parallel provision contained in the ... United States Constitution. Therefore, we decline to consider in this case whether the relevant provision in the Georgia Constitution should be construed differently than the federal provision.").

(b) As to Appellants' claim based on the federal Takings Clause, it fails. Appellants contend that ACC's stormwater utility charge is an uncompensated taking in violation of the Takings Clause because, as they

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[8] Moreover, Appellants appear to suggest that the burden of explaining the distinction, if any, between the Georgia and federal Takings Clauses belongs to ACC, but it does not. See *Rockdale County,* 312 Ga. at 761–62.

argue, the fee is not based on a special benefit given to the payors or the county's need, and because it is not based on a "voluntary decision to receive services."

The first basis for Appellants' argument is unavailing. As explained above, *Homewood I* held that ACC's stormwater utility charge *does* provide a special benefit to the payors, and we have already declined to overrule *Homewood I*. See *Homewood I*, 292 Ga. at 515 (holding that "the properties charged receive a special benefit from the funded stormwater services, which are designed to ... control and treat[ ] polluted stormwater contributed by those properties"). *Homewood I* also held that "the cost of the stormwater services is properly apportioned based primarily on horizontal impervious surface area," 292 Ga. at 515 (cleaned up), a holding that supports the Court's finding that the fee is tied to the special benefit provided. And, as explained above, the revenue generated by the stormwater utility charge is used by ACC only to pay for stormwater management services.

The second basis for Appellants' argument likewise fails. On that score, Appellants fail to cite any authority showing that a fee of this type—one that is linked to the payor's use of a government service or utility—constitutes a taking if it is not based on a voluntary decision to receive services. Instead, Appellants cite six United States Supreme Court cases that do not address a Takings Clause challenge to a fee of the type at issue here. See *Village of Norwood v. Baker*, 172 US 269, 278–79, 297 (1898) (addressing a challenge based on the federal Takings Clause to a "special assessment" levied by the government for the improvement of adjacent land and holding that to the extent the special assessment exceeded the "special benefits accruing to the abutting property," it was a

taking of "private property for public use without compensation");[9] *Myles Salt Co. v. Bd. of Comm'rs of Iberia & St. Mary Drainage Dist.*, 239 US 478, 485 (1916) (concluding that it was "an abuse of power and an act of confiscation" to include property within a certain taxation district that "has the special purpose of the improvement of particular property" when that property "is not and cannot be benefited directly or indirectly"); *Nat'l Cable Television Ass'n v. United States*, 415 US 336, 342–43 (1974) (considering whether a charge imposed by the Federal Communications Commission was an authorized fee or an unauthorized tax and noting that "[t]he phrase 'value to the recipient' is, we believe, the measure of the authorized fee"); *Dolan v. City of Tigard*, 512 US 374, 391–95 (1994) (holding that requiring a dedication of property to public use as a condition of the grant of a variance permit violated the federal Takings Clause because the required dedication was not "related both in nature and extent to the impact of the proposed development"); *Sheetz v. County of El Dorado*, 601 US 267, 276–79 (2024) (holding that *Dolan*'s test for determining if a permit condition is an unconstitutional taking can apply to a permit condition that is a monetary charge prescribed by the legislature).[10]

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[9] This Court has differentiated between this kind of "special assessment" and taxes or fees. See *City of Winder v. Barrow County*, 318 Ga. 550, 562 (2024); *Hayden v. City of Atlanta*, 70 Ga. 817, 822–23 (1884).

[10] Appellants also cite one case to support their argument that if the ACC stormwater utility charge is a tax, it violates the federal Takings Clause. See *Tyler v. Hennepin County*, 598 US 631, 647 (2023) (holding that the county committed an unconstitutional taking when it sold the plaintiff's property for unpaid taxes and then retained the excess proceeds from the sale after the payment of all taxes, penalties, and interest). For the

None of these cases indicates that a fee based on the provision of a service—even assuming it is not based on fully voluntary participation—will constitute a taking. And such an argument is firmly refuted by the Court's emphasis in *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595 (2013), on the longstanding principle that "[i]t is beyond dispute that taxes and user fees are not 'takings.'" Id. at 615 (cleaned up). Notably, *Koontz* dealt with the same type of charge raised in *Dolan* and *Sheetz*—a monetary or property-related condition that a government entity imposes as a requirement for a permit—and *Koontz* took pains to differentiate that kind of charge from a tax or user fee. 570 US at 615–17 (explaining that the holding in *Koontz* as to monetary permit conditions "does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners").[11]

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reasons discussed above, we hold that ACC's stormwater utility charge is not a tax. But in any event, *Tyler*—which dealt with the government retaining funds over the amount of tax due—is factually and legally distinguishable.

[11] To the extent Appellants rely on *Dolan* and *Sheetz* to argue that the stormwater utility charge is a taking unless ACC makes an individualized determination quantifying the benefit to each payor, it fails—even assuming we would treat the stormwater utility charge at issue here like a monetary permit condition. Because *Sheetz* expressly declined to decide whether permit conditions could be permissibly imposed on a class of properties without being "tailored with the same degree of specificity as a permit condition that targets a particular development," 601 US at 208, it does not support an argument that an individualized determination of the amount of benefit received or cost created by each specific property is required before a fee may be imposed. See also id. at 284 (Kavanaugh, J., concurring) ("[T]oday's decision does not address or prohibit the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that

Thus neither *Sheetz* nor any of the other cases Appellants cite support their contention that ACC's stormwater utility charge is an unconstitutional taking. Because Appellants' Takings Clause claim fails, we conclude that the trial court correctly granted summary judgment to ACC on that claim.

4. Finally, Appellants contend that the trial court improperly resolved disputed issues of fact in ACC's favor and therefore misapplied the summary judgment standard in granting summary judgment to ACC. We disagree that the trial court erred in applying the summary judgment standard.

(a) Appellants assert that the trial court improperly made the following factual findings favorable to ACC, despite conflicting evidence in the record: (1) that undeveloped properties do not contribute to stormwater runoff; (2) that the contribution from roads and sidewalks to stormwater runoff is offset by their channeling of stormwater runoff; and (3) that Appellants receive a special benefit from ACC's stormwater management activities.

As to the first two points, Appellants' characterizations of the trial court's summary judgment order do not match the contents of that order. With respect to the first point, the trial court did not find that undeveloped properties do not contribute to stormwater runoff. To the contrary, the court expressly stated that "most [undeveloped properties] will have some runoff," although "there are undeveloped properties that do not." With respect to the second point, the trial court did not find that the contribution from roads and sidewalks to stormwater runoff is "offset" by their

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assess the impact of classes of development rather than the impact of specific parcels of property.").

channeling of stormwater runoff. Instead, the court merely recognized that because roads and sidewalks "capture, control and discharge stormwater runoff," they are "considered part of the stormwater collection system."

With respect to the third point, the trial court did not resolve a disputed issue of fact to determine that Appellants receive a "special benefit" from ACC's stormwater management activities. Instead, it properly applied *Homewood I*, in which this Court made a legal determination that the payors of ACC's stormwater utility charge received a special benefit. See *Homewood I*, 292 Ga. at 515.

(b) Appellants also claim that the trial court found that "ACC's experts were more credible than those of [Appellants]"—and thus ran afoul of the summary judgment standard by weighing credibility—but again the trial court's order does not support Appellants' contention.

To support their contention, Appellants point to the first part of footnote 5 of the trial court's order. But in that footnote, the court merely described the dispute between Appellants' experts and ACC's expert; the court did not decide which experts were more credible:

> Plaintiffs rely heavily on the affidavit of one of their experts, Charles B. Wilson, for significant portions of their motion. They cite him some 31 times in their Proposed Order. [ACC's] expert, Hector Cyre, has extensive criticisms of Wilson's expertise and work history which were primarily in dams and sedimentation (Cyre Affidavit, pp. 2 5). Cyre also had significant criticisms of Wilson's opinions, especially with regard to Plaintiffs'

> contentions regarding credits (Cyre Affidavit, pp. 25-29), whether roads or existing infrastructure can be considered part of a stormwater management system (Cyre Affidavit, pp. 29-30) and the alleged need to allocate the fees and services among the 18 different watersheds in Athens-Clarke County. (Cyre Affidavit, pp. 31-32). Fundamentally, Cyre points out that Wilson demonstrates no experience with local government stormwater management systems. Cyre also criticizes the work of Plaintiffs' experts Alan Perry (Cyre Affidavit, pp. 35-41), and Nancy O'Hare. (Cyre Affidavit, pp. 32-34).

Appellants also claim that the court erred by relying on the affidavit of Hector Cyre in granting summary judgment to ACC on Appellants' constitutional claims. But that contention fails because the trial court expressly disclaimed any reliance on the Cyre affidavit in granting summary judgment to ACC:

> Based on the briefing initially submitted, the parties informed the Court that consideration of Plaintiffs' challenge to Cyre's opinions would not be necessary to decide the motions for summary judgment. After the initial oral argument was suspended, [ACC] informed the Court that it would be relying on Cyre's opinions, presumably because Plaintiffs raised arguments at oral argument not clearly articulated in their briefs. While *the Court does not rely on Cyre's opinions in granting [ACC's] motion for summary judgment*, it cannot ignore this record evidence in considering Plaintiffs motion for partial summary judgment, especially since [ACC]

> informed the Court and the Plaintiffs of the need.

(Emphasis added.) Accordingly, Appellants' contention that the trial court misapplied the summary judgment standard fails.

Judgment affirmed. All the Justices concur.

PETERSON, Chief Justice, concurring.

I join the Court's opinion holding that stare decisis warrants retaining *Homewood I*'s determination that the stormwater ordinance at issue imposes a fee and not a tax. I write separately to make two points. First, I have serious concerns about our historic treatment of Georgia's constitutional protections of taxpayers. And second, charges like the one at issue here may best be characterized as taxes and still be permissible, because it seems likely that they can be structured in ways that conform with the Constitution's uniformity requirement.

1. The Georgia Constitution protects taxpayers by limiting the methods and means by which Georgia governments can impose taxes. One such protection is the uniformity requirement. See Ga. Const. of 1983, Art. VII, Sec. I, Par. III(a) (provided that no constitutional exception applies, "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax"). This requirement entered the Georgia Constitution in 1868 and has been in every constitution since in similar language.[12] One would think, given the long

[12] The uniformity provision in the 1868 Constitution provided that "taxation on property shall be ad valorem only, and uniform on all species of property taxes." Ga. Const. of 1868, Art. I, Sec. XXVII. The 1877 Constitution changed the language slightly. Ga. Const. of 1877, Art. VII, Sec. II, Par. I ("All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed, within the territorial limits of the authority levying the tax[.]"). The 1945 Constitution removed the "ad valorem" language (at least in its express form in this provision) but kept the uniformity language. See Ga. Const. of 1945, Art. VII, Sec. I, Par. III ("All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."). The 1976 Constitution kept this same

history of this provision in Georgia's constitutions, that this Court would have enforced this constitutional protection in meaningful ways. But our precedent shows otherwise. Over time, this Court has allowed state and local governments to evade the uniformity requirement by imposing charges that look a lot like taxes but are called something else, like "fees" or "assessments."

At least three different categories of these "fees" and "assessments" have emerged in our caselaw: (1) special assessments for paving or street improvements; (2) special assessments for the creation of drainage systems; and (3) fees for garbage services.

The first category, special assessments for paving or street improvements, appears to be the first carve-out created by this Court to allow charges to avoid constitutional restrictions on taxation. See *Hayden v. City of Atlanta*, 70 Ga. 817 (1884). *Hayden* involved a statute conferring on a municipal corporation the power to impose "assessments" for street grading, paving, and improvements on real estate abutting each side of an improved street. Id. at 821. The statute was challenged as being not *ad valorem* and uniform as required by the Georgia Constitution. Id. at 822. The Court held that this charge was not a tax, but was instead an "assessment" and thus was not required by the Constitution to be *ad valorem* and uniform. Id. at 822–23. The Court justified this assessment-tax distinction on the basis that assessments for improvements are based on a benefit to the abutting property. See id.

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language. See Ga. Const. of 1976, Art. VII, Sec. I, Par. III. And the 1983 Constitution, which now controls, contains materially identical language. See Ga. Const. of 1983, Art. VII, Sec. I, Par. III(a).

("Taxes are different from assessments for local improvements, taxes being burdens upon all persons and property alike, and compensated for by equal protection to all, while assessments are not burdens but equivalents, and are laid for local purposes upon local objects, and are compensated for to some extent in local benefits and improvements, enhancing the value of the property assessed."). This distinction between assessments for street improvements and taxes was upheld consistently by this Court after *Hayden*. See, e.g., *Speer v. Mayor, Etc., of Athens*, 85 Ga. 49, 49 (1890); *City of Atlanta v. First Presbyterian Church*, 86 Ga. 730, 737 (1891); *City of Atlanta v. Hamlein*, 96 Ga. 381, 382–85 (1895); *Brumby v. Harris*, 107 Ga. 257, 258–59 (1899); *Mayor & Aldermen of Savannah v. Knight*, 172 Ga. 371, 374 (1931).

The second category involves assessments for the creation of drainage systems. See *Almand v. Pate*, 143 Ga. 711, 716–17 (1915); *Witherow v. Bd. of Drainage Comm'rs of Powder Springs Creek Drainage Dist. No. 2*, 155 Ga. 476, 476–77 (1923); *Goolsby v. Bd. of Drainage Comm'rs of Cedar Creek Drainage Dist.*, 156 Ga. 213, 213 (1923). The assessments for these drainage systems were imposed on properties that were specially benefitted by the drainage systems. And the Court upheld these assessments against constitutional challenges because, like assessments for street improvements, "[a]ssessments of this character are radically different from ad valorem taxes, and are not taxes within the meaning of the Constitution." *Almand*, 143 Ga. at 716 (citing *Hayden*, 70 Ga. 817; *Speer*, 85 Ga. 49). At first glance, these assessments might appear superficially similar to stormwater charges like the one at issue here. But the drainage system cases involved charges only on properties that were specially benefitted from the drainage systems, not on property

owners of properties (like the case here) that created the need for drainage. So these cases are consistent with the special benefit justification for assessments in a way that stormwater ordinances may not be.

The third category involves fees or assessments for services removing and disposing of trash and garbage or cleaning the public streets abutting the property on which the fees were levied. These charges were deemed fees or assessments (and thus not taxes) because they were "merely imposing a fee for special services." *Mayor & Aldermen of City of Milledgeville v. Green*, 221 Ga. 498, 501 (1965). See also *Crestlawn Mem'l Park, Inc. v. City of Atlanta*, 235 Ga. 194, 194 (1975) (upholding a "sanitary service charge" for the "cleaning of the public streets abutting appellant's property" because the "assessments ... are not taxes"); *Levetan v. Lanier Worldwide, Inc.*, 265 Ga. 323, 324 (1995) ("These sanitation assessments are not taxes within the meaning of our Constitution but rather charges for services rendered by the county."); *Strykr v. Long County Bd. of Comm'rs*, 277 Ga. 624, 625 (2004) (same); *Mesteller v. Gwinnett County*, 292 Ga. 675, 678 (2013) (solid waste fee is an assessment for services rendered).

The emergence of these categories demonstrates the breadth of the carve-outs in which this Court has allowed charges to avoid constitutional restrictions on taxation. But this Court has not always been consistent in its reasoning for allowing such charges to avoid constitutional limitations on taxes — and our inconsistency has been pronounced with regard to the special-benefit justification. Some cases seized on language in *Speer* (a case that re-affirmed the holding of *Hayden*) stating that the determination of whether there is a benefit to the landowner belongs to the

legislature, "and will not be inquired into by the courts, unless in extraordinary cases presenting a manifest abuse of legislative authority." *Speer*, 85 Ga. at 49; *City of Atlanta v. Johnson*, 191 Ga. 100, 100–03 (1940) (applying this reasoning from *Speer* to uphold an assessment for a new sewer despite the plaintiff's allegation that the new sewer would not benefit her property). But see *City of Atlanta v. Hamlein*, 96 Ga. 381, 382–85 (1895) (finding an assessment for street improvements to be an "extreme[] case" not deserving of deference to municipal authorities as to the existence of a benefit where the property's value was significantly less than the cost of the improvement).

Despite the critical role that the presence of special benefits have played in our decisions deeming charges to be fees instead of taxes, this Court also has held on occasion that the absence of a current special benefit does not make a fee a tax. See *Georgia Power Co. v. City of Decatur*, 181 Ga. 187, 193–200 (1935). See also *Georgia R. & Banking Co. v. Town of Decatur*, 137 Ga. 537, 540–41 (1912); *Neal v. Town of Decatur*, 142 Ga. 205, 205 (1914) (citing *Georgia R. & Banking Co.*, 137 Ga. 537).

In making this determination, this Court made the paradoxical conclusion that although the authority of governments to impose fees and assessments comes from the taxing power, such charges are not subject to the same constitutional restrictions and limitations as taxes. *Georgia R. & Banking Co.*, 137 Ga. at 540; *City Council of Augusta v. Augusta-Aiken Ry. & Elec. Corp.*, 150 Ga. 529, 532 (1920); *City of Brunswick v. Gordon Realty Co.*, 163 Ga. 636, 641–42 (1927).

I have no idea how to reconcile our historic precedent with itself, much less with the constitutional text it purported to interpret and apply.

It was against this backdrop that this Court, in 2004, extended the fee and assessment doctrine to stormwater utility charges. See *McLeod v. Columbia County*, 278 Ga. 242, 242–45 (2004) (holding that a stormwater utility charge was not a tax and thus not subject to the Constitution's uniformity requirement); *Homewood I*, 292 Ga. at 514–15 (holding the same for the ordinance at issue in this case). Given the inconsistencies in our precedent outlined above regarding the justification for allowing fees and assessments to evade the limitations placed on taxation, I am skeptical that this extension of the fee and special assessment doctrine to the stormwater context was correct. In particular, I see no benefit (such as increased property value or a special service) to the charged properties of the sort that most of our special benefit precedent generally requires. And we should be cautious in extending or maintaining carve-outs that allow Georgia governments to avoid the constitutional limitations that the people placed on governments' power to tax.[13]

But even if our decisions in the late 1800s and early 1900s were wrong, it may be too late to change course now. The assessment-tax distinction has existed in our precedent since at least 1884. To the extent that our precedent has been consistent and definitive on at least some related points, we presume that that consistent and definitive construction was carried forward into subsequent constitutions, and eventually into our current Constitution. See *Elliott u. State*, 305

[13] This Court's reluctance to extend the assessment-tax distinction is illustrated by *Bellsouth Telecommunications, LLC v. Cobb County*, 305 Ga. 144, 146–51 (2019), where the Court declined to extend the fee and special assessment doctrine to a 911 charge on telephone services.

Ga. 179, 184 (2019) ("A constitutional clause that is readopted into a new constitution and that has received a consistent and definitive construction is presumed to carry the same meaning as that consistent construction."). The exact contours of that construction remain to be seen. Nevertheless, we need not decide these questions here, because stare decisis principles compel us to retain *Homewood I* even if it was wrong to hold that this particular ordinance imposed a fee and not a tax.

2. Much of the precedent that I just described was decided in contexts where the parties assumed that if the challenged charge was a tax, it would violate the uniformity requirement (as the Appellants assume here). I'm not so sure. Even if we were to hold that this stormwater ordinance imposes a tax and not a fee, I am not convinced it would violate uniformity under our Constitution (and to the extent that parts of it do violate uniformity, it may be that those parts could be altered to conform).

Our precedent outlines some of the ways a tax may (or may not) violate the uniformity provision. There generally seem to be two categories of taxes that have been challenged under the uniformity provision of the Georgia Constitution: cases involving taxes on persons (generally taxes on occupation or revenue), and cases involving taxes on property. See *United Cigar Stores Co. v. Stewart*, 144 Ga. 724, 726 (1916) ("All taxation may be divided into two general classes: Taxation on property, and taxation on person, the latter including taxation on occupation.").

With respect to occupation taxes, certain forms of taxation have been deemed not to violate uniformity. These include taxes on occupations that graduate according to the size of the city or county where the

business operated. See, e.g., *Wright v. Hirsch*, 155 Ga. 229, 232–43 (1923); *Georgia-Carolina Lumber Co. v. Wright*, 161 Ga. 281, 281, 285–86 (1925); *Brooks v. Harrison*, 171 Ga. 488, 489, 492–93 (1930); *Guerry v. Harrison*, 178 Ga. 669, 669–70 (1934). Permissible taxes also included those that graduate according to the use of certain items or equipment by the business. See *Goodwin v. Mayor & Alderman of City of Savannah*, 53 Ga. 410, 414–15 (1874) (occupation tax on common carriers that graduated according to the number of horse drays or wagons employed did not violate uniformity); *Davis & Co. v. Mayor & Council of Macon*, 64 Ga. 128, 132–33 (1879) (tax on butchers that was higher on butchers who used wagons did not violate uniformity). Many cases support the proposition that the General Assembly may classify and subclassify occupations for the purpose of taxation, so long as the classification is "reasonable" and "not arbitrary."[14] And in many early cases, this Court distinguished between taxes on property and taxes on occupations and revenue — since taxes on occupations and revenue were considered *not* taxes on property, they were not subject to the *ad valorem* and uniformity requirements in the Constitution.[15]

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[14] See, e.g., *McGhee v. State*, 92 Ga. 21, 22–27 (1893); *Singer Mfg. Co. v. Wright*, 97 Ga. 114, 114–22 (1895); *Stewart v. Kehrer*, 115 Ga. 184, 189–90 (1902); *City Council of Augusta v. Clark & Co.*, 124 Ga. 254, 258–59 (1905); *Williams v. State*, 150 Ga. 480, 484–85 (1920); *Coy v. Linder*, 183 Ga. 583, 585–88 (1936); *Davison v. F. W. Woolworth Co.*, 186 Ga. 663, 663, 666 (1938); *Forrester v. Edwards*, 192 Ga. 529, 529, 532–34 (1941); *Chanin v. Bibb County*, 234 Ga. 282, 290 (1975).

[15] See, e.g., *Kenny v. Harwell*, 42 Ga. 416, 419–23 (1871); *Burch v. Mayor & Aldermen of Savannah*, 42 Ga. 596, 598–600 (1871); *Bohler v. Schneider*, 49 Ga. 195, 200–01 (1873); *Home Ins. Co. of New York v. City Council of Augusta*, 50 Ga. 530, 543 (1874);

Still within the occupation tax category, a number of our decisions have invalidated taxes as violative of the uniformity provision. This Court generally held that it violated uniformity to exempt businesses within the same class of businesses being taxed. See *Ewing v. Wright*, 159 Ga. 303, 303–04 (1924) ("And where the Legislature, as here, creates by statute a class, upon which it imposes a tax ... , but excepts from it a number of persons falling within the classification, the [*ad valorem* and uniformity provision] is violated; and such a violation of the constitutional provision renders the statute void."). See also *Pate v. Foss*, 157 Ga. 579, 582–84 (1924); *Eplan v. City of Atlanta*, 176 Ga. 613, 613–16 (1933); *Elder v. Smith*, 188 Ga. 65, 67–69 (1939).

But some exemptions from occupation taxes have been upheld on one of two grounds. First, a few exemptions were deemed not violative of uniformity because the Court determined that the exempt businesses were in a class different from the class of businesses being taxed (such that the tax contained permissible classifications, rather than impermissible exemptions). See *Davis*, 64 Ga. at 132 (tax on butchers that exempted farmers selling their own produce and wagons used in delivering milk from farms did not violate uniformity because they were different businesses and thus "different classes of subjects in a scheme of taxation"); *Clark*, 124 Ga. at 258–59 ("[S]imply because they all might be classified in the one general class of lenders of money is no reason why

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Goodwin, 53 Ga. 410, 414–15 (1874); *City of Rome v. McWilliams & Co.*, 52 Ga. 251, 275 (1874); *Weaver v. State*, 89 Ga. 639, 642–43 (1892); *Hirsch*, 155 Ga. at 233–35 (1923). Note that the current constitution does not contain a general ad valorem requirement for taxation.

these different occupations might not be arranged in different classes for the purpose of taxation, and a different amount of tax placed upon each."). Second, and perhaps relatedly, some exemptions were upheld because they were "not unreasonable or arbitrary." See, e.g., *Hunter v. Wright*, 169 Ga. 840, 845–46 (1930); *S. Transfer Co. v. Harrison*, 171 Ga. 358, 358–59 (1930); *City of Atlanta v. Georgia Milk Producers Confederation*, 187 Ga. 117, 119 (1938).[16]

The standard, as mentioned above, for whether classifications and subclassifications violate uniformity is whether they are reasonable and not arbitrary. See, e.g., *Forrester*, 192 Ga. at 532. Most classifications have been held to be reasonable, but this Court has held in at least two cases that certain subclassifications were unreasonable and arbitrary and thus violated uniformity. See *United Cigar Stores Co.*, 144 Ga. at 724–27 (statute imposing a tax "upon every manufacturer of tobacco, and upon every wholesale and retail dealer in tobacco, who redeems, or offers to redeem, any tags or labels sold or distributed or given with tobacco sale" violated uniformity because the classification was "unreasonable and arbitrary"); *F.W. Woolworth Co. u. Harrison*, 172 Ga. 179, 179 (1931) (statute taxing businesses operating over five stores at a rate of $50 per store and not taxing

[16] For exemptions in the property context, see *City of Atlanta v. Spence*, 242 Ga. 194, 197 (1978) (holding that a county ordinance exempting 300 acres or less from taxation of public real property owned by a city outside its territorial limits did not violate uniformity). See also *Atlanta & F.R. Co. v. Wright*, 87 Ga. 487, 489–90 (1891) (holding that uniformity was not violated where five railroad companies were exempted from ad valorem taxation because those charters included provisions limiting their taxation to a certain percentage of income, but other railroad companies were taxed ad valorem).

at all businesses operating five stores or less violated uniformity because this "classification is arbitrary and unreasonable").

Finally, some occupation taxes violated uniformity because businesses were taxed based on their location or territorial discrimination. See *Mut. Rsrv. Fund Life Ass'n v. City Council of Augusta*, 109 Ga. 73, 78–79 (1900); *Morgan v. State*, 140 Ga. 202, 204–07 (1913); *Am. Bakeries Co. v. City of Griffin*, 174 Ga. 115, 115–19 (1932); *Fulton County v. Lockhart*, 202 Ga. 878, 881–83 (1947).

The second category of uniformity cases deals with taxes on property. These cases make clear that property of the same class must be taxed uniformly. See, e.g., *City Council of Augusta v. Nat'l Bank of Augusta*, 47 Ga. 562, 563–65 (1873); *Colvard v. Ridley*, 218 Ga. 490, 490 (1962). And many cases have held that real and personal property are considered a single class for purposes of taxation, so if assessments are raised unequally between them, uniformity is violated. See *Griggs v. Greene*, 230 Ga. 257, 266 (1973) ("[T]he Constitution establishes all tangible property (except automobiles and trailers), both real and personal, as a single class for the purpose of taxation, and it commands that all property in that class must be treated uniformly."). See also *Hutchins v. Howard*, 211 Ga. 830, 830 (1955); *Lott Inv. Corp. v. City of Waycross*, 218 Ga. 805, 808–09 (1963).[17] And state and local governments cannot raise taxes on property by arbitrary means. See *Champion Papers, Inc. v. Williams*, 221 Ga. 345, 346 (1965).

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[17] But income is not property and thus it does not violate uniformity to tax income and property at different rates. See *Waring v. City of Savannah*, 60 Ga. 93, 100 (1878).

Whether and to what extent the above cases apply to the ordinance at issue in this case remains unclear. It is possible that the stormwater ordinance here may be like the occupation taxes that graduated according to the use of certain items or equipment in the business, and thus the stormwater ordinance would not violate uniformity. See, e.g., *Goodwin*, 53 Ga. at 410–15. But this particular stormwater ordinance includes exemptions for undeveloped property and for all public and private roadways. Under our precedent, these exemptions may make the ordinance violative of the uniformity provision, but it is unclear what standard we should apply in making that determination. If the standard for exemptions is the same as the standard for subclassifications (i.e., that they be reasonable and not arbitrary), then the exemption in this ordinance for undeveloped property may be reasonable, because undeveloped properties contribute less to stormwater runoff than developed properties. It may be that a county can also exempt *public* streets and sidewalks.[18] But the exemption for *private* streets and sidewalks to me seems less likely to be permissible. If developed properties are the target of the ordinance because of their increased contribution to stormwater runoff, then I can see no reasonable justification for exempting private roadways. But even

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[18] The right to exempt public property from taxation was in past constitutions and has been discussed in our cases. See Ga. Const. of 1877, Art. VII, Sec. II, Par. II; Ga. Const. of 1945, Art. VII, Sec. 1. Par. IV; Ga. Const. of 1976, Art. VII, Sec. I, Par. IV. See also *City of Atlanta v. Spence*, 242 Ga. 194, 196–97 (1978); *Wright v. Fulton County*, 169 Ga. 354, 362 (1929); *Penick v. Foster*, 129 Ga. 217, 222 (1907) ("The Constitution expressly authorizes the exemption of public property."). But this text is not present in the 1983 Constitution. I express no opinion here how that might affect the power to exempt public property from this tax.

if this exemption makes the stormwater ordinance violative of uniformity, it is not difficult to imagine a stormwater ordinance without such an exemption which would not violate uniformity. Perhaps in the future Georgia governments could focus on crafting charges like those at issue here to conform to uniformity, rather than to try to take them outside all constitutional protection altogether.

I am authorized to state that Justice Bethel joins in this concurrence.

APPENDIX B

SUPREME COURT OF GEORGIA

Case No. S25A0555

HOMEWOOD ASSOCIATES INC *et al.*

v.

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY.

November 13, 2025

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

HOMEWOOD ASSOCIATES INC et al. v. UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ [Illegible]_____, Clerk

APPENDIX C

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY STATE OF GEORGIA

Civil Action File No. SU16CV0845-S

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY a Georgia,

Plaintiff,

v.

HOMEWOOD ASSOCIATES, INC.,

Defendant.

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY STATE OF GEORGIA

Civil Action File No. SU17CV1134

HANCOCK-PULASKI PROPERTIES, INC., a Georgia corporation, TIFFANY & TOMATO, INC., a Georgia corporation, BAXTER HARRIS, INC., a Georgia corporation, HOMEWOOD VILLAGE, LLC., a Georgia limited liability company, OLD SOUTH INVESTMENT ENTERPRISES LLC., a Georgia limited liability company, LUIS BONEt, individually, BONET PROPERTIES, LLC and L. E. BONET PROPERTIES, LLC,

Plaintiffs,

v.

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, a Georgia,

Defendant.

ORDER ON THE UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, GEORGIA'S MOTION FOR SUMMARY JUDGMENT and PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The Court consolidated these two matters to decide legal issues common to both. The Unified Government of Athens-Clarke County, Georgia (hereinafter referred to as "A-CC"), is the Defendant in Civil Action File No. SU17CV1134, and Plaintiff in Civil Action File No. SU16CV0845-SW. The latter action was originally filed as a collection action in Magistrate Court, but counterclaims required transferring the matter to Superior Court. The Court refers to the Plaintiffs in SU17CV1134 and defendant in SU16CV0845 collectively as Plaintiffs. A-CC seeks judgment as to all claims in SU17CV1134 and as to Defendant Homewood Associates' counterclaims in SU16CV0845. Plaintiffs seek partial summary judgment on A-CC's authority to impose stormwater fees and on their claims that the fees violate Plaintiffs' constitutional rights. For the reasons set forth herein, the Court grants A-CC's motion and denies Plaintiffs' motion.

I. INTRODUCTION

Litigation challenging the A-CC Stormwater Management Ordinance and the A-CC Stormwater Utility has been almost continuous since A-CC adopted the ordinance and established the utility in 2004 and 2005. One of the Plaintiffs in this case, Homewood Village, litigated one of the original challenges all the way to the Georgia Supreme Court. *Homewood Village v. A-CC,* 292 Ga. 514, 739 S.E.2d 316 (2013)

(Homewood 1);[1] *see also McLeod v. Columbia County,* 278 Ga. 242, 599 S.E.2d 152, 153 (2004).

After the Georgia Supreme Court upheld A-CC's ordinance, Homewood Village, with some of the other Plaintiffs in SU17CV1134, filed a federal action in the Middle District of Georgia. A-CC moved to dismiss on the basis of the Tax Injunction Act. The federal court denied that motion but invited a motion based upon the Comity Doctrine. Comity holds that the state courts are the appropriate venue to review challenges to state and local revenue measures, even if alleging violations of federal law. *Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293, 298, 63 S. Ct. 1070, 1073, 87 L. Ed. 1407 (1943); *Boise Artesian Hot & Cold Water Co. v. Boise City,* 213 U.S. 276, 29 S. Ct. 426, 53 L. Ed. 796 (1909); *Fair Assessment in Real Estate Ass 'n., Inc. v. McNary,* 454 U.S. 100, 102 S. Ct. 177, 70 L. Ed. 2"d 271 (1981); *Rosewell v. LaSalle National Bank,* 450 U.S. 503, 101 S. Ct. 1221, 67 L. Ed.2d 464 (1981). The district court dismissed the case based on the Comity Doctrine, the Eleventh Circuit affirmed, and the United States Supreme Court denied certiorari. *Homewood Village, LLC v. Unified Government of Athens-Clarke County,* CAFN 3:15-cv-00023, Order (M.D. Ga., Apr. 1, 2016), *aff'd* 677 Fed. Appx. 623 (11th Cir., 2017), *cent. denied,* 138 S. Ct. 88 (2017). After the federal courts' dismissal of the Plaintiffs' case based on comity the Plaintiffs filed the instant case.

The claims alleged in the Complaint and Counterclaims are based only on federal constitutional provisions, specifically the Due Process Clause, the Equal Protection

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[1] As a result of the various actions filed, in some of which, the lead party was called Homewood, the Court refers to the Georgia Supreme Court case as *Homewood I*.

Clause, and the Takings Clause. The only citations in the Complaint to the Georgia Constitution are Ga. Const. of 1983, Art. VII, Sec. I, Par. III and Art. VII, Sec. II, Par. I, which address ad valorem taxation and not fees, tolls or charges such as those charged by the stormwater utility. During summary judgment briefing Plaintiffs raised state constitutional claims and asserted that A-CC lacked the authority to impose the challenged fees. Although the latter claims were not alleged in the Complaint, the Court addresses those as well.

FINDINGS OF FACT

Under the Congressional mandate of the Clean Water Act, the U.S. Environmental Protection Agency (EPA) regulates nonpoint source (NPS) pollution, including stormwater runoff. *Complaint* ¶¶ *13-15.* NPS pollutants can have harmful effects on drinking water supplies, recreation, fisheries and wildlife. *Complaint* ¶ *19.* The U.S. EPA established the Municipal Separate Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit System. The MS4 stormwater discharge permit requires local governments to minimize pollutants in stormwater runoff to the "maximum extent practicable." *Complaint* ¶¶ *20-21.*

A-CC was required to obtain a NPDES permit for NPS pollution discharged into open waterways. *Complaint* ¶ *22.* In March 2003, the federal government imposed upon A-CC a requirement to meet certain guidelines in the management of stormwater. *Complaint* ¶ *25.* From approximately 1992 to 2005, A-CC funded its stormwater management activities from its general revenue funds, i.e., property tax proceeds. *Complaint* ¶ *26.* In 2003, because of increasing costs of the increasing regulations, A-CC

began to investigate establishing a Stormwater Utility with a "user fee" designed and intended to fund "the existing and future stormwater management needs of Athens-Clarke County." *Complaint ¶¶ 27-28; Raessler Depo., pp. 19-20.*

In June 2004, A-CC enacted a Stormwater Management Ordinance found in its Code of Ordinances at Chapter 5-4, et seq. (as amended), that regulates stormwater in A-CC. *Complaint, Exh. A.* In December 2004, A-CC adopted a Stormwater Utility Ordinance, which established a funding formula, a fee structure and an enterprise fund to pay for the Stormwater Management activities performed by A-CC. *Complaint, Exh. B.* The formula is designed and intended to cover the cost of the A-CC Stormwater Master Plan, including anticipated and unanticipated future capital needs. *Complaint ¶¶ 33, 34, 39; Raessler Depo., pp. 17-19, 71-74; Caldwell Depo., pp. 43-45.*

The fee consists of a three-tier structure. A "base charge," is imposed on all non-exempt, developed property based on and intended to cover the annual administrative and management costs of the stormwater utility. A-CC Ord. 5-5-3; A-CC Ord. 5-5-8 (d) (1) & (e) *(Complaint, Exh. A); Complaint ¶¶ 41-42.* A second charge, the "quantity charge," is imposed on all developed property in A-CC based on the impervious area and/or other factors such as land use that A-CC has legislatively determined are necessary to manage and/or mitigate the effect of the volume and rate of stormwater runoff. 5-5-3 (a); A-CC Ord. 5-5-8 (d) (2) & (e). *Complaint ¶ 43.* A third charge, the "quality charge," may be imposed on all non-exempt developed property to reflect the amount of services provided by A-CC to treat or compensate for the difference in pollutants from properties with different land use.

A-CC Ord. 5-5-3; A-CC Ord. 5-5-8 (d) (3) & (e). *Complaint* ¶ *44.*

The A-CC ordinance imposing the stormwater charge states that the "purpose of this [charge] is to protect, maintain and enhance the public health, safety, environment and general welfare" of the residents of the County. *A-CC Ord. 5-4-1; Complaint* ¶ *32.* The A-CC ordinance provides that the revenues generated from the charge will be used for five main purposes: "(a) Transfer, control, conveyance or movement of stormwater runoff through A-CC; (b) Maintenance, repair and replacement of existing stormwater management systems and facilities; (c) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs; (d) Regulation of the use of stormwater management services, systems and facilities; and (e) Education of the public as to stormwater issues. A-CC Ord. 5-5-3." *Complaint* ¶ *53.*

The A-CC Stormwater Utility and the charges assessed are designed specifically to generate revenue to pay for governmental projects for flood prevention, addressing water pollution and compliance with federal law. *Complaint* ¶ *55.* Funds not expended in the year calculated and collected are placed in a capital reserve to address major needs that arise such as repair, construction and replacement of systems and facilities. *Complaint* ¶ *34(j); Raessler Depo., pp. 17-19, 35-36, 71-74,* Even during discovery in this matter, there were major infrastructure failures, often involving the danger of road collapse. *Raessler Depo., pp. 72-73.* A critical aspect of the utility funding the costs by a fee, rather than attempting to use general resources from the property taxes is that the substantial amount

of tax-exempt property in A-CC (e.g., the Board of Regents, federal government, school board and even many A-CC properties) all pay their fair share of the expense. Especially for a place like A-CC, it is a much fairer system. *https://www.accgov.com/1862/Storm water-Utility-Fee*[2] Plaintiffs offered no evidence to contest this critical fact.

The unpaid service charges do not constitute a direct lien against the property. *A-CC Ordinance 5-5-12(b)(1).* A-CC files collection actions against owners who fail to pay, and like any other judgment, a judgment for an unpaid charge could become a lien on the property. *A-CC Ordinance 5-5-12(b)(1); Complaint ¶ 59.*

Culled to their essence, Plaintiffs' claims arise from opposition to the fact that A-CC made two important legislative determinations: I) that all developed property contributes to the storm water issues that A-CC is mandated by the federal government to address; and 2) all developed property obtains a benefit, at least an intangible and indirect benefit, from the fact that A-CC operates the utility to address present and future needs resulting from the concentration of

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[2] As that page explains:

> Some of the largest contributors to stormwater runoff, including schools, churches, and government buildings, are tax-exempt and would not pay their share through property taxes. Through the utility, these property owners pay a stormwater utility fee just as they pay for their water and sewer utility fees. The establishment of a stormwater utility ensures that everyone pays their fair share for the safe management of stormwater and sound protection of water quality in Athens-Clarke County.

developed property in the center of Athens-Clarke County.

In Homewood Village's previous challenge to the ordinance and utility, A-CC submitted a Motion for Summary Judgment, along with various affidavits filed in support thereof. None of the discovery in this case has undermined or negated the operative facts established in those previous submissions. Those previous submissions established the bases and justifications for the utility and funding mechanism.[3]

The federal government legislatively determined to improve water quality issues caused by non-point sources and established regulations to meet those legislative requirements. Local governments such as A-CC were given substantial unfunded mandates to address those requirements. Unified Government of Athens—Clarke County v. Homewood Village, Super. Ct. CAFN SU-10-CV-1851 *Response in Opposition to Defendants Motion for Summary Judgment, Exhibit A (Giese Order), page 3 (Dec. 9, 2011) [Appx. 2, Exh. A to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-A-005].* A-CC initially paid these expenses from general revenues generated by property taxes. *Complaint ¶ 26.* After the Georgia Supreme Court approved storm

[3] Certified copies of some of those summary judgment pleadings and affidavits submitted to the Clarke County Superior Court in SU-10-CV-1851 were filed in the federal action and those documents have been filed in this matter. This court may take judicial notice of the existence of documents filed in related judicial proceedings and matters filed in this Court. For purposes of this record, however, A-CC filed them in his action as well. Relevant portions of these documents cited were attached as Appendix 2 to A-CC's Brief in Support of its Motion for Summary Judgment. A Bates number at the bottom of each page is referenced in this Order.

water utilities in 2004, A-CC adopted a utility and after significant study made its own legislative determinations as to how that utility would be funded. *Spratlin Affidavit, Exh. 6 [Appx. 2, Exh. C to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-C-069ff].* A-CC diligently considered multiple funding mechanisms before legislatively choosing the revenue-raising fee structure ultimately adopted by A-CC's Mayor and Commission. *Clark Affidavit, Exh. 2, Part 1, pp. 4-1 thru 5-17 [Appx. 2, Exh. B to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-B-029 to -054]; Spratlin Affidavit, Exh. 6 [Appx. 2, Exh. C to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-C-069 ff, esp. Bates ACC-C-075, -077, -080, -086, -090, -091].*

The documents included a report by A-CC's consultant, Earth Tech, establishing that all developed property, by simply being developed, contributes to stormwater issues that must be addressed. *Clark Affidavit, Exh. 2, Part 1, pp. 1-2, 5-1, 5-2, 4-3, Fig. 4-1 [Appx. 2, Exh. B to ACC's Brief in Support ofA-CC's MSJ, Bates ACC-B-014, -034, -035, -031, -032].* Furthermore, there are aspects of the compliance program that are county wide, but from which all developed property owners' benefit, albeit in an indirect and intangible way. *Clark Affidavit, Exh. 2, Part 1, pp. 5-14, 3-1 [Appx. 2, Exh. B to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-B-051, - 020]; Raessler Depo., pp. 50-51.*

One of Plaintiffs' primary arguments revolves around the fact that roads and sidewalks, although impervious, are not charged a fee. The documentation establishes A-CC considered how to handle stormwater on roads and bridges. *Clark Affidavit, Exh. 4 [Appx. 2, Exh. B to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-B-059 ff]; Clark Affidavit, Exh. 2, Part 1, pp. 5-13,*

2-1, 3-4, 3-5 [Appx. 2, Exh. B to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-B-050, -017, -024, -025]. The referenced pages reference roads and rights-of way and those structures use for handling stormwater. Those roads and bridges, of course, in addition to their stormwater functions, also bring tenants and customers to Plaintiffs' properties. *Raessler Depo., pp. 78-79.*

These documents [4]demonstrate a few crucial facts. Plaintiffs do have the opportunity under State law to contest issues related to the stormwater utility. The documents also establish that A-CC had a rational, reasonable basis for legislatively adopting the utility and its chosen funding mechanism.[5] Other relevant facts are set forth in the Conclusions of Law below.

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[4] The documents included an Order from a hearing officer considering and rejecting the party's Due Process claim, showing that parties do have a forum in which to raise the types of challenges raised by Plaintiffs in this matter. *Response in Opposition to Defendant's Motion for Summary Judgment, Exh. A (Giese Order), pp. 5-8 [Appx. 2, Exh. A to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-A-007 to -010].*

[5] Plaintiffs rely heavily on the affidavit of one of their experts, Charles B. Wilson, for significant portions of their motion. They cite him some 31 times in their Proposed Order. A-CC's expert, Hector Cyre, has extensive criticisms of Wilson's expertise and work history which were primarily in dams and sedimentation *(Gyre Affidavit, pp. 25).* Cyre also had significant criticisms of Wilson's opinions, especially with regard to Plaintiffs' contentions regarding credits *(Cyre Affidavit, pp. 25-29),* whether roads or existing infrastructure can be considered part of a stormwater management system *(Cyre Affidavit, pp.* 29-30) and the alleged need to allocate the fees and services among the 18 different watersheds in Athens-Clarke County. *(Cyre Affidavit, pp. 31-32).* Fundamentally, Cyre points out that Wilson demonstrates no experience with local government stormwater management systems. Cyre also criticizes the work of Plaintiffs' experts Alan Perry *(Cyre Affidavit, pp. 35-41),* and Nancy O'Hare. *(Cyre*

Plaintiffs' Complaint in SU17CV1134 alleges five counts. Count I is a § 1983 claim alleging violations of the federal Due Process and Equal Protection Clauses; Count II is a § 1983 claim alleging violations of the federal Takings Clause; Count III seeks Declaratory Judgment that the utility fee is unconstitutional and may not be collected from Plaintiffs; Count IV alleges a violation of federal Due Process because renewal of a liquor license was withheld from Plaintiff Bonet because of nonpayment of the utility fees; and Count V seeks an overruling of the Georgia Supreme Court's decisions in *Homewood I* and *McLeod*. Homewood Associates, Defendant in SU16CV845, alleges a two-count counterclaim: Count I is largely identical to the Due Process and Equal Protection Claims in Count I of the Complaint in SU17CV1134 and Count II seeks injunctive and declaratory relief from collection of an illegal tax and the overruling of *Homewood I* and *McLeod,* similar to Counts III and V of the Complaint in SU17CV1134.

Affidavit, pp. 32-34). Based on the briefing initially submitted, the parties informed the Court that consideration of Plaintiffs' challenge to Cyre's opinions would not be necessary to decide the motions for summary judgment. After the initial oral argument was suspended, A-CC informed the Court that it would be relying on Cyre's opinions, presumably because Plaintiffs raised arguments at oral argument not clearly articulated in their briefs. While the Court does not rely on Cyre's opinions in granting A-CC's motion for summary judgment, it cannot ignore this record evidence in considering Plaintiffs motion for partial summary judgment, especially since A-CC informed the Court and the Plaintiffs of the need.

SUMMARY OF THE PARTIES ARGUMENTS

A. A-CC's Claims

A-CC claims that its stormwater ordinance has been upheld by the Supreme Court of Georgia and meets all the statutory, United States and Georgia constitutional requirements for the imposition of the stormwater fees upon the Plaintiffs' properties. *Homewood I; McLeod*. A-CC also argues that the legal criteria for evaluating Plaintiffs' constitutional claims requires the Court dismiss those claims.

B. Plaintiffs' Claims

Plaintiffs counter A-CC's reliance on the binding Georgia Supreme Court authority, arguing that the facts of record in this case are substantially different from those in *Homewood I* and *McLeod*. Plaintiffs argue that except for Homewood Village none of them have had their day in court to challenge the ordinance and thus are not bound by the previous decisions.

Plaintiffs' claims fall into two general categories. First, Plaintiffs claim A-CC does not have the legal authority to impose any service or user fee even upon developed properties for any activity other than to "provide the following services: ... (6) Storm water ... collection and disposal systems," authorized by the Georgia Constitution. See *Ga. Cong. Art. 1X § 2, ¶ III(a)(6)*. Second, the Plaintiffs make an as-applied claim that A-CC's Ordinance imposing stormwater fees on their particular properties is an unconstitutional denial of due process and equal protection, and amounts to a taking in violation of the Fourteenth and Fifth Amendments to the United States Constitution and similar provisions under the Georgia Constitution. *See Ga. Const. Art. I, § I, Para. I & II*. Plaintiffs also contend that *McLeod* and *Homewood I* created an

unconstitutional irrebuttable presumption that the A-CC stormwater fee is voluntary, that Plaintiffs can obtain a credit against their stormwater fee, that A-CC provides a special benefit to Plaintiffs' properties for which the stormwater fee is imposed, and that the stormwater fee is a fair approximation of the cost to A-CC of providing a special benefit. Plaintiffs assert that the alleged rebuttable presumption violates the due process clause of the Fourteenth Amendment to the United States Constitution and provisions of the Georgia Constitution. *Ga. Const. Art. I, § I, Para. I & II.*

CONCLUSIONS OF LAW

A. A-CC Has Ample Authority to Create a Storm Water Utility and Charge a Fee.

1. A-CC is authorized to take all actions necessary and proper to comply with federal mandates for managing stormwater.

Plaintiffs claim that A-CC does not have legal authority under state law for all of the activities for which it charges the stormwater fee. Plaintiffs first argue that, while the authority for A-CC's Stormwater user fee is found in the Georgia Constitution, *Ga. Const. Art.* a § *2,* ¶ *III(a)(6),* that provision does not authorize a user fee, nor does it authorize "services" other than for "collection and disposal systems." *Id.* As set forth below, when government is authorized to perform an act, the government (especially a county) have the powers necessary and proper to actually perform the action, including funding those activities. The cited constitutional provision, the Supplementary Powers Clause, does not state anything with regard to funding the exercise of any of the various powers

authorized. *See McLeod,* 278 Ga. at 242-43, 599 S.E.2d 152, 153-54.

Pointing to a provision in Georgia's Revenue Bond law, O.C.G.A. § 36-82-62, Plaintiffs argue that only the physical infrastructure may be funded. The Supreme Court in *McLeod* actually cited this statute in reasoning that a stormwater utility and the associated fees were a legitimate, governmental function and a service for which the local government can charge fees. *Id.*

The Supreme Court noted, specifically, that a local government's "power to collect fees or charges from undertakings are 'clearly independent of power to issue revenue bonds.'" *Id.* The Supreme Court held that "pursuant to the Home Rule section of the Georgia Constitution and general statutory law, the county was authorized to establish the stormwater utility and impose a utility charge for the stormwater management services." *Id.* In other words, the fee may be used for the general provision of "stormwater management services" and those legitimately include things other than the physical structures under the authority of *McLeod.*

In addition to the Supreme Court's analysis in *McLeod* of the independent power to establish a utility and impose fees, the A-CC Charter as well as the statute relied upon in *McLeod,* both contain what is commonly referred to as a "necessary and proper clause." While Plaintiffs attempted to limit A-CC to relying upon O.C.G.A. § 36-82-62(a)(3), another subsection provides that in performing an undertaking, the government may "make all contracts, execute other instruments and do all things necessary or convenient in the exercise" of what is otherwise a proper governmental power. O.C.G.A. § 36-82-62(a)(6)

(emphasis supplied). Moreover, The A-CC Charter actually has multiple necessary and proper provisions. Section 1-104, "Powers of the unified government" authorizes, among other powers, the following:

> (c) In addition to the foregoing, the unified government shall have all rights, powers, duties, privileges and authority herein conferred or herein enlarged, and such other rights, powers, duties, privileges and authority as may be necessary and proper for carrying the same into execution, and also all rights, powers, duties, privileges and authority, whether express or implied, that may be now vested in or hereafter granted to counties or municipal corporations, or both, by the Constitution and laws of the State of Georgia, including the powers vested in the unified government by this Charter.
>
> (d) The unified government, in addition to the rights, duties, powers, privileges and authority expressly conferred upon it by this Charter, shall have the right, duty, power, privilege and authority to exercise and enjoy all other powers, duties, functions, rights, privileges, and immunities necessary and proper to promote or protect the safety, health, peace, security and general welfare of said government and its inhabitants and to exercise all implied powers necessary to carry into execution all powers granted in this Charter as fully and completely as if such powers were fully enumerated herein and to do and perform all of the acts pertaining to its property, affairs and local government which are necessary or proper in the legitimate

> exercise of its corporate powers and governmental duties and functions.

Section 2-105, "Powers of the commission," among other powers, grants the following:

> (c) In the exercise of its powers, the commission shall adopt and provide for the execution of such ordinances, resolutions, rules and regulations, not inconsistent with this Charter, as may be necessary or proper for the purpose of carrying into effect the powers conferred by this Charter and for the promotion and protection of the safety, health, peace, security and general welfare of the inhabitants of the unified government and may enforce such ordinances, resolutions, rules and regulations by imposing penalties for violations thereof, as prescribed by ordinance, by a fine not exceeding $1,000.00, or by imprisonment for a period not exceeding six (6) months, or both.

These A-CC Charter provisions, as well as general law, provide A-CC with more than sufficient authority, in light of the federal mandates, to adopt and implement the utility, including the user fees, in the manner in which it has. The Georgia Supreme Court has so held in similar cases spanning over 100 years. *See Mayor & Aldermen of City of Milledgeville v. Green,* 221 Ga. 498, 501, 145 S.E.2d 507, 509-10 (1965) (necessary and proper clause in city charter provides authority to impose garbage collection fee); *Hall v. Mayor & Council of Calhoun,* 140 Ga. 611, 79 S.E. 533, 533-34 (1913) (necessary and proper clause in charter allows city to go outside boundaries to obtain water for water system); *Massey v. City of Columbus,* 9 Ga. App. 9, 70 S.E. 263, 264-65 (1911) (necessary and proper

clause in charter gives city power to regulate and impose inspection fees in public market); *also Ledbetter Bros., Inc. v. Floyd Cnty.,* 237 Ga. 22, 23, 226 S.E.2d 730, 731 (1976) ("The trial court was authorized to find that the counties have implied authority to develop facilities for the production of asphalt for use in the county road systems."); *Lancaster v. Effingham Cnty.,* 273 Ga. App. 544, 545, 615 S.E.2d 777, 779 (2005) ("A county has broad discretion in determining the manner and extent to which it will acquire property for its use, and county actions taken in good faith will not be disturbed by the courts.") (citing *Threatt v. Fulton County,* 266 Ga. 466, 471(6), 467 S.E.2d 546 (1996); *Ledbetter Bros., Inc. v. Floyd County,* 237 Ga. 22, 23-24(2), (3), 226 S.E.2d 730 (1976); *Miles v. Brown,* 223 Ga. 557, 558, 156 S.E.2d 898 (1967).

As required by the Clean Water Act and the MS4 regulations, and as allowed by *McLeod* and *Homewood I,* A-CC is empowered to do all things necessary and convenient to the proper and complete provision of stormwater management services. That power includes providing public outreach, education, cleanup, and a website to inform the public. There is authority under the law to do these things, and the collection of the user fee to pay for them is not illegal. A-CC's exercise of the authority does not violate federal law. The Court DENIES Plaintiffs' motion for partial summary judgment to the extent it contends A-CC was not authorized to create the utility and impose the fees.

2. A-CC's collection procedures are lawful.

Plaintiffs raised a new argument at oral argument and in their proposed order regarding the collection of delinquent stormwater fees and whether a conflict existed among the A-CC Ordinance provision on

"Delinquencies and collections," the A-CC Charter and state law. The Court concludes no conflict exists.

The Ordinances provides for collections of unpaid fees as follows:

> (b) Delinquencies and collections.
>
> (1) Unpaid stormwater service fees shall be collected by filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment. In no instance shall the unpaid service charge constitute a direct lien against the property.

A-CC Ordinance § 5-5-12 (b). The A-CC Charter, states as follows:

> The collection of delinquent taxes and fees shall be as provided in state law for the collection of delinquent property taxes by counties.

Athens-Clarke County, Georgia, Charter, Art. VII., Ch. 1, § 7-102. - Collection of delinquent taxes and fees. Another provision in A-CC's Charter reads as follows:

> Section 8-106. - Execution of assessments.
>
> Whenever any tax or special assessment is authorized or empowered to be levied or imposed by this Charter which is required to be collected by the unified government and such is not paid within the time period specified by the commission and no specific provision is elsewhere provided in this Charter for its collection, then the manager

> shall issue execution in the name of the unified government against such person, firm or entity liable therefor or property subject thereto for such sums as may be due with interest at the legal rate from due date, and penalties and costs. The unified government shall have the right to enforce payment of such execution by levy and sale as in the case of county taxes, and the purchaser at such sale shall acquire the same title and rights as a purchaser at a sale for county taxes. Executions issued by the manager of Athens-Clarke County, Georgia, and the levy and sale thereunder shall be governed by general law.

In Georgia, delinquent property taxes create a direct lien on the property. O.C.G.A. § 482-56. That code section is entitled "Liens for taxes; priority of liens." That section addresses only taxes and not fees, and provides for liens and executions. The lien attachment, however, is not automatic, but "the lien provided for in this subsection shall attach to real property, an execution shall be filed with the clerk of superior court in the county where the real property is located." O.C.G.A. § 48-2-56(f). The A-CC Charter provides for those executions. Neither the A-CC Charter, nor the state statute provide for collections of unpaid fees. In fact, state law is silent on the collection of fees and thus A-CC provided for the filing of a suit in court rather than an execution in the clerk's office. As stated above, A-CC can take the steps necessary and proper to carry out its lawful functions. Providing by ordinance for the collections of unpaid fees when state law is silent falls squarely within that authorization. The Court DENIES Plaintiffs' motion for partial summary judgment to the extent it contends A-CC' collection procedures are unlawful.

B. Plaintiffs' Takings Claims in Count H of the Complaint in SU17CV1134 are Barred.

The federal Takings Clause claims are precluded by well-established principles of federal law. Federal courts do not recognize Takings claims when a person is merely required to pay money, but the government has not actually seized a bank account or other property. Justice Kennedy's controlling concurring opinion in *Eastern Enterprises v. Apfel,* 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed.2d 451 (1998), coupled with the views expressed by four other Justices, establish that the Fifth Amendment's Takings Clause is not triggered by a simple obligation imposed upon a person to pay a monetary sum from unidentified assets. The Eleventh Circuit Court of Appeals adheres to this rule. *Swisher Intl, Inc. v. Schafer,* 550 F.3d 1046 (11th Cir. 2008).

In *Swisher International,* the Eleventh Circuit rejected a Takings claim similar to the one alleged by Plaintiffs, holding that "the takings analysis is not an appropriate vehicle to challenge the power ... to impose a mere monetary obligation without regard to an identifiable property interest." 550 F.3d at 1056. Put another way, "the Takings Clause does not apply where there is a mere general liability (i.e., no separately identifiable fund of money) and where the challenge seeks to invalidate the [basis of the obligation] rather than merely seeking compensation for an otherwise proper taking." 550 F.3d at 1057 (citing *Eastern Enterprises,* 524 U.S. at 539-47, 118 S. Ct. at 2154-58 (Kennedy, J., concurring in the judgment and dissenting in part); *Id.* at 554-56, 118 S. Ct. 2161-63 (Breyer, J., joined by Stevens, J., Souter, J., and Ginsburg, J., dissenting)).

Here, as in *Swisher International,* the fees attacked by Plaintiffs constitute "a mere general liability," and Plaintiffs "seek[] to invalidate the [ordinance as applied to them] rather than merely seeking compensation for an otherwise proper taking." *Id.; see also McCarthy v. City of Cleveland,* 626 F.3d 280, 284-85 (6th Cir. 2010) (noting that "all circuits to address the issue" have rejected a Takings claim in these circumstances and citing cases from the First, Second, Third, Fourth, Eleventh, D.C., and Federal Circuits). The "proper taking" referenced by the Eleventh Circuit in the quoted portion is the proper adoption of the statute (or ordinance) that imposes the monetary obligation. *Swisher International,* 550 F.3d at 1056.

Plaintiffs allege A-CC's ordinances require them to pay an invalid tax (or fee), and thus, the demand to pay is a taking. *Complaint,* ¶¶ *120, 122.* The ordinances that are the source of Plaintiffs' takings claims, however, impose on Plaintiffs nothing more than a general obligation to pay money from an unidentified source of funds. Five Justices of the United States Supreme Court and all federal appellate courts to have considered the issue, including the Eleventh Circuit, have rejected a Takings Clause challenge to that kind of government action.

Just before oral argument, Plaintiffs filed a supplement brief bringing to the Court's attention the United States Supreme Court's decision in *Sheetz v. County of El Dorado, California,* 601 U.S. 267, 144 S. Ct. 893 (2024). That case, however, involved a development permit fee required to develop property. The Supreme Court held that the takings analysis of *Nollan v. California Coastal Comm'n,* 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed.2d 677 (1987), and *Dolan v. City of Tigard,* 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed.2d

304 (1994) applied to the monetary exactions in such circumstances. The Supreme Court in another case involving the *Nollan*/*Dolan* analysis has flatly stated that exactions analysis does not apply to taxes or fees.

> It is beyond dispute that "[t]axes and user fees ... are not 'takings.'"_Brown *[v. Legal Foundation of Wash.,* 538 U.S. 216], 243, n. 2, 123 S. Ct. 1406, 155 L. Ed.2d 376 (2003) (SCALIA, J., dissenting). We said as much in *County of Mobile v. Kimball,* 102 U.S. 691, 703, 26 L. Ed. 238 (1881), and our cases have been clear on that point ever since. *United States v. Sperry Corp.,* 493 U.S. 52, 62, n. 9, 110 S. Ct. 387, 107 L. Ed.2d 290 (1989); see *A. Magnano Co. v. Hamilton,* 292 U.S. 40, 44, 54 S. Ct. 599, 78 L. Ed. 1109 (1934); *Dane v. Jackson,* 256 U.S. 589, 599, 41 S. Ct. 566, 65 L. Ed. 1107 (1921); *Henderson Bridge Co. v. Henderson City,* 173 U.S. 592, 614-615, 19 S. Ct. 553, 43 L. Ed. 823 (1899). This case, therefore, does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners.

Koontz v. St. Johns River Water Mgmt. Dist., 133 S. Ct. 2586, 2600-01, 186 L. Ed. 2d 697 (2013). *Koontz* also involved a monetary exaction in the context of a land use permit application. The Court held that the takings analysis of *Nollan* and *Dolan,* applied in such circumstances. The Court, however, in the portion quoted above held that taxes and user fees were not subject to that takings analysis. *Sheetz* has no application under the circumstances presented by this case. Plaintiffs' takings claims are foreclosed by the Supreme Court's controlling holding in *Apfel* and the

decision in *Koontz*. The Court DENIES Plaintiffs' motion for partial summary judgment and GRANTS A-CC's motion for summary judgment on Plaintiffs' Takings claims.

C. The Equal Protection Claims Alleged in Count I of the Complaint and Count I of the Counterclaim Fail as a Matter of Law.

Plaintiffs, including Homewood Associates as the counter claimant in SU16CV845, have made two equal protection claims.[6] One claim is that the manner in which the Georgia Supreme Court has analyzed stormwater fees is different than the analysis of other types of fees, and the difference is irrational, arbitrary and capricious. *Complaint,* ¶¶ *109-113.* Plaintiffs argue that they, as a class, are charged with stormwater user fees inappropriately and posit another class of others who are charged for other government services through other types of user fees, the legality of which is allegedly analyzed differently. Plaintiffs then claim

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[6] Plaintiffs' equal protection claims in this regard fail in the first instance because of the manner in which it is articulated. The gravamen of an equal protection claim is that there are similarly-situated properties that are treated differently for no rational reason, or in other words, irrational disparate treatment. The Plaintiffs all have privately owned developed property with no public uses but with impervious surfaces that contain no stormwater facilities that qualify for credits or exemptions. Notably, even A-CC pays fees into the utility. Plaintiffs have not identified any similarly-situated property owners that are not required to pay the fees or are otherwise treated more favorably. Without such foundational evidence of disparate treatment, no equal protection claim exists. *Maverick Enterprises, LLC v. Frings,* 456 Fed. Appx. 870, 872 (11th Cir. 2012); *Campbell v. Rainbow City, Ala.* ₐ 434 F.3d 1306, 1314 (11th Cir. 2006); *E & T Realty v. Strickland,* 830 F.2d 1107, 1109 (11th Cir. 1987); *Strickland v. Alderman,* 74 F.3d 260, 264-265 (11th Cir. 1996).

there is no rational basis for a difference in legal analysis of the different types of user fees. Plaintiffs offer no authority for such a claim and *McLeod* holds to the contrary.

Simply by virtue of the fact that the fees are different, that the services for which the fees are charged are different, and the basis upon which the charges are determined are different, defeats the contention that the Plaintiffs on the one hand and payors of other fees on the other, are similarly situated.

Plaintiffs criticize the Georgia Supreme Court for its analysis of stormwater user fees in the *McLeod* and *Homewood* cases. The Georgia Supreme Court, however, simply analyzed user fees charged for a stormwater management system in the particular factual context for the type of services needed to respond to the federal regulations that create the requirement for such fees. That Court held that the benefits of the services for which the fees are charged can be indirect and intangible. The Georgia Supreme Court distinguished its analysis in *Homewood* and *McLeod* in deciding another challenge to another type of fee. *See Bellsouth Telecomm., LLC v. Cobb County,* 305 Ga. 144, 146-147, n. 8, 824 S.E.2d 233, 236-37, n. 8 (2019). There the Supreme Court held that, in the context of stormwater fees, the payors received a "special benefit" but held that such "benefits may be indirect or immeasurable." *Mcleod,* 278 Ga. at 244, 599 S.E.2d at 155. The Supreme Court relied upon the holding in upholding the A-CC ordinance. *Homewood I,* 292 Ga. at 515, 739 S.E.2d at 318. That Court, in *McLeod* and *Homewood* analyzed the specific issues of stormwater fees, and concluded in *Bellsouth* that the application of a different legal analysis to other types of fees was

appropriate. This simply does not implicate Equal Protection concerns.

The Court is cognizant that, following *McLeod,* many local jurisdictions in Georgia, like A-CC, adopted stormwater utilities and fee structures based upon the principles in the Columbia County ordinance upheld by the Georgia Supreme Court. The claims asserted by Plaintiffs seek to upend all of these ordinances. All a local government must establish is that there is a rational basis for the legislative determinations made and that those determinations are not completely arbitrary. Plaintiffs have not established how the legislative determinations made by A-CC were arbitrary or irrational.

In the pleadings, Plaintiffs allege another equal protection claim: "that there is no rational basis for developed property owners to be charged this stormwater fee when all other property owners... and non-fee-paying members of the general public benefit equally or more ..." *Complaint ¶ 108.* A-CC contends that *McLeod* forecloses any equal protection claim. To the extent there is any separation between state and federal equal protection, however, Plaintiffs cannot sustain an equal protection claim.

The United States Supreme Court has long held that "a classification neither involving fundamental rights nor proceeding along suspect lines ... cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Armour v. City of Indianapolis, Ind,* 566 U.S. 673, 680, 132 S. Ct. 2073, 2080, 182 L. Ed. 2d 998 (2012) (citing *Heller v. Doe,* 509 U.S. 312, 319-320, 113 S. Ct. 2637, 125 L. Ed.2d 257 (1993); *Gulf C. & S.F.R. Co. v. Ellis,* 165 U.S. 150, 155, 165-166, 17 S. Ct. 255, 41

L. Ed. 666 (1897). "Rational basis review requires deference to reasonable underlying legislative judgments." *Armour, supra.* (citations omitted). The Supreme Court has "repeatedly pointed out that '[l]egislatures have especially broad latitude in creating classifications and distinctions in tax statutes.' *Id.* (citing *Regan v. Taxation With Representation of Wash.,* 461 U.S. 540, 547, 103 S. Ct. 1997, 76 L. Ed.2d 129 (1983); *Fitzgerald v. Racing Assn. of Central Iowa,* 539 U.S. 103, 107-108, 123 S. Ct. 2156, 156 L. Ed.2d 97 (2003); *Nordlinger v. Hahn,* 505 U.S. 1, 11, 112 S. Ct. 2326, 120 L. Ed.2d 1 (1992); *Lehnhausen v. Lake Shore Auto Parts Co.,* 410 U.S. 356, 359, 93 S. Ct. 1001, 35 L. Ed.2d 351 (1973); *Madden v. Kentucky,* 309 U.S. 83, 87-88, 60 S. Ct. 406, 84 L. Ed. 590 (1940); *Citizens' Telephone Co. of Grand Rapids v. Fuller,* 229 U.S. 322, 329, 33 S. Ct. 833, 57 L. Ed. 1206 (1913)). This principle applies broadly to all revenue-generating rules. *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.,* 825 F.2d 367, 373 (11th Cir. 1987) ("Revenue raising is undoubtedly a legitimate and substantial governmental objective.").

When the challenged classification (1) involves neither a "fundamental right" nor a "suspect" classification; (2) has as its subject matter something local, economic, social, or commercial; and (3) does not discriminate against out-of-state commerce or new residents, it falls squarely within rational basis review. *Armour v. City of Indianapolis, Ind,* 566 U.S at, 681, 132 S. Ct. at 2080 Under this standard of review, the distinction is constitutional "if 'there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the

distinction arbitrary or irrational.' *Id.* (citing *Nordlinger, supra,* at 11, 112 S. Ct. 2326).

Furthermore, under this standard of review, the challengers bear the burden to negate "every conceivable basis which might support it." *Id.* at 2082 (citing *Madden,* 309 U.S., at 88, 60 S. Ct. 406; *Heller,* 509 U.S., at 320, 113 S. Ct. 2637; *Lehnhausen,* 410 U.S., at 364, 93 S. Ct. 1001; *Allied Stores of Ohio, Inc. v. Bowers,* 358 U.S. 522, 530, 79 S. Ct. 437, 3 L. Ed.2d 480 (1959). The rational relationship need not be one the legislative body even articulated. *Id.* (citing *Nordlinger,* 505 U.S., at 15, 112 S. Ct. 2326; *Fitzgerald,* 539 U.S., at 108, 123 S. Ct. 2156); *see also Id.* (citing *Allied Stores of Ohio, Inc.,* 358 U.S. at 530, 79 S. Ct. 437 and noting Court upheld state tax classification resting "upon a state of facts that reasonably can be conceived" as creating a rational distinction).

Given these principles of law, the Plaintiffs cannot sustain an equal protection attack on the stormwater user fees. The United States Supreme Court in *Armour* upheld the distinction there based merely upon "administrative considerations." The charges complained of in this case are based upon six or seven categories of possible land use. *Complaint* 7 *31-50;* Ordinance § 5-5-2, Findings. A-CC clearly could have instituted the current structure in order to minimize administrative cost and complexity. In fact, A-CC did so, according to former director Raessler. *Raessler Depo., pp.61, 69, 75, 208-09; Stevenson 2019 Depo., pp. 69:17 — 70:22.* A-CC could rationally determine that all developed property, because those properties do not absorb stormwater as when in their natural undeveloped state, should contribute to A-CC maintaining and sustaining its permit. The documents from the previous case submitted into this record establish that fact. *Earth*

Tech p. 1-2 [Appx. 2, Exh. B to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-B-014].

Plaintiffs argue that the ordinance creates an "irrebuttable presumption" that all developed properties contribute to stormwater discharge and thus all benefit from the utility. The ordinance actually states:

> The base charge is established in recognition of the fact that all properties in Athens-Clarke County receive services from the stormwater management activities provided by Athens-Clarke County and that all developed property contributes to the stormwater discharge that Athens-Clarke County must manage. The base charge shall be charged to collect the administrative costs of the stormwater utility and may include capital, operating and maintenance costs of the stormwater utility which are not recovered by other means. The base charge is based on the ERU and is calculated using the formula identified below.

That statement is amply supported by the documents that justified the creation of the utility and fee structure. Urbanized development of property itself has created a need for stormwater management. This includes the fact that developed property, if nothing else, simply does not absorb, hold or slow stormwater as it did in its undeveloped state. *Roessler Depo., pp. 50-51, 20002.* This fact alone provides a rational basis for a legislative body to determine that all developed properties contribute to the issues and thus may be required to help pay for the costs of management. Moreover, all these developed properties have employees and customers that use the roads, the

stormwater flowing from which must be managed. In addition, there are other county-wide activities required by the NPDES permit, A-CC's compliance with which provide intangible and indirect benefit to the developed commercial properties lying within the jurisdiction. *Roessler Depo., pp. 50-51.*[7] Thus, A-CC's Commission as a legislative body had a reasonable basis for inserting and relying upon the language quoted above.

Further, A-CC need not incur the expense and cost to confirm whether or not the properties at issue actually put water into its system. A-CC, in addition to apparent use of the land, did in fact articulate long-term needs and potential changes as well as the amount of impervious surface as other bases for the fee structure. *Complaint* ¶¶ *32, 34, 43-45.* There is clearly no basis to declare A-CC's distinctions to be irrational or arbitrary. Therefore, Plaintiffs equal protection challenge fails.

Such considerations are sufficient to survive the minimal equal protection scrutiny allowed. As the United States Supreme Court stated, the analysis looks to whether there "is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decision maker, and the relationship of the classifica-

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[7] On those pages, former Director Drew Raessler as a 30(b)(6) representative of A-CC testified as follows:

> So, by operating -- by being in compliance with the NPDES, there's benefit to every property within Athens-Clarke County. Specific to each property, by maintaining the safe and effective flow of stormwater, we're protecting property and access for developed property.

tion to its goal is not so attenuated as to render the distinction arbitrary or irrational.'" Armour, *supra.* The affidavits and attached documents previously filed demonstrate such a sufficient basis. When it comes to federally-mandated management of stormwater in a county in the Georgia Piedmont that contains a confluence of many rivers and streams, clearly the rational basis standard has been met. The Court need not and, as discussed below, cannot undermine the lengthy legislative process that led to the ordinance, utility and the associated fees. The Court DENIES Plaintiffs' motion for partial summary judgment and GRANTS A-CC's motion for summary judgment on Plaintiffs' Equal Protection claims.

D. Plaintiffs' Federal Due Process Claim in Count I of the Complaint and Count I of the Counterclaim is Barred.

Plaintiffs' due process claim is combined with the equal protection claim, and the conduct alleged to violate those rights overlap. As with the equal protection claims, A-CC contends *McLeod* forecloses any due process claim. To the extent there is any different analysis required by federal law, the Plaintiffs' claims are must be dismissed. Plaintiffs essentially allege they never requested nor do they receive service from the utility, that their properties do not benefit from such service, and they have no opportunity to challenge the fees.

If there are adequate state remedies of which a Plaintiff may avail itself to correct any alleged due process deficiencies, the Plaintiffs have no federal due process claim. *Cotton v. Jackson,* 216 F.3d 1328, 1330 (11th Cir. 2000); *McKinney v. Pate,* 20 F.3d 1550, 1557 (11th Cir. 1994) (en banc). In order to be adequate, the state procedure "need not provide all the relief

available under '1983 . . . [but] must be able to correct whatever deficiencies exist and to provide plaintiff with whatever process is due." The Eleventh Circuit has recognized that an opportunity to obtain review in the state courts[8] provides an adequate remedy. *Horton v. Bd. of Cnty. Commirs of Flagler Cnty.,* 202 F.3d 1297, 1302 (11th Cir. 2000). An opportunity to seek review of lower court decisions in the state appellate courts and ultimately review by the United States Supreme Court likewise constitute adequate legal remedies. *Sibley v. Lando,* 437 F.3d 1067, 1074 (11th Cir. 2005). The constitution only requires procedural due process, "and the [resulting] remedy need not be ideal." *Wells v. Columbus Technical Coll.,* 510 Fed. Appx. 893, 897 (11th Cir. 2013) *cert. denied.,* 134 S. Ct. 958, 187 L. Ed. 2d 814 (2014) (citing *Hudson v. Palmer,* 468 U.S. 517, 535, 104 S. Ct. 3194, 82 L. Ed.2d 393 (1984) (noting that the state remedy and the remedy under § 1983 do not have to be identical)). Loss on the merits does not equate to a denial of due process. *Davis v. Self,* 547 Fed. Appx. 927, 930-31 (11th Cir. 2013).

Even if the Plaintiffs fail to avail themselves of the process, it remains an adequate remedy, and federal claims are barred. *McKinney,* 20 F.3d at 1565; *Cotton,* 216 F.3d at 1331.

The Plaintiffs have the opportunity to litigate their claims in state court, and at least one has already done so up to the Georgia Supreme Court. They could seek certiorari in the United States Supreme Court. In this matter, they have had the full and abundantly fair use of the discovery mechanism, the opportunity to brief

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[8] This would include certiorari if the decision was judicial in nature or mandamus if the decision is administrative. O.C.G.A. § 5-4-1, et. seq.; O.C.G.A. § 9-6-20, et. seq.

their claims, and an opportunity to be heard at oral argument. Because the state court remains available and A-CC's ordinance does not foreclose such access, the government has provided all the due process required by federal law. Therefore, Plaintiffs' federal due process claims against Athens-Clarke County are barred as a matter of law. Id.[9]

Beyond this general lack of a federal procedural due process claim, Plaintiffs' due process argument appears to be primarily an assertion that they are foreclosed from contesting the factors that the Supreme Court has held make the stormwater utility charges a permissible fee rather than an unconstitutional tax. They contend that they are foreclosed from contesting those factors and that the record in this case contains evidence that those factors cannot be met as to their properties. The factors Plaintiffs put forth, however, are not those applied by the Georgia Supreme Court.

Plaintiffs cite a law review article for the elements of a valid user fee. The Court concludes, however, that the Georgia Supreme Court in *McLeod* has already

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[9] To the extent that Plaintiffs are alleging a substantive due process claim, that fails as well. No case located by the undersigned suggests, much less holds that being required to pay storm water fees violate a fundamental right. *See Reno v. Flores,* 507 U.S. 292, 303 (1993) (citation omitted); *Owensboro Waterworks Co. v. City of Owensboro,* 200 U.S. 38, 47 (1906); *Greenbriar Village v. Mountain Brook,* 345 F.3d 1258, 1262-63 (11th Cir. 2003. In addition, "[t]he Supreme Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended. The doctrine of judicial self-restraint requires the exercise the utmost care whenever we are asked to break new ground in this field." *Collins v. City of Harker Heights,* 503 U.S. 115, 125, 112 S. Ct. 1061, 1068, 117 L. Ed.2d 261 (1992).

provided the analytical framework that the Court must apply. Both *McLeod* and *Homewood I* provide the following framework:

> First, taxes are a means for the government to raise general revenue and usually [are] based on ability to pay (such as property or income) without regard to direct benefits which may inure to the payor or to the property taxed. Fees, on the other hand, "are intended to be and should be clearly described as a charge for a particular service provided." Second, fees should apply based on the contribution to the problem. Third, fee payers, unlike tax payers, should receive some benefit from the service for which they are paying, although the benefits may be indirect or immeasurable.

Homewood 1, 292 Ga. at 515, 739 S.E.2d at 318 (quoting *McLeod).* This framework first announced in *McLeod* was based upon a law journal article which cited both state and federal law in the section relied upon by the Georgia Supreme Court. *Mcleod,* 278 Ga. at 243, 244, 599 S.E.2d 152, 154, 155 (citing Avi Brisman, *Considerations in Establishing a Stormwater Utility,* 26 S. Ill. U. L.J. 505, 520-523(V)(C)(3) *& nn*. 87-112 (2002)). The user fees required by the A-CC Stormwater Utility are valid, have previously been upheld by the Supreme Court and Plaintiffs' arguments to the contrary are unavailing.

Notwithstanding, even if analyzed as Plaintiffs assert, Plaintiffs' claims fail.

First, Plaintiffs contend that the fee is not voluntary as to their properties, making several arguments. They contend that they never requested or accepted services

or any benefit from the utility; the fee is mandatory as to their property; and no credits are available to their properties.

Second, Plaintiffs contend there is no special benefit to their properties and any benefit from the utility and its expenditures inure equally to the general public. Plaintiffs focus specifically on the fact that expenditures allow A-CC to comply with its NPDES permit and that the use of the streets and roads benefit all who travel within A-CC.

Third Plaintiffs contend that, for many reasons, the fee is not a fair approximation of the cost of providing the services offered by the utility. The reasons offered are as follows: undeveloped properties are exempt, despite Plaintiffs' contention that they contribute to runoff; roads are exempt, although they contribute to runoff; no treatment is provided for runoff; riparian and certain University of Georgia properties can receive credits; the utility does not differentiate among the 18 drainage basins in A-CC; new construction and redevelopment are exempt; public sidewalks are exempt; the fees exceed expenses; and there is no measurement of "particular, direct or special benefit" to Plaintiffs' properties.

Finally, Plaintiffs contend that the Georgia Supreme Court's cases of *Homewood I* and *McLeod* create an illegal irrebuttable presumption of voluntariness and fair approximation. In fact, however, the United States Supreme Court has significantly retreated from its earlier cases invalidating irrebuttable presumptions, especially when protected status is not at issue. *Weinberger v. Salfi,* 422 U.S. 749, 772, 95 S. Ct. 2457, 45 L.Ed.2d 522 (1975). Notwithstanding, the Court addresses Plaintiffs' claims on the merits.

1. The Courts may not substitute their judgement for rational legislative determinations.

The Court notes that the Plaintiffs have not cited any authority that allows this Court to disregard the conclusions of *Homewood I* and *McLeod*. The cases cited by Plaintiffs in both their briefs and proposed order are inapposite to the facts of this case. In their briefs, Plaintiffs rely heavily on inapposite criminal cases for their arguments. *Manley v. Georgia,* 279 U.S. 1, 49 S. Ct. 215, 73 L. Ed. 575 (1929), *Mullaney v. Wilbur,* 421 U.S. 684, 95 S. Ct. 1881, 44 L.Ed.2d 508 (1975). Plaintiffs are not being cited or fined so the concerns inherent in the criminal arena do not exist. Plaintiffs also provide cases wherein states or local governments attempted to exact tax revenues for minerals, oil and gas on sovereign Indian lands. *Carpenter v. Shaw,* 280 U.S. 363, 50 S. Ct. 121, 74 L. Ed. 478 (1930) and *Ward v. Board of County Commissioners of Love County,* 253 U.S. 17, 40 S. Ct. 419, 64 L. Ed. 751 (1920). These cases, too, are inapplicable.

Another case cited by Plaintiffs is *Georgia Ry. & Elec. Co. v. City of Decatur,* 295 U.S. 165, 55 S. Ct. 701, 79 L. Ed. (1935). That case involved a street assessment, and not a utility with associated user fees. There the railroad tracks went down the middle of the street. The City assessed the railroad for all of the cost of the paving between the rails and then for the cost of a two-foot wide strip running parallel to the outside of each rail. The adjoining property owners were assessed for the remaining cost via front foot assessment. The railroad argued that it did not need the paving, it did not use the paved road, and the paving for which it was required to pay actually harmed it. Basically, it had a sound argument that there was no benefit whatsoever

and actual harm to the railroad associated with the assessment and the infrastructure installed. This is contrary to the facts in this case in which the Plaintiffs' developed property in part created the need for the storm water management system, and the properties receive benefit from the services provided. In a case involving storm water utility user fees, *McLeod,* the Georgia Supreme Court has held that this legislative determination of user fees and benefits are sound, supported and not violative of due process or equal protection.

Finally, *Chicago, Burlington & Qunicy Ry. Co. v. City of Chicago,166* U.S. 226, 17 S. Ct. 581, 41 L. Ed.2d 979 (1897), is yet another case involving an exaction for the construction of streets. In that case, the level of compensation for rail companies was fixed by statute. That case again involves a taking of property and issues of just and adequate compensation. Both that case and *Georgia Ry.* are classic takings cases wherein the Court held that the taking, although authorized by statute or ordinance, violated due process. These old takings cases do not overcome the clear holding of *Koontz* that taxes and user fees are not takings, and thus the due process statements in those old cases are not applicable to this case. *Koontz,* 570 U.S. at 615, 133 S. Ct. at 2600 ("It is beyond dispute that [t]axes and user fees ... are not 'takings.'").

Another case Plaintiffs rely on in their brief is *Vlandis v. Kline,* 412 U.S. 441, 93 S. Ct. 2230, 37 L.Ed.2d 63 (1973). In that case, the Supreme Court struck down a Connecticut statute that created the irrebuttable presumption that a non-resident remained a non-resident during the student's entire time in college at a Connecticut state institution. The Court struck down the statute primarily in reliance upon a

conclusion that there were reasonable alternatives for the State to determine the appropriate level of tuition for the students. As A-CC has noted many times before, one reason for the base charge being applied against all developed property is the fact of each property's developed state and the lack of natural pervious surface. In the *Vlandis* case, any particular student may or may not remain a non-resident of Connecticut by her second or third or fourth year. In contrast, Plaintiffs' property was developed when the utility was established, and it remains developed today. Plaintiffs' and their customers and tenants used the roads and bridges when the utility was established and continue to use the roads and bridges today. The legislative determinations made in this case are reasonable, and based on indisputable facts. The analysis of *Vlandis* might apply if a plaintiff owner removed the building and parking structures and turned its property into a park, but was required to continue paying stormwater utility fees. Those, however, are not the facts.

Another case Plaintiffs cite is *Mobile, Jackson & Kansas City R. Co. v. Turnipseed,* 219 U.S. 35, 43, 31 S. Ct. 136, 138, 55 L. Ed. 78 (1910). This case upheld Mississippi's abrogation of the fellow servant rule for railroad employees. The Court held that the legislature's determination about the hazards of railway employment was reasonable and not arbitrary. Likewise, in this case, based upon scientific studies and long experience of other stormwater utilities the presumption that impervious surface on developed properties is a primary indicator of stormwater service needed and benefit provided, the presumption is anything but arbitrary. Therefore, the reasoning of *Mobile, Jackson* actually supports A-CC' s legislative determination in this matter.

Therefore, to the extent, that A-CC has made certain legislative decisions, this Court is not empowered to undermine, much less reverse, those legislative determinations. *Speer v. Mayor, Etc., ofAthens,* 85 Ga. 49, 11 S.E. 802, 804-05 (1890) (existence of benefit is a matter of legislative determination not to be disturbed by the courts except under extraordinary circumstances); *City of Lilburn v. Sanchez,* 268 Ga. 520, 522, 491 S.E.2d 353, 356 (1997) (unless altogether arbitrary "courts have no right to interfere with the exercise of legislative discretion") (emphasis in original); *Harrison Co. v. City of Atlanta,* 26 Ga. App. 727, 107 S.E. 83, 85 (1921) (where "municipal authorities were exercising their public or governmental functions, and these were discretionary acts, and "as long as an official public act can be upheld as being within the exercise of the discretionary power conferred by the charter the will of the legislative body is supreme and the courts have no power to interfere."); *Lake Lanier Theatres v. Hall Cnty.,* 229 Ga. 54, 55-56, 189 S.E.2d 439, 440-41 (1972) (discussing legislative discretion and judicial non-interference in drawing distinctions for various revenue measures).

2. Plaintiffs voluntarily accept the benefits outlined below.

The Plaintiffs own property that has been developed and is income producing in a jurisdiction subject to the federal mandate of the Clean Water Act and requirements of the Municipal Separate Storm Sewer System (MS4) for stormwater management. Because their properties are fully developed with impervious surface and that property no longer absorbs or accepts stormwater in the same way it did in its pre-developed state, by owning the property, they are accepting the benefits of the stormwater management. The simple

fact that the property is developed and has impervious surface means that it is part of the issue that the utility was created to address, and, therefore, may be subject to its fee. Because they have developed property, they are using the system. In Georgia, if a person drives a car, the person must have insurance and a license. In Athens-Clarke County, if a person owns developed property, that person must pay some level of user fee to the storm water utility.

Plaintiffs contend that their particular inability to potentially qualify for credits defeats the voluntariness of the fee. This contention does not entitle Plaintiffs to summary judgment on this issue. First, industry standards for stormwater management do not require credits at all. A-CC's expert, Hector Cyre, noted "Many utilities do not offer them or offer less generous credits than ACC." *Cyre Affidavit, pp. 007.* He concluded

> Respondents to a 2018 survey of stormwater utilities indicated that only fifty-five percent (55%) provided credits against service charges. They are optional, conditioned on standards and continuing performance, and are not an entitlement available to all. They do not have to be economically practical for all customers or for any specific customer. The ACC approach to credits conforms to these general attributes.

Cyre Affidavit, p. 023. Plaintiffs have not pointed to any authority requiring that a stormwater utility provide credits. Much less have Plaintiffs established that any or every property subject to a fee is entitled to or must be able to obtain a credit or any reduction in the fee if it otherwise applies to their use of the property as is the case for Plaintiffs. As Cyre notes, "it

is not the purpose or a requirement of service charge credit mechanisms that they provide every customer an opportunity to obtain a credit with economic efficiency." *Cyre Affidavit, p. 026.*

The issue surrounding credits is really whether Plaintiffs can reduce the required fees charged to their properties. Their properties are developed to the maximum extent. The credits are available, and the inability of Plaintiffs to feasibly qualify does not render the Ordinance unconstitutional as applied to those properties.[10] Their properties have the value they do because they are developed. As a result of that development, those properties are properly assessed stormwater fees.

3. The government provides a benefit, not provided to the public in general, to those property owners who have developed property with impervious surface.

As noted elsewhere, A-CC determined that impervious surface on developed properties was the appropriate indicator to determine the needed level of service and how fees ought to be established. Because of the nature of stormwater management and the federal mandate, the Georgia Supreme Court in addressing constitutional claims has said that the benefits provided by such a utility for the payment of such a fee can be indirect, immeasurable and intangible. Even if the general public benefits incidentally from the same stormwater management, those property owners that own developed properties benefit to a greater degree. The general public benefits from the fact that a grocery

[10] Raessler, in fact, provided specific examples of property owners that had "undeveloped their property." *Roessler Depo., pp. 210-211.*

store developer paid fees for plan review and construction inspection activities so people can shop in a safe environment. But the developer that pays those fees benefits to a greater extent in being able to operate or sell the shopping center.

The science and studies demonstrate that impervious surface creates the need for stormwater management services, and that those developed properties consume those services and obtain the benefits of A-CC managing what the developed properties have created. The properties and businesses operate in the jurisdiction that meets its permit requirements, the streets and roads are able to bring customers and employees to those properties, the owners are able to get to and from other places, and they are not obligated to attempt to meet the clean water mandate that could be imposed because they had removed pervious surface from their properties by the development. As former Director Raessler testified, there is benefit to the property owners "by maintaining the safe and effective flow of stormwater, [and] protecting property and access for developed property;" by maintaining compliance with NPDES permit requirements, especially flood mitigation and access, with which development on property interferes; and keeping the watershed in which the property lies in "good shape." *Raessler Depo., pp. 51-53, 58, 84, 110.*

4. The amount of the fee does not exceed the reasonable costs of providing the benefits received.

In analyzing these issues, mathematical precision is not the test. *Lindsley v. Natural Carbonic Gas Company,* 220 U.S. 61, 31 S. Ct. 337, 55 L. Ed. 369 (1911); *State v. Old S. Amusements, Inc.,* 275 Ga. 274, 276, 564 S.E.2d 710, 712 (2002) ("The legislature is not required to draft its statutes with mathematical

precision."); *Burton v. Glynn Cnty.,* 297 Ga. 544, 548, 776 S.E.2d 179 (2015) ("an ordinance need not regulate with "'mathematical certainty' to comport with due process."). In *Lindsley,* the United States Supreme Court held that local governments have a wide scope of discretion with regard to regulatory fees. The Court noted that the exercise of that discretion does not require mathematical precision. The Court held that laws are not unconstitutional merely "because in practice they result in some inequality." Ultimately the *Lindsley* Court upheld the regulatory fee at issue, holding that because there was no evidence that the fee was merely arbitrary and intended to discriminate against individuals, it demonstrated a proper exercise of legislative authority. *Id.* at 78-79, 82. A-CC's stormwater fees similarly pass constitutional muster

a. A-CC does not unconstitutionally exclude certain properties.

The general principal sufficiently addresses Plaintiffs' contentions related to the various exemptions from the fee requirements. Roads, streets and sidewalks, while they could be included, are routinely excluded by jurisdictions from paying the charges. *Stevenson 2020 Depo., p.90:13- :20; Cyre Affidavit, pp. 024.* The roads, in fact, capture, control and discharge runoff, and are considered part of the stormwater collection system. *Raessler Depo., p. 76:13-:24; Dalton Depo., p. 81:21 — 82:4; Cyre Affidavit, p. 024.* Dalton testified that "Any of us that are dealing with stormwater recognize that roads carry water." The following exchange occurred during the cited portion of Raessler's deposition.

A. Or I'm sorry, why we don't pay for roads?

Q. Yes.

> A. So it's in the ordinance, so that's how we apply it, but my understanding of the reasoning behind that is it's primarily to, one, roads are providing access to developed property, and it's impossible for developed properties not to interface with the roadway network, either public or private; and, two, the roadway network serves as a portion of the stormwater collection and conveyance system. So, the curb and gutter, the actually -- and the way the road is designed is designed to catch the water, collect it and convey it, and so effectively the roads are providing an in-kind service to stormwater.

Later Raessler stated

> The stormwater system of the road provides a service. It's a -- and it's -- and it's near impossible to separate the contributory part of the road and the part of the road that serves as collection and conveyance of the stormwater.

Raessler Depo., p. 78:16-20. As a result, A-CC acted well within its legislative discretion in excluding roads from the fees as they function as part of the stormwater management system.

The study specifically done for A-CC by Earth Tech concluded that in this geographical area, developed property increases runoff and undeveloped property absorbs rainwater and replenishes groundwater, justifying the exemption for undeveloped property. *Earth Tech p. 1-2 [Appx. 2, Exh. B to A-CC's Brief in Support of A-CC's MSJ, Bates ACC-B-014]; Raessler Depo., pp. 200-02.* While most will have some runoff, there are undeveloped properties that do not. *Charles*

Wilson Affidavit, Exhibit 24, Interrogatory 18. Under A-CC's regulations most new construction and redevelopment must comply with stringent stormwater control measures and thus do not significantly add to the problems addressed by the utility. *Stevenson 2020 Depo., p. 106:17 — 108: 11.* Stevenson noted, however, that some new construction would not be exempt because it was not required to comply with those stormwater management issues, offering as an example the construction of a residence on an existing lot of record. *Stevenson 2020 Depo., p. 108:4-:11.* Likewise, excluding certain riparian properties and certain properties owned by the University that do not contribute to the problems is a rational and reasonable legislative decision. *A-CC Ordinance, 5-5-9(a), (b)* (discussing why such properties are designated as separate service areas). In short, A-CC's legislative decisions on these various properties is not irrational and, therefore, not unconstitutional.

b. A-CC's utility provides a benefit to owners of developed property.

The stormwater utility and the stormwater management that the utility fee funds provide a benefit to the developed properties in Athens-Clarke County. In exchange for these properties having impervious surface that increases and enhances the usefulness and value of those properties, the stormwater Utility provides the benefit of convenience, accessibility and usefulness of that property. If culverts or other stormwater infrastructure fail, properties could be flooded, customers or employees could be inconvenienced, and the properties could become inaccessible even if not themselves flooded. This is why it is of no constitutional importance that the stormwater utility fee is not allocated among the drainage basins. If a

road failed in one basin, then properties in other basins could become inaccessible or at least less accessible. Where the Plaintiffs have attempted to cobble together principles from various other areas of the law, the constitutionality of the stormwater user fee must be addressed independently. A-CC's Utility fee passes constitutional muster.

c. A-CC is not required to allocate service and charges among different drainage basins.

Plaintiffs complain that A-CC has not allocated its stormwater services and charges in accordance with the 18 drainage basins or various sub-basins located within the County. For several reasons, the Plaintiffs' argument has no merit. First, almost all of the water flowing on and through Athens-Clarke County ultimately drains into the Oconee or Middle Oconee River, while a small portion near Winterville drains into the Broad River. *Stevenson 2020 Depo., 11819.* As a result, Athens-Clarke County's obligation under federal law is singular in that ultimately it is to maintain the integrity of that body of water. Secondly, as noted above, what occurs in one basin can seriously impact the accessibility and usability of properties in other basins. Raessler testified, there is benefit to all improved property owners from owning property in a jurisdiction that meets its obligations under federal law. Importantly for the constitutional analysis, the current Administrator, Todd Stevenson, testified that it would be administratively burdensome to attempt to allocate the fees and expenditures by drainage basin. *Stevenson 2019 Depo., pp. 20-21.* Further, former Director Raessler testified that even if it could be allocated, it would not necessarily result in more equitable fee structures. *Raessler Depo., pp. 64-66.* As

noted above, the constitutionality of a user fee does not depend upon mathematical precision or certainty. So long as the improved properties with impervious surface are obtaining benefits, and enjoy the services provided, the details are up to the discretion of the legislative body.

d. A-CC could properly use impervious surface and the lack of development on property to determine fees.

As noted multiple times, and a fact which Plaintiffs barely address, much less seriously contest, according to the EarthTech study upon which the stormwater utility rate structure was based, impervious surface is an appropriate and reasonable basis for determining the costs. Plaintiffs offer no evidence that undermines, much less negates, the basis of the EarthTech report and the approach A-CC' s Stormwater Utility has used for almost 20 years. Further, Plaintiffs offer no cases from either a state or federal court that cast doubt on, much less invalidate, this methodology as the basis for a constitutionally valid fee. Plaintiffs' only effort is to cite *City of Wilmington v. United States, 157* Fed. Cl. 705 (2022).

That case is not relevant to the issues to be decided by this Court. In that case, the litigants were a city charging stormwater fees to the United States based upon property used by the United States Corps of Engineers. Before an amendment to the Clean Water Act, the United States had been held to enjoy sovereign immunity from having to pay stormwater utility fees. The Congress and the President determined that given the imposition of unfunded mandates through the Clean Water Act that it was only fair that the millions of acres across the country owned by the United States should pay its fair share.

Congress, therefore, amended the Clean Water Act to require United States' agencies and properties to pay local stormwater utility fees.

There is important proviso in that law that does not apply in the circumstances of this case. The amended law waiving sovereign immunity for the United States set certain requirements for the waiver: if stormwater fees are sought for federal properties, the charging entity must be prepared to prove that the "assessment is based upon some fair approximation of the proportionate contribution of the property or facility to the stormwater pollution." This case does not involve a United States property or agency. All of the Plaintiffs are private property owners and, therefore, the standard and analysis set forth in *Wilmington* simply does not apply to this Court's analysis of the A-CC stormwater utility fee structure. Neither the law, the NPDES permit, nor the federal constitution require the kind of proof and precision of the applicable statute in the *Wilmington* case. A-CC need only show that its fee and the basis therefor have a reasonable basis. Further, whatever may be the particular facts applicable in Wilmington, DE are not evidently applicable in Athens-Clarke County, GA. The EarthTech report that was the foundational document for the ordinance and Utility provides the necessary support for A-CC's legislative decisions in this matter.

A-CC spent months studying and analyzing the best way to address the requirements of federal law to manage stormwater and non-point source pollution caused by water running off of impervious surface, especially rooftops, parking lots, etc., all of which arose from development patterns in the county. Ultimately the three-tier mechanism currently in place was the legislative determination as the best way to address

the issue. *Unified Government of Athens—Clarke County v. Homewood Village, Super. Ct. CAFN SU-10-CV-1851 Response in Opposition to Defendants Motion for Summary Judgment, Spratlin Affidavit, Exh. 6 [Appx. 2, Exh. C to MSJ Brief Bates ACC-C-004-009, -069ff.]* While the resulting tiered fee structure may not have the mathematical or engineering precision Plaintiffs desire, it certainly is not arbitrary and results in no individual discrimination. All developed properties within the jurisdiction are assessed a fee to address the problems created, at least in part, by the fact that there is so much developed property concentrated in the center of the jurisdiction. Given this concentration of development, Plaintiffs assertions about the relative percentages of pervious and impervious areas in the county do not undermine the rational basis of A-CC's legislative decisions.

e. The creation of capital reserves with excess funds does not invalidate the user fee.

Plaintiffs make the allegation that the user fee produces revenues that "significantly exceed the total cost of any service or benefits supplied." The testimony was that any fee amount generated by the three-tiered structure that exceeds the cost of operations is placed in capital or operation reserves for capital maintenance such as the replacement of stormwater infrastructure and addressing catastrophic failures. *Raessler Depo., pp. 35-37, 71-73, 125-27; Caldwell Depo., pp. 43-44.* During the course of this case, there have been several major failures that the Utility needed to repair. *Raessler Depo., pp. 58-59, 71-74, 134-35.* Because maintenance of the infrastructure and the replacement of failed infrastructure is part and parcel of the stormwater services that must be provided,

having a reserve to fund that portion of the service is proper. The Plaintiffs provide no evidence that the provision of such a reserve is not entirely consistent with, and, in fact, required by governmental accounting principles. *Raessler Depo., pp. 58-59.* Such capital reserves are not only appropriate and routine, they are critical to responsible management of a stormwater utility. Reserves are important to the proper management of a stormwater utility. *Cyre Affidavit, pp. 36-38.*

5. Summary.

Plaintiffs assert *"McLeod* and *Homewood* are not controlling law regarding Plaintiffs' federal constitutional right, federal law controls." Plaintiffs' MPSJ Brief, p. 21. Plaintiffs continue to ignore the fact that *McLeod* addressed both state and federal constitutional issues. The Georgia Supreme Court, like this Court, is quite capable of using and interpreting federal constitutional rules, especially when the protections under the state and federal provisions are identical. *Favorito v. Handel,* 285 Ga. 795, 797-98, 684 S.E.2d 257, 261 (2009) ("Because the protection provided in the Equal Protection Clause of the United States Constitution is coextensive with that provided in Art. I, Sec. I, Par. II of the Georgia Constitution of 1983, we apply them as one.") (quoting *Nodvin v. State Bar of Ga.,* 273 Ga. 559-560(2), 544 S.E.2d 142 (2001)); *Miller v. Deal,* 295 Ga. 504, 511, 761 S.E.2d 274, 279 (2014) (in child support enforcement, due process is identical under state and federal constitution); *Joiner v. Glenn,* 288 Ga. 208, 209, 702 S.E.2d 194, 195 (2010) (in employment context due process clause of state and federal constitutions provide identical protection). The Court DENIES Plaintiffs' motion for partial summary judgment and GRANTS A-CC's motion for summary judgment on Plaintiffs' Due Process claims.

D. Claims for Declaratory Judgment and Injunctive Relief Must Be Dismissed.

Count III of Plaintiffs' Complaint and Count II of the Counterclaim seeks Declaratory Judgment that the Utility User Fee is unconstitutional invalid tax and may not be collected. The Counterclaim also seeks injunctive relief. These claims must be dismissed for several reasons.

First, once the underlying claims upon which the request for declaratory (or injunctive) relief is based are properly dismissed, the declaratory count must also be dismissed. *Cox v. Athens Regional Medical Center, Inc.,* 279 Ga. App. 586, 594-95, 631 S.E.2d 792, 799 (2006). In short, once the Court properly concludes that the Plaintiffs' constitutional claims fail, the claim for declaratory (or injunctive) relief must likewise be dismissed.

More importantly, the state law claims for declaratory and injunctive relief against Unified Government of Athens-Clarke County are barred by sovereign immunity. *Dawson County Board of Commissioners v. Dawson Forest Holdings, LLC,* 357 Ga. App. 451, 455-456, 850 S.E.2d 870, 874-875, (2020) (relying upon *Lathrop v. Deal,* 301 Ga. 408, 801 S.E.2d 867 (2017)). The Georgia Supreme Court has long held that counties and county officials sued in their official capacity are protected by sovereign immunity. That protection extends to claims for injunctive or declaratory relief. *Dawson County supra.* This case was filed prior to the constitutional amendment allowing such claims in limited circumstances. The Court GRANTS A-CC's motion for summary judgment on Plaintiffs' claims for declaratory and injunctive relief.

E. Count IV by Plaintiff Bonet for Taking and Denial of Due Process Must Be Dismissed.

In this Count, Plaintiff Bonet alleges A-CC refused to renew its liquor license when its outstanding stormwater fees were not paid. Although the heading in this Count alleges a Taking and Denial of Due Process, the actual allegations themselves allege that the requirement to pay the stormwater fees was an unconstitutional condition upon obtaining "the renewal of his liquor license." *Complaint ¶ 134.* Importantly, A-CC did not revoke an alcohol license but simply declined to renew the license until the fees were paid. To the extent Plaintiff Bonet alleges a taking, the claim is foreclosed by the Georgia Supreme Court's decision in *Goldrush II v. City of Marietta,* 267 Ga. 683, 698-99, 482 S.E.2d 347, 360-61. There, the Georgia Supreme Court held that parties "do not have a vested right to renewal of their [alcohol] licenses because there is no property interest in a renewal." *Id.* (emphasis supplied). If there is no property interest, there can be no Taking.

With regard to the Due Process Claim as noted above, the only requirements of federal due process are notice and an opportunity to be heard. Clearly, Plaintiff Bonet received notice that his liquor license would not be renewed. *Complaint ¶ 29.* Plaintiff Bonet has had the opportunity to raise that claim before this Court. Furthermore, under A-CC's Alcoholic Beverage Ordinance (ABO), Plaintiff Bonet could have challenged the non-renewal under the procedures outlined therein. There is no evidence that Plaintiff Bonet ever exercised his rights under the ABO. However, as noted above, the failure to take advantage of process available does not result in a violation. The Court GRANTS A-CC's motion for summary judgment on

Plaintiff Bonet's separate Taking and Due Process Clause Claim.

F. Count V Seeking the Overruling of *McLeod* and *Homewood* Is Dismissed.

Presumably, Count V is simply a placeholder that will allow Plaintiffs to argue on appeal that *Homewood I* and *McLeod* should be overruled. This Court does not have the authority to overrule existing appellate court precedent, and that is within the exclusive purview, in this case, of the Georgia Supreme Court. *Ga. Const. Art. VI, § 6, ¶ VI* ("The decisions of the Supreme Court shall bind all other courts as precedents."). *McLeod* and *Homewood I* were both unanimous decisions that no justice of the Georgia Supreme Court has since questioned. The Court GRANTS A-CC's motion for summary judgment on Plaintiffs' request to overrule *McLeod* and *Homewood I*.

IV. CONCLUSION

For the reasons set forth above, the Court GRANTS A-CC's motion for summary judgment on all Counts of the Complaint in SU17CV1134 and will set A-CC's counterclaims for collection of unpaid fees for trial at a later date. Likewise, the Court GRANTS A-CC's motion for summary judgment on the two Counts of the Counterclaim in SU16CV845.

SO ORDERED AND ADJUDGED, this 9th day of July, 2024.

/s/ Lawton E. Stephens
Lawton E. Stephens, Judge
Superior Court, Athens-Clarke County

APPENDIX D

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY STATE OF GEORGIA

Civil Action File No. SU16CV0845-SW

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY a Georgia,

Plaintiff,

v.

HOMEWOOD ASSOCIATES, INC.,

Defendant.

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY STATE OF GEORGIA

Civil Action File No. SU17CV1134

HANCOCK-PULASKI PROPERTIES, INC., a Georgia corporation, TIFFANY & TOMATO, INC., a Georgia corporation, BAXTER HARRIS, INC., a Georgia corporation, HOMEWOOD VILLAGE, LLC., a Georgia limited liability company, OLD SOUTH INVESTMENT ENTERPRISES LLC., a Georgia limited liability company, LUIS BONET, individually, BONET PROPERTIES, LLC; and L. E. BONET PROPERTIES, LLC,

Plaintiffs,

v.

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY, a Georgia,

Defendant.

FINAL ORDER

Before the Court are two consolidated cases. In the first, Civil Action File No. SU17CV1134, Hancock-Pulaski Properties, Inc. ("Hancock-Pulaski"), Tiffany & Tomato, Inc. ("Tiffany"), Baxter Harris, Inc. ("Baxter"), Homewood Village, LLC ("Homewood"), Old South Investment Enterprises LLC ("Old South"), Luis Bonet ("Bonet"), Bonet Properties, LLC ("Bonet Properties"), and L.E. Bonet Properties, LLC ("LEBP") challenged the constitutionality of a series of stormwater ordinances adopted by the Unified Government of Athens-Clarke County, Georgia ("A-CC" or the "County"). See Athens-Clarke County, Ga., Code §§ 5-4 and 5-5 (collectively, the "Stormwater Ordinances"). In the second, A-CC filed a collection action in the Magistrate Court against Homewood Associates, Inc. ("Homewood Associates") seeking to collect on assessments imposed by operation of the Stormwater Ordinances. Homewood Associates filed similar counterclaims to those at issue in the first case, which required it to be transferred and consolidated before this Court. This order refers to the private parties as the "Property Owners."

On July 9, 2024, this Court issued an Order on A-CC's Motion for Summary Judgment and the Property Owners' Motion for Partial Summary Judgment (the "Summary Judgment Order"). The Summary Judgment Order upheld the Stormwater Ordinances as a matter of law based on the factual record before the Court at that time.[1] The Summary Judgment Order also indicated that it would set a trial for the "collection of unpaid fees," meaning the Court determined that A-CC established its prima facie case

[1] Nothing in this order alters or otherwise amends the Summary Judgment Order.

to collect under the Stormwater Ordinances leaving only the issue of how much. (Summ. J. Order at 43.)

This Court then held a pre-trial conference on October 25, 2024. The parties were unable to agree upon a consolidated pre-trial order. At least two issues were in dispute. The first involved the Property Owners', deemed the Defendants for purposes of trial, request that the jury determine the following:

1. Identification of the services provided by the Athens-Clarke County Stormwater utility.
2. Identification of benefits that the Defendants receive from Athens-Clarke County's operation of the Stormwater utility.
3. Identification or quantification of how much each Defendant has specifically and uniquely contributed to Athens-Clarke County's burden of complying with the terms of its NPDES permit.
4. Whether persons who own undeveloped property benefit from Athens-Clarke County's stormwater management efforts.
5. Whether persons who only travel through Athens-Clarke County benefit from Athens-Clarke County's stormwater management efforts.
6. Whether Defendants can reduce their assessments under the stormwater maintenance program by creating and maintaining private stormwater management systems.
7. Identification of stormwater management systems that Defendants can create and maintain to reduce their assessments under the stormwater maintenance program.

A-CC opposed this request. The Parties also disagreed about the number and topics of stipulations. Consequently, it became necessary for the Court to rule on A-CC's objections. By order of October 28, 2024, the Court sustained A-CC's objections after concluding that the Summary Judgment Order resolved any facts raised by the seven questions in favor of A-CC as a matter of law. The October 28 order also sustained A-CC's objections to many of the Property Owner's proposed stipulations.[2]

The Court entered the pre-trial order on October 29, 2024 (the "PTO"). The PTO identified the following, single issue for the determination by the jury: "The amount of stormwater fees and late fees owed by the Defendants to A-CC." This decision precluded the Property Owners from being permitted to examine any witness—on direct or cross-examination—about the Property Owner's contribution to stormwater problems, any benefit they receive from the implementation of the Stormwater Ordinances, benefits the general public receives from such implementation, whether the fee charged is a fair approximation of the cost of providing any special benefit to each Property Owner's property, and other issues relevant to deciding what the Property Owners unsuccessfully sought to have the jury decide in the questions identified above. The trial would, therefore, proceed as A-CC's counsel put it in the pre-trial hearing, the jury would decide if A-CC's math is correct and nothing else. Put simply, the effect of the Court's rulings limited the Property Owners role at trial to challenging A-CC's calculations of assessments made pursuant to the Stormwater Ordinances.

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[2] Noting in this order amends the Court's Order of October 28, 2024.

While the Property Owners respectfully disagree with the Summary Judgment Order, they do not dispute A-CC's mathematical calculations of the fees owed based upon the rates as set forth in the Ordinances and the area of impervious surfaces on the Property Owner's properties. Therefore, given that trial would be limited to calculations, and because the Property Owners do not dispute A-CC's arithmetic, the Parties agree to a final judgment imposing Stormwater Ordinance assessments on the Property Owners as follows:

Fee Payer	Unpaid Stormwater Fees	Late Fees	Total
Baxter-Harris, Inc. [Master Account]	$7,401.62	$4,687.89	$12,089.51
Bonet Properties, LLC [135 E. Cloverhurst Ave]	$562.00	$371.14	$933.14
Bonet Properties, LLC [475 Bloomfield St]	$497.30	$339.55	$836.85
Hancock-Pulaski Properties, Inc.	$697.35	$1,983.55	$2,680.90
Homewood Associates, Inc.	$4,649.84	$3,009.68	$7,659.52
Homewood Village, LLC	$129,400.79	$78,105.75	$207,506.54
LE Bonet Properties, LLC [835 S. Church St]	$562.00	$366.50	$928.50
Luis E. Bonet [125 Appleby Dr]	$494.56	$312.56	$807.12
Luis E. Bonet [135 Appleby Dr]	$494.56	$292.58	$787.14
Luis E. Bonet [Master Account]	$13,078.38	$8,608.33	$21,686.71
Tiffany & Tomato, Inc. [Master Account]	$3,847.61	$1,876.50	$5,724.11

This constitutes the FINAL JUDGMENT in this case. All parties are responsible for their own costs and fees.

SO ORDERED AND ADJUDGED, this 4th day of November, 2024.

/s/ Lawton E. Stephens
Lawton E. Stephens, Judge
Superior Court, Athens-Clarke County

APPENDIX E

Constitution of the United States

Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

Currentness

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX F

CHAPTER 5-4. - STORMWATER MANAGEMENT

Article I. Stormwater Management

Article II. Illicit Discharge and Illegal Connection

Footnotes:

--- (5) ---

Editor's note—Section 1 of an ordinance adopted June 1, 2004, deleted former ch. 5-4 of the Code in its entirety and added new provisions as ch. 5-4 as herein set out. Former ch. 5-4, §§ 5-4-1-5-4-16, pertained to similar subject matter and derived from an ordinance adopted Sept. 1, 1992, § 1; and an ordinance adopted Dec. 5, 2000.

ARTICLE I. - STORMWATER MANAGEMENT

Footnotes:

--- (6) ---

Editor's note— An ordinance of October 3, 2006, § 1, amended the Code by dividing ch. 5-4 into two articles and adding the title for art. I. Additionally, the term "chapter" has been changed to "article" throughout art. I.

Sec. 5-4-1. - Purpose and intent.

The purpose of this article is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and

private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, and protect water and aquatic resources. This article seeks to meet that purpose through the following objectives:

(1) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;

(2) Require that new development and redevelopment maintain the pre-development hydrologic response in their post-development state to the maximum extent practicable in order to reduce flooding, streambank erosion, nonpoint source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

(3) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

(4) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum post-development stormwater management standards;

(5) Encourage the use of nonstructural stormwater management and stormwater better site design practices, such as the preservation of greenspace and other conservation areas, to the maximum extent practicable. Coordinate site design plans, with the county's greenspace program, parks and greenway network plan;

(6) Encourage the advantages of urban and brownfield redevelopment and adaptive re-use to reduce the loss of natural areas and open space elsewhere and avoid the need for additional infrastructure to support new development. Follow guidance in the Georgia Stormwater Management Manual and the Transportation and Public Works Department Technical Standards to utilize legal mechanisms to allow more land to be left in a natural state by using incentives or regulatory measures to promote infill and redevelopment in areas already served by infrastructures;

(7) Encourage the development within existing urbanized areas on or between previously developed land that is currently underutilized, such as degraded parking lots or shopping centers;

(8) Establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or to the integrity of downstream water resources; and

(9) Establish administrative procedures for the submission, review, approval and disapproval of stormwater management plans, and for the inspection of approved active projects, and long-term follow up.

(Ord. of 6-1-2004, § 1; Ord. of 2-5-2019(1), §§ 1, 2; Ord. of 4-7-2020, § 1)

Sec. 5-4-2. - Definitions.

Adjusted tract acreage means the total area of the parcel less any of the following areas:

a. Land within the 100-year floodplain;

b. Bodies of open water over 5,000 square feet contiguous area;

c. Wetlands that meet the definition of the Army Corps of Engineers pursuant to the Clean Water Act;

d. Land lying within the 100-foot or 75-foot riparian buffers identified on the Athens-Clarke County Environmental Areas Map;

e. For state waters not identified on the Environmental Areas Map, land lying within the state-mandated 25-foot riparian buffer; and

f. Land with slopes greater than 25 percent over 5,000 square feet contiguous area.

Applicant means any person, firm, or governmental agency who executes the necessary forms and procedures to procure official approval of a project or a permit to carry out construction of a project.

Buffers means the riparian buffers as defined in Athens-Clarke County Protected Environmental Areas Chapter 8-6 and state waters buffers defined in Chapter 8-3.

Channel means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Department means the Department of Transportation and Public Works of Athens-Clarke County.

Detention means the temporary storage of stormwater runoff in a stormwater management facility for the purpose of controlling the peak discharge.

Detention facility means a detention basin or structure designed for the detention of stormwater runoff and gradual release of stored water at controlled rates.

Developer means a person who undertakes land development activities. *Development* means a land development or land development project.

Drainage easement means an easement appurtenant or attached to a tract or parcel of land allowing the owner of adjacent tracts or other persons to discharge stormwater runoff onto the tract or parcel of land subject to the drainage easement.

Erosion and sedimentation control plan means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during land disturbance activities.

Extended detention means the detention of stormwater runoff for an extended period, typically 24 hours or greater.

Extreme flood protection means measures taken to prevent adverse impacts from large low-frequency storm events with a return frequency of 100 years or more.

Flooding means a volume of surface water that is too great to be confined within the banks or walls of a conveyance or stream channel and that overflows onto adjacent lands.

Flood plain means any land area, such as lowland and relatively flat areas adjoining state water, susceptible to being inundated by water from any

source including those areas identified by the Federal Emergency Management Agency (FEMA) on flood insurance rate maps and identified or defined through standard engineering analysis by other government agencies or a licensed professional engineer, but not yet incorporated into a FEMA flood insurance rate map.

Greenspace or *open space* means permanently protected or other conservation areas of the site that are preserved in a natural state.

Hotspot means an area where the use of the land has the potential to generate highly contaminated runoff as determined by the Department, with concentrations of pollutants in excess of those typically found in stormwater, such as fueling station, vehicle repair and maintenance facilities. A list of these land uses is provided in the Georgia Stormwater Management Manual.

Hydrologic soil group (HSG) means the U.S. Natural Resource Conservation Service (NRCS) classification system in which soils are categorized into four runoff potential groups. The groups range from group A soils, with high permeability and little runoff produced, to group D soils, which have low permeability rates and produce much more runoff. NRCS HSG information may be found in the Georgia Stormwater Management Manual.

Impervious surface means a surface composed of any material that significantly impedes or prevents the natural infiltration of water into soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets and roads, and any concrete or asphalt surface.

Industrial stormwater permit means a national pollutant discharge elimination system (NPDES) permit issued to an industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

Infiltration means the process of percolating stormwater runoff into the subsoil.

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

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

Land development project means a discrete land development undertaking.

Inspection and maintenance agreement means a written agreement providing for the long-term inspection and maintenance of stormwater management facilities and practices on a site or with respect to a land development project, which when properly recorded in the deed records constitutes a restriction on the title to a site or other land involved in a land development project.

New development means a land development activity on a previously undeveloped site.

Nonpoint source pollution means a form of water pollution that does not originate from a discrete point such as a sewage treatment plant or industrial discharge, but involves the transport of pollutants

such as sediment, fertilizers, pesticides, heavy metals, oil, grease, bacteria, organic materials and other contaminants from land to surface water and groundwater via mechanisms such as precipitation, stormwater runoff, and leaching. Nonpoint source pollution is a by-product of land use practices such as agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Nonstructural stormwater management practice or *nonstructural practice* means any natural or planted vegetation or other nonstructural component of the stormwater management plan that provides for or enhances stormwater quantity and/or quality control or other stormwater management benefits, and includes, but is not limited to, riparian buffers, open and greenspace areas, overland flow filtration areas, natural depressions, and vegetated channels.

Off-site facility means a stormwater management facility located outside the boundaries of the site. *On-site facility* means a stormwater management facility located within the boundaries of the site.

Overbank flood protection means measures taken to prevent an increase in the frequency and magnitude of out-of-bank flooding (i.e. flow events that exceed the capacity of the channel and enter the floodplain), and that are intended to protect downstream properties from flooding for the two-year through 25-year frequency storm events.

Owner means the legal or beneficial owner of a site, including, but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in operational control of the site.

Permit means the permit issued by the Department to the applicant which is required for undertaking any. land development activity.

Person means, except to the extent exempted from this article or by state or federal law, 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.

Post-development refers to the time period, or the conditions that may reasonably be expected or anticipated to exist based on the proposed project, after completion of the land development activity on a site as the context may require.

Pre-development refers to the time period, or the conditions that exist, on a site prior to the commencement of a land development project and at the time that plans for the land development of a site are approved by the plan approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

Previously developed site means a site that has been altered by paving, construction, and/or land use that would typically have required regulatory permitting to have been initiated (alterations may exist now or in the past).

Project means a land development project.

Redevelopment means the creation or addition of impervious surfaces, replacement of impervious surface

not as part of routine maintenance, and land development activities associated with impervious development on a previously developed site. Redevelopment does not include such activities as exterior remodeling.

Regional stormwater management facility or regional facility means stormwater management facilities designed to control stormwater runoff from multiple properties, where the owners or developers of the individual properties may assist in the financing of the facility, and the requirement for on-site controls is either eliminated or reduced.

Runoff means stormwater runoff.

Runoff from Existing Impervious Surfaces (REIS) Management Volume means the volume of water that results from one-half (0.5) inch of stormwater runoff from existing impervious surfaces within the site. It is calculated by multiplying the existing impervious surface area within the site by a depth of one-half inch.

Site means that portion of a parcel or parcels of land on which the land development project is located.

Stormwater better site design means nonstructural site design approaches and techniques as listed in the most recent edition of the Georgia Stormwater Management Manual that can reduce a site's impact on the watershed and can provide for nonstructural stormwater management. Stormwater better site design includes conserving and protecting natural areas and greenspace, reducing impervious cover and using natural features for stormwater management.

Stormwater management means the collection, conveyance, storage, treatment, infiltration, evaporation, re-use or removal of stormwater runoff in a manner intended to prevent increased flood damage, streambank

channel erosion, habitat degradation and water quality degradation, and to enhance and promote the public health, safety and general welfare.

Stormwater management facility means any infrastructure that controls or conveys stormwater runoff.

Stormwater management measure means any stormwater management facility or nonstructural stormwater practice.

Stormwater management plan means a document describing how existing runoff characteristics will be affected by a land development project and containing measures for complying with the provisions of this article.

Stormwater management manual means the most recent edition of the Georgia Stormwater Management Manual, Volume II (Technical Handbook), produced by the Atlanta Regional Commission (hereinafter in this article referred to as the "Georgia Stormwater Management Manual").

Stormwater management system means the entire set of structural and nonstructural stormwater management facilities and practices that are used to capture, convey and control the quantity and quality of the stormwater runoff from a site.

Stormwater retrofit or *retrofit* means a stormwater management practice designed for a currently developed site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

Stormwater runoff means the flow of surface water resulting from precipitation.

Structural stormwater control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow of such runoff.

(Ord. of 6-1-2004, § 1; Ord. of 12-5-2017(3), §§ 1-4; Ord. of 2-5-2019(1), §§ 3-6; Ord. of 4-7-2020, §§ 2, 3)

Sec. 5-4-3. 'Applicability

This article shall be applicable to all land development, including, but not limited to, site plan applications, subdivision applications, and land disturbance activity applications, unless exempt pursuant to section 5-4-4.

(a) *New development and redevelopment sites.* These standards apply to any new development or redevelopment site that meets one or more of the following criteria:

(1) New development that creates or adds 5,000 square feet or more of new impervious surface area, or that involves land disturbing activity of one acre or greater including projects less than one acre if they are part of a larger common plan of development or sale;

(2) Redevelopment of a previously developed site that creates, adds, or replaces 5,000 square feet or greater of new impervious surface area, or that involves land disturbing activity of one acre or more, including projects less than one acre if they are part of a larger common plan of development or sale;

(3) Any new development or redevelopment, regardless of size, that is determined by the transportation and public works director to be a hotspot land use; or

(4) Any development or redevelopment project that is upstream of a known public flooding problem as identified by the Department of Transportation and Public Works in the AreaWide Stormwater Master Plan, as amended from time to time, on file and available for public inspection at the Department of Transportation and Public Works.

(b) *Infeasibility.* In certain cases in which it can be partially or fully demonstrated infeasible to satisfy the post-development stormwater management performance criteria as provided in section 5-4-7(a), minimum stormwater standards are specified in section 5-4-7(c) of this chapter for those cases.

(c) *Compatibility with other regulations.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, 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 provision is more restrictive shall control.

(d) *Stormwater design manual.* The Department will utilize the policy, criteria and information including technical specifications and standards

in the *Georgia Stormwater Management Manual* and any relevant local requirements, for the proper implementation of the requirements of this article. This includes any addenda or updates to the *Georgia Stormwater Management Manual or* local design guidelines as approved in the Transportation and Public Works Department Technical Standards.

(Ord. of 6-1-2004, § 1; Ord. of 12-3-2013, § 1; Ord. of 12-5-2017(3), § 5; Ord. of 2-5-2019(1), § 7)

Sec. 5-4-4. - Exemptions from requirements.

The following activities are exempt from this article:

(1) Platted individual single-family or duplex residential lots that are not part of a subdivision or phased development project;

(2) Additions or modifications to existing single-family or duplex residential structures provided that they do not result in the creation or addition of 5,000 square feet of impervious cover;

(3) Agricultural or silvicultural land management activities within areas zoned for these activities;

(4) Land disturbing activities conducted for the purpose of restoration of streams, streambanks, riparian zones, or other environmentally protected areas;

(5) Repairs to any stormwater management facility deemed necessary by the transportation and public works director; and

(6) Sidewalks or trails 15 feet wide or less where runoff is directed via sheet flow toward

vegetated areas at least twice as wide as the paved area, provided that the potential for erosion is adequately addressed.

(Ord. of 6-1-2004, § 1; Ord. of 12-3-2013, § 2; Ord. of 12-2-2014, § 1)

Sec. 5-4-5. - Variance procedure.

The Athens-Clarke County Hearings Board shall sit in a quasi-judicial capacity to hear and decide all variance requests from the requirements of this article. A formal written application for a variance shall be filed with the public works director for submittal to the Athens-Clarke County Hearings Board.

(a) The following procedures shall apply to all applications:

(1) The application for variance shall state the specific variances sought and the reasons for their granting.

(2) It shall be the applicant's responsibility to provide sufficient justification for granting the variance.

(3) The Public Works Department shall prepare an evaluation statement concerning each application for variance. The evaluation shall consider the circumstances and supporting documents supplied by the applicant and other generally available technical information pertaining to the variance request. The evaluation statement may include recommendations by the Department concerning the variance to the Hearings Board.

(4) In passing upon such applications, the Athens-Clarke County Hearings Board shall consider all technical evaluation and relevant factors presented by the applicant and the government and the standards specified in other sections of this article.

(5) After hearing and upon consideration of the application, evidence and applicable law, the Athens-Clarke County Hearings Board may attach such conditions to the granting of variances as it deems necessary to further the purpose of this article.

(b) If a variance is granted, it shall be granted upon findings by the Hearings Board that the following standards have been met:

(1) That failure to grant the variance could result in exceptional hardship to the applicant; and

(2) That granting the variance will not result in increased stormwater pollution, increased flood heights, additional threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public;

(3) That the necessity for a variance is not the result of conditions on the property which have been self-imposed by the applicant; and

(4) That the variance is the minimum necessary, considering the adverse impacts of stormwater runoff.

(Ord. of 6-1-2004, § 1)

Sec. 5-4-6. - Permit procedures and requirements.

It shall be unlawful for any owner or developer to perform any land development activities without first meeting the requirements of this article and obtaining a stormwater permit prior to commencing the proposed activity.

(a) *Permit application requirements.* Unless specifically exempted by this article, any owner or developer proposing a land development activity shall submit to the Department a stormwater permit application on a form provided by the Department for that purpose. Unless otherwise exempted by this article, a permit application shall be accompanied by the following items in order to be considered:

(1) Stormwater concept plan and consultation meeting certification in accordance with section 5-4-6(2);

(2) Stormwater management plan in accordance with section 5-4-6(3);

(3) Inspection and maintenance agreement in accordance with section 5-4-6(4), if applicable; and

(4) Permit application and plan review fees in accordance with section 5-4-6(5).

(b) *Stormwater concept plan and consultation meeting.* Before any stormwater management permit application is submitted and prior to the preliminary plan review, as required under Title 9, the developer or the developer's representative shall meet with the Department to review the concept plan and to discuss the post-development stormwater management measures

necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential ideas for stormwater management designs before the formal site design engineering is commenced.

The following information shall be included in the concept plan which shall be submitted in advance of the meeting:

(1) *Existing conditions/proposed site plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) *Natural resources inventory.* A written and/or graphic inventory of the natural resources at the site and surrounding area of properties adjoining the site as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as wetlands, lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that

provide particular opportunities or constraints for development.

(3) *Stormwater management system concept plan.* A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications within the site, such as bridge or culvert crossings.

If applicable, local watershed plans, the Athens-Clarke County greenspace program or greenway network plan, any park development, and any relevant resource protection plans will be consulted in the discussion of the concept plan.

(c) *Stormwater management plan requirements.* The stormwater management plan shall detail how post-development stormwater runoff will be controlled or managed and how the proposed project will meet the requirements of this article, including the performance criteria set forth in section 5-4-7.

This plan shall be in accordance with the criteria established in this section and must be submitted with the stamp and signature of a professional engineer (PE) or landscape architect licensed in the State of Georgia, who must verify

that the design of all stormwater management facilities and practices meet the submittal requirements outlined in the submittal checklist(s) found in the *Georgia Stormwater Management Manual or* as provided for in the Transportation and Public Works Department Technical Standards.

The stormwater management plan must ensure that the requirements and criteria in this article are being complied with and that opportunities are being taken to minimize adverse post-development stormwater runoff impacts from the development. The plan shall consist of maps, narrative, and supporting design calculations (hydrologic and hydraulic) for the proposed stormwater management system. The plan shall include all of the information required in the Stormwater Management Site Plan checklist found in the *Georgia Stormwater Management Manual or* as provided for in the Transportation and Public Works Department Technical Standards. This includes:

(1) Common address and legal description of site.

(2) Vicinity map.

(3) Existing conditions hydrologic analysis. The existing condition hydrologic analysis for stormwater runoff rates, volumes, and velocities, which shall include: a topographic map of existing site conditions with the drainage area boundaries indicated; acreage, soil types and land cover of areas for each sub-drainage areas affected by the

project; all perennial and intermittent streams and other surface water features as noted through field investigation; all existing stormwater conveyances and structural control facilities that impact design and/or construction of proposed development; direction of flow and inputs to and exits from the site; analysis of runoff provided by off-site areas upstream of the project site; and methodologies, assumptions, site parameters and supporting design calculations used in analyzing the existing conditions site hydrology. For redevelopment sites, predevelopment conditions shall be modeled using the established guidelines determined by the Department for the portion of the site undergoing land development activities.

(4) Post-development hydrologic analysis. The post-development hydrologic analysis for stormwater runoff rates, volumes, and velocities, which shall include: a topographic map of developed site conditions with the post-development drainage area boundaries indicated; total area of post-development impervious surfaces and other land cover areas for each sub-drainage area affected by the project; calculations for determining the runoff volumes that need to be addressed for each sub drainage area for the development project to meet the post-development stormwater management performance criteria in section 5-4-7; location and boundaries of proposed natural feature protection and conservation utilized; methodologies, assumptions, site

parameters and supporting design calculations used in analyzing the existing conditions site hydrology.

(5) Stormwater management system. The description, scaled drawings and design calculations for the proposed post-development stormwater management system, which shall include: A map and/or drawing or sketch of the stormwater management facilities, including the location of nonstructural site design features and the placement of existing and proposed structural stormwater controls, including design water surface elevations, storage volumes available from zero to maximum head, location of inlet and outlets, location of bypass and discharge systems, and all orifice/restrictor sizes; a narrative describing how the selected structural stormwater controls will be appropriate and effective; cross-section and profile drawings and design details for each of the structural stormwater controls in the system, including supporting calculations to show that the facility is designed according to the applicable design criteria; a hydrologic and hydraulic analysis of the stormwater management system for all applicable design storms (including stage-storage or outlet rating curves, and inflow and outflow hydrographs); documentation and supporting calculations to show that the stormwater management system adequately meets the post-development stormwater management performance criteria in section 5-4-7; drawings, design calculations, elevations and hydraulic

grade lines for all existing and proposed stormwater conveyance elements including stormwater drains, pipes, culverts, catch basins, channels, swales and areas of overland flow; and where applicable, a narrative describing how the stormwater management system corresponds with any watershed protection plans and/or local greenspace program, greenway network plan, and park development.

(6) Post-development downstream flow analysis. A downstream flow analysis will be prepared by the applicant to provide an overview of potential impacts from post development run-off from the site. At a minimum the downstream flow analysis will include:

a. A map of each and every point or area along the project site's boundaries at which runoff will exit the property.

b. The analysis shall focus on the portion of the drainage channel or watercourse immediately downstream from the project. This area shall extend downstream from the project to a point in the drainage area where the project area is ten percent of the total downstream drainage area.

c. Delineation of all downstream structures and property adjacent or within the flow path of the downstream flow analysis.

d. Identification of known flooding problems from Athens-Clarke County

Stormwater Master Plan or other sources.

e. If determined through this preliminary review of the items above that the potential exists for downstream flooding resulting from post development conditions, the Director of the Department can require the applicant to conduct and submit a downstream hydrologic assessment in accordance with the criteria listed in the *Georgia Stormwater Management Manual* criteria or as provided for in the Transportation and Public Works Department Technical Standards for post development downstream analysis.

(7) Reserved.

(8) Landscaping and open space plan. A detailed landscaping and vegetation plan describing the woody and herbaceous vegetation that will be used within and adjacent to stormwater management facilities and practices. The landscaping plan must also include: the arrangement of planted areas, natural and greenspace areas and other landscaped features on the site plan; information necessary to construct the landscaping elements shown on the plan drawings; descriptions and standards for the methods, materials and vegetation that are to be used in the construction; density of plantings; descriptions of the stabilization and management techniques used to establish vegetation; and a description of who will be responsible

for ongoing maintenance of vegetation for the stormwater management facility and what practices will be employed to ensure that adequate vegetative cover is preserved.

(9) Operations and maintenance plan. Detailed description of ongoing operations and maintenance procedures for stormwater management facilities and practices to ensure their continued function as designed and constructed or preserved. These plans will identify the parts or components of a stormwater management facility or practice that need to be regularly or periodically inspected and maintained, and the equipment and skills or training necessary. The plan shall include an inspection and maintenance schedule, maintenance tasks, responsible parties for maintenance, funding, access and safety issues. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

(10) Maintenance access easements. The applicant must ensure access from public right-of-way to stormwater management facilities and practices requiring regular maintenance at the site for the purpose of inspection and repair by securing all the maintenance access easements needed on a permanent basis. Such access shall be sufficient for all necessary equipment for maintenance activities. Upon final inspection and approval, a plat or document

indicating that such easements exist shall be recorded and shall remain in effect even with the transfer of title of the property.

(11) Inspection and maintenance agreements. Unless an on-site stormwater management facility or practice is dedicated to and accepted by the Unified Government of Athens-Clarke County as provided in section 5-4-6(d), the applicant must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of land served by an on-site stormwater management facility or practice in accordance section 5-4-6(d).

(12) Evidence of acquisition of applicable local and non-local permits. The applicant shall certify and provide documentation to the Department that all other applicable environmental permits have been acquired for the site prior to approval of the stormwater management plan.

(d) *Stormwater management inspection and maintenance agreements.* Prior to the issuance of any permit for a land development activity requiring a stormwater management facility or practice hereunder and for which the Department requires ongoing maintenance, the applicant or owner of the site must, unless an on-site stormwater management facility or practice is dedicated to and accepted by the Unified Government of Athens-Clarke County, execute an inspection and maintenance agreement, if applicable, that shall be binding on all subsequent owners of the site.

The inspection and maintenance agreement, if applicable, must be approved by the Department prior to plan approval, and recorded in the deed records upon final plat approval.

The inspection and maintenance agreement shall identify by name or official title the person(s) responsible for carrying out the inspection and maintenance. Responsibility for the operation and maintenance of the stormwater management facility or practice, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor owner. If portions of the land are sold or otherwise transferred, legally binding arrangements shall be made to pass the inspection and maintenance responsibility to the appropriate successors in title. These arrangements shall designate, for each portion of the site, the person to be permanently responsible for its inspection and maintenance.

As part of the inspection and maintenance agreement, a schedule shall be developed for when and how often routine inspection and maintenance will occur to ensure proper function of the stormwater management facility or practice. The agreement shall also include plans for annual inspections to ensure proper performance of the facility between scheduled maintenance and shall also include remedies for the default thereof. Copies of routine inspection summaries will be submitted in accordance with approved maintenance plan.

In addition to enforcing the terms of the inspection and maintenance agreement, the Department may also enforce all of the

provisions for ongoing inspection and maintenance in section 5-4-9 of this article.

The Mayor and Commission of Athens-Clarke County, in lieu of an inspection and maintenance agreement, may consider dedication to the Unified Government of Athens-Clarke County of any existing or future stormwater management facility for maintenance, upon recommendation by the Director of the Department, provided such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

(e) *Application review fees.* The fee for review and inspection of any stormwater management application shall be based on the fee schedule in Section 7-1-560. The fee shall be paid by the applicant prior to the issuance of the stormwater management permit for the development.

(d) *Modifications for off-site facilities.* The stormwater management plan for each land development project shall provide for stormwater management measures located on the site of the project, unless provisions are made to manage stormwater by an off-site or regional facility. The off-site or regional facility must be located on property legally dedicated for the purpose, must be designed and adequately sized to provide a level of stormwater quantity and quality control that is equal to or greater than that which would be afforded by on-site practices and there must be a legally-obligated entity responsible for long-term operation and maintenance of the off-site or regional stormwater facility. In addition, on-

site measures shall be implemented, where necessary, to protect upstream and downstream properties and drainage channels from the site to the off-site facility.

A stormwater management plan must be submitted to the Department, which shows the adequacy of the off-site or regional facility.

To be eligible for a modification, the applicant must demonstrate to the satisfaction of the Department that the use of an off-site or regional facility will not result in the following impacts to upstream or downstream areas:

(1) Increased threat of flood damage to public health, life, and property;

(2) Deterioration of existing culverts, bridges, dams, and other structures;

(3) Accelerated streambank or streambed erosion or siltation;

(4) Degradation of in-stream biological functions or habitat; or

(5) Water quality impairment in violation of state water quality standards, and/or violation of any state or federal regulations.

(Ord. of 6-1-2004, § 1; Ord. of 11-3-2009, § 1; Ord. of 4-7-2020, § 4)

Sec. 5-4-7. - Post-development stormwater management performance criteria.

(a) The following performance criteria shall be applicable to all stormwater management plans, unless otherwise provided for in this article:

(1) *Water quality and runoff reduction.* All stormwater runoff generated from a site shall be adequately treated before discharge. It will be presumed that a stormwater management system complies with this requirement if:

a. For projects with a stormwater concept meeting before December 6, 2020, the system is designed to treat the prescribed water quality treatment volume from the site, which is defined as the runoff volume resulting from the first 1.2 inches of rainfall from a site, or it retains the first 1.0 inch of rainfall onsite using approved runoff reduction methods;

b. For projects with a stormwater concept meeting on or after December 6, 2020, the stormwater management system shall be designed to retain the first 1.0 inch of rainfall on the site, to the maximum extent practicable. The determination by the MS4 that it is infeasible to apply the runoff reduction standard in part or in whole or that an alternate strategy will reduce pollutant loadings from the site to the maximum extent practicable must be documented with the site plan review documents. If the entire 1.0 inch of rainfall cannot be retained onsite using runoff reduction methods, the remaining runoff from a 1.2 inch rainfall event must be treated to remove at least 80% of the calculated average annual post-

development total suspended solids (TSS) load or equivalent as designed in the Georgia Stormwater Management Manual or the Transportation and Public Works Department Technical Standards. Treatment of runoff from hotspots on the site such as fueling stations requires special attention to address the expected pollutants of concern.

c. Appropriate structural stormwater controls or nonstructural practices are selected, designed, constructed or preserved, and maintained according to the specific criteria in the *Georgia Stormwater Management Manual or* as provided for in the Transportation and Public Works Department Technical Standards; and

d. Runoff from hotspot land uses and activities identified by the Department are adequately treated and addressed through the use of appropriate structural stormwater controls, nonstructural practices and pollution prevention practices.

(2) *Stream channel and aquatic habitat protection.* Protection of stream channels from bank and bed erosion and degradation shall be provided by using all of the following three approaches:

a. Preservation, restoration and/or reforestation with native vegetation of the applicable stream buffer;

b. Twenty-four-hour extended detention storage of all stormwater runoff generated from a site by the one-year, 24-hour return frequency storm event; and

c. Post development erosion prevention measures such as energy dissipation and velocity control. These measures shall take into consideration location and size of outlet control structure.

(3) *Overbank flood protection.* Downstream overbank flood protection and property protection shall be provided by controlling the site's post-development peak discharge rate to the pre-development rate for the 25-year, 24-hour return frequency storm event. If control of the one-year, 24-hour storm under section 5-4-7(3) is exempted, then peak discharge rate attenuation of the two-year through the 25-year return frequency storm event must be provided.

(4) *Extreme flooding protection.* Extreme flood and public safety protection shall be provided by controlling and safely conveying the site's 100-year, 24-hour return frequency storm event such that flooding is not exacerbated.

(5) *Structural stormwater controls.* All structural stormwater management facilities shall be selected and designed using the appropriate criteria from the *Georgia Storm water Management Manual and* any local addenda. All structural stormwater controls must be designed appropriately to

meet their intended function. For other structural stormwater controls not included in the *Georgia Storm water Management Manual or* the Transportation and Public Works Department Technical Standards, or for which pollutant removal rates have not been provided, the effectiveness and pollutant removal of the structural control must be documented through prior studies, literature reviews, or other means and receive approval from the Department before being included in the design of a stormwater management system.

Applicants shall consult the *Georgia Storm water Management Manual for* guidance on the factors that determine site design feasibility when selecting and locating a structural stormwater control.

(6) *Storm water credits for nonstructural measures.* The use of one or more site design measures by the applicant may allow for a reduction in the water quality treatment volume required under section 5-4-7(1). The applicant may, if approved by the Department, take credit for the use of stormwater better site design practices and reduce the water quality volume requirement. Credits shall be made available pursuant to the provisions governing credits in the *Georgia Storm water Management Manual or* as provided for in the Transportation and Public Works Department Technical Standards.

(7) *Drainage system guidelines.* Stormwater conveyance facilities, which may include,

but are not limited to, culverts, stormwater drainage pipes, catch basins, drop inlets, junction boxes, headwalls, gutter, swales, channels, ditches, and energy dissipaters shall be provided when necessary for the protection of public right-of-way, public properties, and private properties adjoining project sites and/or public right-of-ways. Stormwater conveyance facilities that are designed to carry runoff from more than one parcel, existing or proposed, shall meet the following requirements:

a. Methods to calculate stormwater flows shall be in accordance with the stormwater design manual;

b. All culverts, pipe systems and open channel flow systems shall be sized in accordance with the stormwater management plan using the methods included in the stormwater design manual; and

c. Design and construction of stormwater conveyance facilities shall be in accordance with the criteria and specifications found in the stormwater design manual.

(8) *Dam design guidelines.* Any land disturbing activity that involves a site which proposes a dam shall comply with the provisions of O.C.G.A. § 12-5-370 et seq. (the "Georgia Safe Dams Act") and the rules for dam safety promulgated thereunder, as applicable.

(b) The Transportation and Public Works Director may determine that redevelopment on a

developed site that includes all stormwater management measures necessary to satisfy all of the postdevelopment stormwater management performance criteria as provided in section 5-4-7(a) is fully or partially infeasible.

(1) An applicant for such an infeasibility determination shall provide justification demonstrating how the redevelopment satisfies the Better Site Design and smart growth principles, as defined in the *Georgia Stormwater Management Manual or* as provided for in the Transportation and Public Works Department Technical Standards. The Transportation and Public Works Director shall consider the application and existing site conditions to determine full or partial infeasibility on a site by site basis. At least one of the following criteria shall be satisfied:

a. The redevelopment site is situated on parcel(s) with impervious cover in excess of 40 percent of the maximum allowable lot coverage for the applicable zoning category, as calculated considering only the adjusted tract acreage;

b. The redevelopment site includes mitigating circumstances including shallow bedrock, contaminated soils, high groundwater, or presence of existing utilities; or

c. Conformance with post-development stormwater management performance criteria on the redevelopment site

would damage a community resource or impact threatened or endangered species habitat.

(2) Only redevelopment sites that satisfy the following additional criteria will be eligible to be determined partially or fully infeasible for post-development performance criteria as provided in section 5-4-7(a).

a. The site is situated in an area in the I (Industrial), E (Employment), C (Commercial) or RM (Mixed-Density Residential) zones as designated and established in Title 8, entitled Zoning and Development Standards of this Code together with any churches or schools permitted in any other zone by special use permit;

b. The site is not classified as a hotspot; and

c. The site is not upstream of a known public flooding problem as identified by the Department of Transportation and Public Works in the Area-Wide Stormwater Master Plan, as amended from time to time, on file and available for public inspection at the Department of Transportation and Public Works.

(c) Any site determined to be fully or partially infeasible for post-development performance criteria for post-development performance criteria according to section 5-4-7(b) shall be exempt from satisfying any criteria deemed infeasible by the Transportation and Public Works Director. In such case, and unless

otherwise provided for in this article, the following post-development stormwater management performance criteria shall apply at a minimum:

(1) *Existing deficiencies.* The following measures to mitigate existing deficiencies on the parcel(s) shall be part of the stormwater management plan.

a. Existing erosional areas shall be stabilized; and

b. Existing structural stormwater control(s) shall be restored to conform to the original design or to an alternate design that more closely conforms to current standards.

(2) *Special standards for replaced impervious surface area.* All stormwater runoff generated from the replaced impervious surface shall be adequately treated before discharge. A stormwater management system will be presumed to comply with this standard if:

a. It is designed to treat the REIS volume from the site in a way that minimizes this pollutant loading; and

b. Appropriate structural stormwater controls or nonstructural practices are selected, designed, constructed or preserved, and maintained according to the specific criteria in the *Georgia Stormwater Management Manual* or as provided for in the Transportation and

Public Works Department Technical Standards.

c. The design shall utilize green infrastructure, low impact design, and runoff reduction to the maximum extent practicable. All stormwater runoff that is either infiltrated or evaporated may be counted as double in treating the REIS volume requirements.

(3) *Reduction of existing impervious surface areas.* When the existing impervious surface area of a site is removed and replaced with a predevelopment soil hydrologic equivalent (Type B soil with a curve number equivalent to a meadow or woods in good condition), and a stormwater management permit is obtained for such work under this Chapter, the following standards apply:

a. If the site's impervious surface is reduced by 20 percent to any given outlet, the requirements of section 5-4-7(c)(2) do not apply.

b. If the site's impervious surface is reduced by less than 20 percent to any given outlet, the requirements of section 5-4-7(c)(2) are applied in proportion to the amount of impervious surface removed. For example, removal of ten percent of the site's impervious surface area to any given outlet would reduce the requirements of section 5-4-7(c)(2) by 50 percent.

(4) *Additional impervious surface less than 5,000 square feet.* Many redevelopment projects involve not only the replacement of impervious surfaces but also the net creation of impervious surfaces. These new surfaces can impact streams and neighboring properties. All stormwater runoff generated from the new impervious surface shall be adequately treated before discharge. It will be presumed that a stormwater management system complies with this requirement if it is sized to provide treatment as defined in subsection (a)(1) of this section.

(5) *Additional impervious surface greater than 5,000 square feet.* If the redevelopment results in a net increase of greater than 5,000 square feet of impervious surface, all stormwater runoff generated from the new impervious surface shall adhere to the post-development stormwater management performance criteria as specified in section 5-4-7(a).

(Ord. of 6-1-2004, § 1; Ord. of 12-5-2017(3), §§ 6-8; Ord. of 2-5-2019(1), § 8; Ord. of 4-7-2020, §§ 5-8)

Sec. 5-4-8. - Construction inspections of post-development stormwater management system.

(a) *Inspections to ensure plan compliance during construction.* Periodic inspections of the stormwater management system construction shall be conducted by the staff of the Department or conducted and certified by a professional engineer who has been approved by the Department. Construction inspections shall

utilize the approved stormwater management plan for establishing compliance.

All inspections shall be documented with written reports that contain the following information:

(1) The date and location of the inspection;

(2) Whether construction is in compliance with the approved stormwater management plan;

(3) Variations from the approved construction specifications; and

(4) Any other variations or violations of the conditions of the approved stormwater management plan.

If any violations are found, the applicant shall be notified in writing of the nature of the violation and the required corrective actions.

(b) *Final inspection and as-built plans.* Upon completion of a project and before a certificate of occupancy shall be granted, the applicant is responsible for certifying that the completed project is in accordance with the approved stormwater management plan. All applicants are required to submit actual "as built" plans for any stormwater management facilities or practices after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and practices and must be certified by a professional engineer. A final inspection by the Department is required before the release of any performance securities can occur.

(Ord. of 6-1-2004, § 1)

Sec. 5-4-9. - Ongoing inspection and maintenance of stormwater facilities and practices.

(a) *Long-term maintenance inspection of stormwater facilities and practices.* Stormwater management facilities and practices included in a stormwater management plan which are subject to an inspection and maintenance agreement must undergo ongoing inspections to document maintenance and repair needs and ensure compliance with the requirements of the agreement, the plan and this article.

A stormwater management facility or practice shall be inspected on a periodic basis by the responsible person in accordance with the approved inspection and maintenance agreement. In the event that the stormwater management facility has not been maintained and/or becomes a danger to public safety or public health, or threatens downstream water resources, the Department shall notify the person responsible for carrying out the maintenance plan by registered or certified mail to the person specified in the inspection and maintenance agreement. The notice shall specify the measures needed to comply with the agreement and the plan and shall specify the time within which such measures shall be completed. If the responsible person fails or refuses to meet the requirements of the inspection and maintenance agreement, the Department may correct the violation as provided in subsection 5-4-9(d) hereof.

Inspection programs by the Department may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety

laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in stormwater management facilities; and evaluating the condition of stormwater management facilities and practices.

(b) *Right-of-entry for inspection.* The terms of the inspection and maintenance agreement shall provide for the Department to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property for general inspections or when the Department has a reasonable basis to believe that a violation of this article is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this article.

(c) *Records of maintenance activities.* Parties responsible for the operation and maintenance of a stormwater management facility shall provide records of all maintenance and repairs to the Department.

(d) *Failure to maintain.* If a responsible person fails or refuses to meet the requirements of the inspection and maintenance agreement, the Department, after 30 days' written notice by certified mail (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the facility or practice in proper working condition. The costs of the repair work shall be billed to

the owner(s) of the facility. Failure of the owner(s) to pay the costs within 30 days of receipt of the bill shall result in 1.5 percent late charge on the unpaid balance of any bill that becomes delinquent. Suits for collection shall be commenced by Athens-Clarke County in the county of the owner's residence; provided, however, if the owner is not a resident of this state, suit may be filed in the Superior Court of Athens-Clarke County.

(Ord. of 6-1-2004, § 1)

Sec. 5-4-10. - Violations, enforcement and penalties.

Any action or inaction which violates the provisions of this article or the requirements of an approved stormwater management plan or permit, may be subject to the enforcement actions outlined in this section. 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 below shall not prevent such equitable relief.

(1) *Notice of violation.* If the applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this article, the Department shall issue a written notice of violation to such applicant or other responsible person. The violator shall have the amount of time specified in the written notice to correct the violation. If the violation is not corrected within the time specified in the written notice, the Department shall issue a stop work order requiring that all land disturbing activities on the project be stopped.

Where a person is engaged in activity covered by this article without having first secured a stormwater permit, the Department shall issue an immediate stop work order in lieu of a written notice.

(2) *Penalties.* In the event the applicant or other responsible person fails to correct the violation by the date set forth in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed.

a. *Stop work order.* The Department may issue a stop work order which shall be served on the applicant or other responsible person. A stop work order shall mean that all work on the project must stop unless the work pertains to correcting the violation or installing/maintaining erosion control best management practices in accordance with applicable local ordinances and state law. 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 or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.

b. *Withhold certificate of occupancy.* The Department may request that the Athens-Clarke County Building Permits and

Inspections Department 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.

c. *Suspension, revocation or modification of permit.* The Department 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 Department may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

d. *Criminal penalties.* Any person who violates any provision of this article shall be punished as provided in section 1-1-5 of this Code. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(Ord. of 6-1-2004, § 1)

Sec. 5-4-11. - Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be adjudged invalid by a court of competent jurisdiction, such

judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this article.

(Ord. of 6-1-2004, § 1)

Secs. 5-4-12-5-4-19. - Reserved.

ARTICLE II. - ILLICIT DISCHARGE AND ILLEGAL CONNECTION

Sec. 5-4-20. - General provisions.

(a) *Title.* This article shall be known as the "Illicit Discharge and Illegal Connection Ordinance."

(b) *Findings.* It is hereby determined that:

(1) The Athens-Clarke County separate storm sewer system as defined in this article was designed and installed to manage storm-water so as to prevent localized flooding, damage to property and risk to public safety;

(2) The Athens-Clarke County separate storm sewer system was not designed or installed as a receiving system for non-stormwater discharges;

(3) Discharges to the Athens-Clarke County separate storm sewer system that are not composed entirely of stormwater contribute to increased nonpoint source pollution and degradation of receiving waters;

(4) These non-stormwater discharges occur due to spills, dumping and improper connections to the county separate storm sewer system from residential, industrial, commercial or institutional establishments;

(5) These non-stormwater discharges not only impact local waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters;

(6) The impacts of these non-stormwater discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;

(7) These impacts can be minimized through the regulation of spills, dumping and discharges into the Athens-Clarke County separate storm sewer system;

(8) Localities in the State of Georgia are required to comply with a number of state and federal laws, regulations and permits which require a locality to address the impacts of non-point source pollution caused by non-stormwater discharges to the county separate storm sewer system;

(9) The Clean Water Act requires the management and maintenance of the Athens-Clarke County separate storm sewer system and the management of discharges to that system;

(10) Therefore, in order to prohibit such non-stormwater discharges to the Athens-Clarke County separate storm sewer system, it is determined that the regulation of spills, improper dumping and discharges to the Athens-Clarke County separate storm sewer system is in the public interest

and will prevent threats to public health and safety, and the environment.

(c) *Purpose and intent.* The purpose of this article is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the Athens-Clarke County separate storm sewer system to the maximum extent practicable as required by federal law. This article establishes methods for controlling the introduction of pollutants into the Athens-Clarke County separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this article are to:

(1) Regulate the contribution of pollutants to the Athens-Clarke County separate storm sewer system by any user;

(2) Prohibit illicit discharges and illegal connections to the Athens-Clarke County separate storm sewer system;

(3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the Athens-Clarke County separate storm sewer system; and,

(4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this article.

(d) *Applicability.* The provisions of this article shall apply throughout Athens-Clarke County.

(e) *Compatibility with other regulations.* This article is not intended to modify or repeal any

other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, 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 provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

(f) *Responsibility for administration.*

(1) The Athens-Clarke County Manager or his designee shall have the power, to administer, implement, and enforce the provisions of this article and any procedures, standards and guidelines established under authority of this article. Such power shall include the right to maintain an action or procedure in any court of competent jurisdiction to compel compliance with or restrain any violation of this article.

(2) The department shall be responsible for the conservation, management, maintenance (where applicable), extension and improvement of the Athens-Clarke County separate storm sewer system, including activities necessary to control stormwater and activities necessary to administer and implement the stormwater management programs incorporated by reference into Athens-Clarke County's NPDES stormwater permit.

(3) The department or its designee may:

(a) Inspect private systems which discharge to the Athens-Clarke County separate storm sewer system; and

(b) Develop programs or procedures to control the discharge of pollutants into the Athens-Clarke County separate storm sewer system.

(Ord. of 10-3-2006, § 1)

Sec. 5-4-21. - Definitions.

Accidental discharge means a discharge prohibited by this article which occurs by chance and without planning or thought prior to occurrence.

Athens-Clarke Countyshall mean Athens-Clarke County and such of its departments, employees and agents as may have duties and responsibilities for administering and enforcing all storm water management activities and implementation of the provisions of this article.

Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction activity means activities subject to the Georgia Erosion and Sedimentation Control Act or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Conveyance shall mean an aboveground or underground natural or man-made drainage feature, that provides for the collection and movement of stormwater, and shall include but not be limited to concrete or metal pipes, ditches, depressions, swales, roads with drainage systems, highways, county streets, curbs,

gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, drainage channels, reservoirs, rights-of-way, storm drains, culverts, street gutters, oil/water separators, modular pavements and other similar drainage structures.

Department shall mean, unless otherwise specified, the Department of Transportation and Public Works or their authorized agent.

Discharge shall mean the direct or indirect release of water, fluid, materials or other matter to a conveyance or surface that drains to a conveyance.

Illegal connection means either of the following:

(a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

(b) Any pipe, open channel, drain or conveyance connected to the Athens-Clarke County separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency regardless of whether such pipe, open channel, drain or other conduit, whether natural or man-made, was permissible under law or practices applicable or prevailing at the time the connection was made, or has

been previously allowed, permitted, or approved by the Athens-Clarke County or any other authorized enforcement agency. "Illegal connection" expressly includes, without limitation, those connections made in the past.

Illicit discharge means any direct or indirect non-stormwater discharge to the Athens-Clarke County separate storm sewer system, except as exempted in section 5-4-22 of this article.

Industrial activity means activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by the Georgia EPD under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means, except to the extent exempted from this article, 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.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease;

detergents or cleaning chemicals (biodegradable or otherwise); degreasers; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; sediment, as defined in section 8-3-2 of this Code; concrete and cement; and noxious or offensive matter of any kind.

Pollution means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Procedure shall mean a procedure adopted by the department, by and through the director, to implement a regulation or regulations adopted under this article, or to carry out other responsibilities as may be required by this Code or other codes, ordinances or resolutions of Athens-Clarke County or other agencies.

Separate storm sewer system means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, county streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

(a) Owned or maintained by Athens-Clarke County;

(b) Not a combined sewer; and

(c) Not part of a publicly-owned treatment works (POTW).

State waters means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Georgia which are not entirely confined and retained completely upon the property of a single person.

Stormwater runoffor stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Structural stormwater control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

Violator means any person, business, or commercial entity violating any provision of this article or allowing

any person or persons under their control or authority to violate any provision of this article.

(Ord. of 10-3-2006, § 1; Ord. of 12-3-2013, § 1)

Sec. 5-4-22. - Prohibitions.

(a) *Prohibition of illicit discharges.* It shall be a violation of this article for any person to throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the Athens-Clarke County separate storm sewer system any pollutants or waters containing any pollutants, other than stormwater.

(b) *Exemptions.* The following discharges are exempt from the prohibition provision above:

(1) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, noncommercial washing of vehicles, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;

(2) Discharges or flows from fire fighting, and other discharges specified in writing by the department as being necessary to protect public health and safety;

(3) The prohibition provision above shall not apply to any non-stormwater discharge

permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State of Georgia and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the Athens-Clarke County separate storm sewer system.

(c) *Prohibition of illegal connections.* It shall be a violation of this Article for any person to construct, connect, use, maintain or suffer or allow the continued existence of any illegal connection to the Athens-Clarke County separate storm sewer system.

(1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(2) A person violates this article if the person connects a line conveying sewage to the Athens-Clarke County separate storm sewer system, or allows such a connection to continue.

(3) Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the

sanitary sewer system upon approval of the public utilities department.

(4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from Athens-Clarke County requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the department.

(Ord. of 10-3-2006, § 1)

Sec. 5-4-23. - Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the department prior to allowing discharges to the Athens-Clarke County separate storm sewer system.

(Ord. of 10-3-2006, § 1)

Sec. 5-4-24. - Access and inspection of properties and facilities.

The department shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this article.

(a) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the department.

(b) The owner or operator shall allow the department ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.

(c) The department shall have the right to set up on any property or facility such devices as are necessary in the opinion of the department to conduct monitoring and/or sampling of flow discharges.

(d) The department may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the department. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the department and shall not be replaced. The costs of clearing such access shall be paid by the owner or operator.

(f) Unreasonable delays in allowing the department access to a facility is a violation of this article.

(g) If the department has been refused access to any part of the premises from which stormwater is discharged, and the department is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the department may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. of 10-3-2006, § 1)

Sec. 5-4-25. - Notification of accidental discharges and spills.

(a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of non-stormwater from that facility or operation which is resulting or may

result in a discharge of that non-stormwater into the Athens-Clarke County separate storm sewer system, state waters, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

(b) Said person shall notify the department by phone, facsimile or in person within 24 hours of discovering the discharge. Such notification shall detail the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the department within three business days of the phone or in person notice. If the discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

(c) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

(d)Failure to provide notification of a release or discharge as provided above is a violation of this article.

(Ord. of 10-3-2006, § 1)

Sec. 5-4-26. 'Violations, enforcement and penalties.

(a) *Violations.* It shall be a violation of this article for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this Article may be subject to the enforcement actions outlined in this section. Each day of noncompliance is considered a separate offense. The department may institute appropriate action or proceedings at law or equity for the enforcement of this article. Any court of competent jurisdiction may have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Nothing herein contained shall prevent the department from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief. In the event the violation constitutes an immediate danger to public health or public safety, the department has the right but not the duty, to enter upon the subject private property or premises, without giving prior notice, and take any and all measures necessary to abate the violation and/or restore the property.

(b) *Notice of violation.* Whenever the department finds that a violation of this Article has occurred, the department may, but is not required to, order compliance by written notice of violation.

(1) The notice of violation shall contain:

a. The name and address of the alleged violator when available; and

b. The address when available or a description of the building, structure, premises or land upon which the violation is occurring, or has occurred; and

c. A statement specifying the nature of the violation; and

d. A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action; and

e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and

f. A statement that the determination of violation may be appealed to the department by filing a written notice of appeal within 30 days of service of notice of violation.

(2) Such notice of violation may require without limitation:

a. The performance of monitoring, analysis, and reporting;

b. The elimination of illicit discharges and illegal connections;

c. That violations of this article shall cease and desist;

d. The abatement of non-stormwater discharges, the remediation of land or the effects of pollution, and the

restoration of any affected property to its unaffected condition;

e. Payment of costs to cover administrative and abatement costs;

f. The implementation of pollution prevention practices;

g. The development and provision to the department of written remediation or action plans;

h. The development and provision to the department of documents showing the location and discharge points of conveyances, pipes, channels, or drains; and

i. Any other actions that will lead to the remedy of a condition of violation of this article.

(c) *Appeal of notice of violation.* Any person receiving a notice of violation may appeal the determination of the director or his designee. The notice of appeal must be received by the department within 30 days from the date of the notice of violation. Hearing on the appeal before the director shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the director shall be appealed to the Administrative Hearing Officer pursuant to section 1-5-1.

(d) *Criminal penalties.* For violations of this article, the department may issue a citation to the alleged violator requiring such person to appear in the Municipal Court of Athens-Clarke County to answer charges for such violation.

Upon conviction, such person shall be punished pursuant to section 1-1-5 of this Code. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(e) *Violations deemed a public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.

(f) *Remedies not exclusive.* The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law, and the department may seek cumulative remedies. The department may recover attorney's fees, court costs, and other expenses associated with enforcement of this article, including sampling and monitoring expenses. If the amount due is not paid within 30 days after receipt of a notice requiring payment of such costs, or if an appeal is taken, within 30 days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(Ord. of 10-3-2006, § 1)

Sec. 5-4-27. - Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be

adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this article.

(Ord. of 10-3-2006, § 1)

APPENDIX G

CHAPTER 5-5. - STORMWATER UTILITY

Sec. 5-5-1. - Purpose.

Athens-Clarke County is authorized by the State constitution, including, without limitation, Article IX, Section II, Paragraphs 1(a) and III(a)(6) thereof and state law, to provide stormwater management services, systems and facilities throughout Athens-Clarke County, which services, systems and facilities contribute to the protection and preservation of the public health, safety and welfare, and protection of the natural resources of Athens-Clarke County. The Federal Clean Water Act, as amended by the Water Quality Act of 1987 (33 U.S.C. § 1251 et seq.), other amendments and rules promulgated by the United States Environmental

Protection Agency pursuant to the Act, place increased emphasis on the role of local governments in developing, implementing, conducting and making available to its citizens and property owners stormwater management services which address water quality and volume impacts of stormwater runoff. The Athens-Clarke County Commission has determined that development in Athens-Clarke County to date, and the outlook for continued development at an increasing rate in the future, has created and will continue to create additional needs for stormwater management services, systems and facilities within Athens-Clarke County. Athens-Clarke County has engaged a consultant to perform Professional Engineering and Financial Analyses of Athens-Clarke County's stormwater management needs and the alternatives available to Athens-Clarke County for dealing with stormwater management, and has received, reviewed and considered the results of the consultant's analyses which identify stormwater management needs, propose strategic program goals and priorities, estimate the cost of stormwater management services, systems and facilities, examine reasonable charges by Athens-Clarke County for providing such services and facilities and project the rate base available within Athens-Clarke County to support such costs. The Athens-Clarke County Commission finds and concludes from the Professional Engineering and Financial Analyses that it would be desirable to provide for additional stormwater management services, systems and facilities within Athens-Clarke County. Athens-Clarke County Commission finds and concludes from the Professional Engineering and Financial Analyses that a fair and equitable rate structure for those owners of developed property in Athens-Clarke County receiving the benefits of stormwater management services,

systems and facilities, the proceeds of which will be dedicated to Athens-Clarke County stormwater utility for carrying out its purposes, will be essential if Athens-Clarke County is to provide the level of stormwater management services, systems and facilities that would be desirable to meet the existing and future stormwater management needs of Athens-Clarke County.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-2. - Findings.

The Athens-Clarke County Commission makes the following findings of fact:

(a) Athens-Clarke County is authorized by the state constitution, including, without limitation, Article IX, Section II, Paragraphs 1(a) and III(a)(6) thereof and state law to provide stormwater management services, systems and facilities throughout Athens-Clarke County.

(b) The management of stormwater and other surface water discharges within and beyond Athens-Clarke County is a matter that affects the health, safety and welfare of all residents and businesses in Athens-Clarke County.

(c) Improper management of stormwater runoff may cause erosion of lands, threaten businesses and residences, and other facilities with water damage and may create environmental damage to the rivers, streams and other bodies of water within and adjacent to Athens-Clarke County.

(d) A system for the collection, conveyance, storage, treatment and disposal of stormwater provides services to all properties within Athens-Clarke County and surrounding areas.

(e) Failure to effectively manage stormwater affects the operations of sanitary sewer operated by Athens-Clarke County by, among other things, increasing the likelihood of infiltration and inflow into the sanitary sewer system.

(f) Failure to effectively manage stormwater contributes to the further degradation of the water quality in area waterbodies which may result in higher levels of treatment requirements imposed on Athens-Clarke County's wastewater treatment facilities and increased water treatment cost of potable water supplies.

(g) The Federal Clean Water Act, as amended by the Water Quality Act of 1987 (33 U.S.C. § 1251 et seq.) (the "Act"), and rules promulgated by the United States Environmental Protection Agency pursuant to the Act imposed by regulatory obligations of its national pollutant discharge elimination system (NPDES) permit require Athens-Clarke County to reduce pollution in its stormwater discharge and increase water quality to the maximum extent practicable.

(h) Proper management of stormwater is a key element of having clean water with adequate assimilative capacity for treated wastewater discharges and adequate potable drinking water that are essential to support existing and future development in Athens-Clarke County. Athens-Clarke County has several rivers and streams listed on the list of impaired waters produced by the Georgia Department of Natural Resources, Environmental Protection Division, or other appropriate authorities pursuant to Section 303(d) of the Act.

(i) Compliance with the regulatory obligations of the NPDES permit will substantially increase the cost of stormwater management above that which is currently spent for drainage and flood control.

(j) The cost of operating and maintaining the Athens-Clarke County stormwater management system and financing necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.

(k) In order to protect the health, safety and welfare of the public, the unified government of Athens-Clarke County hereby exercises its authority to establish a stormwater utility and establish rates for stormwater management services.

(l) In promulgating the regulations contained in this section, Athens-Clarke County is acting pursuant to authority granted by the Constitution of the State of Georgia and the Charter of Athens-Clarke County to provide for stormwater collection and disposal. Ga. Const. art. IX, § II, ¶ Ill(a)(6).

(m) The unified government of Athens-Clarke County fully incorporates by reference into these findings the Stormwater Utility Development and Implementation Plan dated May 2004, the Funding Action Strategy dated September 2003, the Stormwater Areawide Master Plan dated March 2001 (hereinafter collectively referred to as the "Professional Engineering and Financial Analyses"), said documents on file in

the office of the transportation and public works department.

(n) The Professional Engineering and Financial Analyses conducted on behalf of and submitted to Athens-Clarke County assess and define the stormwater management issues, needs, goals, program priorities and operational opportunities of Athens-Clarke County.

(o) Given the issues, needs, goals, priorities and operational opportunities identified in the Professional Engineering and Financial Analyses submitted to Athens-Clarke County, Athens-Clarke County determines to establish a stormwater utility within Athens-Clarke County that is dedicated specifically to the management, maintenance, protection, control, regulation, use and enhancement of stormwater management services, systems and facilities in Athens-Clarke County in concert with other water resource management programs.

(p) Stormwater management is applicable and needed throughout Athens-Clarke County. Development in Athens-Clarke County has altered the natural hydrology with some natural elements having been replaced or augmented by man-made facilities. Even areas of Athens-Clarke County that remain less densely developed and rural in character with natural stormwater drainage predominating demand services along roads where ditches and culverts have been installed. As a result, stormwater management services systems and facilities needs apply to all areas of Athens-Clarke County.

(q) The stormwater needs in Athens-Clarke County include, but are not limited to, protecting the public health, safety and welfare. Provision of stormwater management services, systems and facilities and regulation of the use therefore renders and/or results in both service and benefit to individual properties, property owners, citizens and residents of Athens-Clarke County, and to all properties, property owners, citizens and residents of Athens-Clarke County concurrently in a variety of ways as identified in the Professional Engineering and Financial Analyses.

(r) The service and benefit rendered or resulting from the provision of stormwater management services, systems and facilities may differ over time depending on many factors and considerations, including, but not limited to, location, demands and impacts imposed upon the stormwater management services, systems and facilities, and risk exposure. It is practical and equitable to allocate the cost of stormwater management among the owners of properties in proportion to the long-term demands the properties owned impose on Athens-Clarke County's stormwater management services, systems and facilities which render or result in services and benefits to such properties and the owners thereof.

(s) Athens-Clarke County presently owns and operates stormwater management systems and facilities which have been developed, installed and acquired through various mechanisms over many years. The future usefulness and value of the existing stormwater management systems and facilities owned and operated by Athens-

Clarke County, and of future additions and improvements thereto, rests on the ability of Athens-Clarke County to effectively manage, protect, control, regulate, use and enhance the stormwater management systems and facilities in Athens-Clarke County in concert with the management and regulation of other water resources in Athens-Clarke County. In order to do so, Athens-Clarke County must have adequate and stable funding for its stormwater management services, systems and facilities.

(t) A stormwater utility provides the most practical and appropriate means of properly delivering stormwater management services, systems and facilities throughout Athens-Clarke County, and the most equitable means to regulate the use of a higher level of stormwater management services, systems and facilities in Athens-Clarke County through stormwater service charges, user fees and other mechanisms as described more fully herein.

(u) A schedule of stormwater utility service charges based in part on the area of impervious surface located on each property is the most appropriate and equitable means of allocating the cost of stormwater management services, systems and facilities throughout Athens-Clarke County. Such service charges may be complemented by other types of charges which address specific needs, including, but not limited to, special service fees, special assessments, use of proceeds from special purpose local option sales taxes and other forms of revenue, as deemed appropriate by Athens-Clarke County Commissioners.

(v) The existence of privately owned and maintained on-site or off-site systems, facilities, activities or assets which significantly reduce or otherwise mitigate the impact of a particular property on Athens-Clarke County's stormwater utility's cost of providing stormwater management services and/or stormwater management systems and facilities should be taken into account to reduce the service charge on that property either in the form of a direct reduction or credit, and that such reduction or credit should be conditional upon continuing provision of such services, systems, facilities, activities or assets in a manner complying with the standards and codes as determined by Athens-Clarke County and as set forth herein.

(w) The area of impervious surfaces on each property is the most important factor influencing the cost of the stormwater management services, systems and facilities provided by Athens-Clarke County or to be provided by Athens-Clarke County in the future, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater service charge.

(x) In addition to impervious area, the amount and types of pollutants that are carried by stormwater runoff is closely tied to the use of the property. Sampling of stormwater runoff from across the United States has demonstrated that the runoff from the more heavily used property, such as commercial and industrial developments, contain greater quantities of pollutants than less intensely

developed residential properties. The water quality component of Athens-Clarke County's stormwater program will concentrate more heavily in those areas where the land use of the properties generates the greatest quantity of pollutants and will be reflected in the stormwater quality charge of those properties.

(y) It is imperative that the proceeds from all service charges for stormwater management services, systems and facilities, together with any other revenues raised or otherwise allocated specifically to stormwater management services, systems and facilities, be dedicated solely to those purposes, and the commission directs that such proceeds of service charges and revenues shall therefore be deposited into the enterprise accounting fund of the Athens-Clarke County stormwater utility and shall remain in that fund and be disbursed only for stormwater management capital, operating and non-operating costs, lease payments and debt service of bonds or other indebtedness for stormwater management purposes.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-3. - Definitions.

(a) *Generally.* The following definitions shall apply in the interpretation and enforcement of this chapter, unless otherwise specifically stated or where the context clearly indicates a different meaning:

Act means and refers to the Clean Water Act, as amended by the Water Quality Act of 1987 (33 U.S.C. § 1251 et seq.), as amended, and the rules and

regulations promulgated by the United States Environmental Protection Agency pursuant thereto.

Agriculture means a developed property other than a single-family property that is zoned AR and has ten percent or less impervious area on the parcel. If a property is not zoned AR, but the property's primary use is agriculture, the owner may make application for the agriculture customer designation, provided that the agricultural operation has an approved farm plan from the Natural Resource Conservation Service (NRCS).

Base charge means a charge to all developed property based on the annual administrative and management costs of the stormwater utility. The base charge recognizes that all developed property in Athens-Clarke County contributes to the stormwater discharge that Athens-Clarke County must manage and that all developed property in Athens-Clarke County receives services from the stormwater management activities that Athens-Clarke County provides.

Credit means a reduction in the amount of a stormwater service charge to the owner of a particular parcel for the existence and use of significantly owner maintained and operated on-site or off-site stormwater systems or facilities, or continuing provision of services or activities that reduce or mitigate the Athens-Clarke County stormwater utility's cost of providing stormwater management services, systems and facilities for that particular parcel.

Developed property means a parcel that has been altered from its natural state by the addition of any improvement, such as a building, structure or other impervious surface with a footprint greater than 300

square feet and where a certificate of occupancy has been issued, or upon completion of construction or final inspection if no such certificate is issued; or where construction of an improvement is at least 50 percent complete and construction is halted for a period exceeding three months. Developed property includes but is not limited to, transient rentals (such as hotels and motels), multifamily apartment buildings or condominiums, commercial or industrial developments, institutional schools, hospitals and churches, federal, state, and local governmental properties, and parking parcels.

Director means the director of the Athens-Clarke County Department of Public Works and Transportation or his designees.

Duplex means a detached residential structure containing two dwelling units, designed for occupancy by not more than two families living independent of each other.

Equivalent runoff unit (ERU) means the statistical average horizontal impervious area of a single-family property between 1,500 and 4,000 square feet of impervious area within Athens-Clarke County as of the date of adoption of this article. The horizontal impervious area includes, but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks. The average square footage of horizontal impervious surface for a single-family property is determined to be 2,628 square feet.

Impervious area means those areas which prevent or impede the infiltration of stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development.

Large single-family means a single-family property with more than 4,000 square feet of impervious area.

Medium single-family means a single-family property with at least 1,500 square feet but less than 4,000 square feet of impervious area.

Other developed property means any developed property which is not a small, medium or large single-family property, a duplex, or a triplex.

Parcel means a discrete unit of land created by subdivision, which complies with all applicable laws at the time such parcels were created, as identified in the Athens-Clarke County deed and/or tax records, that is developed property.

Quantity charge means a charge that may be imposed on all developed property in Athens-Clarke County based on the impervious area and/or other factors that Athens-Clarke County determines reasonably reflect services provided to manage and/or mitigate the effect of the volume and rate of stormwater runoff.

Quality charge means a charge that may be imposed on all developed property in Athens-Clarke County to reasonably reflect services provided to treat or compensate for the difference in pollutants from properties of different land use.

Service area means those portions of Athens-Clarke County which receive stormwater management services, systems and facilities, and the Commission designates as a service area, or a part thereof. The Commission, from time to time, in its discretion, may add areas of Athens-Clarke County to a service area or remove areas from a service area. Service areas are identified generally and for informational purposes

only on the stormwater utility service area map prepared and maintained by the director.

Single-family property means a parcel containing a detached residential dwelling unit functioning as the only residential unit and designed for and occupied by one family only. A residential unit may include a house, manufactured or mobile home.

Small single-family means a single-family property with less than 1,500 square feet of impervious area.

Stormwater Management Manual means the Georgia Stormwater Management Manual Volume II (Technical handbook), dated August 2001, promulgated by the Atlanta Regional Commission, as officially revised and amended by the Atlanta Regional Commission from time to time (hereinafter referred to as the "Georgia Stormwater Management Manual").

Stormwater management services means all services provided by Athens-Clarke County which relate to the:

(1) Transfer, control, conveyance or movement of stormwater runoff through Athens-Clarke County;

(2) Maintenance, repair and replacement of existing stormwater management systems and facilities;

(3) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;

(4) Regulation of the use of stormwater management services, systems and facilities; and

(5) Education of the public as to stormwater issues.

Stormwater management services may address the quality and/or the quantity of stormwater runoff.

Stormwater service charge means the periodic service charge imposed pursuant to this article by the Athens-Clarke County stormwater utility for providing the stormwater management services, systems and facilities. This term may also include special charges to the owners of particular properties for services, systems or facilities related to stormwater management, including, but not limited to, charges for development plan review, inspection of development projects and on-site stormwater control systems, and enhanced levels of stormwater service above the threshold level.

Stormwater management systems and facilities means those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainageways, inlets, catchbasins, pipes, head walls, storm sewers, lakes and other physical works, properties and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff, which are owned by Athens-Clarke County or through which Athens-Clarke County has an easement or other legally binding right of use for stormwater drainage, and for which Athens-Clarke County has the obligation of maintenance for stormwater drainage purposes.

Triplex mean a detached residential structure containing three dwelling units, designed for occupancy by not more than three families living independent of each other.

Undeveloped means a parcel which does not have any improvements such as a building, structure, or impervious surface and contains no more than 300 square feet of impervious area.

Water quality factor means a statistically generated modifier to the base charge developed to represent the

relative differences in the level of pollutants in stormwater from general categories of land use on an average annual basis. The average annual pollutant loads from the general land use categories were estimated using the Source Loading and Management Model (SLAMM) developed by PV & Associates.

(b) *Construction of undefined terms.* Terms not herein specifically defined shall be construed in the manner commonly accepted, and the interpretation of the same will be furnished by the public works director upon application.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-4. - Stormwater utility established.

There is established a stormwater utility to be known as the Athens-Clarke County stormwater utility, which shall be responsible for stormwater management services, systems and facilities throughout Athens-Clarke County, and which shall provide for the management, protection, control, regulation, use and enhancement of Athens-Clarke County's stormwater management services, systems and facilities.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-5. - Enterprise fund established.

(a) *Creation.* There is established a stormwater utility enterprise fund in Athens-Clarke County budgeting and accounting systems for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater utility, including, but not limited to, rentals, rates, charges, fees and licenses, as may be established by the commission from time to time, and other funds that may be transferred or allocated to the

stormwater utility. All revenues and receipts of the stormwater utility shall be placed in the stormwater utility enterprise fund, and all expenses and capital investments of the stormwater utility shall be paid from the stormwater utility enterprise fund; provided, however, that other revenues, receipts and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management services, systems and facilities as deemed appropriate by the commission.

(b) *Funding and budget.*

(1) The commission shall place within the Athens-Clarke County stormwater utility the responsibility for operation, maintenance and regulation of the existing stormwater management services, systems and facilities previously performed, owned and operated or maintained by Athens-Clarke County, and other related assets, including, but not limited to, properties, other than road rights-of-way, upon which such stormwater management systems and facilities are located, easements, rights-of-entry and access and certain equipment used solely for stormwater management. This responsibility shall be placed with the Athens-Clarke County stormwater utility as the commission has determined that the Athens-Clarke County stormwater utility has been sufficiently organized, staffed and funded adequately to carry out such responsibilities. The commission shall determine which division of Athens-Clarke

County's governing body organization in which to place the stormwater utility, and the commission may move the stormwater utility to other divisions from time to time as it sees fit.

(2) Finance director or designee shall prepare an annual budget, which is to include all operation and maintenance costs, debt service and other costs related to the operation of the stormwater utility. The budget is subject to approval by the Athens-Clarke County Commission.

(3) The costs shall be spread over the rate classifications as determined by the commission.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-6. - Scope of responsibility for systems and facilities.

(a) Athens-Clarke County owns or has rights established by written agreements which allow it to operate, maintain, improve and access those stormwater management systems and facilities which are located:

(1) Within public road rights-of-way and easements;

(2) On private property as provided for in Department of Transportation and Public Works Policy and Procedure Statement PW-002 as adopted by the Mayor and Commission January, 1992; or

(3) On public land which is owned by Athens-Clarke County or another governmental entity, and to which Athens-Clarke County

has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities.

(b) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by Athens-Clarke County, and for which there has been no written agreement granting easements, rights-of-entry, rights-of-access, rights-ofuse or other form of dedication thereof to Athens-Clarke County for operation, maintenance, improvement and access of such stormwater management and systems and facilities, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by the laws of the state and the United States.

(c) It is the express intent of this chapter to protect the public health, safety and welfare of people and property in general, but not to create any special duty or relationship with any individual person, or to any specific property within or outside the boundaries of Athens-Clarke County. Athens-Clarke County expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or equitable remedies upon Athens-Clarke County, its commissioners, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-7. – Service charges, user fees, etc.

(a) It shall be the policy of Athens-Clarke County that service charges and user fees for the stormwater management services, systems and facilities to be provided by the stormwater utility in the service areas shall be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater management services, systems and facilities by individual properties and/or the level of service rendered by or resulting from the provision of stormwater management services, systems and facilities. Stormwater service charge rates shall be structured so as to be fair and reasonable, and the resultant service charges shall bear a substantial relationship to the cost of providing stormwater management services, systems and facilities. Similarly situated properties shall be charged similar rates, charges or fees. Service charge rates shall be coordinated with the use of other rates, charges or fees employed for stormwater management within Athens-Clarke County, whether within or outside the defined service areas, including, but not limited to, plan review and inspection fees, special fees for services, fees in lieu of regulatory requirements and special assessments. In setting the rentals, rates, charges, fees or licenses for stormwater management services, systems and facilities, Athens-Clarke County Commission shall also take into consideration the impact such will have in regulating the use of such services, systems and facilities.

(b) The cost of stormwater management services, systems and facilities may include operating expenses, capital investments and reserve accounts.

(c) Service areas shall be established to reflect significant variations in services provided to stormwater utility customers. The boundaries of the service areas are described herein and depicted generally and for informational purposes only on the official map of Athens-Clarke County stormwater utility service areas prepared and maintained by the director, and amended from time to time, referred to in this section as the "map."

(d) To the extent practicable, credits against stormwater service charges and/or other methods of funding stormwater management shall be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to Athens-Clarke County's standards by private property owners which eliminate, mitigate or compensate for the impact that the property or person may have upon stormwater runoff discharged to public stormwater management systems and facilities or to private stormwater management systems and facilities which impact the proper function of public stormwater management systems and facilities.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-8. - Service charge rates.

(a) Stormwater service charge rates shall be set and may be modified from time to time by the Athens-Clarke County Commission. In setting

or modifying such rates it shall be the goal of the Athens-Clarke County Commission to establish rates that are fair and reasonable, reflect the value of the stormwater management services, systems and facilities to those property owners who benefit therefrom, and which, together with other sources of support available to Athens-Clarke County stormwater utility, are sufficient to support the cost of the stormwater management services, systems and facilities, including, but not limited to, the payment of principal and interest on debt obligations, lease payments, operating expenses, capital outlays, nonoperating expenses, provisions for prudent reserves and other costs as deemed appropriate by the Athens-Clarke County Commission.

(b) The basis for computation of the charge for stormwater services to all developed property within Athens-Clarke County is established under this section. The amount of charge to be imposed, the establishment of formulas for the calculation of charges, the creation of customer classifications for the imposition of charges, and changes in such charges, formulas and customer classifications may be made by further resolution of the Athens-Clarke County Commission. All charges established pursuant to this section shall be fair and reasonable.

(c) The director shall assign a customer classification to all developed property within Athens-Clarke County. The director shall be responsible for determining the impervious area, land area, land use or other factors as may be needed for the fair, reasonable and equitable allocation of the stormwater fee based on the best available

information, including, but not limited to, data supplied by the county board of assessors, aerial photography, the property owner, tenant or developer. The director may require additional information as necessary to make the determination. The billing amount shall be updated by the director based on any additions to the impervious area as approved through the building permit process.

(d) Charges shall be imposed to recover all or a portion of the costs of the stormwater utility. Such charges, established herein, may include the following components:

(1) *Base charge.* A base charge may be imposed on all developed property in Athens-Clarke County. The base charge is established in recognition of the fact that all properties in Athens-Clarke County receive services from the stormwater management activities provided by Athens-Clarke County and that all developed property contributes to the stormwater discharge that Athens-Clarke County must manage. The base charge shall be charged to collect the administrative costs of the stormwater utility and may include capital, operating and maintenance costs of the stormwater utility which are not recovered by other means. The base charge is based on the ERU and is calculated using the formula identified below.

(2) *Quantity charge.* A quantity charge may be imposed on all developed property in Athens-Clarke County. The quantity charge shall be charged based upon the impervious

area and/or other factors affecting the volume and rate of stormwater runoff as reasonably determined by the Athens-Clarke County. The quantity charge is based on ERU and is calculated using the formula identified below.

(3) *Quality charge.* A quality charge may be charged to all developed property in Athens-Clarke County. The quality charge reflects the services provided to treat stormwater or compensate for the difference in pollutants from properties of different land use. The quality charge is determined by multiplying the base charges by a water quality factor as described below.

(e) *Calculation of charges.* The monthly stormwater utility charges imposed to recover the cost of the stormwater utility program are as follows:

Base Charge …..	$ 2.07 x ERU
Quantity Charge …..	$ 0.86 x ERU
Quality Charge …..	$ 0.57 x ERU x Water Quality Factor

(1) *Base charges and quantity charges.*

a. The basis of the stormwater utility fee for the base and quantity charges shall be the equivalent runoff unit (ERU).

b. An ERU will represent 2,628 square feet of impervious area.

c. The director shall be responsible for determining the impervious area and other required information for each developed property in Athens-Clarke

County based on the best available information, including, but not limited to, data supplied by the county board of assessors, aerial photography, the property owner, developer or other method as may be required. The number of ERUs that will form the basis of the base charge and quantity charge shall be established in the following manner:

1. *Small single-family—The* charges shall be equal to 0.6 ERUs.
2. *Medium single-family--The* charges shall be equal to 1.0 ERU.
3. *Large single-family—The* charges shall be equal to 1.8 ERUs.
4. *Agriculture—The* base and quantity charges shall be equal to 2.0 ERUs. The quality charge ERUs shall be equal to the total impervious area of the property divided other")—There footage of an ERU.
5. *Duplex and triplex—The* charges shall be equal to 1.0 ERU.
6. *Other developed property ("other')—The* charges shall be equal to the total impervious area of the property divided by the square footage of an ERU.
7. *Undeveloped—The* charges shall be equal to 0 ERUs and will not receive a stormwater utility bill.

(2) *The quality charge.*

a. The director shall assign all parcels within Athens-Clarke County one of the following water quality land use classifications based upon the Athens-Clarke County Comprehensive Plan, as amended:

1. Low density resdential.
2. Agriculture.
3. Medium density residential.
4. High density residential/institutional/public.
5. Commercial/industrial development.
6. Undeveloped.

b. The water quality factors for each of the water quality land use classifications are as follows:

1.	Low density residential	0.5
2.	Agriculture	1.0
3.	Medium density residential	1.0
4.	High density residential/institutional/ public	1.3
5.	Commercial/industrial development	1.9
6.	Undeveloped	0.0

(Ord. of 12-7-2004, § 1)

Sec. 5-5-9. - Stormwater service areas.

The following stormwater service areas shall be established to reflect significant variations in services provided to stormwater utility customers:

(a) *The Riparian Stormwater Service Area.* The Riparian Stormwater Service Area shall be comprised of parcels that drain directly into the hereinafter designated riparian waters or a portion of parcels that drain directly into designated waters without entering Athens-Clarke County's stormwater system. Designated waters include: North Oconee River, Middle Oconee River, McNutt Creek and the lower portions of Shoal Creek and Cedar Creek. The director shall be responsible for designating the properties in the Riparian Stormwater Service Area based on the best available information, including, but not limited to, data supplied by the county board of assessors, aerial photography, the property owner, developer or other method as may be required. The director shall designate said properties and provide a map of designated properties in the department of public works and transportation office. A parcel owner that wishes to challenge the inclusion or exclusion of a property in the riparian stormwater service area can file an appeal as provided in section 1-5-1 of the Athens-Clarke County Code.

(b) *The University of Georgia Stormwater Service Area.* The University of Georgia Service Area shall be comprised of those parcels draining directly into designated waters (riparian) or a portion of properties that drain directly to the University of Georgia stormwater system without entering Athens-Clarke County's stormwater system. The University of Georgia Stormwater Service Area means those portions of Athens-Clarke County bordered generally by the North Oconee River to the east, Lumpkin Street to the

west, College Station Road to the south and Baldwin Street to the north:

(1) Containing a significant impervious area and stormwater management system owned, maintained and operated by the University of Georgia;

(2) Receiving stormwater from non-university properties and facilitated in Athens-Clarke County; and

(3) Stormwater which flows generally to the Oconee River without entering other stormwater management systems in Athens-Clarke County.

The director shall be responsible for designating the properties in the University of Georgia Stormwater Service Area based on the best available information, including, but not limited to, data supplied by the county board of assessors, aerial photography, the property owner, developer or other method as may be required. The director shall designate said properties and provide a map of designated properties in the department of public works and transportation office. A parcel owner that wishes to challenge the inclusion or exclusion of a property in the University of Georgia Stormwater Service Area can file an appeal as provided in section 1-5-1 of the Athens-Clarke County Code.

(c) *Non-Athens-Clarke County NPDES Stormwater Phase II MS4 Service Areas.* These areas represent parcels at least a portion of which are within the geographic boundaries of Athens-Clarke County that have obtained and are in

compliance with a separate NPDES Stormwater Phase **II** Small Municipal Separate Storm Sewer Systems (MS4) Permit issued by the State of Georgia that requires the permit holder entity to develop and conduct its own stormwater management program similar in requirements to that of Athens-Clarke County and thus reduces the demand of service from Athens-Clarke County"s stormwater utility.

(d) *The Athens-Clarke County General Service Area.* All remaining parcels located within the jurisdictional boundaries of Athens-Clarke County which have not been designated as parcels within the Riparian or University of Georgia Stormwater Service Area.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-10. - Exemptions.

Except as provided in this section, no public or private property located in a service area shall receive a credit or offset against such stormwater service charges. No credit, offset or other reduction in stormwater service charges shall be granted based on the tax status, economic status, race, religion, age or sex of the owner of the property being served, or based on any other condition unrelated to the provision of stormwater management services, systems and facilities. There shall be four categories of exemptions as follows:

(a) *Type I exemption.* The following parcels shall be automatically exempt from all stormwater service utility charges. Parcel owners do not need to apply for an exemption pursuant to section 5-5-11

(1) Railroad tracks and the rights-of-way shall be exempt from stormwater service charges. However, railroad stations, maintenance buildings or other developed land used for railroad purposes shall not be exempt from stormwater service charges.

(2) Public and private roadways, not including driveways, shall be exempt from stormwater service charges.

(b) *Type II exemption.* The following parcels shall be automatically exempt from the quantity charges. Parcel owners do not need to apply for an exemption pursuant to section 5-5-11

(1) Parcels located in the Riparian Stormwater Service Area.

(2) Parcels located in the University of Georgia Stormwater Service Area.

(c) *Type III exemption.* The following parcels shall be automatically exempt from the water quality charges and may be eligible for further reduction in charges by providing in-kind services to Athens-Clarke County that reduce the cost of service for the Athens-Clarke County Stormwater Utility. However, the permittee of the MS4 must first apply for a credit or adjustment pursuant to the procedures identified in section 5-5-11 and submit a copy of their permit and stormwater management program for review and comparison with Athens-Clarke County services.

(1) Parcels located in a non-Athens-Clarke County NPDES Stormwater Phase II Service Area.

(d) *Type IV exemption*. The following parcels may be exempt from the quantity and/or quality charges. However, parcel owners must first apply for a credit or adjustment pursuant to the procedures identified in section 5-5-11

(1) Parcels with on-site stormwater management and treatment facilities that are designed to properly manage the stormwater runoff from impervious surface areas in accordance with (a.) and one or more of the stormwater quantity criteria described by the Georgia Stormwater Management Manual may be eligible to be exempted from a portion of the quantity charge.

a. In order to receive this credit, a maintenance plan must be on file with the department and be in compliance with it.

b. Facilities designed to meet the channel protection standard in accordance with the Athens-Clarke County Code and the Georgia Stormwater Management Manual, each as may be updated or amended from time to time will be eligible for one-third reduction in the quantity charge for the property.

c. Facilities designed to meet the channel protection and the over bank standard in accordance with the Athens-Clarke County Code and the Georgia Stormwater Management Manual, each as may be updated or amended from time to time, will be eligible for two-thirds

reduction in the quantity charge for the property.

d. Facilities designed to meet the channel protection, over bank and flood protection standard in accordance with the Athens-Clarke County Code and the Georgia Stormwater Management Manual, each as may be updated or amended from time to time, will be eligible for total exemption of the quantity charge for the property.

(2) Parcels with on-site stormwater management and treatment facilities and parcels serviced by such facilities that are designed to properly manage the stormwater runoff from impervious surface areas in accordance with the stormwater quality criteria described by the Georgia Stormwater Manual as may be updated or amended from time to time may be eligible to be exempted from a portion of the quality charge.

a. Facilities designed to remove no less than 40 percent of the average annual sediment load from stormwater runoff from the site may be eligible for a 20 percent reduction in the quality charge for the property.

b. Facilities designed to remove no less than 65 percent of the average annual sediment load from stormwater runoff from the site may be eligible for a 60 percent reduction in the quality charge for the property.

c. Facilities designed to remove no less than 80 percent of the average annual sediment load from stormwater runoff from the site will be eligible for total exemption of the quality charge for the property.

(3) The owner of property which is used as a site for a public or private school and which agrees to teach a general environmental science curriculum that includes water protection measures at the primary or secondary level may receive a credit against the stormwater service charge applicable to the property of five percent of the service charge applicable to the property. If a specific water protection program is agreed to be taught in all grades at such school including the Water Wise Program, the River Kids Program, Enviroscape Program, GLOBE (Global Learning and Observation to Benefit the Environment) Program or another such program approved by the director, which will result in benefits to Athens-Clarke County as a result of teaching such program, the amount of the credit against stormwater service charges which may be received may be increased up to an additional 15 percent of the service charge applicable to the property for a total of a 20 percent total educational credit. The amount of credits given shall be as determined by the director based on the number of contact hours and the curriculum being taught. The educational credit may be taken in addition to any other credit available under this section. Prior to

July 1 of each year, the superintendent of the Athens-Clarke County School System or in the case of private schools the chief executive officer of the school, shall certify to the director, the water protection measures curriculum being taught in each school for which an educational credit is being claimed and the extent to which such curriculum is being taught. For purposes of this educational credit a public school shall be any school operated by the Athens-Clarke County School District and a private school shall be a school operated by a private entity teaching some or all of the grades K through 12 at which are taught subject[s] commonly taught in the public schools operated by the Athens-Clarke County School District.

(4) Properties classified as agricultural customers that have an approved farm plan from the Natural Resource Conservation Service (NRCS) will be eligible for exemption from the water quality charge. These farm plans require implementation of best farm practices including but not limited to:

Crop Management	Channel Management	Nutrient Management
Contour Plowing	Stream/Channel Stabilization	Manure Management
No Till	Vegetated Buffers	Stream Fencing
Strip Cropping	Grassed Waterways	Barnyard Runoff Control

(5) Groups of detached single-family dwelling units or improvements on other developed

land which are developed as part of a common development plan which includes within the development, but not on the Parcels on which the detached single-family dwelling units or the improvements on other developed land are located, privately owned, maintained or operated stormwater control systems, facilities, assets, services or activities that reduce Athens-Clarke County stormwater utility's cost of providing stormwater management services, systems and facilities, may receive a credit based on attaining n continuing compliance with the technical requirements and performance standards referenced in 5-5-10(d)(1) and 5-5-10(d)(2). Such credits shall be proportionately allocated among all properties using such stormwater control systems or facilities, the owners of which are contributing to their costs of ownership, operation and maintenance.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-11. - Procedure for applying for credits and adjustments to service charges.

(a) The director shall establish specified technical and procedural criteria by which credits or adjustments will be granted. Copies of such technical and procedural criteria will be maintained by and available from the transportation and public works department.

(1) In order to obtain a credit, the property owner must make application to the director on forms provided by the director for such purpose.

(2) Customers must apply for any credits or adjustments that they believe apply.

(3) The application for any credit or adjustment must be in writing and must include the information necessary to establish eligibility for the credit or adjustment, any application fee, and be in the format established by the director. Incomplete applications will not be accepted by the director.

(4) Stormwater utility fees may be adjusted retroactively to the date the director received the completed application.

(5) Applicants must have an approved maintenance plan on file with the director, and the applicant's property must have on-site stormwater management and treatment facilities.

(b) When an application for a credit is deemed complete by the director, he shall have 30 days from the date the complete application is accepted to: (a) grant the credit in whole; (b) grant the credit in part; or (c) deny the credit within 30 days thereafter. Credits applied for by the property owner in the year 2005, and granted in whole or in part, shall apply to all stormwater service charges accruing in the year 2005. Beginning January 1, 2006 credits applied for by the property owner, and granted in whole or in part, shall apply from the first day of the calendar month immediately following the date on which a complete application for the credit has been filed with Athens-Clarke County. The property owner may appeal such determination

pursuant to section 1-5-1 of the Athens-Clarke County Code.

(c) A property owner shall not have to reapply annually for the credit granted, but the director may review the credit and the basis therefor no more frequently than annually, and may terminate the credit if the director finds grounds therefor. If such credit is terminated, the property owner may appeal such determination pursuant to section 1-5-1 of the Athens-Clarke County Code, or may, if possible, correct the deficiencies which caused the termination and reapply for the credit. A property owner with a National Pollutant Discharge Elimination System (NPDES) Stormwater Phase **II** MS4 permit, however, must submit the report prescribed in the NPDES permit to the director to continue to receive the credit from Athens-Clarke County associated with the NPDES Stormwater Phase II MS4 permit.

(Ord. of 12-7-2004, § 1)

Sec. 5-5-12. - Service charge billing, delinquencies and collections, appeals.

(a) *Billing.*

(1) Stormwater service charges shall begin to accrue July 1, 2005, and shall be billed in arrears. A bill for stormwater service charges may be sent through the United States Postal Service or by alternative means, notifying the owner of the property being billed of the amount of the stormwater service charge, less credits, the date the payment is due and the date when payment is past due.

(2) The stormwater service charge may be billed and collected separately or along with water and sanitary sewer charges, or along with other fees for services, as deemed most effective and efficient by the Athens-Clarke County Manager.

(3) Frequency of the billing of stormwater service charges shall be specified by the Athens-Clarke County Manager.

(4) Failure to receive a bill shall not be justification for nonpayment. Regardless of the party to whom the bill is initially directed, the owner of each developed property subject to stormwater service charges shall be obligated to pay stormwater service charges and any interest on delinquent stormwater service charge payments.

(5) If a property owner is underbilled, or if no bill is sent for a particular tract of developed land, the Athens-Clarke County stormwater utility may backbill for a period of up to one year, but shall not be entitled to any interest for any delinquency during the backbilled period.

(b) *Delinquencies and collections.*

(1) Unpaid stormwater service fees shall be collected by filing suit to collect on an unpaid account and by using all methods allowed by Georgia law to collect on any judgment obtained thereby, including enforcement of any lien resulting from any such judgment. In no instance shall the

unpaid service charge constitute a direct lien against the property.

(2) A one percent per month late charge shall be assessed against the owner for the unpaid balance of any stormwater utility service charge that becomes delinquent.

(c) *Adjustments/appeals.*

(1) All requests for adjustments shall be submitted to the director of the transportation and public works department, who shall have the authority to develop and administer the procedures and standards for the adjustment of the stormwater fee.

a. Customers may seek an adjustment of the stormwater fee allocated to a Parcel at any time by submitting the request in writing and setting forth in detail the grounds upon which relief is sought.

b. Customers requesting the adjustments may be required, at his, her or its own expense, to provide supplemental information to the director, including, but not limited to, survey data approved by a registered land surveyor (R.P.L.S.) and engineering reports approved by a professional engineer (P.E.). Failure to provide such information within the time limits established by the director, as may be reasonably extended, may result in denial of the adjustments request.

c. Once a completed adjustments request and all required information are received by the director, the director shall have 30 calendar days within which to render a written decision. Concurrent payment of any charges allocated to the property is not required as a condition precedent to this request for review.

d. In considering an adjustment request, the director shall consider whether the calculation of the stormwater fee for the property is correct.

e. The director's decision shall be mailed to the address provided on the adjustments request, and service shall be complete upon mailing.

(2) The decision of the director is final unless the property owner appeals the decision pursuant to section 1-5-1 of Athens-Clarke County Code.

(3) If the result of an appeal is that a refund is due the appellant, the refund will be applied as a credit on the appellant's next stormwater bill.

(Ord. of 12-7-2004, § 1)