

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

South River Watershed Alliance, Inc., \*  
Edward “Ted” Terry, and \*  
Amy Taylor \*  
Plaintiffs \*  
v. \*  
Atlanta Police Foundation, Inc. \*  
Defendant \*  
\*  
\_\_\_\_\_

**Verified Complaint for Injunctive Relief  
to Stop Unauthorized Clearing**

**Nature of Action**

1.

This suit seeks emergency injunctive relief to stop land disturbance that continues even though an administrative appeal filed by plaintiff Amy Taylor “stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal.” (DeKalb County Code, Ch. 27, Section 7.5.2(D) and Appendix B, Part XVII, Section 1131(f)).

**Jurisdiction**

2.

This Court has jurisdiction under GA CONST, Art. 6, § 4, ¶ I and O.C.G.A. § 15-6-8.

**Parties and Venue**

3.

ATLANTA POLICE FOUNDATION, INC. is a Georgia nonprofit corporation that maintains its registered office at 191 Peachtree St. N.E., Suite 191, Atlanta, Georgia in Fulton County and is subject to the venue of this Court under GA CONST, Art. 6, § 2, ¶ III, O.C.G.A. § 9-10-30, and O.C.G.A. § 14-2-510(b)(1).

4.

SOUTH RIVER WATERSHED ALLIANCE, INC. (“SRWA”) is a Georgia nonprofit corporation dedicated to protecting water quality in the South River watershed and Chattahoochee River watershed through enforcement, advocacy, water quality testing, land and river cleanups, and environmental education.

5.

EDWARD “TED” TERRY is the DeKalb County Commissioner for Super District 6, which includes the project site and surrounding neighborhoods.

6.

AMY TAYLOR owns property within 250-feet of the project site, and she filed an appeal of Atlanta Police Foundation, Inc.’s land disturbance permit for the proposed Atlanta Public Safety Training Center (“the project”).

### **Procedural Background**

7.

On February 2, 2023, the DeKalb County Director of Planning and Sustainability signed a land development permit authorizing the Atlanta Police Foundation, Inc. to clear, grade, and excavate 85 acres of the South River Forest for the proposed project.

8.

The DeKalb County zoning board of appeals has “the power and duty to hear and decide appeals” where error is alleged “in any ... decision made by an administrative official based on or made in the enforcement of [the] zoning ordinance ...” (DeKalb County Code, Ch. 27, Sec. 7.5.2(A) (Chapter 27 is the Zoning Ordinance of DeKalb County, Georgia)).

9.

Appeals of an administrative official's decision may be filed by an owner of property within 250-feet or by any elected member of the DeKalb County Governing Authority affected by the decision. (DeKalb County Code, Ch. 27, Sec. 7.5.2(B)).

10.

On February 6, 2023, plaintiff Amy Taylor filed an administrative appeal of the planning director's decision to issue a land development permit to Atlanta Police Foundation, Inc.

11.

On February 9, 2023, DeKalb County staff acknowledged Amy Taylor's appeal application was complete and would be heard by the zoning board of appeals at its April 2023 hearing.

12.

"If the action or decision appealed from permits land disturbance or construction activity to commence or continue on residentially zoned property, the appeal stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal." (DeKalb County Code, Ch. 27, Section 7.5.2(D); Appendix B, Section 1131(f)).

13.

The project site is residentially zoned (R-75). (Survey, Site Plans).

14.

On February 9, 2023, Atlanta Police Foundation, Inc. was notified that DeKalb County processed Amy Taylor's appeal application and that the appeal "stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal."

15.

Atlanta Police Foundation, Inc. refused to stop clearing the site.

16.

Atlanta Police Foundation, Inc. claimed the site “is exempt from county zoning requirements altogether” because it is “being developed for a public facility.”

17.

“Government facilities” are a “permitted use” in R-75 zoning districts, but the zoning ordinance “shall apply to *all* buildings, structures, land and uses within the unincorporated area of DeKalb County, Georgia.” (DeKalb County Code, Ch. 27, Table 4.1.3; Ch. 27, Sec. 1.1.7 (emphasis added)).

18.

The project site is in unincorporated DeKalb County.

### **Grounds for Injunctive Relief**

19.

O.C.G.A. § 12-7-7(a) and the DeKalb County Code, Chapter 27, Section 7.7.2, require a permit for land-disturbing activity, which means any activity that “may result in soil erosion ... and the movement of sediments into state water or onto lands within the state, including ... clearing, dredging, grading, excavating, transporting, and filling of land.” (O.C.G.A. § 12-7-3).

20.

The zoning ordinance states that the planning director “shall in no case grant any development permit for the use, construction or alteration of any land” if the proposed alteration “would be in violation of any of the provisions of this chapter or any other ordinances and laws of the county or the state, except as provided herein.” (DeKalb County Code, Ch. 27, Sec. 7.7.6(A)).

21.

The zoning ordinance defines “development permit” as any “permit that authorizes land disturbance for the use, construction thereon or alteration of any real property within the unincorporated limits of the county.” (DeKalb County Code, Ch. 27, Sec. 9.1.3).

22.

Amy Taylor appealed the planning director’s issuance of the land development permit because sediment discharges caused by clearing, grading, and excavating will violate state law.

23.

The Clean Water Act requires states to identify surface waters that don’t meet water quality standards (“impaired waters”), and to calculate how much pollutants the water body can assimilate without violating water quality standards. (33 U.S.C. § 1313(d)).

24.

Intrenchment Creek, which flows next to the project site, doesn’t meet the state’s water quality standards because sediment has degraded the fish and benthic macroinvertebrate populations. (*Georgia Environmental Protection Division* (“EPD”) *Section 303(d) list of impaired surface waters*; Georgia DNR Rule 391-3-6-.03).

25.

Georgia EPD ranked Intrenchment Creek’s stream health as “very poor” for these species. (*Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment* (2017) at p. 33; *Total Maximum Daily Load Evaluation for Seventy Stream Segments in the Ocmulgee River Basin for Sediment* (2007) at p. 28).

26.

Georgia EPD's Intrenchment Creek TMDL established a 945-ton annual sediment load allowance, which was allocated between 579 tons of sediment per year from point source discharges and 366 tons of sediment per year from nonpoint source runoff. (*Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment* (2017) at p. 58).

27.

Stormwater discharges from construction sites with at least one acre of land disturbance are point source discharges that require a National Pollutant Discharge Elimination System ("NPDES") permit under the Clean Water Act and Georgia Water Quality Control Act. (33 U.S.C. §§ 1311(a), 1342(p); 40 C.F.R. § 122.26(b)(14)(x), (b)(15)).

28.

In Georgia, stormwater discharges from construction sites with at least one acre of land disturbance are regulated by a general permit. (General NPDES Permit No. GAR 100001; O.C.G.A. § 12-5-30(a)).

29.

An applicant is covered under the general permit 14 days after filing a notice of intent, unless Georgia EPD provides notice to the contrary. (*General Permit*, Part I.D.2 at p. 10).

30.

For discharges into or within one mile upstream of impaired streams, the general permit states, "If the TMDL Implementation Plan establishes a specific numeric wasteload allocation that applies to a permittee's discharge(s) to the Impaired Stream Segment, then the permittee must incorporate that allocation into the Erosion, Sedimentation and Pollution Control Plan and implement all necessary measures to meet that allocation." (*General Permit*, Part III.C.1 at p. 15.).

31.

The Atlanta Police Foundation, Inc.'s Erosion, Sedimentation and Pollution Control Plan for the project doesn't incorporate the numeric allocation from the Intrenchment Creek TMDL.

32.

Sediment discharges from the project site during clearing, grading, and construction would exceed the numeric wasteload allocation for Intrenchment Creek.

33.

Sediment discharges from the project site during clearing, grading, and construction would contribute to the violation of water quality standards for Intrenchment Creek.

34.

The Intrenchment Creek TMDL states that for sites discharging stormwater into or within one mile upstream of an impaired stream, compliance with the general permit is "effective implementation" of the waste load allocation and "demonstrates consistency with the assumptions and requirements of the TMDL." (*Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment* (2017) at p. 52.)

35.

But the Atlanta Police Foundation, Inc. cannot demonstrate compliance with the general permit because the Erosion, Sedimentation and Pollution Control Plan for the project doesn't incorporate the numeric allocation from the Intrenchment Creek TMDL.

36.

Additionally, the general permit doesn't distinguish discharges into impaired streams with remaining pollutant allocations from discharges into impaired streams without remaining pollutant allocations.

37.

The general permit's 50 Nephelometric Turbidity Unit numeric limit exceeds the Intrenchment Creek TMDL's remaining waste load allocation for sediment.

38.

Prohibiting new construction adjacent to an impaired stream which has no remaining sediment load allocation is consistent with State law.

39.

Georgia DNR's storm water permit regulation prohibits issuing an NPDES permit to a new source if the discharge from construction will contribute to violating water quality standards, "except as in accordance with Federal Regulations, 40 C.F.R. § 122.4(i)." (Georgia DNR Rule 391-3-6-.16(8)(a)(6)).

40.

40 C.F.R. § 122.4(i) prohibits issuing an NPDES permit to a new source proposing to discharge into impaired waters unless the applicant demonstrates there are "sufficient remaining pollutant load allocations to allow for the discharge."

41.

Not only are there no remaining pollutant load allocations from the 945-ton annual sediment load allowance, but the actual discharge of sediment into Intrenchment Creek far exceeds the annual allowance.

42.

After Intrenchment Creek was listed as impaired, EPD removed the total suspended solids limits from the City of Atlanta's NPDES permit for the East Area Water Quality Control Facility and Custer Avenue Combined Sewage Control Facility, which discharge untreated and partially treated sewage into Intrenchment Creek. (*NPDES Permit No. GA0037168 for City of Atlanta East Area CSO* at pp. 15 and 17).

43.

The City of Atlanta later reported an average annual load of 6,471 tons of suspended sediment into Intrenchment Creek from these two facilities. (*City of Atlanta Department of Watershed Management, Nov. 2017 Intrenchment and Sugar Watershed Improvement Plan*, Appendix B at p. 21).

44.

The Atlanta Police Foundation, Inc. also failed to comply with procedural requirements for obtaining coverage under the general permit.

45.

The general permit states that a notice of intent for coverage “shall include” any “information specified on the NOI in effect at the time of submittal.” (*General Permit GAR100001*, Part II.B.1.k. at pp. 12-13).

46.

The notice of intent asked, “Does the facility/construction site discharge storm water into an Impaired Stream Segment where a Total Maximum Daily Load (TMDL) Implementation Plan for ‘sediment’ was finalized at least six (6) months prior to the submittal of the Initial NOI?”

47.

The Intrenchment Creek TMDL included a TMDL implementation plan that was finalized several years before the Atlanta Police Foundation, Inc. submitted its notice of intent. (*Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment* (2017) at Section 7).

48.

The Atlanta Police Foundation, Inc.'s notice of intent disclosed that the site would discharge into Intrenchment Creek, and that the creek is impaired, but did not disclose that there was a TMDL Implementation Plan for Intrenchment Creek. (*Notice of Intent for Coverage Under General Permit* at p. 3).

49.

Amy Taylor appealed the planning director's decision to issue a land development permit because the proposed alteration of land would violate state law. (DeKalb County Code, Ch. 27, Sec. 7.7.6(A)).

50.

Amy Taylor's appeal stayed the land-disturbing activity, but Atlanta Police Foundation, Inc. has refused to stop clearing, and DeKalb County has not issued a stop work order.

51.

The site plans identify 86.92 acres of land disturbance on two parcels comprising 296.024 acres.

52.

The land development permit (Permit # 1245564) authorizes 85 acres of land disturbance – although there's no indication the site plans were revised to limit disturbance to 85 acres.

53.

The 296-acre project site is the Old Atlanta Prison Farm (which is sometimes called Honor Farm).

54.

This site is within the South River Forest, which is the largest contiguous greenspace inside the perimeter.

55.

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



Hiking and cycling trail through boxwoods.



Oak tree next to picnic bench.



Lake that's no longer accessible for public use.

54.

A 2017 report by Atlanta's department of city planning, titled "*The Atlanta City Design*," called for creating South River Park, finding this was "our last chance for a massive urban park in the city."

55.

*The Atlanta City Design* was adopted into the City of Atlanta Charter in 2017. (Atlanta City Code, Part I, Sec. 3-601).

56.

*The Atlanta City Design* identified lands in the South River watershed as a "conservation corridor" to be protected from new development. The Atlanta Prison Farm was central to this concept and its protection was emphasized in the report.

57.

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

58.

Ryan Gravel, who conceived the Atlanta BeltLine, described South River Park as "stretching from Southside Park on Jonesboro Road eastward across the city limits at Moreland Avenue into unincorporated DeKalb County to include the Crown site, Honor Farm, and Intrenchment Creek Park, and connecting as far north as Custer Avenue. Such a vast regional park – which could be as large as 3,500 acres inside I-285 – could become a nationally-significant model for climate and community resiliency."

59.

But in 2021, the City of Atlanta Ordinance 21-O-0367 authorized the Mayor to enter into a lease with the Atlanta Police Foundation, Inc. to use “approximately 85 acres for improvements related to public safety training facilities and to preserve approximately 265 acres for greenspace...”

60.

The 2021 Ordinance mis-identified the site’s size and mis-identified the site’s boundaries to include other parcels.

61.

Because of this error, the greenspace preserved on the project site will be less than 210 acres (not 265 acres as called for in the ordinance).

62.

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

63.

The unauthorized land disturbing activity is causing immediate and irreparable harm to plaintiffs, the South River Forest, and Intrenchment Creek.

64.

Ted Terry and SRWA’s members, including Amy Taylor and Jacqueline Echols, Ph.D., use the wetlands immediately downstream of the project site (between Constitution Road and the South River) for their aesthetic, scenic, and recreational values, and these plaintiffs are concerned that increased sediment pollution in Intrenchment Creek caused by clearing, grading, and excavating the project site will lessen these values. They also enjoy observing wildlife around and flying over the project site and are concerned that clearing the forested site will lessen the opportunity to observe wildlife.

65.

The relief requested will redress plaintiffs' harm, but plaintiffs have no other adequate remedy to redress the ongoing harm.

66.

"Equity considers that done which ought to be done and directs its relief accordingly." (O.C.G.A. § 23-1-8).

67.

"Equity, by a writ of injunction, may restrain ... any ... act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law."  
(O.C.G.A. § 9-5-1).

### **Requested Relief**

Plaintiffs respectfully request that this Court:

- a. Grant an immediate temporary restraining order to stop all land disturbance on DeKalb County Parcel 15-081-08-001 and DeKalb County Parcel 15-082-01-001.
- b. Grant a preliminary injunction to prevent all land disturbance on DeKalb County Parcel 15-081-08-001 and DeKalb County Parcel 15-082-01-001 pending the DeKalb County zoning board of appeals' decision on the appeal.
- c. Retain jurisdiction to enforce the requested relief and to grant equitable relief as the Court deems just and appropriate pending a final decision on the issues asserted in plaintiffs' appeal.

Respectfully filed February 13, 2023.

/s/ Jon Schwartz

Jon Schwartz

Ga. Bar. No. 631038

*Attorney for Plaintiffs South River Watershed Alliance, Inc.,  
Edward "Ted" Terry, and Amy Taylor*

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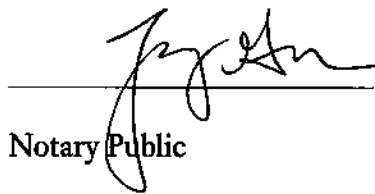
**Verification of Jacqueline Echols, Ph.D.**

Personally appeared Jacqueline Echols, Ph.D., President of South River Watershed Alliance, before an officer duly authorized to administer oaths, who being duly sworn, states that the facts set forth in plaintiffs' Verified Complaint for Injunctive Relief are true and correct and based on her personal knowledge.



Jacqueline Echols, Ph.D.

Sworn to and subscribed  
before me this February 13, 2023.



Notary Public

