

ATLANTA

BUILDING NEWS

WHAT WE'RE UP AGAINST: TOP CHALLENGES FOR HOMEBUILDERS IN EARLY 2023

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THE LASTING EFFECTS OF THE COVID-19
PANDEMIC ON HOME DESIGN

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EMBRACING BEST MANAGEMENT PRACTICES FOR YOUR WATER SYSTEM

by Tyler Dunn

Developers should design and manage projects to address the control of erosion, sediment and storm water. Failure to do so can result in lawsuits and lost profits. Consider the following situations to avoid.

1. Reliance on a Government's Approval, Lack of Enforcement or Even Permitting

Developers must obtain the proper land disturbance permit from the appropriate governmental agency, and they must comply with the local, state and federal regulations for erosion, sediment and storm water control. However, the ordinances and the permits generally contain language stating that compliance with the ordinance and approval of a plan will not automatically protect the developer from liability for damage to another person or property imposed by other laws or regulations. Further, the permit may state that neither county approval nor lack of enforcement is a defense to a violation of the permit. So, don't rely on the defense of "we did everything the county asked" or "we followed the code."

2. Doing the Minimum Instead of Site-Specific BMPs

Developers must use the Best Management Practices (BMPs) for land disturbance set forth in the Manual for Erosion and Sediment Control in Georgia and the Georgia Stormwater Management Manual. These manuals detail the BMPs to be used in a project; however, BMP techniques for each project must be analyzed and chosen based on topography, soils, duration of the use of the BMP and the maintenance required. Some sites may need BMPs that are beyond the minimum required by law. Also, a single BMP may not meet all the needs of a construction site — a combination of BMPs may be necessary. Using an ineffective or inappropriate BMP can lead to claims of trespass or



nuisance from other owners and claims of noncompliance by the government.

3. Lack of BMP Inspection and Maintenance

The most common mistake is the failure to regularly maintain, upgrade and repair erosion and sediment controls after installation. The law requires not only that BMPs be designed and installed, but also that they be maintained. For example, matting, silt fences and inlet sediment traps all require regular inspection to ensure they have not shifted and the sediment collected has not rendered them ineffective. The BMPs are only as good as their maintenance, and the failure to inspect, maintain and upgrade can eventually cascade into a failure of the installation.

4. Failure to Consider Volume in Storm Water Planning

Most local storm water regulations require that a hydrology study assess the flow of storm water discharged from a site. Two components of water flow are rate and volume. Often, the emphasis is on keeping the post-development rate of storm water

discharge consistent with or less than the pre-development rate, in the belief that the developer will not be liable to downstream property owners despite an increase in volume. However, an increase in volume of water discharged can create serious impacts downstream. Georgia courts have held that increases in volume from a site amount to a nuisance and trespass and have awarded damages to the injured parties.

5. Using a Downstream Pond or Lake as Part of Your Storm Water Plan

It is a mistake to use an off-site downstream pond or lake as part of a storm water management system. If the project is increasing the rate or volume of storm water flowing into the downstream lake, it will be a trespass or nuisance. It does not matter how conveniently located it is or whether "it looks like it can handle the water." The best advice is to never assume that you can make use of any structure that is not on your property. Unless you have prior permission, increasing the rate or volume of water discharged to a downstream lake is a trespass or nuisance. 🏡