



**Richard E. Dunn, Director**

**Watershed Protection Branch**

2 Martin Luther King, Jr. Drive  
Suite 1152, East Tower  
Atlanta, Georgia 30334  
404-463-1511

January 11, 2021

**VIA ELECTRONIC MAIL**

City of Sandy Springs  
The Honorable Rusty Paul, Mayor  
Morgan Falls Office Park  
7840 Roswell Road  
Building 500  
Sandy Springs, GA 30350  
[rpaul@sandyspringsga.gov](mailto:rpaul@sandyspringsga.gov)

**Subject: Consent Order EPD-WP-8998**  
Lake Forrest Dam  
Fulton County

Dear Mayor Paul:

The Georgia Environmental Protection Division has received the signed Consent Order from you. Enclosed is a copy of the executed Consent Order. The City of Sandy Springs will be expected to meet all conditions of this order.

Thank you for your attention to this matter. If you have any questions about the Consent Order, please contact Tom Woosley of the Safe Dams Unit at (404) 463-2461 or by email at [tom.woosley@dnr.ga.gov](mailto:tom.woosley@dnr.ga.gov).

Sincerely,

Richard E. Dunn  
Director  
Environmental Protection Division

Enclosure

cc: Amir Fallahi, City of Sandy Springs (via electronic mail)  
Daniel Lee, attorney for City of Sandy Springs (via electronic mail)  
Commissioner Mikita Browning, City of Atlanta (via electronic mail)  
Todd Hill, City of Atlanta (via electronic mail)  
Paul Moisan, City of Atlanta (via electronic mail)  
Robert Moses, attorney for City of Atlanta (via electronic mail)

Shelly Ellerhorst, attorney for City of Atlanta (via electronic mail)

Todd Rinck, Three Lakes Corporation (via electronic mail)

Tina Roddenberry, Three Lakes Corporation (via electronic mail)

Buck Dixon, attorney for Three Lakes Corporation (via electronic mail)

Gilbert Aleman (via certified mail)

Nicholas Pieschel, attorney for Gilbert Aleman (via electronic mail)

William H. Harrison (via electronic mail)

Joseph Angersola, attorney for William Harrison (via electronic mail)

**ENVIRONMENTAL PROTECTION DIVISION  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF GEORGIA**

RE: City of Sandy Springs  
The Honorable Rusty Paul, Mayor  
1 Galambos Way  
Sandy Springs, GA 30328

EPD-WP-8998

**CONSENT ORDER**

**WHEREAS**, the Georgia Department of Natural Resources, Environmental Protection Division (hereinafter the “Division”) alleges that the City of Sandy Springs (hereinafter the “Respondent”), along with the City of Atlanta, the Three Lakes Corporation, Gilbert Aleman, and William H. Harrison, own and/or operate the Lake Forrest Dam (hereinafter the “Dam”) located in Fulton County, Georgia; and

**Authority**

**WHEREAS**, under the “Georgia Safe Dams Act of 1978” as amended O.C.G.A. § 12-5-370 et seq. (hereinafter the “Safe Dams Act”), the General Assembly of Georgia designated the Director of the Division, (hereinafter the “Director”) to administer the provisions of the Safe Dams Act; and

**WHEREAS**, the Rules for Dam Safety, Ga. Comp. R. and Regs. 391-3-8, et seq., as amended (hereinafter the “Rules for Dam Safety”), authorized under O.C.G.A. § 12-5-374 of the Safe Dams Act, were established and became effective; and

**WHEREAS**, the Safe Dams Act authorizes the Director to issue permits for dams in Georgia, which permits stipulate the conditions, requirements, or limitations applicable to the dam and dam owner(s); and

**WHEREAS**, the Safe Dams Act authorizes the Director to issue orders as may be necessary to enforce compliance with the provisions of the Safe Dams Act and Rules for Dam Safety; and

**WHEREAS**, O.C.G.A. § 12-5-376(a) and the Rules for Dam Safety require owners and/or operators of a Category I dam to submit an “Application for Dam Construction & Operation Permit”, including all attachments, to the Director of the Division no later than one hundred eighty (180) days from the date of the letter classifying a dam as a Category I dam; and

**WHEREAS**, O.C.G.A. § 12-5-376(g) and (h) provides that all permitted dams must comply with the design standards described in the Rules for Dam Safety; and

**WHEREAS**, O.C.G.A. § 12-5-376(g) and (h) provides that no permit will be issued for a Category I dam in Georgia unless such dam has been brought into compliance with the design standards described in the Rules for Dam Safety; and

**WHEREAS**, the Division will issue any permit or breach approval to bring the Dam into compliance with the Rules for Dam Safety in the name of Respondent, the City of Atlanta, the Three Lakes Corporation, Gilbert Aleman, and William H. Harrison (collectively referred to herein as the “Dam Responsible Parties”);

#### **History**

**WHEREAS**, the Division has determined that the Dam is a “dam” in accordance with the definitions in the Safe Dams Act; and

**WHEREAS**, on May 13, 2009 the Director determined that the Dam is a Category I dam, as defined in O.C.G.A. § 12-5-375(a)(1), because failure or improper operation of the Dam would cause a probable loss of human life; and

**WHEREAS**, on May 13, 2009 the Director notified the Respondent of the Director's determination that the Dam is a Category I dam; and

**WHEREAS**, the Director has alleged that the Respondent, the City of Atlanta, the Three Lakes Corporation, Gilbert Aleman, and William H. Harrison are current owners and/or operators of the Dam (collectively referred to herein as the "Dam Responsible Parties"); and

**WHEREAS**, the Director's classification of the Dam as a Category I dam was not appealed, therefore Director's classification decision is now final; and

**WHEREAS**, a permit application was not submitted to the Division within 180 days of its notification of the Dam's classification to Category I; and

**WHEREAS**, in April 2016, the level of the lake retained by the Dam was lowered by the Respondent and the City of Atlanta, and the Division determined the plans to lower the lake level were acceptable; and

**WHEREAS**, on December 23, 2016, the Division sent the Dam Responsible Parties a letter providing a new 180-day deadline of June 21, 2017 to submit a complete permit application; and

**WHEREAS**, a permit application was not submitted to the Division on or before June 21, 2017; and

**WHEREAS**, the Respondent, the City of Atlanta, the Three Lakes Corporation, and the Division held a meeting on November 18, 2018 to discuss the status of the Dam;

**WHEREAS**, a permit application was not submitted to the Division following the November 18, 2018 meeting; and

**WHEREAS**, the principal spillway of the Dam is in poor condition, as documented in the March 22, 2019 inspection report by Schnabel Engineering, indicating that the Dam is not in compliance with the design standards described in the Rules for Dam Safety; and

**WHEREAS**, in 2017 and in the spring of 2019 lawsuits were filed by third parties<sup>1</sup> and cross-claims were filed by Dam Responsible Parties Aleman and Harrison against the Cities of Atlanta and Sandy Springs that may have an effect on the details of the plans to bring the Dam into compliance with the Safe Dams Act (the “Litigation”); and

**WHEREAS**, the Division wants to ensure that any plans submitted to the Division to bring the Dam into compliance with the Safe Dams Act or to breach the Dam so that it will no longer be subject to the Safe Dams Act will not be prevented from being carried out by the Litigation; and

**WHEREAS**, on August 15, 2019, Schnabel Engineering submitted a plan for addressing the poor condition of the spillway; and

**WHEREAS**, the Dam Responsible Parties met with the Division on February 19, 2020 to discuss the process to bring the Dam into compliance; and

**WHEREAS**, the Respondent, the City of Atlanta, and the Three Lakes Corporation agree to coordinate their efforts to bring the Dam into compliance; and

**WHEREAS**, on February 27, 2020, Schnabel Engineering submitted a revised plan for addressing the spillway (the “Plan”); and

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<sup>1</sup> Lambeth v. City of Sandy Springs, No. 1:19-cv-02602-ELR (N. D. Ga. 2019); Lambeth v. Three Lakes Corp., No. 2017-CV-286413 (Ga. Super. Ct., Fulton Cnty. 2017); and Lambeth v. City of Sandy Springs, No. 2019CV320679 (Ga. Super. Ct., Fulton Cnty. 2019).

**WHEREAS**, on April 22, 2020, the Division approved of the temporary measures in the Plan which specified further lowering of the level of the lake retained by the Dam to elevation 898.0 feet above mean sea level (the “Lowered Lake Level”); and

**WHEREAS**, the Division and the Respondent agree that maintaining the Lowered Lake Level may aid in preventing further deterioration of conditions at the Dam;

**WHEREAS**, the Three Lakes Corporation Consent Order, EPD-WP-8995, references Three Lakes Corporation’s obligation to communicate with and encourage cooperation from those landowners whom the City of Atlanta and the City of Sandy Springs identify as those from whom they may need to obtain property access and/or easements to complete the work necessary to maintain the Lowered Lake Level and bring the dam into compliance with the Safe Dams Act;

**Alleged Violations**

**WHEREAS**, the Division alleges that the Respondent and the other Dam Responsible Parties failed to submit to the Division a complete application to operate a dam in accordance with the timeframe specified by the Division, in violation of O.C.G.A. § 12-5-376; and

**Civil Penalties**

**WHEREAS**, O.C.G.A. § 12-5-385 provides that any person violating any provision of the Safe Dams Act or any permit condition or limitation established pursuant to the Safe Dams Act or negligently or willfully failing or refusing to comply with any final order of the Director shall be liable for a civil penalty not to exceed \$1,000.00 for such violation, and an additional civil penalty not to exceed \$500.00 for each day during which the violation continues; and

### Conditions

WHEREAS, the Director has determined that it is in the public interest to resolve all allegations concerning Respondent set forth above by entering into this Consent Order without the necessity of litigation and adjudication of the issues.

NOW THEREFORE, by agreement of the parties, before the taking of any testimony and without adjudicating the merits of the parties' positions in this matter, in order to resolve the violations alleged herein, the Director hereby ORDERS and the Respondent CONSENTS to the following:

1. The Respondent shall ensure that the level of the lake retained by the Dam remains at the Lowered Lake Level, subject to the level rising during and immediately after precipitation events, until the Dam has been permitted or breached in accordance with an application submitted pursuant to Condition No. 5 of this Order. The Respondent shall take reasonable steps to ensure that they have access to all property necessary to conduct activities to maintain the Lowered Lake Level and shall give reasonable advance notice to all property owners, including the other Dam Responsible Parties, of any planned activities that may require access to their property. Reasonable steps do not require the Respondent paying for or providing any consideration to other Dam Responsible Parties for such access.
2. The Respondent shall conduct monitoring of the Dam weekly and shall submit a written report to the Division no later than the 5<sup>th</sup> day of the month detailing the weekly monitoring conducted during the previous month. Monitoring shall include:
  - a) noting the lake level and the amount of flow in principal spillway pipe, including whether the Lowered Lake Level has been maintained;
  - b) inspection and noting of



any signs of cracking in the road running across the Dam; c) any unusual increases in principal spillway flow; and d) other signs of increased seepage from the Dam. The report shall include photographs taken during weekly monitoring activities and shall document the monitoring of conditions a-d described in this Condition. This monitoring and report submission shall continue until the Dam has been permitted or breached in accordance with an application submitted pursuant to Condition No. 5 of this Order.

3. If Respondent determines that additional hazards or further deterioration of the Dam exist at any time before the Dam has been permitted or breached in accordance with an application submitted pursuant to Condition No. 5 of this Order, the Respondent shall notify the Division within one (1) business day of such determination of the additional hazard or further deterioration, and shall provide the Division a timeline for developing a plan to address the hazard or deterioration within five (5) business days. The Respondent's proposed plan for repair shall be submitted to the Division for review and approval pursuant to a timeline agreed upon by the Division.
4. Within thirty (30) days after execution of this Order, the Respondent shall provide an update to the Division in writing regarding the status of the Litigation (e.g., whether the parties are conducting discovery, dates of any scheduled hearings, submission of dispositive motions). After that initial status update, the Respondent shall submit quarterly updates regarding the same no later than the 5<sup>th</sup> day of April, July, October, and January until issuance of a final adjudication in the Litigation.
5. Within sixty (60) days after issuance of a final adjudication of the Litigation or such other timeframe as agreed to by the Division in writing, including taking into

consideration the status of the Respondent obtaining any necessary easements, the Respondent shall cause to be submitted to the Division either: a) a complete permit application package for the Dam, a Visual Inspection Report (VIR) complying with Section 3 of the 2015 edition of the Engineer Guidelines of the Safe Dams Program of the Watershed Protection Branch (“Engineer Guidelines”), design documents including plans and specifications and any other technical documents required to bring the Dam into compliance with the Safe Dams Act and Rules for Dam Safety, and an Operation and Maintenance Plan meeting all requirements in Section 8 of the Engineer Guidelines; or b) an application for breach of the Dam, including engineering plans meeting all requirements in Section 6.4 of the Engineer Guidelines. The Division agrees to issue any permit or breach application approval in the name of all Dam Responsible Parties.

Addresses. Correspondence and other submissions to be made to the Division shall be sent by electronic mail to Tom Woosley (tom.woosley@dnr.ga.gov) and hard copy addressed to:

Safe Dams Program, Watershed Protection Division  
Georgia Environmental Protection Division  
2 Martin Luther King Jr. Drive, SE, Suite 1152 East  
Atlanta, Georgia 30334

Correspondence to the Respondent shall be sent by electronic mail to Mr. Daniel Lee (dlee@fmglaw.com) and hard copy addressed to:

City of Sandy Springs  
The Honorable Russell K. Paul, Mayor  
City Hall  
1 Galambos Way  
Sandy Springs, GA 30328

Compliance. This Order does not relieve the Respondent of any obligations or requirements under the Act and the Rules except, if applicable, as specifically authorized herein; which authorization shall be strictly construed.

Public Notice and Comment. This Order may be subject to public notice and comment upon final approval by the Director.

Time of Essence. Time is of the essence of this Order. Upon it becoming effective, the Respondent shall promptly commence their undertakings required herein and shall diligently pursue the accomplishment thereof.

Required Submissions. Upon the submission of any plan, report, or schedule, or any modified plan, report or schedule, required by this Order, the Division shall review the submission to determine its sufficiency. The Division shall notify the Respondent in writing whether the submission is approved or disapproved.

If the Division determines that the submission is disapproved, it shall provide the Respondent with a written notice of the deficiencies of the submission. The Respondent shall have thirty (30) days from the issuance of the Division's notice of deficiency to modify the submission to correct the deficiencies and resubmit it to the Division.

The failure of the Respondent to provide the Division with an ultimately approved submission on or before the specified due date, may, in the sole discretion of the Director, be deemed a violation of this Order. Upon approval by the Division, all submissions required by the terms of this Order are incorporated by reference into, and made a part of, this Order. Except as may be provided by this Order, noncompliance with the contents of such approved submissions shall be deemed noncompliance with this Order.

Division approval of any submission required by this Order is not intended as, nor shall such approval be construed as, certification by the Division that compliance with relevant state and federal laws, regulations, and permits will thereby be achieved, and such approval by the Division shall not provide the Respondent with a defense to an enforcement action taken by the Director pursuant to violations of the same. Division approval of any submission is strictly limited to the technical aspects of the submission and is not intended as, nor shall it be construed as, approval or acceptance of any statements, assertions, or representations of fact, of opinion, or of a legal nature that are contained in the document.

Force Majeure. Failure to complete a condition mandated by this Consent Order within the time period specified may be excused and not subject the Respondent to further enforcement action if the failure is the result of a force majeure event as identified below and Respondent complies the requirements set forth below. The Respondent shall have the burden of proving to EPD that it was rendered unable, wholly or in part, by Force Majeure to carry out their obligations.

The term “Force Majeure” as used herein shall be limited to the following: Act of God; strike, lockout, or other labor or industrial disturbance not caused by an unfair labor practice by the Respondent; act of the public enemy; war; blockade; public riot; fire; storm; flood; explosion; failure to secure timely and necessary federal, state, or local approvals or permits, provided such approvals or permits have been timely and diligently sought; or other delay caused by unforeseeable circumstances beyond the reasonable control of Respondent, their employees, agents, consultants, or contractors, as determined by EPD in its sole discretion. Force Majeure does not include financial inability to perform an obligation required by this Consent Order, the bankruptcy of a contractor or a failure to achieve compliance applicable regulatory permits.

The Respondent shall notify EPD verbally within 48 hours (or no later than the beginning of the next business day if the expiration of the 48 hours occurs on a weekend or holiday) from the time Respondent learns, or in the exercise of reasonable diligence should have learned, of any Force Majeure circumstances that may reasonably be expected to cause a schedule or performance delay. Within 10 days of such time, the Respondent shall submit to EPD a written notice as to the anticipated length (if known) and cause of any delay due to Force Majeure. Failure to so notify EPD shall constitute a waiver of any claim to Force Majeure.

The Respondent and EPD agree to negotiate informally and in good faith to identify delays resulting from Force Majeure. The Respondent shall comply with EPD's determination as to the appropriate time period to be excused by Force Majeure, which shall be communicated to the Respondent in writing. In the event that any circumstance or series of circumstances cause the schedule to extend over thirty (30) calendar days, the Respondent and EPD shall meet formally to assess the overall schedule impact and attempt to mitigate same.

If EPD determines that Force Majeure has occurred, the affected time for performance specified in this Consent Order shall be extended for a period of time equal to the delay resulting from such Force Majeure. The Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.

Additional Conditions: This Order does not waive the Director's right to take further enforcement action against the Respondent, or imply that the Director will not take such action, either for (1) the violations alleged herein if the Respondent fails to fully comply with the conditions of this Order, or (2) violations not alleged herein based on any other relevant requirements of this Order, the law, rules, and permit(s).

This Order is executed and entered solely for the purpose of resolving and disposing of the alleged violations set forth herein and does not constitute a finding, adjudication, or evidence of a violation of any law, rule, or regulation by Respondent, and, by consenting to this Order, the Respondent does not admit to any factual allegation contained herein or to any violations of State laws. In addition, this Order is not intended to create and it shall not be construed or otherwise deemed to recognize or create any claim, right, liability, estoppel, or waiver of rights in favor of any third-party or parties.

The parties agree that any electronic signatures on this Consent Order constitute original, valid signatures pursuant to the Uniform Electronic Transactions Act, O.C.G.A. § 10-12-1 *et seq.*

By agreement of the parties, this Order shall have the same force and binding effect as a Final Order of the Director and shall become final and effective immediately upon its execution by the Director. The parties further agree that this Order shall not be appealable by Respondent, and the Respondent hereby waive their right to initiate any administrative or judicial hearing on the terms and conditions of this Order.

Unless modified or terminated by a subsequent Order, or otherwise specified in writing by the Director, this Order shall be deemed satisfied and terminated upon full, complete, and timely performance of each and every condition set forth herein.

It is so ORDERED, CONSENTED, and AGREED to on: January 11, 2021.

*R. Dunn*

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Richard E. Dunn  
Director, Environmental Protection Division

FOR RESPONDENT: City of Sandy Springs

BY:

*Russell K. Paul*

NAME: RUSSELL K. PAUL

TITLE: MAYOR

DATE: 12/28/2020