

**SYNOPSIS****Proposed Amendments to the Rules for Erosion and Sedimentation Control,  
Chapter 391-3-7**

The proposed amendments to the Rules for Erosion and Sedimentation Control would amend **Rules 391-3-7-.01, 391-3-7-.04, 391-3-7-.05, and 391-3-7-.11** to ensure consistency and compliance with 2021 amendments to the Erosion and Sedimentation Act under House Bill (HB) 577 and include other clarifying amendments to the rules.

**Purpose:** The 2021 amendments to the Erosion and Sedimentation Act of 1975 (HB 577) authorizes the adoption of rules by the Board relative to requests for variances for road construction and maintenance projects undertaken by the Georgia Department of Transportation. These proposed rule amendments amend one rule (391-3-7-.04) under the Rules for Erosion and Sedimentation Control to ensure consistency with SB 577. The proposed rule amendments also include the addition of a definition for “Buffer” and “Buffer Area” to Rule 391-3-7-.01 and provide clarifying language in two rules (391-3-7-.05 and 391-3-7-.11).

**Main Features:** As called for in HB 577, these amendments incorporate specific criteria for the approval or denial by the EPD Director of requests for buffer variances for land disturbing activity associated with road construction and maintenance projects. These proposed amendments amend one rule (391-3-7-.01) to add a definition and amend another rule (391-3-7-.04) to add two specific buffer variance criteria that can be used by the Georgia Department of Transportation. Two proposed rule amendments (391-3-7-.05 and 391-3-7-.11) also provide clarification that land disturbing activity within the buffer does not require a permit from the U.S. Army Corps of Engineers and allows applicants who are awaiting a permit from the Corps to provide EPD a copy of the permit approval once it’s been issued. Additionally, the amendments proposed to Rule 391-3-7-.11 combine two of the criteria into a single criterion and eliminate redundancy.

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**391-3-7-.01, “Definitions”** is being amended to add a definition for “Buffer” and “Buffer Area” in paragraph (b), and to renumber subsequent paragraphs.

**391-3-7-.04, “Repealed”** is being amended to change the title to “Georgia Department of Transportation Minimum Requirements and Buffer Variance Criteria”, and to incorporate the requirements and criteria applicable to road construction and maintenance projects undertaken by the Georgia Department of Transportation.

**391-3-7-.05, “Buffer Variance Procedures and Criteria”** is being amended: to revise subparagraph (2)(h) to clarify that land disturbing activity within the buffer does not require a permit from the U.S. Army Corps of Engineers (Corps) and to allow applicants who are awaiting

a permit from the Corps to provide EPD a copy of the permit approval once it's been issued; to include clarifying language in subparagraph (2)(k); and to revise subparagraph (4)(a)4. to allow applicants who are awaiting a permit from the Corps to provide EPD a copy of the permit approval once it's been issued.

**391-3-7-.11, "Coastal Marshlands Buffer Variance Procedures and Criteria"** is being amended: to combine the types of projects eligible for a buffer variance described in subparagraphs (2)(h) and (2)(j) into subparagraph (2)(h), and to revise subparagraph (2)(h) to clarify that land disturbing activity within the buffer does not require a permit from the Corps and to allow applicants who are awaiting a permit from the Corps to provide EPD a copy of the permit approval once it's been issued; to redesignate subparagraph (2)(j) as Reserved; to include clarifying language in subparagraph (2)(k); to update subparagraph references in paragraph (4); and to revise subparagraph (4)(a)4. to allow applicants who are awaiting a permit from the Corps to provide EPD a copy of the permit approval once it's been issued.

### **STATEMENT OF RATIONALE**

#### **Proposed Amendments to the Rules for Erosion and Sedimentation Control, Chapter 391-3-7**

The Rules for Erosion and Sedimentation Control, Chapter 391-3-7, are proposed for amendment to ensure consistency between these rules and the 2021 amendments to the Erosion and Sedimentation Act of 1975, O.C.G.A. §§ 12-7-1 et seq. (HB 577).

House Bill 577 requires the establishment of two new criteria for use by the Georgia Department of Transportation for road construction and maintenance projects with land disturbing activity impacting the stream buffer. As called for in HB 577, the proposed rule amendments (391-3-7-.04) incorporate the requirements and criteria applicable to buffer variance requests for road construction and maintenance projects undertaken by the Georgia Department of Transportation. These proposed rule amendments were designed to ensure consistency with, and to satisfy all the requirements of, House Bill 577. Compliance with Best Management Practices and mitigation requirements were also made explicit in the proposed amendment to Rule 391-3-7-.04.

EPD also proposes to amend Rule 391-1-7-.01 to add a definition of "Buffer" and "Buffer Area" taken from the Erosion and Sedimentation Act of 1975, O.C.G.A. §§ 12-7-1 et seq. Proposed amendments to Rules 391-3-7-.05 and 391-3-7-.11 provide clarification regarding existing processes for projects still awaiting permit approval by the U.S. Army Corps of Engineers and to incorporate the amendments, for consistency, in both the Buffer Variance Procedures and Criteria (Rule 391-3-7-.05) and the Coastal Marshlands Buffer Variance Procedures and Criteria (Rule 391-3-7-.11). These proposed rule amendments were designed to capture procedures currently followed by EPD and ensure those procedures are documented in the rule to provide for transparency and consistency.