PROPOSED AMENDMENTS TO THE RULES
OF THE DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION
RELATING TO EROSION AND SEDIMENTATION CONTROL, CHAPTER 391-3-7

The Rules of the Department of the Natural Resources, Chapter 391-3-7, Erosion and Sedimentation Control are hereby amended and revised for specific Rules, or such subdivisions thereof as may be indicated.

[Note: Underlined text is proposed to be added. ~~Lined-through~~ text is proposed to be deleted.]

CHAPTER 391-3-7 EROSION AND SEDIMENTATION CONTROL

Rule 391-3-7-.01 Definitions

The following definitions shall apply in the interpretation and enforcement of these rules and regulations unless otherwise specifically stated.

(a) "Best Management Practices" means a collection of structural measures and vegetative practices which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control and are designed in accordance with the design specifications contained in the "Manual for Erosion and Sediment Control in Georgia." Best Management Practices also include, but are not limited to, design specifications from the most recent publications of the Georgia Stormwater Management Manual and Coastal Stormwater Supplement to the Georgia Stormwater Management Manual.

(b) "Buffer" and "Buffer Area" each mean the area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.

(~~b~~c) "Certification" means an action by the Division that states in writing that a local issuing authority has met the criteria established in these rules and regulations.

(~~c~~d) "Certified Personnel" means any person who meets or exceeds the education and training requirements of Code Section 12-7-19.

(~~d~~e) "Coastal Marshlands" shall have the same meaning as in Code Section 12-5-282.

(~~e~~f) "Complaint Investigation Process" means a process followed by a local issuing authority or the Division when dealing with inquiries, complaints or concerns about land disturbing activities.

(~~f~~g) "Decertification" means an action by the Division that states in writing that a local issuing authority has failed to meet the criteria established in these rules and regulations.

(~~g~~h) "Department" means the Department of Natural Resources of the State of Georgia.

(~~h~~i) "Director" means the Director of the Environmental Protection Division.

(~~i~~j) "District" means the appropriate local Soil and Water Conservation District.

(~~j~~k) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(~~k~~l) "Erosion" means the process by which land surface is worn away by the action of wind, water, ice, or gravity.

(~~l~~m) "Erosion, Sedimentation and Pollution Control Plan" or "Plan" means a plan for the control of soil erosion and sediment resulting from a land disturbing activity.

(~~m~~n) "Infrastructure Project" means construction activities that are not part of a common development that include the construction, installation and maintenance of roadway and railway projects and conduits, pipes, pipelines, substations, cables, wires, trenches, vaults, manholes, and similar or related structures or devices for the conveyance of natural gas (or other types of gas), liquid petroleum products, electricity, telecommunications (telephone, data television, etc.), water or sewage.

(~~n~~o) "Land Disturbing Activity" means any activity which may result in soil erosion and the movement of sediments into State waters or onto lands within the State, including but not limited to clearing, dredging, grading, excavating, transporting, and filling of land, but not including those practices to the extent described in O.C.G.A. 12-7-17.

(~~o~~p) "Local Issuing Authority" means the governing authority of any county, municipality, water authority, or water and sewer authority that is certified pursuant to these rules and regulations and pursuant to the requirements of O.C.G.A. 12-7-8(a).

(~~p~~q) "Maintenance" means actions necessary or appropriate for retaining or restoring a currently serviceable improvement to the specified operable condition to achieve its maximum useful life. Maintenance includes emergency reconstruction of recently damaged parts of a currently serviceable structure so long as it occurs within a reasonable period of time after damage occurs. Maintenance does not include any modification that changes the character, scope or size of the original design.

(~~q~~r) "Major Buffer Impact" means any impact that does not meet the definition of "Minor Buffer Impact."

(~~r~~s) "Minor Buffer Impact" means an impact that upon completion yields no additional above ground, man-made materials or structures within the buffer, maintains the original grade, and results in less than 5,000 square feet of buffer impacts per stream crossing and/or less than 5,000 square feet of buffer impacts per individual area of encroachment for each project.

(~~s~~t) "Permit" means the authorization necessary to conduct a land disturbing activity under the provisions of these rules and regulations.

(~~t~~u) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility,

cooperative, State agency, municipality or other political subdivision or the State, any interstate body or any other legal entity.

(~~u~~v) "Project" means the entire area of the proposed development site, regardless of the size of the area to be disturbed.

(~~v~~w) "Sediment" means solid material, both organic and inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, ice, or gravity as a product of erosion.

(~~w~~x) "Sedimentation" means the action or process of forming or depositing sediment.

(~~x~~y) "Serviceable" means usable in its current state or with minor maintenance but not so degraded as to essentially require reconstruction.

(~~y~~z) "Soil and Water Conservation District Approved Plan" means an erosion, sedimentation and pollution control plan approved in writing by the Soil and Water Conservation District in which the proposed land disturbing activity will take place.

(~~z~~aa) "Stabilization" means the process of establishing an enduring soil cover of vegetation and/or mulch or other ground cover and/or installing temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

(~~aa~~bb) "State Waters" means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural and artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation, except as may be defined in O.C.G.A. 12-7-17(7).

(~~bb~~cc) "Stream Bank" means the confining cut of a stream channel and is usually identified as the point where the normal stream flow has wrested the vegetation. For nontrout waters, the normal stream flow is any stream flow that consists solely of base flow or consists of both base flow and direct runoff during any period of the year. Base flow results from groundwater that enters the stream channel through the soil. This includes spring flows into streams. Direct runoff is the water entering stream channels promptly after rainfalls or snow melts.

(~~cc~~dd) "Trout Streams" means all streams or portions of streams within the watershed as designated by the Division under the provisions of the Georgia Water Quality Control Act, O.C.G.A. 12-5-20et seq. Streams designated as primary trout waters are defined as water supporting a self-sustaining population of rainbow, brown or brook trout. Streams designated as secondary trout waters are those in which there is no evidence of natural trout reproduction, but are capable of supporting trout throughout the year. First order trout waters are streams into which no other streams flow except springs.

(~~dd~~ee) “Water authority” or “water and sewer authority” means a “local government authority”, as that term is defined in O.C.G.A. § 36-80-16, that has been properly formed in accordance with

applicable Georgia law and that provides water services or water and sewer services to the public.

(~~ee~~ff) "Watercourse" means any natural or artificial waterway, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, gully, ravine, or wash in which water flows either continuously or intermittently, having a definite channel, bed and bank, and includes any area adjacent thereto which is subject to inundation by reason of overflow or floodwater.

(~~ff~~gg) "Water Quality" means the chemical, physical, and biological characteristics of the State's water resources.

Authority: O.C.G.A. Secs. 12-7-1 et seq.

Rule 391-3-7-.04 ~~Repealed~~Georgia Department of Transportation Minimum Requirements and Buffer Variance Criteria

(1) For road construction or maintenance projects disturbing one or more contiguous acres of land, the Georgia Department of Transportation must abide by and follow the minimum requirements set forth within O.C.G.A. § 12-7-6(a) and (b) and all requirements and procedures described in Sections 391-3-7-.05 and 391-3-7-.11.

(2) In addition to the criteria for buffer variances described in Rule 391-3-7-.05(2) and Rule 391-3-7-.11(2), variance applications will be reviewed by the Director for road construction and maintenance projects undertaken by the Georgia Department of Transportation only where the Georgia Department of Transportation provides reasonable evidence that impacts to the buffer have been avoided or minimized to the fullest extent practicable, the projects include required mitigation in accordance with the current EPD "Stream Buffer Variance Mitigation Guidance" document, and in the following cases:

(a) The proposed land disturbing activity within the buffer is part of a project that will require a permit issued by the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act of 1972, as amended, or Section 10 of the Rivers and Harbors Act of 1899, contingent upon approval by the Corps of Engineers of that permit; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(b) The proposed land disturbing activity within the buffer is part of a project that is not eligible for a permit issued by the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act of 1972, as amended, and involves the piping, filling, or rerouting of waters that are not jurisdictional waters of the United States regardless as to whether or not such waters have been classified as primary or secondary trout waters.

Authority: O.C.G.A. Secs. 12-7-1 et seq.

Rule 391-3-7-.05 Buffer Variance Procedures and Criteria

(1) Buffers on state waters are valuable in protecting and conserving land and water resources; therefore, buffers should be protected. The buffer variance process will apply to all projects legally eligible for variances and to all state waters having vegetation wrested from the channel by normal stream flow, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. Rule 391-3-7-.05 does not apply to coastal marshlands. The following activities do not require application to or approval from the Division:

(a) stream crossings for water lines or stream crossing for sewer lines that occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream and cause a width of disturbance of not more than 50 feet within the buffer; or

(b) where drainage structures must be constructed within the twenty-five (25) foot buffer area of any state water not classified as a trout stream; or

(c) where roadway drainage structures must be constructed within the twenty-five (25) foot buffer area of any state waters or the fifty (50) foot buffer of any trout stream; or

(d) construction of bulkheads or sea walls on Lake Oconee and Lake Sinclair where required to prevent erosion at the shoreline; or

(e) construction of public water system reservoirs.

(2) Variance applications will be reviewed by the Director only where the applicant provides reasonable evidence that impacts to the buffer have been avoided or minimized to the fullest extent practicable and only in the following cases:

(a) The project involves the construction or repair of an existing infrastructure project or a structure that, by its nature, must be located within the buffer. Such structures include, but are not limited to, dams, public water supply intake structures, detention/retention ponds, waste water discharges, docks including access ways, boat launches including access ways, and stabilization of areas of public access to water; or

(b) The project will result in the restoration or enhancement to improve water quality and/or aquatic habitat quality; or

(c) Buffer intrusion is necessary to provide reasonable access to a property or properties; or

(d) The intrusion is for water and sewer lines that cannot reasonably be placed outside the buffer, and stream crossings and vegetative disturbance are minimized; or

(e) Crossing for utility lines, including but not limited to gas, liquid, power, telephone, and other pipelines, provided that the number of crossings and the amount of vegetative disturbance are minimized; or

(f) Recreational foot trails and viewing areas, providing that impacts to the buffer are minimal; or

(g) The project involves construction of one (1) single family home for residential use by the owner of the subject property and, at the time of adoption of this rule, there is no opportunity to develop the home under any reasonable design configuration unless a buffer variance is granted. Variances will be considered for such single family homes only if construction is initiated or local government approval is obtained prior to January 10, 2005; or

(h) For non-trout waters, the proposed land disturbing activity within the buffer is part of a project that will require a permit from the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1344, ~~and~~contingent upon approval by the Corps of Engineers ~~has approved a mitigation plan to be implemented as a condition of such a~~that permit; or

(i) For non-trout waters, a plan is provided for buffer intrusion that shows that, even with the proposed land disturbing activity within the buffer, the completed project will result in maintained or improved water quality downstream of the project; or

(j) For non-trout waters, the project with a proposed land disturbing activity within the buffer is located in, or upstream and within ten linear miles of, a stream segment listed as impaired under Section 303(d) of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1313(d) and a plan is provided that shows that the completed project will result in maintained or improved water quality in such listed stream segment and that the project has no adverse impact relative to the pollutants of concern in such stream segment; or

(k) The proposed land disturbing activity within the buffer is part of a project that is not eligible for a permit from the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1344, but includes required mitigation in accordance with current EPD "Stream Buffer Variance Mitigation Guidance" document, and involves:

1. piping, filling, or re-routing of non-trout waters that are not jurisdictional Waters of the U.S.; or

2. stream buffer impacts due to new infrastructure projects adjacent to state waters (jurisdictional and non-jurisdictional Waters of the U.S.). This criterion shall not apply to maintenance and/or modification to existing infrastructure, which are covered under 391-3-7-.05(2)(a).

(3) If the buffer impact will be minor, the buffer variance request shall include the following information at a minimum:

(a) Site map that includes locations of all state waters, wetlands, floodplain boundaries and other natural features, as determined by field survey.

(b) Description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.

(c) Dated and numbered detailed site plan that shows the locations of all structures, impervious surfaces, and the boundaries of the area of soil disturbance, both inside and outside

of the buffer. The exact area of the buffer to be impacted shall be accurately and clearly indicated.

(d) Description of the project, with details of the buffer disturbance, including estimated length of time for the disturbance and justification for why the disturbance is necessary.

(e) Calculation of the total area and length of the buffer disturbance.

(f) Letter from the issuing authority (if other than the Division and as applicable) stating that the issuing authority has visited the site and determined the presence of state waters that require a buffer and that a stream buffer variance is required as per the local erosion and sedimentation control ordinance.

(g) Erosion, sedimentation and pollution control plan.

(h) Re-vegetation plan as described in the most recent publication of the Division's guidance book, "Streambank and Shoreline Stabilization" and/or a plan for permanent vegetation as per the "Manual for Erosion and Sedimentation Control in Georgia."

(i) For projects within the buffer of or upstream and within one linear mile of impaired stream segments on Georgia's "305(b)/303(d) List Documents (Final)," documentation that the project will have no adverse impacts relative to the pollutants of concern and if applicable, documentation that the project will be in compliance with the TMDL Implementation Plan(s).

(j) Any other reasonable information related to the project that the Division deems necessary to effectively evaluate the variance request.

(k) Applications must be on the most current forms provided by the Division.

(4) If the buffer impact will be major, the buffer variance request shall include all of the information in Sections (3)(a) thru (k) above, with the exception of (3)(h). A buffer variance request for major buffer impacts shall also include the following additional information:

(a) For variance requests made under Section (2)(h):

1. Joint Public Notice (JPN), if it is an individual permit;

2. Pre-Construction Notification (PCN), if it is a Nationwide Permit;

3. Mitigation calculations; and

4. Permit approval from the United States Army Corps of Engineers or, if not yet received, a signed statement from the applicant certifying that the applicant will provide a copy of the permit approval upon receipt.

(b) Buffer mitigation plan addressing impacts to critical buffer functions, including water quality and floodplain, watershed and ecological functions based on an evaluation of existing buffer conditions and predicted post construction buffer conditions pursuant to Section (7)(c) herein.

(c) Plan for stormwater control once site stabilization is achieved, when required by a local stormwater ordinance.

(d) For variance requests made under Sections (2)(i) and (2)(j), the application shall include the following water quality information:

1. Documentation that post-development stormwater management systems to conform to the minimum standards for water quality, channel protection, overbank flood protection and extreme flood protection as established in the Georgia Stormwater Management Manual or the equivalent and if applicable, the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual.

2. Documentation that existing water quality will be maintained or improved based on predicted pollutant loading under pre- and post-development conditions as estimated by models accepted by the Division.

(e) For variance requests made under Section (2)(j), if the proposed project is in, or upstream and within ten linear miles of impaired stream segments on Georgia's "305(b)/303(d) List Documents (Final)," documentation that the project will have no adverse impacts relative to the pollutants of concern and if applicable, documentation that the project will be in compliance with the TMDL Implementation Plan(s).

(f) For variance requests made under Section (2)(k)1., the application shall include documentation from the United States Army Corps of Engineers verifying the water bodies identified in the application are non-jurisdictional waters of the United States under Section 404 of the Clean Water Act.

(5) Upon receipt of a completed application in accordance with Sections 391-3-7-.05(3) or 391-3-7-.05(4), the Division shall consider the completed application and the following factors in determining whether to issue a variance:

(a) Locations of state waters, wetlands, floodplain boundaries and other natural features as determined by field surveys.

(b) Shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.

(c) Location and extent of buffer intrusion.

(d) Whether reasonable alternative project designs, such as the use of retaining walls, are possible which do not require buffer intrusion or which require less buffer intrusion.

(e) Whether issuance of the variance, with the required mitigation plan, re-vegetation plan and/or plan for permanent vegetation, is at least as protective of natural resources and the environment (including wildlife habitat).

(f) The current condition of the existing buffer, to be determined by:

1. The extent to which existing buffer vegetation is disturbed;

2. The hydrologic function of the buffer; and

3. Stream characteristics such as bank vegetative cover, bank stability, prior channel alteration or sediment deposition.

(g) The extent to which the encroachment into the buffer may reasonably impair buffer functions.

(h) The value of mitigation activities conducted pursuant to this rule, particularly Subsections 391-3-7-.05(7)(c) and 391-3-7-.05(7)(d) herein, and shall take regional differences into consideration on-site or downstream, to be determined by development techniques or other measures that will contribute to the maintenance or improvement of water quality, including the use of low impact designs and integrated best management practices, and reduction in effective impervious surface area.

(i) The long-term water quality impacts of the proposed variance, as well as the construction impacts. And for applications made under Subsections 391-3-7-.05(2)(i) and 391-3-7-.05(2)(j), the following criteria, which reflect regional differences in the state, shall be used by the Director to assist in determining whether the project seeking a variance will, when completed and with approved mitigation, result in maintained or improved water quality downstream of the project and minimal net impact to the buffer:

1. Division will assume that the existing water quality conditions are commensurate with an undeveloped forested watershed unless the applicant provides documentation to the contrary. If the applicant chooses to provide baseline documentation, site and/or stream reach specific water quality, habitat, and/or biological data would be needed to document existing conditions. If additional data are needed to document existing conditions, the applicant may need to submit a monitoring plan and have it approved by the Division prior to collecting any monitoring data. Existing local data may be used, if available and of acceptable quality to the Division.

2. The results of the predicted pollutant loading under pre- and post-development conditions as estimated by models accepted by the Division indicate that existing water quality conditions will be maintained or improved.

(j) For applications made under Section 391-3-7-.05(2)(j), for which a land disturbing activity is proposed within the buffer of a 303(d) listed stream, or upstream and within 10 linear miles of a 303(d) listed stream, the results of the model demonstrate that the project has no adverse impact relative to the pollutants of concern in such stream segment.

(6) Within 60 days of receipt of a complete buffer variance application, the Division will either provide written comments to the applicant or propose to issue a variance.

(a) When the Division proposes to issue a variance, it will issue a public notice. The public notice shall describe the proposed buffer encroachment, the location of the project, where the public can review site plans, and where comments should be sent. The public shall have 30 days from the date of publication of the public notice to comment on the proposed buffer variance.

(b) If after the public comment period for a proposed buffer variance has closed or a buffer variance has been issued the applicant proposes to change the project as described in the variance application, the applicant must notify the Division in writing of those proposed changes.

1. If the proposed changes include a change in the location of the buffer impacts, an increase in buffer impact, or change in project concept or design such that there may be a change to the applicable variance criteria described in Section 391-3-7-.05(2) and the Division approves such changes, the Division shall issue public notice in accordance with Section 391-3-7-.05(6)(a).

2. If the proposed changes do not include changes described in 391-3-7-.05(6)(b)(1), the Division may approve those changes in writing or may elect to issue public notice in accordance with Section 391-3-7-.05(6)(a).

(c) If after the public comment period for a proposed buffer variance has closed or a buffer variance has been issued a person or entity other than the applicant wishes to carry out the work described in the proposed variance or variance, the new person or entity must submit an application for that variance and all other requirements and procedures described in this Section 391-3-7-.05 shall apply. A new application shall not be required where the applicant is merely changing its name or corporate structure, but the applicant must notify the Division in writing of that name or corporate structure change.

(7) In all cases in which a buffer variance is issued, the following conditions shall apply:

(a) The variance shall be the minimum reduction in buffer width necessary to provide relief. Streams shall not be piped if a buffer width reduction is sufficient to provide relief.

(b) Disturbance of existing buffer vegetation shall be minimized.

(c) Mitigation is required for all major buffer impacts and shall offset the buffer encroachment and any loss of buffer functions. Where lost functions cannot be replaced, mitigation shall provide other buffer functions that are beneficial. Buffer functions include, but are not limited to:

1. temperature control (shading);

2. streambank stabilization;

3. trapping of sediments, if any;

4. removal of nutrients, heavy metals, pesticides and other pollutants;

5. aquatic habitat and food chain;

6. terrestrial habitat, food chain and migration corridor; and

7. buffering of flood flows.

(d) Mitigation should be on-site when possible. Depending on site conditions, acceptable forms of mitigation may include but are not limited to:

1. Restoration of the buffer to a naturally vegetated state to the extent practicable, or to current existing conditions;

2. Bioengineering of channels to reduce bank erosion and improve habitat;

3. Creation or restoration of wetlands;

4. Stormwater management systems to better maintain the pre-development flow regime (with consideration given to downstream effects) that exceeds the requirements of applicable ordinances at the time of application;

5. Reduction in pollution sources, such as on-site water quality treatment or improving the level of treatment of septic systems;

6. Other forms of mitigation that protect or improve water quality and/or aquatic wildlife habitat;

7. An increase in buffer width elsewhere on the property;

8. Mitigation as required under a Clean Water Act Section 404 or Nationwide permit issued by the U.S. Army Corps of Engineers;

9. Stormwater management systems described in the most recent publication of the Georgia Stormwater Management Manual and the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual;

10. Mitigation as described in the most recent publication of the Division's guidance document, Stream Buffer Mitigation Guidance.

(e) Forms of mitigation that are not acceptable include:

1. Activities that are already required by the Georgia Erosion and Sedimentation Act, such as the minimal use of best management practices;

2. Activities that are already required by other federal, state and local laws, except as described in 391-3-7-.05(7)(d) above. U.S. Army Corps of Engineers mitigation is acceptable.

(f) The Division will not place a condition on a variance that requires a landowner to deed property or the development rights of property to the state or to any other entity. The landowner may voluntarily preserve property or the development rights of property as a mitigation option with the agreement of the Division.

(8) If the approved buffer impacts are not completed within five years of the date issued, buffer variances issued on or after the effective date of this rule will become null and void, unless an extension is granted by the Division as specifically provided herein.

(a) The applicant may request a time extension of that buffer variance only if the approved buffer impacts will not be completed prior to the buffer variance expiration date. The buffer variance time extension, if granted, can be for a period of up to five years. If the applicant can demonstrate that a time extension for a period of greater than five years is reasonable, the

Director may grant a buffer variance time extension for a reasonable period of greater than five years. A buffer variance time extension may be issued only once.

(b) The buffer variance time extension must be requested in writing at least 90 calendar days prior to the buffer variance expiration date with justifiable cause demonstrated. Once an approved buffer variance expires, it is no longer eligible for a time extension.

(c) Time extension requests will be reviewed by the Division. The Division will either provide written comments to the applicant or propose to issue a buffer variance time extension within 60 days of receipt of a time extension request. If there are any other changes to the original buffer variance application, the Division shall issue a public notice in accordance with Section 391-3-7-.05(6)(a).

(d) If a variance issued by the Director is acceptable to the issuing authority, the variance shall be included as a condition of permitting and therefore becomes a part of the permit for the proposed land disturbing activity project. If a stream buffer variance is not acceptable to the issuing authority, the issuing authority may issue a land disturbing permit without allowing encroachment into the buffer.

(9) A general variance is provided for piping of trout streams with an average annual flow of 25 gpm or less.

(10) To obtain this general variance in Section 391-3-7-.05(9) for encroaching on the buffer of a trout stream, the applicant must submit information to the issuing authority or EPD if there is no issuing authority demonstrating that the average annual flow in the stream is 25 gpm or less. There are two acceptable methods for making this determination.

(a) The USGS unit area runoff map may be used to determine the threshold acreage that will produce an average annual flow of 25 gpm or less.

(b) The applicant may submit a hydrologic analysis certified by a Registered Professional Engineer or Geologist that presents information sufficient to estimate that the average annual flow of each stream to be piped is 25 gpm or less with a high level of certainty.

(11) Any stream piping performed in accordance with this general variance in Section 391-3-7-.05(9) shall be subject to the following terms:

(a) The total length of stream that is piped in any one property shall not exceed 200 feet.

(b) Any project that involves more than 200 ft of piping will require an individual variance for the entire project. The general variance may not be applied to a portion of a project; e.g., it is not permissible to pipe 200 ft of a stream under the general variance and seek an individual variance for an additional length of pipe.

(c) The downstream end of the pipe shall terminate at least 25 ft before the property boundary.

(d) The applicant for a Land Disturbing Activity Permit shall notify the appropriate issuing authority of the precise location and extent of all streams piping as part of the land disturbing

activity permit application. The issuing authority (if other than the Division) shall compile this information and convey it to the Division annually.

(e) Where piping of a stream increases the velocity of stream flow at the downstream end of the pipe, appropriate controls shall be employed to reduce flow velocity to the predevelopment level. Plans for such controls must be submitted as part of the land disturbing activity permit.

Authority: O.C.G.A. Secs. 12-7-1 et seq. and 50-13-9.1.

Rule 391-3-7-.11 Coastal Marshlands Buffer Variance Procedures and Criteria

(1) Buffers on state waters are valuable in protecting and conserving land and water resources. Therefore, there is established a 25 foot buffer along coastal marshlands, as measured horizontally from the coastal marshland-upland interface, except:

(a) Where the Director determines to allow a variance that is at least as protective of natural resources and the environment under the variance criteria in 391-3-7-.11(2) through (7) or under the variance by rule criteria in 391-3-7-.11(9); or

(b) Where otherwise allowed by the Director pursuant to O.C.G.A § 12-2-8; or

(c) Where an alteration within the buffer area has been authorized pursuant to O.C.G.A. § 12-5-286; or

(d) For maintenance of any currently serviceable structure, landscaping, or hardscaping, including bridges, roads, parking lots, golf courses, golf cart paths, retaining walls, bulkheads, and patios; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(e) Where a drainage structure or roadway drainage structure is constructed or maintained; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(f) On the landward side of any currently serviceable shoreline stabilization structure; or

(g) For the maintenance of any manmade storm-water detention basin, golf course pond, or impoundment that is located entirely within the property of a single individual, partnership, or corporation; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(h) Crossings for utility lines that cause a width of disturbance of not more than 50 feet within the buffer; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(i) Any land-disturbing activity conducted pursuant to and in compliance with a valid and effective land-disturbing permit issued subsequent to April 22, 2014, and prior to December 31,

2015; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(j) Any lot for which the preliminary plat has been approved prior to December 31, 2015 if roadways, bridges, or water and sewer lines have been extended to such lot prior to the effective date of this Act and if the requirement to maintain a 25 foot buffer would consume at least 18 percent of the high ground of the platted lot otherwise available for development; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.

(2) The buffer variance process will apply to all projects legally eligible for variances, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. Variance applications will be reviewed by the Director only in the following cases:

(a) The project involves the construction or repair of an existing infrastructure project or a structure that, by its nature, must be located within the buffer. Such structures include, but are not limited to, dams, public water supply intake structures, detention/retention ponds, waste water discharges, docks including access ways, boat launches including access ways and stabilization of areas of public access to water; or

(b) The project will result in the restoration or enhancement to improve water quality and/or aquatic habitat quality; or

(c) Buffer intrusion is necessary to provide reasonable access to a property or properties; or

(d) The intrusion is for utility lines within or adjacent to existing utility or transportation right of ways or that cannot reasonably be placed outside the buffer, and crossings and vegetative disturbance are minimized; or

(e) Crossing for utility lines, including but not limited to gas, liquid, power, telephone, and other pipelines, provided that the number of crossings and the amount of vegetative disturbance are minimized; or

(f) Recreational foot trails and viewing areas, providing that impacts to the buffer are minimal; or

(g) The project involves construction of one (1) single family home for residential use by the owner of the subject property and, at the time of adoption of this rule, there is no opportunity to develop the home under any reasonable design configuration unless a buffer variance is granted. Variances will be considered for such single family homes only if construction is initiated or local government approval is obtained prior to January 10, 2005; or

(h) The proposed land disturbing activity within the buffer is part of a project that will require a permit from the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1344, or Section 10 of the Rivers and Harbors Act of 1899, contingent upon approval by the Corps of Engineers ~~has approved a mitigation plan to be implemented as a condition of such a~~of that permit; or

(i) A plan is provided for buffer intrusion that shows that, even with the proposed land disturbing activity within the buffer, the completed project will result in maintained or improved water quality; or

(j) ~~The proposed land disturbing activity includes an alteration within the buffer that has been authorized pursuant to a permit issued by the United States Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act of 1972, as amended, or Section 10 of the Rivers and Harbors Act of 1899; or~~(Reserved)

(k) The proposed land disturbing activity within the buffer is part of a project that is not eligible for a permit from the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1344, and involves:

1. Piping, filling, or re-routing of waters that are not jurisdictional Waters of the U.S.; or

2. Buffer impacts due to new infrastructure projects adjacent to state waters (jurisdictional and non-jurisdictional Waters of the U.S.). This criterion shall not apply to maintenance and/or modification to existing infrastructure.

(3) Except as provided in 391-3-7-.11(9), if the buffer impact will be minor, the buffer variance request shall include the following information at a minimum:

(a) Site map that includes locations of all state waters, wetlands, floodplain boundaries and other natural features, as determined by field survey.

(b) Description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.

(c) Dated and numbered detailed site plan that shows the locations of all structures, impervious surfaces, and the boundaries of the area of soil disturbance, both inside and outside of the buffer. The exact area of the buffer to be impacted shall be accurately and clearly indicated.

(d) Description of the project, with details of the buffer disturbance, including estimated length of time for the disturbance and justification for why the disturbance is necessary.

(e) Calculation of the total area and length of the buffer disturbance.

(f) Letter from the issuing authority (if other than the Division and as applicable) stating that the issuing authority has visited the site and determined the presence of coastal marshlands that require a buffer and that a buffer variance is required.

(g) Erosion, sedimentation and pollution control plan.

(h) Re-vegetation plan as described in the most recent publication of the Division's guidance book, "Streambank and Shoreline Stabilization", or the "Hydromodification Best Management Practice Manual for Coastal Georgia," and/or a plan for permanent vegetation as per the "Manual for Erosion and Sedimentation Control in Georgia."

(i) For projects within the buffer of or upstream and within one linear mile of an impaired water body on Georgia's "305(b)/303(d) List Documents (Final)," documentation that the project will have no adverse impacts relative to the pollutants of concern and if applicable, documentation that the project will be in compliance with the TMDL Implementation Plan(s).

(j) Applications must be on the most current forms provided by the Division.

(4) If the buffer impact will be major, the buffer variance request shall include all of the information in 391-3-7-.11(3)(a) through (~~j~~i) above, with the exception of 391-3-7-.11(3)(h). A buffer variance request for major buffer impacts shall also include the following additional information:

(a) For variance requests made under 391-3-7-.11(2)(h)~~ or (j)~~:

1. Joint Public Notice (JPN), if it is an individual permit;

2. Pre-Construction Notification (PCN), if it is a Nationwide Permit;

3. Mitigation calculations; and

4. Permit approval from the United States Army Corps of Engineers or, if not yet received, a signed statement from the applicant certifying that the applicant will provide a copy of the permit approval upon receipt.

(b) Buffer mitigation plan addressing impacts to critical buffer functions, including water quality and floodplain, watershed and ecological functions based on an evaluation of existing buffer conditions and predicted post construction buffer conditions pursuant to 391-3-7-.11(7)(c) herein.

(c) Plan for stormwater control once site stabilization is achieved, when required by a local stormwater ordinance.

(d) For variance requests made under 391-3-7-.11(2)(i), the application shall include the following water quality information:

1. Documentation that post-development stormwater management systems to conform to the minimum standards for water quality, channel protection, overbank flood protection and extreme flood protection as established in the Georgia Stormwater Management Manual or the equivalent and if applicable, the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual.

2. Documentation that existing water quality will be maintained or improved based on predicted pollutant loading under pre- and post-development conditions as estimated by models accepted by the Division.

(e) For variance requests made under 391-3-7-.11(2)(k)1., the application shall include documentation from the United States Army Corps of Engineers verifying the water bodies identified in the application are non-jurisdictional waters of the United States under Section 404 of the Clean Water Act.

(5) Upon receipt of a complete application, the Division shall consider the complete application and the following factors in determining whether to issue a variance:

(a) Locations of state waters, wetlands, coastal marshlands, floodplain boundaries and other natural features as determined by field surveys.

(b) Shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.

(c) Location and extent of buffer intrusion.

(d) Whether reasonable alternative project designs, such as the use of retaining walls are possible which do not require buffer intrusion or which require less buffer intrusion.

(e) Whether issuance of the variance, with the required mitigation plan, re-vegetation plan and/or plan for permanent vegetation, is at least as protective of natural resources and the environment.

(f) The current condition of the existing buffer, to be determined by:

1. The extent to which existing buffer vegetation is disturbed;

2. The hydrologic function of the buffer; and

3. Hydrologic functional characteristics such as bank vegetative cover, bank stability, or prior channel alteration.

(g) The extent to which the encroachment into the buffer may reasonably impair buffer functions.

(h) The value of mitigation activities conducted pursuant to this rule, particularly 391-3-7-.11(7)(c) and (d) herein, development techniques or other measures that will contribute to the maintenance or improvement of water quality, including the use of low impact designs and integrated best management practices, and reduction in effective impervious surface area.

(i) The long-term water quality impacts of the proposed variance, as well as the construction impacts. And for applications made under 391-3-7-.11(2)(i), the following criteria shall be used by the Director to assist in determining whether the project seeking a variance will, when completed and with approved mitigation, result in maintained or improved water quality downstream of the project and minimal net impact to the buffer:

1. The Division will assume that the existing water quality conditions are commensurate with an undeveloped maritime forested watershed unless the applicant provides documentation to the contrary. If the applicant chooses to provide baseline documentation, site specific water quality, habitat, and /or biological data would be needed to document existing conditions. If additional data are needed to document existing conditions, the applicant may need to submit a monitoring plan and have it approved by the Division prior to collecting any monitoring data. Existing local data may be used, if available and of acceptable quality to the Division.

2. The results of the predicted pollutant loading under pre- and post-development conditions as estimated by models accepted by the Division indicate that existing water quality conditions will be maintained or improved.

(j) For applications made under 391-3-7-.11(2)(i), for which a land disturbing activity is proposed within the buffer of a 303(d) listed water body, or upstream and within one linear mile of a 303(d) listed water body, the results of the model demonstrate that the project has no adverse impact relative to the pollutants of concern.

(6) Within 60 days of receipt of a complete buffer variance application, the Division will either provide written comments to the applicant or propose to issue a variance.

(a) When the Division proposes to issue a variance, it will issue a public notice. The public notice shall describe the proposed buffer encroachment, the location of the project, where the public can review site plans, and where comments should be sent. The public shall have 30 days from the date of publication of the public notice to comment on the proposed buffer variance.

(b) If after the public comment period for a proposed buffer variance has closed or a buffer variance has been issued the applicant proposes to change the project as described in the variance application, the applicant must notify the Division in writing of those proposed changes.

1. If the proposed changes include a change in the location of the buffer impacts, an increase in buffer impact, or change in project concept or design such that there may be a change to the applicable variance criteria described in Section 391-3-7-.11(2) and the Division approves such changes, the Division shall issue public notice in accordance with Section 391-3-7-.11(6)(a).

2. If the proposed changes do not include changes described in 391-3-7-.11(6)(b)(1), the Division may approve those changes in writing or may elect to issue public notice in accordance with Section 391-3-7-.11 (6)(a).

(c) If after the public comment period for a proposed buffer variance has closed or a buffer variance has been issued a person or entity other than the applicant wishes to carry out the work described in the proposed variance or variance, the new person or entity must submit an application for that variance and all other requirements and procedures described in this Section 391-3-7-.11 shall apply. A new application shall not be required where the applicant is merely changing its name or corporate structure, but the applicant must notify the Division in writing of that name or corporate structure change.

(7) In all cases in which a buffer variance is issued, the following conditions shall apply:

(a) The variance shall be the minimum reduction in buffer width necessary to provide relief.

(b) Disturbance of existing buffer vegetation shall be minimized.

(c) Mitigation is required for all major buffer impacts and shall offset the buffer encroachment and any loss of buffer functions. Where lost functions cannot be replaced,

mitigation shall provide other buffer functions that are beneficial. Buffer functions include, but are not limited to:

1. temperature control (shading);

2. bank stabilization;

3. trapping of sediments, if any;

4. removal of nutrients, heavy metals, pesticides and other pollutants;

5. aquatic habitat and food chain;

6. terrestrial habitat, food chain and migration corridor;

7. buffering of flood flows; and

8. maintenance of salinity through buffering of freshwater flows.

(d) Mitigation should be on-site when possible. Depending on site conditions, acceptable forms of mitigation may include, but are not limited to:

1. Restoration of the buffer to a naturally vegetated state to the extent practicable, or to current existing conditions. Information on natural vegetation in coastal Georgia is available from the University of Georgia Marine Extension Service's website (visit https://gacoast.uga.edu/ and search the terms "Ecoscapes" or "Native Plant Search Engine");

2. Bioengineering of channels to reduce bank erosion and improve habitat;

3. Creation or restoration of wetlands;

4. Stormwater management systems to better maintain the pre-development flow regime (with consideration given to downstream effects) that exceeds the requirements of applicable ordinances at the time of application;

5. Reduction in pollution sources, such as on-site water quality treatment or improving the level of treatment of septic systems;

6. Other forms of mitigation that protect or improve water quality and/or aquatic wildlife habitat;

7. An increase in buffer width elsewhere on the property;

8. Mitigation as required under a Clean Water Act Section 404 or Nationwide permit issued by the U.S. Army Corps of Engineers; or

9. Stormwater management systems described in the most recent publication of the Georgia Stormwater Management Manual and the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual.

(e) Forms of mitigation that are not acceptable include:

1. Activities that are already required by the Georgia Erosion and Sedimentation Act, such as the minimal use of best management practices;

2. Activities that are already required by other federal, state and local laws, except as described in 391-3-7-.11(7)(d) above. U.S. Army Corps of Engineers mitigation is acceptable.

(f) The Division will not place a condition on a variance that requires a landowner to deed property or the development rights of property to the state or to any other entity. The landowner may voluntarily preserve property or the development rights of property as a mitigation option with the agreement of the Division.

(g) If a variance issued by the Director is acceptable to the issuing authority, the variance shall be included as a condition of permitting and therefore becomes a part of the permit for the proposed land disturbing activity project. If a buffer variance is not acceptable to the issuing authority, the issuing authority may issue a land disturbing permit without allowing encroachment into the buffer.

(8) A buffer variance will expire five years after the effective date, unless an extension is granted by the Division as specifically provided herein.

(a) The applicant may request a time extension of that buffer variance only if the approved buffer impacts will not be completed prior to the buffer variance expiration date. The buffer variance time extension, if granted, can be for a period of up to five years. If the applicant can demonstrate that a time extension for a period of greater than five years is reasonable, the Director may grant a buffer variance time extension for a reasonable period of greater than five years. A buffer variance time extension may be issued only once.

(b) The buffer variance time extension must be requested in writing at least 90 calendar days prior to the buffer variance expiration date with justifiable cause demonstrated. Once an approved buffer variance expires, it is no longer eligible for a time extension.

(c) Time extension requests will be reviewed by the Division. The Division will either provide written comments to the applicant or propose to issue a buffer variance time extension within 60 days of receipt of a time extension request. If there are any significant changes to the original buffer variance application, the Division shall issue a public notice in accordance with 391-3-7-.11(6)(a).

(9) Variance By Rule

(a) Notwithstanding any other provision of these Rules, the following activities have minimal impact on the water quality or aquatic habitat of the adjacent coastal marshland and therefore are deemed to have an approved buffer variance.

1. Activities where the area within the buffer is not more than 500 square feet.

2. Activities that have a "Minor Buffer Impact" as defined in 391-3-7-.01(r), provided that the total area of buffer impacts is less than 5,000 square feet. A proposed development site may not be subdivided into smaller projects or phases to circumvent the 5,000 square feet limitation.

(b) Bank and shoreline stabilization structures are not eligible for coverage under the variance by rule.

(c) Notification shall be made at least 14 days prior to the commencement of land-disturbing activities to provide the Division an opportunity to review the activity to ensure it meets the applicable criteria. Unless notified by the Division to the contrary, an applicant who submits a notification in accordance with 391-3-7-.11(9) is authorized to encroach into the buffer 14 days after the notification form is received by the Division. A buffer variance by rule expires if the buffer impacts are not completed within two years after the notification form is received by the Division. The Director may deny coverage under this variance by rule and require submittal of an application for an individual variance based on the review of the documentation submitted or other information. Persons failing to notify the Director of such activities shall be deemed to be operating without a variance.

(d) Notification for a variance by rule is to be submitted by return receipt certified mail (or similar service that provides confirmation of receipt) to both the Division and to the Local Issuing Authority in jurisdictions authorized to issue Land Disturbance Permits.

(e) An individual variance will be required for any activity that does not qualify for a variance by rule.

(f) Any notification for a variance by rule shall include the following:

1. Description of the activity, with details of the buffer disturbance, including area and length of the buffer to be impacted and estimated length of time for the disturbance.

2. Photographs of the area that will be affected by the proposed activity.

3. Notice of a land-disturbing activity to be covered by a variance by rule must be on the most current forms provided by the Division.

(g) Any variance by rule shall be subject to the following requirements:

1. The following information shall be maintained onsite until final stabilization of the site is complete:

i. Site plan that shows the locations of all structures, impervious surfaces, and the boundaries of the area of soil disturbance, both inside and outside of the buffer. The exact area and length of the buffer to be impacted shall be accurately and clearly indicated.

ii. Documentation that adequate erosion control measures are incorporated into the project plans and specifications.

2. Disturbance of existing buffer vegetation shall be minimized.

3. Final stabilization of the site must include a re-vegetation plan as described in the most recent publication of the Division's guidance book, "Streambank and Shoreline Stabilization." It is recommended that vegetation be native riparian vegetation.

4. Temporary vegetative measures must be implemented within 14 calendar days following the completion of any soil disturbance and the site shall be stabilized at the end of every day until project completion.

5. Proper and full implementation of the erosion control measures in 391-3-7-.11(9)(g)1. ii.

6. Post construction stormwater management practices should be considered. Best management practices can be found in the latest edition of the Georgia Stormwater Management Manual or the Coastal Supplement to the Georgia Stormwater Management Manual.

7. All other applicable federal, state, and local laws, rules and ordinances, including erosion and sedimentation control must be fully complied with prior to commencement of project construction.

8. For a variance by rule under 391-3-7-.11(9)(a)1., cumulative impacts shall not exceed 500 square feet within a 5 year period.

9. Any activity that does not meet the requirements of 391-3-7-.11(9)(g) is in violation of the variance by rule.

Authority: O.C.G.A. Secs. 12-7-1 et seq. and 50-13-9.1.