

# Georgia Department of Natural Resources

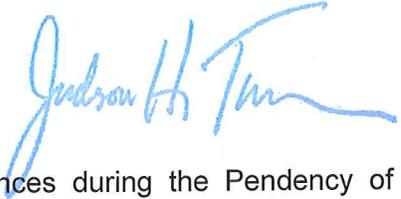
## **Environmental Protection Division**

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August 12, 2014

### **MEMORANDUM**

TO: Erosion and Sedimentation Local Issuing Authorities  
Other Interested Parties

FROM: Judson H. Turner, Director  
Environmental Protection Division 

SUBJECT: Evaluation of Stream Buffer Variances during the Pendency of the Tired Creek Appeal

On July 16, 2014 the Georgia Court of Appeals by a 4-3 margin reversed two separate decisions by superior courts concerning a stream buffer variance issued by EPD for a project in the Tired Creek watershed in Grady County. Contrary to EPD's application of the Erosion and Sedimentation Act's buffer provision, which the superior courts had affirmed, the Court of Appeals held that 25-foot buffers apply to all state waters, not just those "...where vegetation has been wrested by normal stream flow or wave action..." (OCGA 12-7-6(b)(15)(A)). The ruling in its entirety is available at the Court of Appeals of Georgia website at [http://www.gaappeals.us/docket/results\\_one\\_record.php?docr\\_case\\_num=A14A0215](http://www.gaappeals.us/docket/results_one_record.php?docr_case_num=A14A0215).

This ruling has created confusion and uncertainty as to its applicability to land disturbing activities within buffers. Areas in questions may include, but are not limited to: freshwater wetlands, coastal wetlands and marshes, beaches, grassed swales, drainage channels without wrested vegetation, sea walls, vegetated ponds without wrested vegetation, and other waters without clear banks and wrested vegetation.

The state has asked the Georgia Supreme Court to review the Court of Appeals' ruling. During the pendency of this appeal, an applicant for a stream buffer variance that contains state waters that would be brought into question by the ruling may apply for a variance under the buffer rules that existed immediately prior to the ruling and will be evaluated as such by the EPD. These rules are available on the EPD website at: <http://epd.georgia.gov/erosion-and-sedimentation>. EPD will continue to make buffered state water determinations under existing protocols and recommends that the Local Issuing Authorities do the same. The applicant should be aware that third parties may very likely try to challenge any buffer variance determination or plan of mitigation made pursuant to this action.

For projects where the applicant delineates and the issuing authority agrees that there is a bank and wrested vegetation, such as a lake or stream, a 25-foot buffer (50-foot for trout streams) remains except as limited by the statutory exceptions and the project can continue under the buffer rules that existed immediately prior to the ruling (referenced above) and will be evaluated as such by the EPD.