

# Georgia Department of Natural Resources

## Environmental Protection Division

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### MEMORANDUM

**TO:** Erosion and Sedimentation Local Issuing Authorities  
Other Interested Parties

**FROM:** Judson H. Turner, Director  
Environmental Protection Division 

**RE:** Buffer Determinations for Tidal Creeks and Saltwater Marshes  
Under the Erosion and Sedimentation Act

Natural vegetative buffers around certain state waters are demonstrated to provide significant water quality benefits. Determining the presence of buffers in coastal Georgia presents challenges not found in other areas of the state. The purpose of this memorandum is to clarify the position of the Environmental Protection Division ("EPD") regarding coastal buffers. This communication supersedes the July 8, 2004 memorandum from Director Carol Couch.

#### **Statutory Authority**

The Erosion and Sedimentation Act ("E&S Act"), O.C.G.A. § 12-7-1, *et. seq.*, provides for the establishment of buffers as follows:

- "'Buffer' means 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." O.C.G.A. § 12-7-3(2).
- "There is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except: . . ." O.C.G.A. § 12-7-6(b)(15)(A).

Therefore, in accordance with the E&S Act, two elements must be present to establish a buffer:

- A bank to waters of the state. While "banks" are not defined in the E&S Act, a workable definition is found in Webster's Dictionary as follows: "The rising ground bordering a lake, river, or sea or forming the edge of a cut or hollow or as the slope of land adjoining a body of water."
- Wrested vegetation. While wrested vegetation is not defined in the E&S Act, wresting is defined in Webster's Dictionary as "to pull, force or move by violent wringing or twisting movements."

## **Application in Coastal Georgia**

The saltwater marshes along the Georgia Coast are a complex system of channels or creeks, interspersed with broad expanses of vegetation. This memorandum will address two particular situations unique to Coastal Georgia: buffers along tidal creeks and buffers at the interface between saltwater marsh and land.

### Buffers along tidal creeks adjacent to uplands

Tidal creeks run both adjacent to uplands and throughout the saltwater marsh. In both cases the requirement of a bank to state waters is met. Further, examination of the vegetation will demonstrate wresting by stream flow, satisfying the second requirement. There is, therefore, a buffer present along most tidal creeks. The buffer determination is not dependent on the type of vegetation present, only on whether there is a bank to state waters and wrested vegetation.

A related issue regarding buffers along tidal creeks adjacent to uplands involves the construction of bulkheads. In some cases, bulkheads have been partially constructed from the water side avoiding land disturbance to the buffer. The plans for these bulkheads require tie-backs to the buffer area and backfilling to complete the project. The incomplete bulkhead is a temporary structure at best. The presence of a temporary or incomplete project does not eliminate the required buffer, nor the need to obtain a buffer variance. If the project as proposed requires a buffer variance, construction of a partially completed project does not remove the requirement to obtain the buffer variance.

### Buffers to Saltwater Marshes

Previous EPD guidance established the marsh jurisdiction line determined by the Coastal Resources Division ("CRD") as the point from which the buffer established in the E&S Act is measured. The jurisdiction line is usually established by CRD based on the presence of one or more of 14 species of marsh plants or the presence of marsh peat deposits within the estuarine area.

A close review of this policy in light of the E&S Act reveals that all the requirements of the statute are not met in some cases. Saltwater marshes are waters of the state. Generally, the nexus between the marsh and the upland meets the definition of a bank to state waters. However, in many places there is no wresting of vegetation associated with saltwater marshes.

Henceforth, in accordance with the language of the E&S Act, buffers along saltwater marsh boundaries exist only if the vegetation is clearly wrested by stream flow or wave action. Buffer determinations under the E&S Act will no longer be based on CRD's jurisdiction line, but on evidence of wrested vegetation, and buffers will be measured horizontally from the point where vegetation has been wrested by stream flow or wave action. If wrested vegetation is not present, there is no buffer under the E&S Act.