


**METROPOLITAN PLANNING COMMISSION***"Planning the Future - Respecting the Past"*

M E M O R A N D U M

DATE: July 28, 2015  
TO: The Planning Commission  
FROM: Thomas L. Thomson, Executive Director   
SUBJECT: Proposed Rule Changes to Erosion and Sedimentation Control Act Related to Coastal Marshland Buffers (SB 101)

Senate Bill 101, recently agreed upon by both houses of Georgia's General Assembly and signed into law by Gov. Nathan Deal, re-establishes a 25-foot buffer around coastal marshlands through the Erosion and Sedimentation Control (E&SC) Act. The Georgia Department of Natural Resources Environmental Protection Division (GA EPD) is the agency that oversees the implementation of the E&SC Act. GA EPD is mandated to promulgate rules and regulations on or before December 31, 2015 for immediate implementation.

The proposed rule changes to the E&SC Act generally establishes a process for protecting coastal marsh buffers that parallels the existing process in place for protecting buffers on other state waters. Additionally the rules establishes that state waters buffers be measured from the Coastal Resources Division's jurisdictional determination line near salt marshes as defined in the Coastal Marsh Protection Act. The bill clarified how to measure the State's 25 foot buffer along coastal marshlands and in essence restored the 25-foot marsh buffer and provided the GA EPD with statutory authority to enforce the buffer. For clarification on this description, please refer to the attached guidance letter and schematics from Chatham County Engineering.

The Bill put a protective buffer back in place around coastal marshes and wetlands that was removed in some areas along the coast by a GA EPD policy issued in April 2014. Buffers are designed to prohibit any kind of construction in the buffer zone so that the natural vegetation can serve as a filter to block storm water runoff from washing pollutants like petroleum and fertilizer into the marshes, which serve as breeding grounds for many seafood species.

The initial SB 101 was highly debated with the two primary problems being exemptions from buffer laws for federal projects approved by the U.S. Army Corps of Engineers and vague language concerning bulkheads and other shoreline stabilization structures. That language has since been modified by returning EPD's authority to have input on those projects (the compromise allows DNR and EPD to include rules that will ensure bulkheads built after the bill passes are not exempt from marsh buffers after their construction is completed).

As previously noted, there will be no changes to the current procedures until after December 31, 2015. However, Chatham County's Department of Engineering recommends that any County Riparian Buffer variance issued by the Zoning Board of Appeals (ZBA) for a parcel not located within the Environmental Overlay District or greater than 10' for any property located within the Environmental Overlay District should be contingent on successfully obtaining a State Buffer Variance prior to beginning work on the project.

Copies of the draft Rules for Erosion and Sedimentation Control (391-3-7) related to Coastal Marshland Buffers as well as a copy of the PowerPoint presentation made at the July 14, 2015 stakeholder meeting attended by Ms. Jackie Jackson, the MPCs Director of Comprehensive and Natural Resources Planning, has been included for your use and information.

Further information on the draft rules can be obtained at <http://epd.georgia.gov/development-amendments-erosion-and-sedimentation-rules>

Feel free to contact me at 651-1446 or Jackie Jackson Teel at 651-1454 with any questions.

cc: Jackie Jackson Teel  
Gary Plumbley

TLT/jjt



# CHATHAM COUNTY DEPARTMENT OF ENGINEERING

124 Bull Street, Room 430  
P.O. Box 8161  
Savannah, Georgia 31412-8161  
FAX 912-652-7818  
912-652-7800

*Leon Davenport, P.E.*  
*County Engineer*

*Suzanne Cooler, P.E.*  
*Assistant County Engineer*

## MEMORANDUM

May 8, 2014

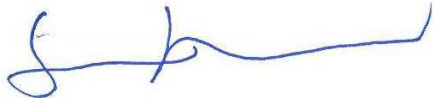
In light of the recent memorandum released by the Georgia Department of Natural Resources, Environmental Protection Division (EPD) dated April 22, 2014 and titled 'Buffer Determinations for Tidal Creeks and Saltwater Marshes Under the Erosion and Sedimentation Act' this department would like to explain the implications set forth by the above mentioned document.

Unincorporated Chatham County requires a buffer on properties adjacent to the marsh in the Environmental Overlay District (EOD) in the form of a 35' County riparian buffer. This buffer is measured from the Georgia Department of Natural Resources, Coastal Resources Division (CRD) Jurisdictional Determination (JD) line. This buffer is required by the Chatham County Zoning Ordinance and variances may be granted by the Chatham County Zoning Board of Appeals (ZBA). This is a permanent protected buffer and any encroachment of any kind must have a variance. Properties not located in the EOD are subject to a 25' setback as measured from the JD line. Properties in both districts may be subject to other Local, State or Federal buffer requirements.

The State of Georgia requires a buffer on properties conducting land disturbing activities as required by the Georgia Erosion and Sedimentation (E&S) Act. This is a 25' state waters buffer for erosion and sedimentation control. Chatham County is delegated the authority to determine when and where this buffer is required in accordance with the E&S Act. This undisturbed buffer is required on properties located adjacent to Waters of the State during construction activities. This buffer is measured from the 'point of wrested vegetation' as determined by the Chatham County Department of Engineering; any disturbance within this buffer requires a variance from the Georgia Department of Natural Resources, EPD. This buffer is required during Land Disturbing Activities (LDAs).

Fundamentally, the memorandum released by Georgia Department of Natural Resources, EPD, does not change the way Chatham County determines the presence and locations of the above described buffers. Furthermore, this guidance document does not relieve any party of the responsibility of obtaining other local, state or federal permits or other authorizations pertaining to any site for any disturbance.

Please see attached details. Questions may be directed to the undersigned.

A handwritten signature in blue ink, appearing to read "J. Kirkland", with a long horizontal flourish extending to the right.

Jefferson T. Kirkland  
Environmental Program Coordinator

# Buffer Requirements for Lots IN the Enviromental Overlay District



Open Water / Channel

Wrested Vegetation

CRD JD Line

State Waters Buffer for E & S

County Riparian Buffer

LOT - A

Property Line

LOT - B

Structure

Structure

Salt Marsh

35'

25'



# Buffer Requirements for Lots NOT in the Enviromental Overlay District



Open Water / Channel

Wrested Vegetation

CRD JD Line

State Waters Buffer for E & S

County Setback

LOT - A

Property Line

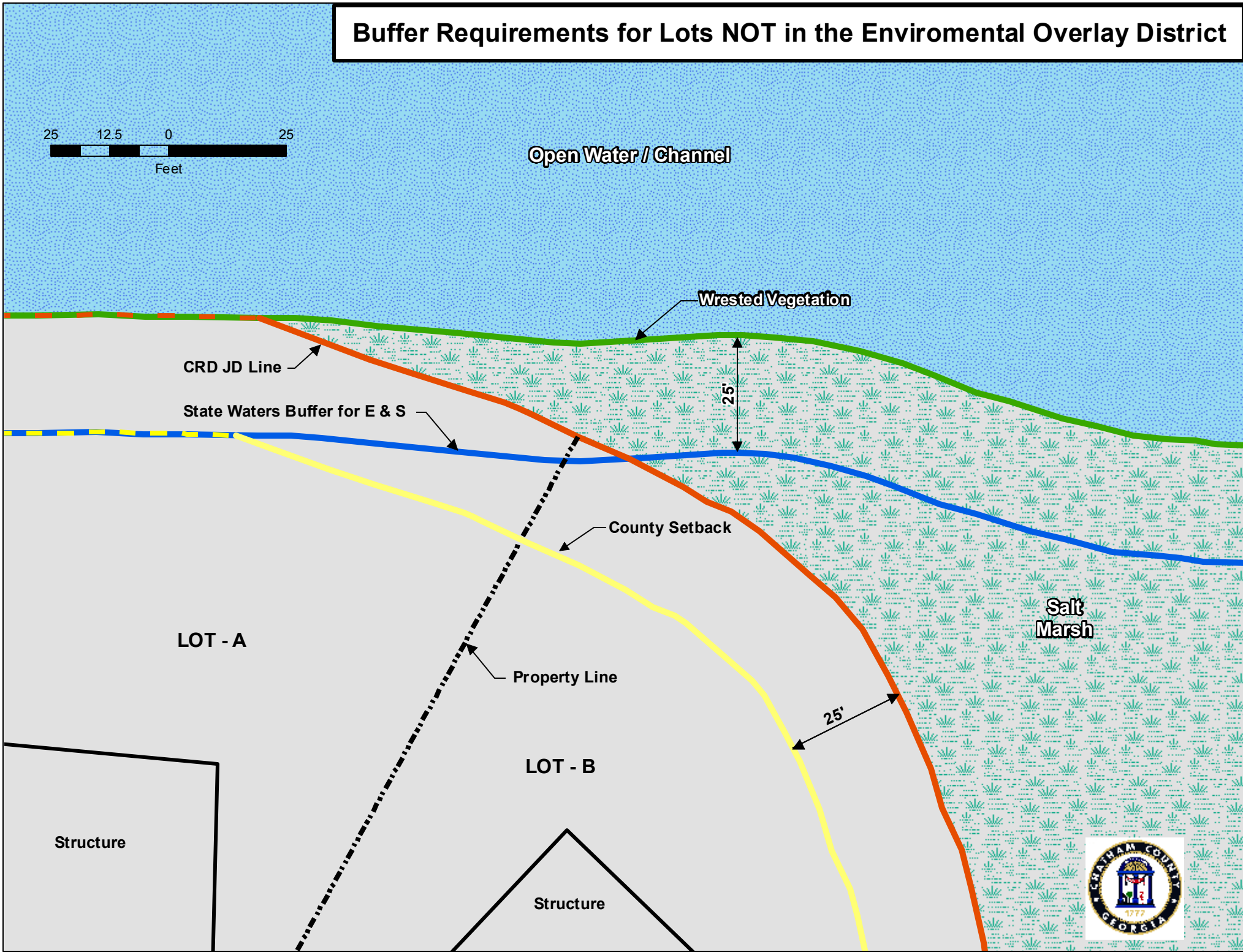
Salt Marsh

25'

LOT - B

Structure

Structure



### 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) “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) “Certified Personnel” means any person who meets or exceeds the education and training requirements of Code Section 12-7-19.
- (d) “Coastal Marshlands” shall have the same meaning as in Code Section 12-5-282.
- (e) “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.
- ~~(d)(f)~~ “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.
- ~~(e)(g)~~ “Department” means the Department of Natural Resources of the State of Georgia.
- ~~(f)(h)~~ “Director” means the Director of the Environmental Protection Division.
- ~~(g)(i)~~ “District” means the appropriate local Soil and Water Conservation District.
- ~~(h)(j)~~ “Division” means the Environmental Protection Division of the Department of Natural Resources.
- ~~(i)(k)~~ “Erosion” means the process by which land surface is worn away by the action of wind, water, ice, or gravity.
- ~~(j)(l)~~ “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.

~~(k)~~(m) “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.

~~(h)~~(n) “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.

~~(m)~~(o) “Local Issuing Authority” means the governing authority of any county or municipality that is certified pursuant to these rules and regulations and O.C.G.A. 12-7-8(a).

(p) “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)~~(~~o~~) “Major Buffer Impact” means any impact that does not meet the definition of “Minor Buffer Impact.”

~~(r)~~(~~p~~) “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)~~(~~q~~) “Permit” means the authorization necessary to conduct a land disturbing activity under the provisions of these rules and regulations.

~~(t)~~(~~r~~) “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)~~(~~s~~) “Project” means the entire area of the proposed development site, regardless of the size of the area to be disturbed.



~~(v)(t)~~ “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)(u)~~ “Sedimentation” means the action or process of forming or depositing sediment.

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

~~(y)(v)~~ “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)(w)~~ “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)(x)~~ “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)(y)~~ “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 non-trout 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)(z)~~ “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. 12-5-20 et 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)(aa)~~ “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.

~~(ee)(bb)~~ “Water Quality” means the chemical, physical, and biological characteristics of the State’s water resources.

**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, 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 ~~gravity-flow 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 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 the Corps of Engineers has approved a mitigation plan to be implemented as a condition of such a 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 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), a copy of the permit application and supporting documentation, as submitted to 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.
  - (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. When the Division proposes to issue a variance, it will send out a public advisory to all citizens and groups who request to receive the advisories. The applicant will then publish one public notice in the legal organ of each of the counties where the buffer disturbance will occur. The public advisory and 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 advisory and the public notice to comment on the proposed buffer variance.
- (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.

The applicant may request a buffer variance time extension 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.

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.

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 may be required to issue

a public advisory and the applicant may be required to publish a public notice in accordance with Section 391-3-7.05(6).

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.

**391-3-7-.06 Coastal Marshlands 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 marsh buffer variance process will apply to all coastal marshlands projects legally eligible for variances, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following activities are exempt from the requirement for a variance and do not require application to or approval from the Division:
- (a) Crossings for utility lines that ~~span the marsh and~~ cause a width of disturbance of not more than 50 feet within the buffer; or
  - (b) Where a drainage structure or roadway drainage structure is constructed or maintained; or
  - (c) On the landward side of any currently serviceable shoreline stabilization structure; or
  - (d) Maintenance of any currently serviceable structure, landscaping, or hardscaping, including bridges, roads, parking lots, golf courses, golf cart paths, retaining walls, bulkheads, and patios; or
  - (e) Maintenance of any manmade stormwater detention basin, golf course pond, or impoundment that is located entirely within the property of a single individual, partnership, or corporation; or
  - (f) Where an alteration within the buffer area has been authorized pursuant to Code Section 12-5-286; or
  - (g) 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; or
  - (h) 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 December 31, 2015 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.
- (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 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 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 the Corps of Engineers has approved a mitigation plan to be implemented as a condition of such a 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 project with a proposed land disturbing activity within the buffer is located in, or upstream and within ten linear miles of, a water body 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 water body and that the project has no adverse impact relative to the pollutants of concern; or

(k) The proposed land disturbing activity within the buffer 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. 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~~ coastal marshlands that require a buffer and that a 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", 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 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).
- (i) Any other reasonable information related to the project that the Division deems necessary to effectively evaluate the variance request.
- (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 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), a copy of the permit application and supporting documentation, as submitted to 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.
  - (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 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).
- (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-.06(3) or 391-3-7-.06(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, 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 (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. 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 Subsections 391-3-7-.06(7)(c) and 391-3-7-.06(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 391-3-7.06(2)(i) and 391-3-7-.06(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 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
  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-.06(2)(j), for which a land disturbing activity is proposed within the buffer of a 303(d) listed water body, or upstream and within 10 linear miles 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. When the Division proposes to issue a variance, it will send out a public advisory to all citizens and groups who request to receive the advisories. The applicant will then publish one public notice in the legal organ of each of the counties where the buffer disturbance will occur. The public advisory and 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 advisory and the public notice to comment on the proposed buffer variance.

(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. 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 at <http://marex.uga.edu/ecoscapes/>. Or <http://www.caes.uga.edu/extension/bryan/anr/documents/nativeplantlist.pdf>;

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; or
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.

The applicant may request a buffer variance time extension 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.

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.

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 may be required to issue a public advisory and the applicant may be required to publish a public notice in accordance with Section 391-3-7.05(6).

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) Variance By Rule

(a) Notwithstanding any other provision of these Rules, the following category of activities shall be deemed to have an approved buffer variance where an alteration within the buffer will have minimal impact on the water quality or aquatic habitat of the adjacent coastal marshland, where the project area within the buffer is not more than 500 square feet. Bank and shoreline stabilization structures are excluded from this category.

(b) 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 project to ensure it meets the applicable criteria. Notification shall be made on such forms as are provided by the Division. Unless notified by the Division to the contrary, an applicant who submits a notification in accordance with 391-3-7-.06(9) is authorized to encroach into the buffer 14 days after the date that the notification form is postmarked. 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.

(c) Projects not eligible for variance by rule include:

1. Bank and shoreline stabilization structures

2. Any activity that is part of a larger project disturbing more than 500 square feet regardless of whether the disturbance is within the buffer.

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

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

1. Description of the activity, with details of the buffer disturbance, including estimated length of time for the disturbance and justification for why the disturbance is necessary.

2. 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.

3. Erosion, sedimentation and pollution control plan.

4. A description of post construction stormwater management practices are recommended or justification for why such practices are not feasible. Best management practices can be found in the latest edition of Georgia Stormwater Management Manual or the Coastal Supplement to the Georgia Stormwater Management Manual.

5. Photographs of the area which will be affected by the proposed activity.

6. Written justification as to why there is no practicable alternative to the encroachment into the buffer.

7. Documentation that the proposed activity will have minimal impact on the water quality and aquatic habitat of the adjacent marsh.

8. Calculation of the total area and length of the buffer disturbance.

9. For Section 9 cumulative impacts cannot exceed 500 square feet within a 5 year period.

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

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

1. Disturbance of existing buffer vegetation shall be minimized.
2. 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 vVegetation must be native riparian vegetation.
3. Invasive species shall be removed where practicable.
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 implementation of the erosion, sedimentation and pollution control plan.
6. All other applicable federal, state, and local laws, rules and ordinances, including erosion and sediment control must be fully complied with prior to commencement of project construction.

Any activity that does not meet the conditions in 391-3-7-.05(9)(e) will be in violation of the variance by rule.

# **Georgia EPD**

## **Stakeholder Meeting #2**

### **July 14, 2015**

**Draft Amendments to Rules for  
Erosion & Sedimentation Control  
Pertaining to Coastal Marsh Buffers  
& Implementation of Senate Bill 101**

# Agenda

- Welcome, Introductions and Agenda Overview (Jac Capp)
- Overview of the Erosion and Sedimentation Act of 1975 as it pertains to buffers in general (Glen Behrend)
- Overview of Coastal Marshlands Protection Act – (CRD Representative)
- Overview of Senate Bill 101 (Jac Capp)
- Recap of Stakeholder Meeting # 1 (Jac Capp)
- Overview of Draft Rule Amendments to Chapter 391-3-7 (Glen Behrend)
- Q & A with Attendees – (EPD/CRD Panel, Moderated by Gordon Maner)
- Wrap Up (Jac Capp)

# Agenda

- Overview and Purpose of Stakeholder Meeting
  - This meeting is responsive to Senate Bill 101, signed into law by the Governor on May 6, 2015
  - EPD is holding this stakeholder meeting to:
    - Identify and inform stakeholders of rule changes that are under consideration;
    - Receive input from stakeholders
  - EPD requests that any input in response to this stakeholder meeting be submitted to EPD by July 21, 2015
  - EPD is not formally proposing any rule changes at this time
  - EPD anticipates proposing rule amendments to implement Senate Bill 101 this fall
  - Any proposed rule changes in the future would involve public notice, public hearing, and opportunity to comment



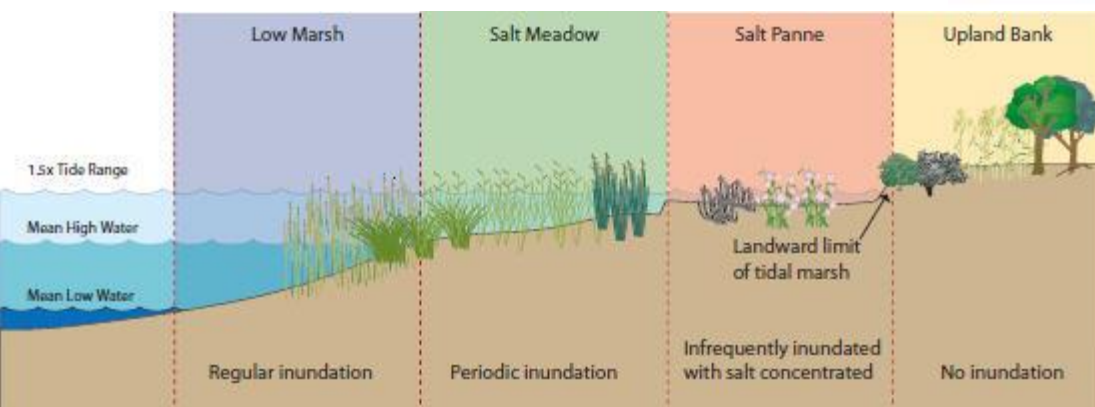
# Ground Rules

- Please hold your questions and comments until the Q & A segment
- Be respectful of everyone
- Be concise and stay on topic
- Identify yourself and any affiliation when speaking
- Stakeholder input limited to the rule development process to implement Senate Bill 101
- Not taking input on anything else

# Overview of the Georgia Erosion and Sedimentation Act of 1975

# Overview of the Erosion and Sedimentation Act of 1975

- State Law – aka the “E&S Act”
  - Supports compliance with the US Clean Water Act and Georgia Water Quality Act
- Amongst other things, it protects “buffers” (generally 25 feet) for “state waters”



# Erosion and Sedimentation Act Overview

- Georgia EPD and local governments (aka “Local Issuing Authority” or LIA) have responsibilities and authority under the E&S Act

# Erosion and Sedimentation Act Overview

- If you have a project that will intrude on the buffer you must:
  - 1. Consult with Local Issuing Authority(LIA) (or EPD if not regulated by LIA) to determine buffer applicability
  - 2. Apply to EPD for variance
    - Application must include: site map, description of intrusion, mitigation or re-vegetation plan, erosion, sediment, and pollution control plan (E&S Plan) by a design professional, et al...
    - Must meet a listed criteria (i.e. project by its nature must be in buffer, water quality restoration or enhancement, necessary to access property, utility line crossings, recreational trails...)
    - If project does not meet a listed criteria, it can't get a variance
    - All projects require minimization/restoration of impacts
    - Some criteria may require offsite mitigation even if variance is granted (<http://epd.georgia.gov/erosion-and-sedimentation>)
  - 3. EPD reviews application and plans
  - 4. EPD and applicant solicit public comments on application

# Erosion and Sedimentation Act Overview

- If you have a project that will intrude on the buffer you must:
  - 5. EPD requires applicant to address all public comments
  - 6. EPD reviews comments, applicant's response, and makes decision on application
  - 7. EPD's decision may be challenged
- Some types of projects that intrude on the buffer are exempt such as utility line crossings, drainage structures and roadway drainage structures.

# Overview of the Coastal Marshlands Protection Act of 1970

# Coastal Marshlands Protection Act of 1970

## O.C.G.A. 12-5-280-297

### The coastal marshlands:

- comprise a vital natural resource system...
- is the habitat of many species of marine life and wildlife...
- provide a great buffer against flooding and erosion...
- help control and disseminate pollutants...
- vitally linked to the economy of Georgia's coastal zone and to that of the entire state...
- costly, if not impossible, to reconstruct or rehabilitate once adversely impacted by man related activities...
- essential to health, safety, and welfare of all the citizens of the state...

The General Assembly finds and declares that activities and structures in the coastal marshlands must be regulated to ensure the values and functions of the coastal marshlands are not impaired...



# Coastal Marshlands Protection Act

Generally, activities may be permitted if they do not:

- create an unreasonably harmful obstruction to or alteration of the natural flow of navigational water within the affected area
- create unreasonably harmful or increased erosion, shoaling of channels, or stagnant areas of water
- unreasonably interfere with the conservation of marine life, wildlife, or other resources



Proposed activities are typically:

- Construction of community docks and marinas (private docks are exempt)
- Construction of bridges and boardwalks
- Dredging and fill
- Shoreline stabilization



# Coastal Marshlands Protection Act

The following items are typically contrary to the public interest:

- **Filling of marshlands for residential, commercial, and industrial uses**
- **Filling of marshlands for private parking lots or private roadways**
- **Construction of dump sites and depositing any waste materials or dredge spoil**
- **Dredging of canals or ditches for the purposes of draining coastal marshlands**
- **Mining**
- **Construction of lagoons or impoundments for waste treatment, cooling, agriculture, or aquaculture which would occupy or damage coastal marshlands and life forms**
- **Construction of structures constituting an obstruction of view to adjoining riparian landowners, including signs and enclosures**



# Jurisdiction of Coastal Marshlands Protection Act

**Coastal marshlands within the following:**

**Savannah River – East of Old U.S. Hwy 17**

**Ogeechee River – East of U.S. Hwy 17**

**Darien Creek – East of Interstate 95**

**Butler River – East of U.S. Hwy 17**

**Champney River – East of U.S. Hwy 17**

**South Altamaha River – East of U.S. Hwy 17**

**Satilla River – East of U.S. Hwy 17**

**St. Marys River – East of U.S. Hwy 17**

**All other rivers, streams, and tributaries in the six coastal counties not listed above.**

# Jurisdiction of Coastal Marshlands Protection Act

**Presence and density of 14 salt-tolerant plant species listed in O.G.G.A. 12-5-282 (3):**

**salt marsh grass**

**saltmeadow cordgrass**

**saltgrass**

**bigelow glasswort**

**saltwort**

**sea oxeye**

**false willow**

**black needlerush**

**big cordgrass**

**coast dropseed**

**woody glasswort**

**sea lavender**

**silverling**

**high-tide bush**




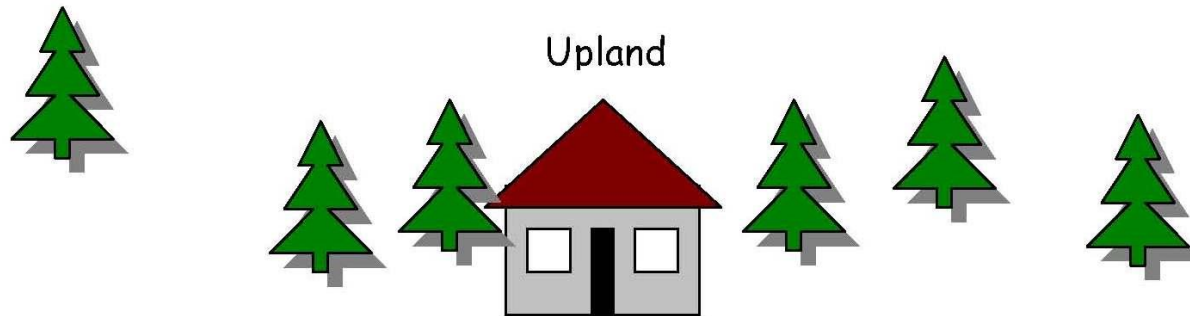
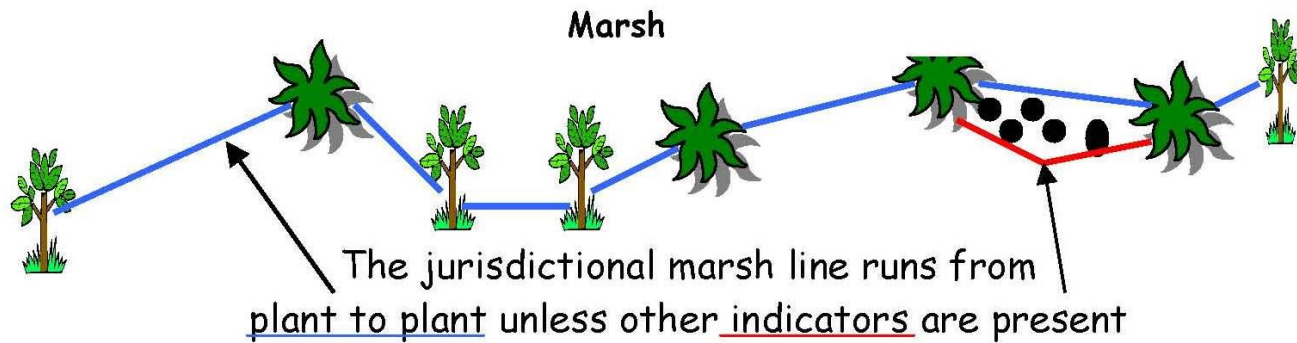
**O.C.G.A. 12-5-282 (7): All tidally influenced waters, marshes, and marshlands lying within a tide-elevation range from 5.6 feet above mean tide level and below.**



# Determining Marsh Jurisdiction

 = Marsh Plants       = Upland Plants

 = Other tidal indicators  
For example, fiddler crab holes



# Overview of Senate Bill 101

# Overview of Senate Bill 101

- It amends the Erosion & Sedimentation Act of 1975
- Passed by large majorities in each chamber
  - Mar 26 - House Vote #307 164-0
  - Mar 27 - Senate Vote #262 46-2
- Signed into law by Governor on May 6, 2015
- 4 pages long
- Generally establishes a process for protecting coastal marsh buffers that parallels the existing process we have for protecting buffers on other state waters

# Overview of Senate Bill 101 - Definitions

- 3 definitions added to statute at Code Section 12-7-3
  - (2.1) 'Coastal marshlands' shall have the same meaning as in Code Section 12-5-282.
  - (10.1) '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.
  - (13.1) 'Serviceable' means usable in its current state or with minor maintenance but not so degraded as to essentially require reconstruction.“



# Overview of Senate Bill 101

## Best Management Practices

- New paragraph added at Code Section 12-7-6
  - (17)(A) There is established a 25 foot buffer along coastal marshlands ... except:
    - (i) Where the director determines to allow a variance that is at least as protective of natural resources and the environment;
    - (ii) Where otherwise allowed by the director pursuant to Code Section 12-2-8;
    - (iii) Where an alteration within the buffer area has been authorized pursuant to Code Section 12-5-286;
    - (iv) For maintenance of any currently serviceable structure...

# Overview of Senate Bill 101

## Best Management Practices

- (17)(A) There is established a 25 foot buffer along coastal marshlands ... except:
  - (v) Where a drainage structure or roadway drainage structure is constructed or maintained...
  - (vi) On the landward side of any currently serviceable shoreline stabilization structure; and
  - (vii) 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
- (B) No land-disturbing activity shall be conducted within any such buffer and a buffer shall remain in its current, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed, except as otherwise provided by this paragraph.

# Overview of Senate Bill 101

## EPD Mandate for Rulemaking

- (C) On or before December 31, 2015, the board shall promulgate rules and regulations that:
  - (i) Contain criteria for the grant or denial by the director of requests for variances pursuant to this paragraph
  - (ii) Provide for variances by rule, subject to specified conditions, for certain categories of activities within the buffer that will have minimal impact on the water quality or aquatic habitat of the adjacent marsh, including where the area within the buffer is not more than 500 square feet
- (D) The board may adopt rules and regulations that provide for an expedited process for certain categories of activities within the buffer based on the size, scope, location, and character of the proposed activity within the buffer.

# Overview of Senate Bill 101

## Coastal Marsh Buffer Exemptions

- (E) The buffer requirements of this paragraph shall not apply to 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

# Overview of Senate Bill 101

## Coastal Marsh Buffer Exemptions

- (F) The buffer shall not apply to:
  - (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 the effective date of this Act
  - (ii) Any lot for which the preliminary plat has been approved prior to the effective date of this Act 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

# Recap of Stakeholder Meeting # 1

- Recap of significant comments from June 18<sup>th</sup> meeting in Brunswick
  - Should Erosion and Sedimentation Plan developed by a design professional always be required for a buffer variance – even for a very small project
  - Concern that mitigation is not authorized by statute as part of the buffer variance process
  - Question of whether an update to the model ordinance will be provided

# Recap of Stakeholder Meeting # 1

- Recap of significant comments from June 18<sup>th</sup> meeting in Brunswick
  - Recommendations regarding Variance by Rule
    - Should be notification to LIA with no EPD review or decision
    - Should list specific categories of activities eligible for variance by Rule such as
      - Any activity <500 ft<sup>2</sup> within the buffer, regardless of total project size
      - Landscaping and hardscaping
      - Pedestrian trails, viewing areas, decks, docks, walkways, gazebos, retaining walls

# Overview of Draft Rule Amendments to Chapter 391-3-7



# Overview of Draft Rule Amendments to 391-3-7

## Structure of Rule

- Similar to Existing Stream Buffer Variance Rules in a new section due to differing Coastal context
  - Definitions
  - Procedures and Criteria for Variance under certain criteria
  - Procedures and Criteria for a “Variance by Rule”

# Overview of Draft Rule Amendments to 391-3-7 Definitions

- “Coastal marshlands” shall have the same meaning as in Code Section 12-5-282.
  - 12-5-282 is the Coastal Marshlands Protection Act
  - Marsh/upland boundary is delineated by the Jurisdictional (JD) Line determined by the Coastal Resources Division (CRD)
- Also define “Serviceable” and “Maintenance”

# Overview of Draft Rule Amendments to 391-3-7 Exemptions

- Exemptions include:
  - Maintenance of serviceable structures, landscaping, hardscaping, etc.
  - Maintenance of ponds/detention basins
  - 12-2-286 (Coastal Marshland Permitting) authorized intrusions
  - Crossing for utility lines
  - Land disturbing permits between 4/22/14 and 12/31/15
  - Certain lots

# Overview of Draft Rule Amendments to 391-3-7 Criteria and Procedures

- Criteria and procedures copied from stream buffer Rules modified for a coastal context
  - For example Buffer functions include “maintenance of salinity through buffering of freshwater flows”
  - Procedures require
    - Application
    - Minimization/restoration/mitigation procedures
    - Public notice and comment period

# Overview of Draft Rule Amendments to 391-3-7

## Variance by Rule

- Simplified “Variance by Rule” procedures for a category of projects less than 500 square feet
- Bank and shoreline stabilization projects are excluded from this category but are eligible for a full variance
  - Note: a full variance will require demonstration of erosion problem

# Overview of Draft Rule Amendments to 391-3-7

## Variance by Rule

- Procedures
  - Projects < 100 square feet proposed to be exempt via change to minor land disturbance guidance
  - Projects between 100 and 500 square feet of total disturbance may apply for variance by rule
    - Application including erosion, sediment and pollution control plan
    - No Public Notice – may construct 14 days after EPD notification
    - Cumulative impacts cannot exceed 500 square feet within 5 years
    - Subject to minimization of impact, stabilization, removal of invasive species where practicable, etc.
  - Projects > 500 square feet => full variance

# Q & A Session

# Moderated Question and Answer Session

## Ground Rules

- Your questions should be limited only to the rule changes mandated by Senate Bill 101 and the rule development process
- Please address your questions to the panel.
- Please raise your hand to be recognized by the moderator (*wait until the microphone gets to you to ask your question*)
- Give your name and affiliation prior to your question
- Be brief and concise with questions and comments (*honor the time limit*)
- If you want to be recognized a second time to speak you will be recognized after others interested in speaking have had the opportunity to ask a question
- Be respectful of the presenters (*refrain from outbursts pro and con*)
- Be respectful of each other

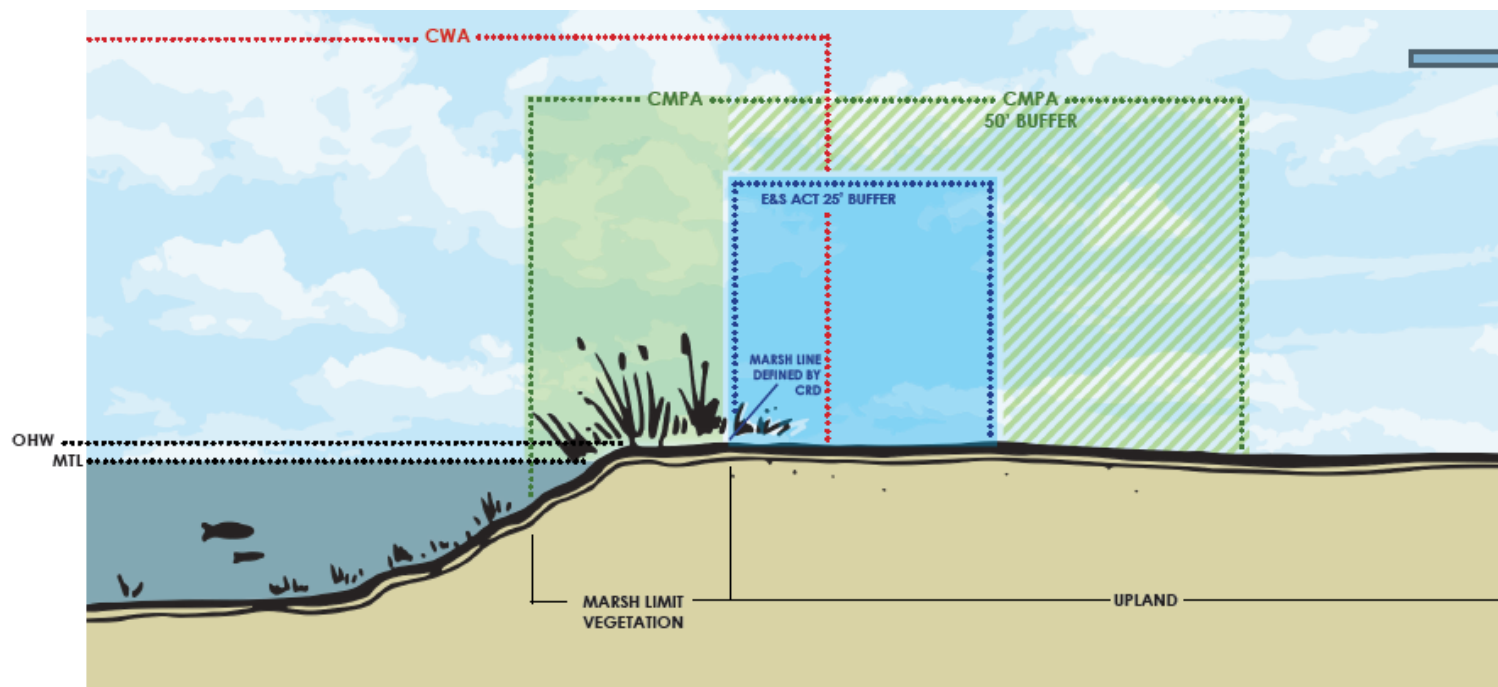


# Moderated Question and Answer Session Notes

- If you want to comment on the rule changes, please prepare written comments and submit to EPD on or before July 21, 2015 (7 days)

# Moderated Question and Answer Session

## Georgia Marsh Jurisdictional Lines



- **CWA:** Clean Water Act-EPA and Corps of Engineers
- **CMPA:** Georgia Coastal Marshlands Protection Act - Coastal Resources Division
- **E&S Act:** Georgia Erosion and Sedimentation Control Act - Environmental Protection Division

- **OHW:** "Ordinary high-water mark" means the position along the shore of the mean monthly spring high tide reached during the most recent tidal epoch. This term is not synonymous with "mean" high-water mark.
- **MTL:** Mean Tide Line



# Wrap Up

- Thank you for your interest, attendance, and participation
- Please provide any comments by July 21, 2015
  - Mail: James A. Capp  
Chief, Watershed Protection Branch, EPD  
2 Martin Luther King Jr. Drive, Suite 1152 East  
Atlanta, GA 30334  
RE: Coastal Marsh Buffers Rulemaking – Stakeholder Meeting #2
  - E-mail: [tim.cash@dnr.state.ga.us](mailto:tim.cash@dnr.state.ga.us); Subject: Coastal Marsh Buffers Rulemaking – Stakeholder Meeting #2

END