

**GEORGIA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

REVISED SEPTEMBER 2013

**APPLICATION FOR A 25-FOOT VEGETATIVE BUFFER ENCROACHMENT
ON DESIGNATED WARM WATERS OF THE STATE**

(Required prior to conducting land disturbing activities within the State-mandated 25-foot buffer in accordance with the Erosion and Sedimentation Act of 1975, as amended, O.C.G.A. 12-7-6(b)(15))

Property Owner's Name (*Person*): _____

Company Name (*if applicable*): _____

Current Mailing Address: _____

Telephone: _____ E-Mail: _____

Contact Person's Name and Address: _____

Contact Person's Telephone: _____ E-Mail: _____

Contact Person's Company Name (*if applicable*): _____

Project Name: _____

Total Project Disturbed Acreage: _____

Type of Project: _____

Buffer Variance Criteria (391-3-7.05(2)(a) – (k)): _____

Location of Buffer Impacts:

City (*list only if the buffer impacts are located within jurisdictional boundaries of the municipality*): _____

County (*list only if the buffer impacts are located within jurisdictional boundaries of the county*): _____

GPS Coordinates (*decimal degrees*): Latitude: _____ Longitude: _____

Watershed Name and 8-digit HUC (*Hydrologic Unit Code*): _____

Detailed Directions to Project (*attach location map and USGS quad sheet*): _____

Name of State Water(s) Impacted: _____
(*if unnamed, indicate the first named State water that this tributary flows into*)

Total Area of Buffer Disturbance (*square feet*): _____

Total Length of Buffer Disturbance (*linear feet*): _____

Signature: _____

Date: _____

- 1) Pursuant to DNR Rule 391-3-7.05, buffer 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 for the following criteria:
- (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 gravity-flow 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 the current EPD Stream Buffer 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).

NOTE: Projects that include “streambank or shoreline stabilization” (e.g., criterion (a)) or “streambank restoration” (e.g., criterion (b)) should adhere to the most current guidance documents: *Streambank and Shoreline Stabilization Guidance*, *Guidelines for Streambank Restoration* and *Streambank and Shoreline Stabilization – Techniques to Control Erosion and Protect Property*.

Projects reviewed under criteria (h), (i), (j) or (k) should adhere to the most current EPD guidance document, *Stream Buffer Mitigation Guidance*, when applicable. All guidance documents are available on the EPD website, www.gaepd.org.

- 2) **Mail completed buffer variance application to:** Erosion and Sedimentation Control Unit
Georgia Environmental Protection Division
4220 International Pkwy, Suite 101
Atlanta, GA 30354

NOTE: APPLICATIONS MUST BE ON THE MOST CURRENT FORMS PROVIDED BY EPD.

- 3) **Address all items on the attached Buffer Impact Checklist and submit the completed checklist and other pertinent information with the buffer variance application to EPD.**

NOTE: INCOMPLETE APPLICATIONS WILL BE RETURNED TO THE APPLICANT.

- 4) **Within 60 days of receipt of a complete buffer variance application, EPD will either provide written comments to the applicant or propose to issue a buffer variance. EPD may request additional information related to the project necessary to effectively evaluate the buffer variance application. When EPD proposes to issue a buffer variance, the application process will continue in the following order:**

- (a) EPD will send out a public advisory to all citizens and groups that requested to receive advisories.
- (b) The applicant will then publish a single public notice in the correct legal organ of each county where the buffer disturbance will occur (www.sos.georgia.gov/corporations/legal_organ.pdf). The applicant's public notice must include the following:
- 1) Description of proposed buffer encroachment;
 - 2) Location of the project;
 - 3) Location where the public can review site plans; and
 - 4) Statement that public comments should be submitted within 30 days to: Program Manager, NonPoint Source Program, Georgia Environmental Protection Division, 4220 International Pkwy, Suite 101, Atlanta, GA 30354.

NOTE: The applicant can publish a public notice(s) only after EPD has issued a public advisory for the proposed buffer variance.

- (c) The applicant must forward the **“original newspaper sheet with the public notice and published date”** to EPD to confirm that the public notice has been published. A **“copy of the public notice”** is also acceptable only when accompanied by a sworn affidavit from the legal organ's notary public.

NOTE: Failure by the applicant to complete items 4(b) and 4(c) will delay EPD review and approval.

- (d) The public must have 30 days from the date of publication of the public notice in the legal organ to comment on the proposed buffer variance.

BUFFER IMPACT CHECKLIST

Pursuant to DNR Rule 391-3-7.05, all buffer variance applications must include the following information. All narrative descriptions, calculations and documentation must be provided on the Buffer Impact Checklist form below or in a separate report. All plans, letters from Local Issuing Authorities, copies of USACE permit applications and supporting documentation, and site maps should be submitted as attachments:

Y/N/NA

- (1) Narrative 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.
- (2) Calculation of total area (square feet) and length (linear feet) of buffer disturbance.
- (3) Letter from the Local Issuing Authority (LIA), when applicable, stating that the LIA 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.
- (4) 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).
- (5) For all **minor buffer impacts** (as defined in DNR Rules 391-3-7.01), a **Re-Vegetation Plan** with a descriptive narrative as described in the EPD guidance document, Streambank and Shoreline Stabilization, and/or a plan for permanent vegetation as per the Manual for Erosion and Sedimentation Control in Georgia.
- (6) For all **major buffer impacts** (as defined in DNR Rules 391-3-7.01), a **Buffer Mitigation Plan** with a descriptive narrative addressing impacts to critical buffer functions based on an evaluation of existing buffer conditions and predicted post buffer conditions pursuant to DNR Rule 391-3-7.05(7).
- (7) For variance requests under DNR Rules 391-3-7.05(2)(h),(i), (j) and (k), the application must include documentation that the project will mitigate buffer disturbances based on the EPD guidance document, Stream Buffer Mitigation Guidance, addressing post-development total suspended solids (TSS), stormwater runoff reduction, water quality protection and aquatic/buffer habitat protection.
- (8) For variance requests under DNR Rules 391-3-7.05(2)(i) and (j), the application must include the following:
 - (a) Documentation that post-development stormwater management systems 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.
 - (b) Documentation that existing water quality will be maintained or improved based on predicted pollutant loadings under pre- and post-development conditions as estimated by models accepted by EPD.
 - (c) For projects within the buffer of 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 as estimated by models accepted by EPD and if applicable, documentation that the project will be in compliance with the TMDL Implementation Plan(s).

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Y/N/NA

- (9) For variance requests under DNR Rule 391-3-7.05(2)(h), a copy of the permit application and supporting documentation as submitted to the United States Army Corps of Engineers (USACE) under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1344.
 - (10) For variance requests under DNR Rule 391-3-7.05(2)(k)(1), the application must include documentation from the USACE verifying the water bodies identified in the application are **non-jurisdictional** Waters of the U.S. under Section 404 of the Clean Water Act.
 - (11) Narrative description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.
 - (12) Any other reasonable information related to the project that may be deemed necessary to effectively evaluate the variance request.
 - (13) **Site Map** that includes locations of all State waters, wetlands, floodplain boundaries and other natural features, as determined by a field survey.
 - (14) **Erosion, Sedimentation and Pollution Control Plan** with a dated and numbered detailed **Site Plan** delineating the locations of all structures, impervious surfaces, and the boundaries of the area of soil disturbance, both inside and outside of the buffer. Submit only the cover sheet and the sheets of the Erosion, Sedimentation and Pollution Control Plan that pertain to the buffer impacts.
- NOTE: THE EXACT AREA OF THE BUFFER TO BE IMPACTED MUST BE ACCURATELY AND CLEARLY INDICATED ON THE PLANS.**
- (15) **Stormwater Control Plan** once site stabilization is achieved, when required by a local stormwater ordinance.