

Model Coastal Riparian Buffer Ordinance for Georgia's Local Governments

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Model Coastal Riparian Buffer Ordinance for Georgia's Local Governments

Guidance & Recommendations

Although several model riparian buffer ordinances have been developed for Georgia's local governments, these models were crafted with freshwater ecosystems in mind and do not take into account the unique resources and issues facing the tidally influenced ecosystems of Georgia's coastal communities. Therefore, there is a need for a model riparian buffer ordinance that meets the specific needs of local governments along Georgia's coast.

In working with local governments in Georgia's coastal region and in other areas of the State, several issues and points of confusion regarding riparian buffers have arisen. Below are clarifications regarding three common points of confusion about the role of local governments in maintaining and protecting riparian buffers in light of the 25-foot buffer required by the state Erosion and Sedimentation Control Act. The fourth section is a description of buffer averaging, an optional tool available to local governments for setting buffer width that has been incorporated into this Model Ordinance. The fifth section is an explanation of the buffer encroachment permit, which is a new permit introduced in the Model Ordinance.

1. Local regulation of activities in the statewide 25-foot riparian buffer.

Within the 25-foot riparian buffer established along state waters under the Georgia Erosion and Sedimentation Control Act of 1975 (E&S Act), the Georgia Environmental Protection Division (EPD) has the primary authority to approve or deny a variance request for intrusion into the buffer. In addition, local governments in Georgia that have been certified as local issuing authorities under the E&S Act retain some decision-making authority regarding variance requests in the 25-foot buffer. Op. Att'y Gen. No. 90-40 (1990).

The shared state-local responsibility for issuing variances in the state 25-foot buffer works in the following way. The EPD receives all variance requests and first decides whether to deny or issue the variance. If EPD denies a variance request, a local issuing authority with jurisdiction over the property may not issue its own variance, and no intrusion into the 25-foot buffer is permitted. However, if EPD issues a variance allowing intrusion into the 25-foot buffer, the local issuing authority has two options: it may allow encroachment into the 25-foot buffer pursuant to the EPD variance, or it may disallow intrusion by issuing a land disturbance permit without allowing for intrusion into the 25-foot buffer. The Georgia Dept. of Natural Resources regulations state it this way:

If a variance issued by the [EPD] Director is acceptable to the [local] 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. Ga. Comp. R. & Regs. § 391-3-7-.05(8) (2006).

2. Minor landscaping activities.

The E&S Act allows for minor land disturbing activities such as home landscaping and gardening within the state 25-foot buffer through an exemption. No variance request is necessary to engage in these activities. However, because the model coastal buffer ordinance intends to protect riparian lands from environmental degradation

beyond the purpose of erosion and sedimentation control, its stricter requirements likely fall within the purview of the savings clause in the E&S Act's best management practices provision. This clause states that "nothing shall prevent a local government from adopting...ordinances...which contain stream buffer requirements that exceed the minimum requirements of [the E&S Act]." O.C.G.A. §12-7-6(c) (2006). Furthermore, it is likely within the "home rule" powers of local governments to regulate landscaping activities. The Home Rule clause of the Georgia Constitution gives local governments wide "legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law." Ga. Const. Art. IX, Sec. 2, para. 1. Regulating landscaping activities most likely falls within the boundaries of this wide grant of authority of a local government to regulate its property and affairs.

3. Buffers in areas where banks have been stabilized.

Local governments may require maintenance of buffers in areas where the banks have been stabilized with bulkheads or other structures such as a rip rap revetment of rocks or concrete. As explained above, because the model coastal buffer ordinance intends to protect riparian lands from environmental degradation beyond the purpose of erosion and sedimentation control, any stricter requirements likely fall within the purview of the savings clause in the E&S Act's best management practices provision. O.C.G.A. §12-7-6(c) (2006). Therefore, regardless of whether the state 25-foot buffer is applied to areas in which the installation of stabilization has removed the point of "wrested" vegetation, from which the E&S buffer is normally measured, local governments have the ability to require buffers in these areas through adoption of a multi-purpose riparian buffer ordinance.

4. Buffer averaging.

Providing local governments with a flexible method for delineating riparian buffer width is important for creating a successful ordinance. Often, cases will arise in which it is necessary or ecologically defensible to reduce the buffer width at certain points. This was addressed in the model ordinance by including an optional buffer averaging provision. Buffer averaging is a system that allows for a reduction of the buffer's width at a certain point or points within a single parcel so long as the average buffer width across the entire parcel is the minimum width required by the ordinance. In any case, buffer averaging may not be used to reduce the buffer at any one point to less than the 25-foot State-mandated buffer.

Buffer averaging is incorporated into the attached ordinance in Section 5, "Buffer Encroachment Permits." It is recommended that buffer averaging not be used when the width of the buffer is less than 75 feet, because it may result in an unacceptably narrow buffer at a certain point or points within a single parcel. It is essential to clearly establish the conditions under which a buffer encroachment permit for buffer averaging may be issued. A buffer encroachment permit for buffer averaging should be considered in two cases:

- a) When the width of the buffer as related to the size and shape of the parcel results in a situation in which it is impossible for the property owner to make reasonable economic use of the portion of the parcel not in the buffer. The buffer should be reduced only as much as necessary to allow for reasonable activity, and never to less than 25 feet.

- b) When the width of the buffer as related to the size and shape of the parcel results in a situation in which it is impossible for the property owner to construct a single family dwelling on the portion of the parcel not in the buffer. The buffer should be reduced only as much as necessary to allow for reasonable activity, and never to less than 25 feet.

5. Buffer encroachment permit.

Under the Model Ordinance, a landowner should apply for a buffer encroachment permit when he or she desires to encroach into the buffer for the purpose of placing an accessory structure to a residential dwelling, such as

a deck, in the buffer. Use of the buffer encroachment permit is also appropriate when the landowner wishes to use buffer averaging.

The buffer encroachment permit and the ordinance's variance procedure are intended to be used for two separate situations. If the landowner wishes to encroach for a purpose other than use of buffer averaging or placement of an accessory structure to a residential dwelling in the buffer, use of the variance procedure is the appropriate method.

Model Coastal Riparian Buffer Ordinance for Georgia's Local Governments

Description

This model ordinance provides a framework for local governments to establish buffer zones for streams, lakes, coastal marshlands, and freshwater wetlands as well as the requirements that minimize land development within those buffers. It is the purpose of these buffer zone requirements to protect and stabilize stream banks, prevent sedimentation of coastal water resources, protect water quality for important nursery areas for fisheries, and preserve aquatic and riparian habitat.

Note

All bulleted text with this symbol ► and in *italics* should be interpreted as comments, instructions, or information to assist the local government in tailoring the ordinance. This text would not appear in a final adopted ordinance.

Section 1. Intent and Purpose

- 1) The rivers, streams, wetlands, and coastal marshlands constituting the riparian lands of [*local government*] are a significant natural resource and are essentially linked to [*local government*]'s economy. The [*Board of Commissioners/ City Council*] recognizes that these lands provide numerous benefits and are vital to the health, safety, and economic welfare of its citizens. The [*Board of Commissioners/ City Council*] finds that buffers adjacent to these lands provide substantial benefits including:
 - a) Minimizing activities that degrade, destroy, or otherwise negatively impact the value and function of coastal marshlands;
 - b) Maintaining stream and river water quality;
 - c) Trapping sediment and other pollutants found in surface runoff;
 - d) Promoting bank stabilization and reducing erosion;
 - e) Protecting terrestrial coastal habitat for nesting and feeding wildlife;
 - f) Reducing the impact of flooding by increasing floodwater storage areas;
 - g) Enhancing the marshlands' scenic value and recreational opportunities;
 - h) Protecting property values of individual landowners; and,
 - i) Protecting and restoring greenspace and the natural character of the coastal region; and
 - j) Protecting important nursery areas for fisheries, which provide food and habitat to numerous species of fish and shellfish, including commercially important species.

- 2) It is therefore the purpose and intent of this ordinance to establish a coastal riparian buffer zone of restricted development and limited land use adjacent to coastal streams, rivers, marshes, and wetlands. The purposes of this coastal riparian buffer zone are to:
 - a) Protect the public health, safety, environment, and general welfare of the citizens of [*local government*];
 - b) Minimize public and private land loss due to erosion, sedimentation, and water pollution;
 - c) Maintain water quality for human use and for protecting the important nursery areas for fisheries, which provide food and habitat to numerous species of fish and shellfish, including commercially important species;

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- d) Protect terrestrial coastal habitat for nesting and feeding wildlife;
 - e) Reduce the impact of flooding by increasing floodwater storage areas;
 - f) Protect the natural and native vegetation in the zone;
 - g) Protect the coastal region’s visual character and unique natural resources; and,
 - h) Avoid land development within such buffers by establishing buffer zone requirements and by requiring authorization for any land disturbing activities.
- 3) The standards and regulations set forth in this ordinance are created under the authority of the [local government]’s Home Rule and zoning powers defined in Article IX, Section 2 of the Georgia Constitution.

Section 2. Definitions

“Access path” means a pervious path designed, constructed, and maintained pursuant to the “Coastal Riparian Buffer Guidance Manual” that provides for access to water-dependent uses through the buffer and takes the route that impacts the natural vegetation of the buffer to the least extent possible.

“Buffer encroachment permit” means the permit issued by [local government] and required to undertake certain buffer encroaching activities as described in Section 4 herein.

“Coastal marshland” or “marshland” means any marshland intertidal area, mud flat, tidal water bottom, or salt marsh within the estuarine area of the [local government] whether or not the tidewaters reach the littoral areas through natural or artificial watercourses. “Vegetated marshlands” shall include those areas upon which grow one, but not necessarily all, of the following: salt marsh grass (*Spartina alterniflora*), black needlerush (*Juncus roemerianus*), saltmeadow cordgrass (*Spartina patens*), big cordgrass (*Spartina cynosuroides*), saltgrass (*Distichlis spicata*), coast dropseed (*Sporobolus virginicus*), bigelow glasswort (*Salicornia bigelovii*), woody glasswort (*Salicornia virginica*), saltwort (*Batis maritima*), sea lavender (*Limonium nashii*), sea oxeye (*Borrchia frutescens*), silverling (*Baccharis halimifolia*), false willow (*Baccharis angustifolia*), and high-tide bush (*Iva frutescens*). The occurrence and extent of salt marsh peat at the undisturbed surface shall be deemed to be conclusive evidence of the extent of a salt marsh or a part thereof. Coastal Marshlands Protection Act, O.C.G.A. § 12-5-282.

“Coastal riparian buffer” or “buffer” means, on any given parcel of land, a natural or enhanced vegetated area of riparian land lying adjacent to a stream, pond, impoundment, wetland, or coastal marshland.

“Estuarine area” means all tidally influenced waters, marshes, and marshlands lying within a tide-elevation range from 5.6 feet above mean tide level and below. Coastal Marshlands Protection Act, O.C.G.A. § 12-5-282.

“Impervious cover” means a surface composed of any material that greatly impedes or prevents the natural infiltration of water into soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets and roads, except those designed specifically to allow infiltration.

“Impoundment” means any lake, pond, or other body of freshwater.

“Land disturbing activity” means: (1) any installation of impervious cover; (2) any grading, scraping, excavating or filling of land; (3) any construction, rebuilding or significant alteration of a structure that damages or destroys vegetation; (4) any other activity that destroys vegetation in the buffer.

“Land disturbance permit” means the permit issued by [EPD or local government] pursuant to the Georgia Erosion and Sedimentation Control Act and required for undertaking any land disturbing activity.

“Littoral area” means the tidal area between the high water and low water marks.

“Native vegetation” means vegetation that is naturally found in the area and is listed in the native vegetation list found in the “Coastal Riparian Buffer Guidance Manual.”

“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 of this State, any interstate body or any other legal entity.

“Riparian land” means any land along the edge of a stream, wetland, coastal marshland, pond or impoundment.

“Stream” means any freshwater stream, beginning at: (1) the location of a spring, seep or groundwater outflow that sustains streamflow; or (2) a point in the stream channel with a drainage area of 25 acres or more; or (3) a point in a stream channel with a drainage area of less than 25 acres, if evidence from field studies required by the [local government] verify the existence of a stream.

“Wetland” means those areas, which are not coastal marshlands, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil. Ga. Comp. R. & Regs. r.391-3-16-.03 (2006).

Section 3. Applicability

This ordinance shall apply to all land disturbing activity on property containing a coastal riparian buffer. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law. Approval or exemption from these requirements does not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

3.1. Grandfather Provisions

This ordinance shall not apply to the following activities:

- 1) Existing development and land disturbance activities as of [*the effective date of this ordinance*] except that new development or new land disturbing activities on such properties will be subject to all applicable buffer requirements.
- 2) Any land disturbing activity that is scheduled for permit approval or has been submitted for approval as of [*the effective date of this ordinance.*]
- 3) Land disturbing activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development and that has been previously approved within one year of [*the effective date of this ordinance.*]

After [*the effective date of this ordinance*], this Ordinance shall apply to all new subdividing and platting activities.

3.2. Exemptions

- *It is recommended that the seven exemptions listed below be adopted as part of the local government's ordinance because similar exemptions exist in the Georgia Erosion & Sedimentation Control Act. In Georgia, a local law regulating a particular subject or issue is preempted by a state law that regulates that same subject or issue (unless the state law explicitly allows for local laws on the subject) . Ga. Constit. art. III, sec. VI, para. IV(a). Therefore, if the local law conflicts with the state law, then state law prevails. In this instance, the state law establishing the 25-foot buffer exempts certain activities. Therefore, any local law regulating activities in the 25-foot buffer should contain those same exemptions in order to avoid preemption by the way of conflict. A local government could, most likely, disallow these exemptions in areas of the buffer beyond the first 25 feet without facing the risk of preemption by state law since the state does not regulate activities in buffers beyond 25 feet.*

The following specific activities are exempt from this Ordinance:

- 1) Public sewer line easements paralleling the stream, lake, impoundment, wetland, and/or coastal marshlands, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the mean high water line in coastal marshlands and wetlands or the top of the bank for streams, lakes, and impoundments. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed to allow the construction of roads, bike paths, or other transportation routes in such easements, regardless of the type of paving material used.
- 2) Land disturbing activities by governments within a road right of way existing at the time this ordinance takes effect, or approved under the terms of this ordinance. Development activities are only allowed if they cannot reasonably be located outside the buffer.
- 3) Land disturbing activities within utility easements existing as of the effective date of this ordinance or approved under the terms of this ordinance when necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.
- 4) Emergency maintenance and repairs necessary to preserve life and/or property. However, when emergency work is performed under this section, the person performing it shall report such work to the [local government] as soon as possible and within 24 hours of the commencement of the work. Within ten (10) days thereafter, the person shall apply for a variance and perform such work within such time period as may be determined by the [local government] to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
- 6) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses, provided these activities are not incidental to other land disturbing activity and are conducted using applicable best management practices. If such activity results in land disturbance in the buffer that would otherwise be prohibited, no land disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.
- 7) Stream crossings for water lines or stream crossings for sewer lines, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented.

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- **Menu of Options:** *The following list is a menu containing possible exemptions that a local government may wish to include in its ordinance depending on the community's needs and desires.*
- 1) Activities for the purpose of constructing public water supply intake or public wastewater outfall structures, when designed, constructed, and maintained pursuant to the “Coastal Riparian Buffer Guidance Manual.”
 - 2) Activities to restore and enhance stream bank stability, vegetation, water quality, and/or aquatic habitat, when designed, constructed, and maintained pursuant to the “Coastal Riparian Buffer Guidance Manual.”
 - *See the “Coastal Riparian Buffer Guidance Manual” for a list of native vegetation and bioengineering techniques.*
 - 3) Any trimming or pruning of vegetation for the purpose of creating a keyhole view corridor and/or access path and conducted in accordance with the “Coastal Riparian Buffer Guidance Manual.” This exemption shall not allow for the removal of trees.
 - 4) Creation of an access path to water-dependent uses through the buffer when designed, constructed, and maintained pursuant to the “Coastal Riparian Buffer Guidance Manual.”
 - 5) Structural maintenance and repair (not replacement or enlargement) of any damaged structure that existed in the buffer as of the effective date of this ordinance, provided the repair is less than fifty (50) percent of the value of the structure, as determined by a local building inspector and is constructed and designed pursuant to the “Coastal Riparian Buffer Guidance Manual.”

Section 4. Standards and Regulations

All land disturbing activity that is not exempt from this Ordinance pursuant to subsection 3.2 above shall meet the following requirements:

- 1) A buffer shall be maintained for a minimum of 75 feet along both banks of streams and along all impoundments, as measured from the top of the bank of the stream or impoundment. All land disturbing activity is prohibited within the 75-foot buffer unless a variance or buffer encroachment permit is granted pursuant to Section 4.3 or Section 4.4 below.
 - 2) A buffer shall be maintained for a minimum of 75 feet along all coastal marshlands, measured horizontally from the estuarine area. All land disturbing activity is prohibited within the 75-foot buffer unless a variance or buffer encroachment permit is granted pursuant to Section 4.3 or Section 4.4 below.
 - 3) A buffer shall be maintained for a minimum of 75 feet along all wetlands as measured from the inland edge of the wetland. All land disturbing activity is prohibited within the 75-foot buffer unless a variance or buffer encroachment permit is granted pursuant to Section 4.3 or Section 4.4 below.
- *Buffer widths used in this ordinance model are intended as minimums. Local governments are encouraged to adopt wider buffers as necessary to receive the benefits of other buffer services such as increased sediment and pollutant removal, general wildlife and avian habitat, floodwater control, recreational and aesthetic benefits and protection of commercially important fish and shellfish. A description of recommended buffer widths for each of these services is available in the attached document entitled “Protecting Riparian Buffers in Coastal Georgia: Management Options.”*

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- 4) No septic tanks or septic tank drain fields shall be permitted within the buffer.
 - 5) The establishment of a manicured lawn shall not be permitted in the buffer.
 - 6) The application of herbicides shall not be permitted in the buffer.
- **Menu of Options:** *The following is an optional provision that a local government may choose to adopt in addition to the above standards and regulations. This provision establishes a variable-width buffer.*
- 7) A buffer shall be maintained for ___ feet along all high value areas. High value areas include [*those designated by the local government*].
- *Under a variable width buffer ordinance, the local government requires a wider buffer adjacent to aquatic areas that the local government designates as having high value. In all other areas, the buffer width is set by Section 4 (1), (2), and (3) above. Examples of areas that a local government may wish to designate as high value include: small, headwater tidal creeks that have high value as nursery grounds for fish and shellfish in certain seasons; oyster habitat; endangered species habitat and; streams or creeks listed on the Clean Water Act § 303(d) list for non-compliance with water quality standards (other than sediment). The width of the buffer in high value areas is determined by the local government. Please refer to the document entitled “Protecting Riparian Buffers in Coastal Georgia: Management Options,” for suggested buffer widths.*

Section 5. Buffer Encroachment Permit

5.1 General

- 1) No person shall conduct any land disturbing activity within the coastal riparian buffer without first obtaining a buffer encroachment permit from the [*local government*] to perform such activity.
- 2) Buffer encroachment permits may be issued by the [*local government*] only if the land disturbing activity constitutes one of the following activities:
 - **Menu of Options:** *The following is a list of options from which a local government may choose when determining the activities for which it wishes to require citizens to obtain a buffer encroachment permit.*
 - a) construction of a porch, deck, boardwalk, or similar structure that is an accessory use to a residential dwelling, constructed and designed in accordance with the “Coastal Riparian Buffer Guidance Manual”;
 - *For boardwalks that will extend into the coastal marshlands, landowners must first receive a permit or license, whichever is applicable, from the Coastal Marshlands Protection Committee before applying for a buffer encroachment permit.*
 - b) any other land disturbing activity that results in a reduction in buffer width over a portion of a parcel, in exchange for an increase in buffer width elsewhere on the same parcel, provided that the average buffer width on the entire parcel is 75 feet and the buffer width at any given point on the parcel is not less than 25 feet.
- 3) The following factors will be considered in determining whether to issue a permit:

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- a) whether the buffer encroachment will result in a reduction of the quality of the water exiting the parcel, or a diminishment of a uniform coastal marshland scenic vista;
 - b) whether the proposed development in the buffer will be conducted in accordance with all design guidelines, low impact development techniques, and other guidance found in the “Coastal Riparian Buffer Guidance Manual;”
 - c) whether the proposed intrusion into the buffer is the minimum intrusion necessary to accomplish the purpose of the intrusion;
 - d) whether a feasible alternative design exists that would result in no intrusion into the buffer;
 - e) when the permit is sought pursuant to subsection 5.1 (d), whether the width of the buffer as related to the size and shape of the parcel results in a situation in which it is impossible for the property owner to make reasonable economic use of the portion of the parcel not in the buffer; and
 - f) when the permit is sought pursuant to subsection 5.1 (d), whether the width of the buffer as related to the size and shape of the parcel results in a situation in which it is impossible for the property owner to construct a single family dwelling on the portion of the parcel not in the buffer.

5.2 Application Requirements and Procedures

- 1) The application for a buffer encroachment permit shall be submitted to the [*local government*] and must include the following:
 - a) A site plan showing:
 - The location of all riparian lands on or immediately adjacent to the property;
 - Identification of any streams found on the Clean Water Act § 303(d) list that are adjacent to the property;
 - Boundaries of the riparian buffer, as described by Section 4 of this Ordinance, on the property;
 - Buffer zone topography with contour lines at no greater than five (5)-foot contour intervals;
 - Delineation of forested and open areas in the buffer zone; and,
 - Detailed plans of all proposed land development and land disturbing activity on the site;
 - b) A description of any potential development impact on the buffer and how it will be avoided;
 - c) Any other documentation that the [*local government*] may reasonably deem necessary for review of the application and to insure that the coastal riparian buffer ordinance is addressed in the approval process; and
 - d) Payment of the application fee of _____.
- 2) The coastal riparian buffer shall be clearly delineated on all development plans and plats submitted for buffer encroachment permit approval, and buffer limits must be staked in the field in a manner approved by the [*local government*] before and during construction with posted signs that describe allowable activities. Buffer boundaries shall be printed on all development and construction plans, plats, and official maps.
- 3) All buffer areas must be recorded on the final plat of the property following plan approval.

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- 4) Within [ten] working days of receiving an application for a permit, the [planning department or public works department] shall review it for completeness and notify the public of the application by placing a notice [on its website or in a local newspaper]. If the [planning department or public works department] finds that the application is incomplete, it shall within such [ten] day period, send to the applicant a notice of the specific ways in which the application is deficient, with appropriate references to the applicable sections of this ordinance.
 - 5) The [planning department or public works department] shall process all buffer encroachment permit applications within [thirty] business days of the [planning department or public works department]'s actual receipt of a completed application and a permit fee. The [planning department or public works department] shall give notice to the applicant of its decision by hand delivery or by mailing a notice, by Certified Mail, Return Receipt Requested, to the address on the permit application on or before the [thirtieth] business day after the [planning department or public works department]'s receipt of the completed application. If the jurisdiction fails to act within the [thirty day] period, the permit shall have been deemed to have been granted.
 - 6) In the event the [planning department or public works department] determines that all requirements for approval have not been met, it shall promptly notify the applicant of such fact and shall automatically deny the permit.
 - 7) An individual whose permit application has been denied or a permittee whose permit has been revoked may appeal the decision of the [planning department or public works department] to the [County Commission/City Council] provided that they file written notice of an appeal with the [County/City Clerk] within [fifteen] business days of the [local government]'s decision. Such appeal shall be considered by the [County Commission/City Council] at the next [County Commission/City Council] meeting held after the [county/city's] receipt of the written notice of appeal, provided that notice of appeal is received by the [County Commission/City Council] a minimum of [five] full business days before the meeting. In the event an individual whose permit has been denied or revoked is dissatisfied with the decision of the [County Commission/City Council], they may petition for writ of certiorari to the [superior court] as provided by law.
 - 8) The [planning department or public works department] shall inspect each lot for which a permit for a new land disturbing activity or for modification of an existing land disturbing activity is issued. This inspection shall occur on or before [six months] from the date of issuance of such permit.
 - a) If the land disturbing activity is not complete within [six months] from the date of issuance, the permit shall lapse and become void. No refunds will be made for permit fees paid for permits that expired due to failure to engage in the land disturbing activity. If later, an individual desires to continue land disturbing activities at the same location, a new application must be processed and another fee paid in accordance with the fee schedule applicable at such time.
 - b) If the land disturbing activity is substantially complete, but not in full compliance with this ordinance the [planning department or public works department] shall give the applicant notice of the deficiencies and shall allow an additional [thirty days] from the date of inspection for the deficiencies to be corrected. If the deficiencies are not corrected by such date, the permit shall lapse and become void.

Section 6. Inspection

The [planning department or public works department] or its authorized representative may inspect ongoing work in the buffer to be made periodically during the course thereof and shall make a final inspection following completion of the work. The landowner shall assist the [planning department or public works department] or authorized representative in making such inspections. The [planning department or public works department] shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and to enter at a reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activities within the buffer protection area.

No person shall refuse entry or access to any authorized representative or agent who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out official duties.

Section 7. Variance Procedure

Variances from the above buffer requirements may be granted in accordance with the following provisions:

- 1) Where a parcel was platted prior to the effective date of this ordinance, and its shape, topography, or other existing physical condition prevents land disturbing activity consistent with this ordinance, and such land disturbing activity cannot be authorized through issuance of a buffer encroachment permit, the [local government] may grant a variance that shall allow a reduction in buffer width only to the extent necessary to provide relief from the conditions which prevented land disturbing activity on the parcel, provided adequate mitigation measures are implemented by the landowner to offset the effects of such variance.
- 2) Variances shall not be considered when:
 - a) following adoption of this ordinance, actions of any property owner of a given property have created conditions of a hardship on that property; or
 - b) the owner previously applied for a buffer encroachment permit that was denied by [the local government].
 - *The buffer encroachment permit and the variance procedure are intended to be used for two separate situations. A landowner should apply for a buffer encroachment permit when he or she desires to encroach into the buffer for the purpose of placing an accessory structure to a residential dwelling, such as a deck, in the buffer. Use of the buffer encroachment permit is also appropriate when the landowner wishes to use buffer averaging. However, if the landowner wishes to encroach for a purpose other than use of buffer averaging or placement of an accessory structure to a residential dwelling in the buffer, use of the variance procedure is the appropriate method.*
- 3) Except as provided above, the [local government] shall grant no variance from any provision of this ordinance.
- 4) When a public hearing on the application for a variance is conducted, the [local government] shall give

public notice of each such public hearing in a newspaper of general circulation within the [local government]. The [local government] shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.

- 5) At a minimum, a variance request shall include the following information:
- a) A site map that includes locations of all streams, wetlands, coastal marshlands, floodplain boundaries, and other natural features, as determined by field survey;
 - b) A description of the shape, size, topography, slope, soils, vegetation, and other physical characteristics of the property;
 - c) A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance both inside and outside the buffer;
 - d) The exact area of the buffer to be affected shall be accurately and clearly indicated;
 - e) Documentation of the inability to develop the property without a variance;
 - f) Documentation that shows how buffer encroachment will be minimized to the greatest extent possible;
 - g) Documentation that shows how the buffer encroachment will not result in reduction of water quality or diminishment of a uniform coastal marshland scenic vista;
 - h) At least one alternative plan, which does not include a buffer encroachment, and an explanation of why such a plan is not possible;
 - i) A calculation of the total area and length of the proposed encroachment;
 - j) A stormwater management site plan, if applicable; and,
 - *A stormwater management site plan may be required if the property is located in a Phase I or II NPDES permitted area pursuant to the federal Clean Water Act or if the local government otherwise requires such a plan.*
 - k) A proposed mitigation plan designed pursuant to the “Coastal Riparian Buffer Guidance Manual” that offsets the effects of the proposed encroachment. If no mitigation is proposed, the application must include an explanation of why none is being proposed.
 - *Acceptable mitigation might include restoration and/or enhancement and protection of a degraded area of coastal riparian buffer on an adjacent or nearby property.*
 - l) Payment of the application fee of _____.

6) The following factors will be considered in determining whether to issue a variance:

- a) Whether the requirements of the riparian buffer represent an extreme hardship for the landowner, such that little or no reasonable economic use of the land is available without the reduction of the width of the riparian buffer;
 - b) Whether actions of the landowner of a given property have created conditions of a hardship on that property;
 - c) The size, shape, topography, soils, vegetation and other physical characteristics of the property that may prevent land development;
 - d) The location and extent of the proposed buffer encroachment;
 - e) Whether alternative designs are possible which require less or no intrusion;
 - f) The long-term water-quality impacts of the proposed variance;
 - g) The water quality impacts of any construction that the granting of the variance would allow in the buffer;
 - h) Whether the issuance of a variance and the completion of the applicant's proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources, including but not limited to water and oxygen supply; and
 - i) whether the proposed development in the buffer will be conducted in accordance with all design guidelines, low impact development techniques, and other guidance found in the "Coastal Riparian Buffer Guidance Manual."
- *Only the Georgia Environmental Protection Division may approve buffer variances within the 25-foot buffer established along state waters under Georgia's Erosion and Sedimentation Act of 1975. Op. Att'y Gen. No. 90-40 (1990). For purposes of the Erosion and Sedimentation Act of 1975, state waters include, inter alia, ponds, lakes, reservoirs, and coastal marshlands. Op. Att'y Gen. No. 93-7 (1993).*
- *A local issuing authority does not have to allow encroachment into the 25-foot buffer, despite the issuance of a variance by EPD.*

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. Ga. Comp. R. & Regs. § 391-3-7-.05(8) (2006).

Section 8. Compatibility with Other Regulations and Requirements

This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this ordinance should be considered minimum requirements. Where any provision of this ordinance imposes restrictions or protective standards different from those imposed by any other ordinance, rule, regulation, or other provision of law, the more restrictive provision applies.

The requirements of this ordinance shall in no case be interpreted to preempt the need for other relevant local, state and federal permits and approvals.

- *All land disturbing activities must comply with the requirements of the Erosion and Sedimentation Act of 1975 and all applicable best management practices therein.*
- *A 100-foot buffer must be maintained along perennial rivers with an average annual flow of at least 400 cubic feet per second pursuant to the Mountain and River Corridor Protection Act, O.C.G.A. § 12- 2-8. For purposes of the Act, the 100-foot buffer begins from the river bank at mean high water. This subsection only applies to counties or cities whose jurisdiction extends beyond tidally-influenced waters governed by the Coastal Marshland Protection Act.*
- *Construction of docks, piers and marinas are not governed by this ordinance and require permits from the Department of Natural Resources (Coastal Resources Division) and/or Army Corps of Engineers. Permit information can be found at <http://crd.dnr.state.ga.us> and <http://www.usace.army.mil>. However, any land disturbing activity encroaching the buffer area associated with construction of a dock, pier, or marina must satisfy the requirements of the ordinance.*
- *Construction of bulkheads, groins, revetments, and any other shoreline engineering activities are not governed by this ordinance and require permits from the Department of Natural Resources (Coastal Resources Division) and/or Army Corps of Engineers. Permit information can be found at <http://crd.dnr.state.ga.us> and <http://www.usace.army.mil>. However, any land disturbing activity encroaching the buffer area associated with the construction must satisfy ordinance requirements.*

Section 9. Violations, Enforcement and Penalties

Any action, or inaction, which violates the provisions of this ordinance or the requirements of an approved site plan may be subject to the enforcement actions outlined in this Section. Any such action, or inaction, which is continuous with respect to time, is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

9.1. Notice of Violation

If the [local government] determines that a permittee or other responsible person has failed to comply with the terms and conditions of a permit, an approved stormwater management plan or the provisions of this ordinance, it shall issue a written notice of violation to such permittee or other responsible person. Where a person is engaged in activity covered by this ordinance without having first secured a permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- 1) The name and address of the owner or the applicant or the responsible person;
- 2) The address or other description of the site upon which the violation is occurring;
- 3) A statement specifying the nature of the violation;
- 4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the stormwater management plan or this ordinance and the date for the completion of such remedial action;
- 5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- 6) A statement that the determination of violation may be appealed to the [local government] by filing a written notice of appeal within thirty (30) days after the notice of violation (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient).

9.2. Penalties

In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the [local government] shall first notify the permittee or other responsible person in writing of its intended action and shall provide a reasonable opportunity, of not less than 72 hours (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) to cure such violation. In the event the permittee or other responsible person fails to cure such violation after such notice and cure period, the [local government] may take any one or more of the following actions or impose any one or more of the following penalties.

- 1) Stop Work Order - The [local government] may issue a stop work order which shall be served on the permittee or other responsible person. The stop work order shall remain in effect until the permittee or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the permittee or other responsible person to take the necessary remedial measures to cure such violation or violations.
- 2) Withhold Certificate of Occupancy - The [local government] may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the permittee or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- 3) Suspension, Revocation or Modification of Permit - The [local government] may suspend, revoke, or modify the permit authorizing the land development project. A suspended, revoked, or modified permit may be reinstated after the permittee or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the [local government] may deem necessary) to

enable the permittee or other responsible person to take the necessary remedial measures to cure such violations.

- 4) Civil Penalties - In the event the permittee or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within 72 hours, or such lesser period as the *[local government]* shall deem appropriate (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) after the *[local government]* has taken one or more of the actions described above, the *[local government]* may impose a penalty on the permittee or other responsible person not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains un-remedied after receipt of the notice of violation.

- 5) Criminal Penalties - For intentional and flagrant violations of this ordinance, the *[local government]* may issue a citation to the permittee or other responsible person, requiring such person to appear in *[appropriate municipal, magistrate or recorder's]* court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

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