

**PROPOSED AMENDMENTS TO THE RULES OF THE  
DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION  
RELATING TO  
ENVIRONMENTAL PLANNING CRITERIA, CHAPTER 391-3-16**

The Rules of the Department of Natural Resources, Chapter 391-3-16, Environmental Planning Criteria are hereby amended, added to, repealed, repealed in part, and/or revised, as hereinafter explicitly set forth in the attached amendments, additions, partial repeals, and revisions for specific Rules, or such subdivisions thereof as may be indicated.

**[Note: Underlined text is proposed to be added, text with strikeouts is proposed to be deleted.]**

**Rule 391-3-16-.01(2) Definitions is hereby amended by the addition and deletion of certain language to subparagraph (d) to read as follows:**

(d) Perennial Stream means a stream ~~which flows throughout the whole year as indicated on a USGS Quad map.~~ that has normal stream flow consisting of base flow (discharge that enters the stream channel mainly from groundwater) or both base flow and direct runoff during any period of the year.

**Rule 391-3-16-.01(10) Alternate Minimum Criteria for Water Supply Watersheds is hereby amended by the addition and deletion of certain language to paragraph (10) to read as follows:**

**(10) Alternate Minimum Criteria for Water Supply Watersheds.**

~~(a) Criteria different than those in (6) and (7) may be presented to the Department of Natural Resources by all of the local governments within a water supply watershed. The Department of Natural Resources may approve such criteria if the Department of Natural Resources deems them to provide an equivalent level of protection to the criteria of (6) and (7), and if they provide at least as much stream corridor buffer and setback area in the watershed as the criteria of (6) and (7).~~

~~(b) Land uses, such as the construction of lakes and pools, which can be shown to enhance the protection of water quality may be include in the alternate criteria.~~

(a) A local government within a water supply watershed may adopt alternative minimum criteria for the stream buffer requirements in paragraphs (6)(c) and 7(b) of these criteria if the alternative criteria meet the following requirements:

1. The local government is certified by the Director as having a program in place adequate to implement and enforce these alternative minimum criteria, including implementing ordinances. Such certification may be suspended or revoked pursuant to the same procedures provided for Local Issuing Authorities under O.C.G.A. § 12-7-8; and

2. As part of any certification by the Director required above, the local government shall, through its planning department or other appropriate body, require that all approvals for the subdivision or development of parcels within the water supply watershed shall include a determination that the subject parcel or parcels within a development are consistent with the buffers required hereunder and that all plats of survey and approvals provide clear notice of the alternative minimum criteria and requirements adopted by the local government. Further, after the effective date of the ordinance, the creation of lots on which there is not sufficient area for construction is prohibited; and

3. The local government shall adopt an ordinance that incorporates one of the following **three (3) four** options provided below in subparagraphs 3.(i), 3.(ii), **or** 3.(iii) **or 3.(iv)** for all perennial stream corridors within the water supply watershed that are within a seven (7) mile radius upstream of a governmentally owned public drinking water supply intake or water supply reservoir. Beyond such seven (7) mile radius, the ordinance shall also provide for a 50-foot buffer for perennial stream corridors within the water supply watershed. These options **apply only to the stream segments that feed the water supply reservoir and** do not affect the buffer around the water supply reservoir.

(i) “**Option 1**” For a one-mile radius upstream of a public water supply intake, within such local government jurisdiction that is a certified Local Issuing Authority as defined in O.C.G.A. § 12-7-8, there is a 100-foot critical area with an undisturbed buffer on both sides of the stream; for the balance of the watershed, there is a 50-foot undisturbed buffer on both sides of the stream. Beyond the adopted 50-foot and 100-foot riparian buffers, development is allowed but is limited to an effective impervious cover of ten (10) percent as described below in subparagraph 4.(vi) of these criteria.

(l) For local government ordinances incorporating the options in subparagraph 3.(i) above, all of the following practices are also required within the water supply watersheds:

I. development and implementation of a public education program approved by the Division that includes items described below in subparagraph 4.(i) of these criteria; and

II. implementation of design guidelines that ensure a diffuse flow requirement with no concentrated flow leaving the property as described below in subparagraph 4.(ii) of these criteria; and

III. declarations of development restrictions on either survey plats and/or deeds that indicate that the **parcel lot** is located within a water supply watershed and that there are restrictions on disturbance of the buffer area and specific development practices for said property; and

IV. adoption of a stormwater ordinance as described below in subparagraph 4.(iii) of these criteria; and

V. performance of a septic tank inspection every seven (7) years with mandatory repairs and pumping, if required; and

VI. implementation of a Division approved monitoring program as described below in subparagraph 4.(iv) of these criteria; and

VII. vegetation of riparian buffers as described in subparagraph 4.(v) of these criteria;

(ii) “**Option 2**” Upstream of a public water supply intake, within such local government jurisdiction that is a certified Local Issuing Authority as defined in O.C.G.A. § 12-7-8, there is a 75-foot undisturbed riparian buffer on both sides of the stream. **Beyond the adopted 75-foot riparian buffer, development is allowed but is limited to an effective impervious cover of ten (10) percent as described below in subparagraph 4.(vi) of these criteria.**

(l) For local government ordinances incorporating the options in subparagraph 3.(ii) above, all of the following practices are also required within the water supply watersheds:

I. development and implementation of a public education program approved by the Division that includes items described below in subparagraph 4.(i) of these criteria; and

II. implementation of design guidelines that ensure a diffuse flow requirement with no concentrated flow leaving the property as described below in subparagraph 4.(ii) of these criteria; and

III. declarations of development restrictions on either survey plats and/or deeds that indicate that the **parcel lot** is located within a water supply watershed and that there are restrictions on disturbance of the buffer area and specific development practices for said property; and

IV. adoption of a stormwater ordinance as described below in subparagraph 4.(iii) of these criteria; and

**V. mandatory notification every seven (7) years by the local government for all owners of septic tanks and septic tank**

drain fields within the water supply watershed outlining the risk of fines and enforcement for illegal discharge or seepage into waters of the State and the need for routine maintenance and replacement under guidance and direction from the local health department; and

V. performance of a septic tank inspection every seven (7) years with mandatory repairs and pumping, if required; and

VI. implementation of a Division approved monitoring program as described below in subparagraph 4.(iv) of these criteria; and

VII. vegetation of riparian buffers as described in subparagraph 4.(v) of these criteria;

(iii) “Option 3” Upstream of a public water supply intake, within such local government jurisdiction that may or may not be a certified Local Issuing Authority as defined in O.C.G.A. § 12-7-8, there is a 100-foot undisturbed riparian buffer on both sides of the stream.

(I) For local government ordinances incorporating the options in subparagraph 3.(iii) above, all of the following practices are also required within the water supply watersheds:

I. development and implementation of a Division approved public education program that includes items described below in subparagraph 4.(i) of these criteria; and

II. implementation of design guidelines that ensure a diffuse flow requirement with no concentrated flow leaving the property as described below in subparagraph 4.(ii) of these criteria; and

III. declarations of development restrictions on either survey plats and/or deeds that indicate that the lot is located within a water supply watershed and that there are restrictions on disturbance of the buffer area and specific development practices for said property; and

IV. adoption of a stormwater ordinance as described below in subparagraph 4.(iii) of these criteria;

(II) For local government ordinances incorporating the options in subparagraph (iii) above, the following practices are recommended but not required within the water supply watersheds:

I. acquiring certification as a Local Issuing Authority; and

II. mandatory notification by the local government every seven years for all owners of septic tanks and septic tank drain fields within 100-feet of any stream within the water supply watershed, as measured from the top of the stream bank, outlining the risk of fines and enforcement for illegal discharge or seepage into waters of the State and the need for routine maintenance and replacement under guidance and direction from the local health department; and

III. implementation of a Division approved monitoring program as described below in subparagraph 4.(iv) of these criteria; and

IV. vegetation of riparian buffers as described in subparagraph 4.(v) of these criteria.

**(iv) “Option 4” Upstream of a public water supply intake, within such local government jurisdiction that may or may not be a certified Local Issuing Authority as defined in O.C.G.A. § 12-7-8, there is a 100-foot riparian buffer on both sides of the stream and a 150-foot setback on both sides of the stream.**

4. If required above, the local government shall:

(i) Adopt and implement a Division approved public education plan that is designed to educate the community and conduct equivalent outreach activities targeting but not limited to citizens, government officials, developers, engineers, architects, landscapers, builders, construction workers, non-profit organizations, and volunteers. The plan shall include but is not limited to information about the use and maintenance of stormwater best management practices, septic system inspection and maintenance, agricultural best management practices, forestry best management practices, native landscaping and water conservation;

(ii) **Require that** diffuse flow or runoff must be maintained within the riparian buffer by dispersing concentrated flow and re-establishing vegetation. Concentrated runoff from new ditches or constructed conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer. If necessary to impede the formation of erosion gullies, periodic corrective action to restore diffuse flow shall be required in a maintenance agreement with appropriate entities;

(iii) **Adopt a Division approved stormwater management ordinance that applies in the water supply watershed. If a storm water management ordinance is required above, a** Any local government certified as a Local Issuing Authority under the Georgia Erosion and Sedimentation Control Act shall implement said adopted stormwater management ordinance that incorporates the post-development best management practices expressly required hereunder and permanent storm water control measures as well as design standards appropriate for the terrain and topography to protect water quality, stream channels and flooding. These standards shall be consistent with criteria

established for such control measures in the Georgia Storm Water Management Manual. If such local government is not required above to become a certified Local Issuing Authority, then it shall adopt an ordinance approved by the Division that requires at a minimum that plans for permanent storm water control measures be reviewed and approved by such local government. The local government shall have the resources necessary to review and inspect such measures;

~~(iv) If required above, the local government shall~~ Implement a Division approved program to monitor streams within the water supply watershed for the following: 1) Georgia bacterial standard, 2) turbidity and 3) nutrients. The samples shall be taken immediately after the first substantial rain of the month **(0.5 inches or larger)**; or if rain has not occurred and is not predicted, the samples shall be taken during the last week of the month. **Degradation of the monthly reporting for three consecutive months is a trigger for corrective action;** **Should the monthly data show three (3) consecutive months of degrading water quality (each month's data set for any or all parameters showing increasing values), a corrective action plan shall be submitted within thirty (30) days to the Division for approval. Upon approval by the Division the corrective action plan shall be implemented and the monthly sampling continued until such time as the Division notifies the local government that corrective action is no longer required;**

~~(v) If woody vegetation is not present within the undisturbed portion of the riparian buffer, then all buffers must~~ **Require that a 50-foot riparian buffer** be vegetated with understory trees and shrubs and canopy trees native to the region **or approved by the Division** planted no more than ten (10) feet apart and pursuant to guidelines contained in the storm water management ordinance approved by the Division. Vegetation and permanent maintenance of the buffers is the responsibility of the developer, subsequent property owner or homeowners association. This vegetation shall only be required upon a change in use or development of the lot or parcel that includes the riparian buffer subject to these criteria.

~~(vi) If required above, and upon the development or redevelopment of a parcel, the local government~~ **Require an effective impervious cover of no more than ten (10) percent upon the development or redevelopment of a parcel** for either lots immediately adjacent to a perennial stream or for the area of land within 150-feet of a perennial stream, whichever is larger. On single, individual lots this requirement shall be triggered for projects with greater than 5,000 square feet of impervious surfaces. An effective impervious cover shall be generally defined in terms of controlling runoff and pollutants so that post-development runoff is only ten (10) percent greater than pre-development conditions. The pre-development (baseline) conditions shall be assumed to be good forested conditions appropriate to site. This requirement and the methodology to achieve it shall be further defined in accordance with guidelines to be developed as part of a local government's storm water management ordinance approved by the Division.

(vii) **The certified local government shall** Notify all owners of septic tanks and septic tank drain fields within the water supply watershed every seven (7) years of the risk of fines and enforcement for illegal discharge or seepage into waters of the State and the need for routine maintenance and replacement under guidance and direction from the local health department.

5. Septic systems and drain fields shall be located outside of the required riparian buffers and setbacks indicated in the above paragraphs and are recommended to be at least 100-feet away from a perennial stream where practicable. As part of any subdivision or development of parcels within the water supply watershed, the local government shall in cooperation with the Georgia Department of Human Resources, through its planning department or other appropriate bodies, require that:

(i) Considering the size, configuration and household appliances and equipment, septic tanks and septic drainfields shall be sized appropriately by qualified personnel; and

(ii) Septic tank risers shall be installed; and

(iii) Only multi-stage septic tanks with effluent filters shall be installed; and

(iv) All approvals for new building permits for additions or remodeling of existing structures on the subject parcel or parcels within a subdivision or development shall be accompanied by a review of septic tank and septic drainfield sizing, configuration and design with mandatory upgrades if required.

6. **This paragraph shall not apply to those structures or lots existing as of the effective date of the adopted ordinances or the effective date of rules already in place governing large water supply watersheds or small water supply watersheds. However, any modification or expansion of such structure which results in a net increase in the structure footprint or of the impervious surface area within the buffer shall subject the structure to the applicable criteria hereunder. This paragraph shall not apply to structures or lots approved for development by the local government prior to such effective dates; however, the practices described in subparagraphs 4(ii), 4(iii), 4(v), 4(vi) and 4(vii) are recommended.**

Local governments may exempt those structures existing, under construction, or for which a complete application for a land disturbance permit, building permit, or similar government approval has been submitted as of the effective date of the ordinances adopted pursuant to this rule, or on which construction will commence no later than one year following the date of the adoption of the ordinances required pursuant to this rule. However, any modification or expansion of such existing structure which results in a net increase in the structure footprint or of the impervious surface area within the buffer shall subject the structure to the applicable criteria hereunder. Further, local governments may exempt parcels on which only

**one (1) single family home is built for residential use by the owner of the parcel, provided that this exemption shall not apply to parcels that are subdivided into lots after the effective date of ordinances adopted pursuant to this rule.**

7. After the effective date of the ordinance, the local government shall have one year to implement the stormwater ordinance and two years to design and implement a Division approved public education program and a Division approved monitoring program. The local jurisdiction shall submit a report on the aforementioned activities to the Division and get approval from the Division to proceed with buffer reductions.

8. Local governments may consider granting a variance to the buffers established in the adopted ordinance only when:

(i) There are hardships that prevent compliance with the buffer widths and required practices. Local governments shall provide an opportunity for meaningful public notice of, comment upon, and administrative appeal of all decisions relating to action upon an application for a variance under these provisions. Such terms shall be referenced or included in the storm water management ordinance to be considered by the Division. Such terms shall include any rights of appeal or further administrative review as otherwise provided for land use decisions in the local government. Hardships shall be evaluated in accordance with the following:

(I) If the applicant complies with the buffer widths and required practices, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government shall consider whether the variance is the minimum possible deviation from the buffer widths that shall make reasonable use of the property possible; and

(II) The hardship results from application of the buffer widths to the property rather than from other factors such as unrelated deed restrictions; and

(III) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography; and

(IV) The applicant did not cause the hardship; and

**(V) The Applicant did not purchase the property after the effective date of the buffer widths and required practices and then request a variance; and**

(VI)-(V) The variance is in harmony with the general purpose and intent of the riparian buffer widths and required practices and preserves the purpose thereof; and

~~(VII)~~(VI) In granting the variance, the public safety and welfare have been assured, and the quality of downstream water, including but not limited to water used to supply public drinking water, has been maintained or improved; and

~~(VIII)~~(VII) The applicant certifies that the applicant has not and does not intend to apply for a variance from the minimum buffer requirements contained in the Georgia Erosion and Sedimentation Control Act for the same perennial stream or streams for which a variance is sought pursuant to this paragraph.