

**Etowah Habitat Conservation Plan
Metropolitan North Georgia Water Planning District
Model Stream Buffer Ordinance
with HCP Recommendations Included**

prepared by the HCP Stream Buffer Technical Committee

2005



Recommended Changes to the Model Stream Buffer Ordinance of the Metropolitan North Georgia Water Planning District. Additions are shown in highlighting (shading), and deletions are struck through.

A. Clarification of the definition of stream

“**Stream**” means any 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. Where evidence indicates the presence of a stream in a drainage area of ~~other~~ **less** than 25 acres, the **(local permitting authority)** may require field studies to verify the existence of a stream.

B. Removal of the exemption for activities in rights of way. Utility easements and road crossings are exempted elsewhere, so this broadly-worded section appears unnecessary and problematic.

~~(3) Land development activities within a right of way existing at the time this ordinance takes effect or approved under the terms of this ordinance.~~

C. Clarification and strengthening of variance procedures.

5.2. Variance Procedures

Variations from the above buffer and setback requirements may be granted **only** 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 **any** land development consistent with this ordinance, and the **(review and permitting authority)** finds and determines that the requirements of this ordinance prohibit the otherwise lawful use of the property by the owner, the **(appeals board)** of **(local jurisdiction)** may grant a variance from the buffer and setback requirements hereunder, provided ~~such variance require adequate~~ mitigation measures **are implemented by the owner** to offset the effects of **such variance** ~~any proposed land development on the parcel.~~
- (2) Except as provided above, the **(appeals board)** of **(local jurisdiction)** shall grant no variance from any provision of this ordinance without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the **(appeals board)**. The **(local jurisdiction)** shall give public notice of each such public hearing in a newspaper of general circulation within **(local jurisdiction)**. The **(local jurisdiction)** 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.

~~— Variations will be considered only in the following cases:~~

- a. ~~When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.~~
- b. ~~Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.~~

Variances will not be considered when, following adoption of this ordinance, actions of any property owner of a given property have created conditions of a hardship on that property.

- (3) At a minimum, a variance request shall include the following information:
 - a. A site map that includes locations of all streams, wetlands, 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 and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
 - d. Documentation of unusual hardship should the buffer be maintained;
 - e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
 - f. A calculation of the total area and length of the proposed intrusion;
 - g. A stormwater management site plan, if applicable; and,
 - h. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
- (4) The following factors will be considered in determining whether to issue a variance:
 - a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
 - b. The locations of all streams on the property, including along property boundaries;
 - c. The location and extent of the proposed buffer or setback intrusion; and,
 - d. Whether alternative designs are possible which require less intrusion or no intrusion;
 - e. The long-term and construction water-quality impacts of the proposed variance;
 - f. Whether issuance of the variance is at least as protective of natural resources and the environment.
- (5) An approved variance shall allow a reduction in buffer width only to the extent necessary to provide relief from the conditions which prevented land development activities on the parcel.