

Client Alert

Tort & Environmental Practice Group

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EPD Revises Marshland Buffer Policy: The 25-Foot Buffer Will Now Be Recognized Only if a Line of “Wrested Vegetation” Exists

On April 22, 2014, Georgia EPD Director Judson Turner issued a new policy for determining how the buffers required under the Georgia Erosion and Sediment Control Act (“E&SA”) will be delineated along coastal marshlands. The new policy is that a 25-foot buffer will be recognized *only* along waterbodies that have a “bank” and a line of “wrested vegetation,” *i.e.*, a point where vegetation has been removed from the bank by wave or tidal action.

The new policy follows directly from the text of the Georgia E&SA, which establishes a 25-foot buffer within which land-disturbing activities are prohibited. O.C.G.A. § 12-7-6(b)(15)(A). The statute provides for the buffer to be measured along the bank of the waterbody from the point where vegetation has been wrested by normal stream flow or wave action. The new policy rescinds a 2004 EPD interpretation stating that buffers surrounding coastal marshlands would be measured, not from the point of wrested vegetation, but from the jurisdictional line established by the Coastal Marshlands Protection Act (“CMPA”). The change in policy was necessary because there is no basis in the Georgia E&SA for using the CMPA jurisdictional line to measure buffers.

The result of this change in policy will be to eliminate buffers along most coastal marshlands, because the transition from marshland to upland is rarely marked by a line of wrested vegetation. The marshlands themselves will still be protected under the CMPA and other statutes, but the additional 25-foot strip along the adjacent upland will not be. Because most tidal creeks do have a line of wrested vegetation, buffers will still exist along these waterbodies.

The buffer requirement is onerous because very little can be done within a buffer, and it is difficult and often impossible to obtain a variance. Variances can only be obtained for certain types of projects, and only by applying directly to the EPD Director (even if other E&SA matters are handled by the County).

Vigorous efforts will be made to amend the E&SA to restore the marshland buffer in the 2015 General Assembly, as this has long been a hot-button issue. The regulated community will need to be proactive to protect its interests. King & Spalding will be working with its coastal clients to consider these issues and to steer the legislative process.

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