



COASTAL RESOURCES DIVISION

ONE CONSERVATION WAY · BRUNSWICK, GA 31520 · 912-264-7218

WALTER RABON  
INTERIM COMMISSIONER

DOUG HAYMANS  
DIRECTOR

August 22, 2023

MEMORANDUM

TO: Board of Natural Resources  
FROM: Doug Haymans  
SUBJECT: Briefing on proposed amendments to the Rules of the Department of Natural Resources Coastal Resources Division, Regulation of Upland Component of a Project, Chapter 391-2-3-.02

Included for your consideration is an amendment of the Rules of the Department of Natural Resources Coastal Resources Division related to regulating of upland components of projects such a marinas, community docks, and commercial docks located over coastal marshlands. These proposed amendments would clarify what type projects would be subject to the rule by modifying the definition of the upland component.

I respectfully submit the following information in support of a request for approval to initiate rulemaking:

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Attachments



COASTAL RESOURCES DIVISION  
ONE CONSERVATION WAY · BRUNSWICK, GA 31520 · 912-264-7218

WALTER RABON  
COMMISSIONER

DOUG HAYMANS  
DIRECTOR

August 23, 2023

## NOTICE OF PROPOSED REGULATION CHANGES

TO: All Interested Persons and Parties  
FROM: Doug Haymans  
SUBJECT: Notice of Rule Making for the Regulation of Upland Component of a Project,  
Chapter 391-2-3-.02.

Notice is hereby given that, pursuant to authority set forth below, the Georgia Department of Natural Resources proposes to amend the Rules of Georgia Department of Natural Resources Coastal Resources Division: Rule 391-2-3-.02, Regulation of Upland Component of a Project.

This amended rule is being promulgated under the authority of the Official Code of Georgia, Annotated Title 12, Section 12-5-285. Rule 391-2-3-.02 is being amended to specify the standards and conditions for issuance of a Coastal Marshlands Protection Act permit for marinas and community and commercial dock projects located over coastal marshlands.

A public hearing will be held Wednesday, September 6, 2023 at 5:30 PM at the Coastal Resources Division, One Conservation Way, Brunswick, GA 31520. Written public comment will be received through Monday September 25, 2023. Comments should be legible, concise and limited to the proposed rule change. Following the comment period, the Board of Natural Resources will consider the proposed rule on October 24, 2023, at 9:00 AM at its board meeting to be held at the Savannah Economic Development Authority, 906 Drayton Street, Savannah, GA 31401.

Mail or email comments to: Jill Andrews, Coastal Resources Division  
One Conservation Way, Brunswick, GA 31520  
jill.andrews@dnr.ga.gov

Additional information is available at [www.CoastalGaDNR.org](http://www.CoastalGaDNR.org). Click on the “News and Notices” tab.

**BACKGROUND AND SYNOPSIS OF  
THE PROPOSED AMENDMENT TO THE RULES OF THE  
GEORGIA DEPARTMENT OF NATURAL RESOURCES  
COASTAL RESOURCES DIVISION  
RELATING TO  
REGULATION OF UPLAND COMPONENT OF A PROJECT  
RULE 391-2-3-.02**

**Background**

The Coastal Marshlands Protection Act (“CMPA”, O.C.G.A. 12-5-280 et seq.), administered by the Coastal Resources Division (CRD) of the Department of Natural Resources, requires permits be granted for any activities that remove, fill, dredge, drain or otherwise alter coastal marshlands. In 2005, in response to legal challenges regarding whether “otherwise alter” included impacts resulting from upland activities that might impact the marshlands, CRD convened the Uplands Stakeholder Committee, which was instrumental in proposing a new rule, Regulation of Upland Component of a Project (“Upland Rules” 391-2-3-.02), to define what component(s) of a coastal marshlands project could be reasonably affected by upland activities. The Upland Stakeholder Committee was convened at a time when CRD was also working with Marinas and Community Docks Stakeholder Committee which recommended that uplands related to those specific type of projects be addressed.

The Upland Stakeholder Committee was charged by the Department to address upland impacts from marinas, community docks and commercial docks. Upland components are limited, by definition, to “all those service areas, amenities and recreational areas...that serve or augment the functioning of the marshlands component of the project, such as but not limited to dry stack boat storage, dockmaster shop, fuel storage and delivery facilities...and restrooms intended for users of the marshlands component” (391-2-3-.02(2)(q)). The definition further states “this term may extend to and cover such facilities adjacent to or in proximity to the marshlands component...intended to serve exclusively or primarily the users of the marshlands component...” The definition of “upland component of the project” is not specific as to the types of marshland projects to which the definition should be applied. However, the Stakeholder committee had within its purview only marinas, community docks and commercial docks. Other types of CMPA-permitted projects, including small-scale residential projects, public projects and bank stabilization projects were not considered by the stakeholder committee, nor is there evidence in the records that discussions of other project types took place. Therefore, it is a reasonable assumption that the rules are intended to apply only to marinas, community docks and commercial docks.

The rules go on to determine the extent to which the CMPA permit should authorize upland activities and requires a 50-foot marshlands buffer extending landward of the upland component, as well as stringent stormwater treatment and impervious cover standards. Inasmuch as the definitions in the Upland Rules are not clear as to which CMPA permitted project types they are to be applied to, CRD has historically applied the Rules to all project types. This has resulted in CRD's regulation of residential and public (municipal) upland areas and numerous challenges in trying to apply criteria to non-marina/dock projects, for example municipal drainage and road projects and residential bank stabilization projects. Often, the application of the rules to these projects has required additional engineering by the applicant to meet stormwater and impervious surface standards and caused delays in agency processing times. In such cases, however, the upland components projects do not "serve" or augment the function of the marshlands component in the manner as was intended in the rule, or in the same way "dry stack boat storage, dockmaster shop, fuel storage and delivery facilities...and restrooms" does for a marina or community dock. The **unanticipated** regulation of a significant portions of municipal and residential parcels through the CMPA creates a burden upon the property owner to use their property, and upon CRD to regulate and enforce development on lots, including homes, decks, pools, patios, sheds, swing sets, fire pits and other common appurtenances that are not related to the marshlands component. In practice, it is evident that the Upland Rules simply were not written to apply to all coastal marshland projects. This is the impetus for CRD's recommendation of the proposed amendments to clearly define "upland component of the project" and reaffirm the intent and application of the rules.

### **Purpose**

The purpose of the proposed amended rule is to modify the definition of "upland component of a project" to clarify the intent of the rule which is to be applied to marinas, community docks and commercial docks such that all other project types are not subject to the rule. This proposed amendment to Rule 391-2-3-.02, Regulation of Upland Component of a Project, maintains a reasonable approach to regulating the upland activities associated with marinas, community docks and commercial docks as intended upon the drafting of the rules based on recommendation of Upland Stakeholder Committee, without applying such criteria to other project types. This minor change will lead to significant efficiencies in permit requirements and processing times for projects not subject to the Upland Rules and more consistent and predictable outcomes for applicants, residential property owners and municipal governments.

### **Main Features**

The amended rule will:

1. add "marinas, community docks and commercial docks" to the definition of an upland component (391-2-3-.02 (2)(q)) and strike the words "amenities, and recreational areas." These additions and deletions will clarify that the upland rules will only apply to these type projects; and
2. include a minor housekeeping change in the definition of a "marshlands buffer" (391-2-3-.02 (2)(h)). "a long" will be corrected to "along".

### **Differences**

The amended rule will narrow the application of the rule to marinas, and community and commercial docks.

### **Date, Time, and Place of Board Action:**

Board Action: October 24, 2023, 9:00 AM, Savannah Economic Development Authority, 906 Drayton Street, Savannah, GA 31401.

### **Targeted Public Participation Plan**

Rule 391-2-3-.02, Regulation Upland Component of a Project. A targeted participation plan was chosen as the universe of affected persons is coast-wide and could potentially impact many waterfront property owners in coastal Georgia.

- Summer 2023 – CRD drafted proposed amendment to Rule 391-2-3-.02
- August 22, 2023 – Briefed the Board of Natural Resources on proposed amendment.
- August 23, 2023 – Public Notice of Comment Period
- September 6, 2023 – Public Hearing held in Brunswick.
- September 25, 2023 – Public comment period closed.
- October 24, 2023 – DNR Board considers final action on proposed rule.



COASTAL RESOURCES DIVISION

ONE CONSERVATION WAY · BRUNSWICK, GA 31520 · 912-264-7218

WALTER RABON  
INTERIM COMMISSIONER

DOUG HAYMANS  
DIRECTOR

July 14, 2023

MEMORANDUM

TO: Board of Natural Resources

FROM: Doug Haymans

SUBJECT: Economic Impact of Proposed Amended Rule 391-2-3-.02, Regulation of Upland Component of a Project, on Small Businesses

The Administrative Procedures Act requires that during the formation and adoption of any rules attempts shall be made to reduce the economic impact of the rules on small businesses. This applies to businesses that are independently owned and operated, are not dominant in the field and employ 100 employees or less.

The Coastal Resources Division has determined that the proposed amended chapter will have no negative economic impact on small businesses. This amendment does not require anything different than what is currently required by the Department of Natural Resources regarding projects located over coastal marshlands.

DH

**RULES  
OF  
GEORGIA DEPARTMENT OF NATURAL RESOURCES  
COASTAL RESOURCES DIVISION**

**SUBJECT 391-2-3  
COASTAL MARSHLANDS PROTECTION**

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**391-2-3-.02 Regulation of Upland  
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**391-2-3-.02 Regulation of Upland Component of a Project**

**(1) Findings and Purpose.**

(a) Findings. In promulgating this Rule, the Board declares the following:

1. Georgia's coastal marshlands have long been recognized by the General Assembly and the Board as a vital natural resource system, a vital area of the state, and essential to maintain the health, safety, and welfare of all the citizens of the State.

2. The Coastal Marshlands Protection Act (CMPA) provides a grant of authority to the Board of Natural Resources and Coastal Marshlands Protection Committee to regulate certain activities that affect or have the potential to affect the coastal marshlands of the state, to ensure the values and functions of the coastal marshlands are not impaired and to protect the public interest.

3. Stormwater management measures, impervious surface coverage standards, and marshlands buffer design and maintenance measures as applied to projects which are subject to permitting

under the Coastal Marshlands Protection Act are warranted so as to protect this vital area and to protect the public interest.

(b) Purpose. The purpose of these Rules is to implement the authority of the Board of Natural Resources to promulgate rules and regulations for permitting under and enforcement of the Coastal Marshlands Protection Act. This Chapter establishes procedures and criteria to be applied by the Coastal Marshlands Protection Committee when reviewing applications for a permit to remove, fill, dredge, drain, or otherwise alter any marshlands or construct or locate any structure on or over marshlands within the estuarine area of the state.

**(2) Definitions used in this Rule.**

(a) "Applicant" means any person who files a permit application under the Coastal Marshlands Protection Act.

(b) "Coastal marshlands" or "marshlands" means any marshland intertidal area, mud flat, tidal water bottom, or salt marsh in the State of Georgia within the estuarine area of the state, 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 ( *Borrichia 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.

(c) "Committee" means the Coastal Marshlands Protection Committee.

(d) "Effective impervious cover" is the percentage derived when total impervious area is adjusted to reflect the fact that a site design results in the actual impervious surface characteristics of a site with a lower total impervious area, supported by scientific and engineering studies and findings.

(e) "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.

(f) "Greenspace" means vegetative upland or wetland that remains in its natural state or has been developed only to the extent consistent with natural ecological systems protection.

(g) "Impervious surface" means any surface such as pavement, roofs, roadways or other surface material through which water does not permeate.

(h) "Marshlands buffer" means a zone or strip of land of a specified width ~~a long~~ along the riparian border of the project that serves as a protective setback.

(i) "Marshlands component of the project" means the part of the project in an estuarine area or any structure on or over an estuarine area, including but not limited to marinas, community docks, bridges, piers, and bulkheads, requiring a permit under the Coastal Marshlands Protection Act pursuant to O.C.G.A. Section 12-5-286.

(j) "Nonstructural Stormwater Management Practice" means any naturally occurring or planted vegetation or other pervious component of a stormwater management plan that provides for, or enhances, stormwater quality and/or reduces stormwater quantity or provides other stormwater management benefits.

(k) "Person" means any individual, partnership, corporation, municipal corporation, county, association, or public or private authority, and shall include the State of Georgia, its political subdivisions, and all its departments, boards, bureaus, commissions, or other agencies, unless otherwise specifically exempted by the Coastal Marshlands Protection Act.

(l) "Project" means the proposed construction or maintenance activity identified in an application for a marshlands permit within the contemplation of the Coastal Marshlands Protection Act. A project may consist of two components: a marshlands component and an upland component, as defined herein.

(m) "Stormwater Treatment" means a process of remediation, reduction and/or elimination of the undesirable characteristics of runoff including, but not limited to, peak runoff rate, velocity, volume, and quantity of solids and pollutants.

(n) "Total Impervious Area" means all impervious surface in a specified area as calculated as a percent of the total area.

(o) "Untreated Stormwater" means runoff that is discharged without previously being managed by one or a combination of techniques that remediate, reduce and/or eliminate undesirable characteristics of the runoff.

(p) "Upland" means lands that are neither coastal marshlands nor wetlands.

(q) "Upland component of the project" is all those service areas associated with marinas, community docks and commercial docks, as defined in 391-2-3-.03 ~~amenities, and recreational areas~~ located inland of the Coastal Marshlands Protection Act jurisdiction line, that serve or augment the functioning of the marshlands component of the project, such as, but not limited to, dry stack boat storage; dockmaster shop; fuel storage and delivery facilities to serve the marshlands component of the project; and restrooms intended for users of the marshlands component of the project. This term may extend to and cover such facilities adjacent to or in proximity to the marshlands component of the project that are intended to serve exclusively or primarily the users of the marshlands component of the project if the Committee finds in its sole discretion that such facility is likely to alter the marshlands.

(r) "Wetlands" means areas that are inundated or saturated by surface or ground water often and long enough to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, marshes, bogs, and floodplains.

**(3) Procedure for Determining Project Boundaries.** The applicant shall delineate the boundaries of the proposed project. Such boundaries shall be subject to review and validation by the staff of the Department of Natural Resources to ensure that the entire project is delineated. Such boundaries shall be included in the application proposed for consideration by the Committee. In this regard, the applicant shall submit documentation identifying all areas that are planned to be used in connection with the project which is delineated, to allow the Coastal Marshlands Protection Committee to verify the extent of the project.

**(4) Marshlands Buffers for Upland Component of the Project.**

(a) There is established a 50-foot marshlands buffer applicable to the upland component of the project as measured horizontally inland from the coastal marshland-upland interface, which is the Coastal Marshlands Protection Act jurisdiction line, so as to ensure the project does not result in the filling or other alteration of the coastal marshlands.

(b) The applicant for a permit under the Coastal Marshlands Protection Act and these rules shall certify adherence to soil and erosion control responsibilities, which, for purposes of the Coastal Marshlands Protection Act shall include recognition of and compliance with the following requirements unless in conflict with a criterion or exception established by the Environmental Protection Division of the Department of Natural Resources.

1. Except as provided in subparagraph 2. of this paragraph and paragraphs (d) and (g) below, no land-disturbing activities within the project boundaries shall be conducted within the 50-foot marshlands buffer, and such marshlands buffer shall remain in its natural, undisturbed state of vegetation, so as to naturally treat stormwater during both construction and post construction phases of the upland component of the project.

2. Land disturbance and construction of structures within the 50-foot marshlands buffer in the upland component of the project shall be limited to the following:

(i) Construction and maintenance of temporary structures necessary for construction of the marshlands component of the project;

(ii) Construction and maintenance of permanent structures that are required for the functionality of and/or provide permanent access to the marshlands component of the project; and

(iii) Planting and grading with vegetated materials within the marshlands buffer to enhance stormwater management, such as erosion and sediment control measures, and to allow pedestrian access for passive recreation.

(c) After such land disturbing activities associated with (b)2.(i) above are completed, and except as allowed for in (b)2.(ii) and (iii) above, the marshlands buffer must be restored to and maintained in a natural vegetated state or in a vegetated state at least as protective or better than pre-construction conditions, subject to hand trimming and thinning as authorized in the permit.

(d) Already existing impervious surfaces and structures within the marshlands buffer area may remain and be maintained, provided the replacement, modification or upgrade does not increase any encroachment upon the required marshlands buffer in effect at the time of the replacement, modification or upgrade.

(e) Marshlands buffers shall be designed, installed and/or maintained sufficiently such that stormwater discharge to coastal marshlands from the marshlands buffer is managed according to the policy, criteria, and information including technical specifications and standards in the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual, 1st Edition, April 2009.

(f) Nothing in this Rule shall be construed to limit the power or authority of the Director of the Environmental Protection Division.

(g) The Coastal Marshlands Protection Committee, in its sole discretion, is authorized to grant a permit that includes an exception

to the 50-foot marshlands buffer if the Committee finds that three conditions are met:

1. Application of the marshlands buffer requirement will create a substantial hardship on the applicant; and

2. The purpose, function and treatment capabilities of the marshlands buffer can be or has been achieved by alternative means, such that the stormwater discharge to coastal marshlands from the marshlands buffer is managed according to the policy, criteria, and information including technical specifications and standards in the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual, 1st Edition, April 2009, and is protective of water quality; and

3. Consistent with the purpose and reasonable use of the proposed project, the smallest practicable encroachment into the marshlands buffer is being utilized;

4. For purposes of this part, substantial hardship means a significant, site-specific and demonstrable condition exists that precludes the project from being constructed. The Coastal Marshlands Protection Committee shall consider the following factors in their evaluation of whether a substantial hardship exists:

(i) If the applicant complies with the required marshlands buffer width, the property cannot practicably be used for the proposed project. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception; and

(ii) The substantial hardship results from application of the marshlands buffer width to the property separately or in conjunction

with other factors such as unrelated deed restrictions, other state, federal or local government restrictions or ordinances; and

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

(iv) The applicant or predecessor in title did not, by deed, covenant, or other voluntary act after March 26, 2007, create a situation where the application of the marshlands buffer would create a substantial hardship on the applicant.

**(5) Stormwater Management Standards for the Upland Component of the Project.**

(a) There shall be no discharge of untreated stormwater from developed or disturbed areas, whether surface or piped, to coastal marshlands from the upland component of the project. The Committee is authorized to waive this requirement if the Committee finds that the site or project characteristics prohibit treatment, there is no practicable alternative, and it has minimal adverse impact.

(b) In addition to the requirements of Section (5)(a) above, discharged stormwater from the upland component of the project shall be managed according to the policy, criteria, and information including technical specifications and standards in the Coastal Stormwater Supplement to the Georgia Stormwater Management Manual, 1st Edition, April 2009.

(c) As a component of the stormwater treatment system, greenspace shall be retained and interconnected where practicable and appropriate.

(d) The use of non-structural stormwater management and stormwater better site design practices, such as those listed in the

Coastal Stormwater Supplement to the Georgia Stormwater Management Manual, 1st Edition, April 2009, shall be utilized to the maximum extent practicable.

(6) **Impervious Surface.** Pervious surfaces shall be used to the maximum extent practicable, and total impervious area shall be minimized with the goal of achieving no more than 15% effective impervious cover where practicable taking into account existing structures that are part of the project and the available land area that is part of the upland component of the project.

(7) **Required Information.** The Coastal Marshlands Protection Committee shall establish an application checklist to assist applicants. A copy of the application checklist may be obtained by contacting the Committee at its administrative headquarters: Coastal Resources Division, One Conservation Way, Suite 300, Brunswick, Georgia 31520, 912-264-7218.

**Statutory Authority.**

O.C.G.A. Title 12, O.C.G.A. Sec. 12-5-285.