

Coastal Marshlands Protection Act
Proposed Amendments to Regulation of Upland Component of a Project
Chapter 391-2-3-.02

Frequently Asked Questions

September 20, 2023

What do Upland Rules currently regulate?

The Coastal Marshlands Protection Act (CMPA) rules were adopted in 2007 to regulate upland activities that augment/serve the function of the marshlands component of a project. The rules were developed through an intensive process involving the Upland Stakeholder committee.

The Rules only regulate an upland component of a project. In other words, if an area landward of the marsh is not part of the upland component that augments/serves a CMPA-permitted activity, as currently defined, the Rules do not apply. Within an upland component, a 50-foot coastal marshlands buffer is required within which no permanent structures may be constructed that do not provide functionality of and/or provide permanent access to the marshlands component; stormwater must be managed to prevent untreated discharge into the marsh; and new impervious surfaces in the upland component should be minimized. An exemption to the 50-foot marshlands buffer may be granted by the Coastal Marshlands Protection Committee under certain circumstances.

What are the Proposed Amendments?

The proposed amendments are to modify the definition of “upland component of a project” to clarify the rules only apply to marinas, community docks and commercial docks; this was the intention when the rules were adopted in 2007. The current definition states the upland component is to apply to service areas, amenities and recreational areas associated with a project including: dry stack boat storage, dockmaster shop, fuel storage and deliver facilities, and restrooms, and further covers “facilities” adjacent to or in proximity to the marshlands component, intended to serve the users of the marshlands component. “Facilities” is not defined in the rule. As a result, it can be construed that the definition of upland component of a project may extend to projects other than marinas, community or commercial docks.

Why does CRD view these amendments to be important?

The Upland Rules were developed by stakeholder committee in 2007 to regulate activities associated with the development of primarily commercial marinas, community docks and commercial docks. Residential private docks and projects not subject to CMPA permitting requirements (in 2007) were not to be regulated. However, the vague definition of “upland component of a project” resulted in CRDs conservative approach in applying the rules to upland components across a spectrum of projects not limited to marinas, community, and commercial docks.

In 2022, CRD reevaluated its process for authorizing small bank stabilization projects. Projects that did not require CMPA permits between 2007 and 2021, would beginning in 2022. The vast majority of small bank stabilization projects, to include living shorelines, rip rap and bulkheads, are located on private, residential properties.

Unfortunately, because the Upland Stakeholder committee was focusing on rules intended to apply to marinas, community and commercial docks, the public was not informed, in 2007 or during subsequent rule amendments, that the Upland Rules could apply to private, residential bank stabilization projects.

Similarly, the Upland Stakeholder committee did not intend for the rules to apply to municipal infrastructure, roads or drainage projects, though CRD has applied the rule to these types of projects for many years. This results in additional engineering requirements on the part of local governments and CRDs regulation over already-existing roads and other public infrastructure.

Due to the recent changes in permitting for bank stabilization projects, and long-standing challenges in applying the Upland Rules to municipal infrastructure projects, CRD believes it is in the public interest to offer the proposed amendments to the definition of “upland component of a project” to clarify the intention and application of the Rule.

If no 50-foot marshlands buffer is being applied to small residential bank stabilization projects through the rule, what is regulating buffers?

Prior to 2022, CRD managed most bank stabilization projects through the Revocable License process, meaning that CMPA permits were not required for those projects. Buffers were regulated through the Georgia Erosion and Sedimentation Act and/or local ordinances. For projects that are not subject to the Upland Rules, buffer regulations will remain the same as before 2022. Small bank stabilization projects will now be permitted through the CMPA without the Upland Rules, but other state and local buffer regulations will not change.

Is CRD eliminating the 50-foot coastal marshlands buffer?

No. The 50-foot coastal marshland buffers will continue to apply to all marina, community or commercial dock projects for which there is an upland component, unless an exemption is granted by the Coastal Marshlands Protection Committee.

It is important to note that unless there is a CMPA permitted activity *with an upland component*, there is no 50-foot coastal marshlands buffer, at all. This buffer does not exist without both a CMPA permit for a marshland component and an upland component.

Will there be “upland activities” that have been regulated under CMPA that will no longer be regulated or permitted by any entity?

No. Upland Rules ONLY apply when there is a CMPA permit for activities in the coastal marshlands *with an upland component*. For example, there is no 50-foot coastal marshland buffer on a private, residential marshfront *until* there is a CMPA permit for a marshland activity that also has related activities in the upland. It is an additional requirement that is triggered only by a CMPA permit.

Coastal properties are generally subject to other state (e.g., Environmental Protection Division), federal (e.g., US Army Corps of Engineers) and/or local government regulations. Examples of laws/regulations that apply may include local government ordinances (varies by project

location), Georgia Erosion and Sedimentation Control Act, or the Clean Water Act administered by the US Army Corps of Engineers.

Were the Upland Rules always applied broadly to include all projects authorized under the CMPA?

It has been routine over the past several years for CRD to interpret the definition of “upland component of a project” very conservatively, or “broadly” such that all projects with upland activities serving or augmenting the marshland component have been subjected to the Upland Rules.

Will the rule change remove bank stabilization activities from permitting requirements under the CMPA?

No. The proposed amendments to the Upland Rules will not remove any activities, including bank stabilization activities, from the permitting requirements of the CMPA.

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How will ‘bank stabilization activities’ that will no longer be subject to the Upland Rules be regulated and permitted?

Bank stabilization activities resulting in alterations to coastal marshlands will continue to be regulated and permitted through the CMPA.

How will municipal and road projects be regulated and permitted if remove from CMPA Upland Rules?

Municipal projects that alter coastal marshlands but that do not meet any of the exemptions of the CMPA under O.C.G.A 12-5-295 will continue to require a CMPA permit.

In which circumstances/for which “upland activities” will this rule change reduce or remove buffer requirements?

The proposed rule change will no longer regulate upland activities associated with projects that are not considered to be a marina, community dock or commercial dock. Meaning, the 50-foot marshlands buffer will not apply to any other type of project such as municipal infrastructure projects and bank stabilization projects. Buffer requirements of the Erosion and Sedimentation

Act or of local governments will not be affected. For bank stabilization projects, specifically, buffer regulations will continue as they did prior to CRD's permitting changes in 2022.

Was there stakeholder involvement during the development of the proposed amendments?

The Upland Rules were originally developed through a very involved stakeholder process that resulted in draft rules that were adopted by the Board of Natural Resources. CRD has proposed the current amendments solely to reflect the intensions of the 2007 Upland Stakeholder Committee, their deliberations and public notifications of the rulemaking process. Therefore, no new stakeholder process was initiated to draft the proposed amendment.

Do the proposed amendments change anything related to bank stabilization and the role or relationship between CRD and the US Army Corps of Engineers?

Currently, CRD permits bank stabilization activities in coastal marshlands through the CMPA (formerly through the Revocable License process) and will continue to do so. However, upland activities will no longer be permitted under the Upland Rules. There will be no change in role of CRD or the US Army Corps of Engineers as it relates to bank stabilization activities because of the proposed amendments. Every CMPA permitted project also requires authorization from the US Army Corps of Engineers due to the fact that both agencies have jurisdiction in coastal marshlands.