



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

WALTER RABON
COMMISSIONER

DOUG HAYMANS
DIRECTOR

December 5, 2023

MEMORANDUM

TO: Board of Natural Resources
FROM: Doug Haymans
SUBJECT: Re-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 are revisions to 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, commercial docks, fishing piers, boat ramps and bridges located over coastal marshlands. These proposed amendments, which were revised as a result of public input, would clarify what type projects would be subject to the rule by modifying the definition of the upland component of the project.

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

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- Background and Synopsis Page C 3 - 5
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DH/ja

Attachments



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

WALTER RABON
COMMISSIONER

DOUG HAYMANS
DIRECTOR

December 6, 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. The proposed amendments have been revised considering public comments received in response to a previous notice.

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, community and commercial docks, fishing piers, boat ramps and bridge projects located over coastal marshlands.

A public hearing will be held Thursday, January 4, 2024 at 5:30 PM at the Coastal Resources Division, One Conservation Way, Brunswick, GA 31520. Written public comment will be received through Friday, January 19, 2024. 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 February 27, 2024 at 9:00 AM at its board meeting to be held at 2 Martin Luther King Jr. Drive, SE, Suite 1252, Atlanta, Georgia.

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. Click on the “Public 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 addressed upland impacts from marinas, community docks and commercial docks, fishing piers, boat ramps and bridges. Upland components are currently 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, Stakeholder committee recommendations referred only to marinas, community docks, commercial docks, fishing piers, boat ramps and bridges. Their recommendations were subject to extensive public comment and subsequently adopted by the Board in 2007.

The rules determine the extent to which the CMPA permit should authorize upland activities and require a 50-foot marshlands buffer extending landward of the upland component, as well as stringent stormwater treatment and impervious cover standards. While the Stakeholder Committee clearly had limited its scope to certain types of marshland projects, the resulting Upland Rules, particularly the definition of “upland component of the project,” provide guidance as to the

applicability but is not as clear as to which CMPA permitted project types they are to be applied to. Because the language of the Rule is vague, and although documentation from the time the Rule was adopted supports a limited scope, CRD has more recently taken a conservative interpretation of the Rules and applied them to a wider range of project types. This has resulted in CRD's regulation of project types not originally intended to fall under the Rule, for example, municipal drainage and road projects and residential bank stabilization projects. Often, the application of the rules to these types of projects has required additional burden on the applicant to meet stormwater and impervious surface standards not directly related to the marshland component and caused delays in agency processing times pending additional information from applicants. In such cases, however, the upland components of projects are not "serving" or augmenting the functions of the marshlands component in the same manner as a "dry stack boat storage, dockmaster shop, fuel storage and delivery facilities...and restrooms" for a marina, community dock or boat ramps. The unanticipated regulation of municipal and residential parcels, as a result of the lack of specificity in an otherwise effective regulation, creates a burden upon the property owner to use their property and upon CRD to regulate and enforce development on municipal or residential parcels. This is particularly burdensome when the regulations, specifically buffer requirements extending into homes, decks/patios, pools, sheds, swing sets, fire pits and other common appurtenances that are not related to the marshlands component, typically a bank stabilization structure (bulkhead, living shoreline, riprap). 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 original intent and application of the rules.

CRD initially briefed the Board of Natural Resources on the proposed amendments on August 22, 2023, after which a public hearing was held on September 6, 2023, and a written public comment period through September 25, which was extended through October 10, 2023. CRD received seventy-three (73) written public comments, sixty-five (65) of which were nearly identical form letter comments. Comments contained several themes: stakeholder engagement/public involvement, recommended changes to the proposed amendments, requirements for bulkheads and incentives for living shorelines, procedural concerns with the rulemaking process, and coordination with EPD on buffers. CRD has prepared written responses to comments.

Upon consideration of public comment, CRD recommends certain revisions to the proposed amendments as originally noticed in August 2023, to broaden the applicability of the Rules to not only marinas, community docks and commercial docks, but also to fishing piers, boat ramps and bridges. Additionally, CRD agrees with commentors that striking certain language in the definition of upland component of the project regarding "service areas, amenities, and recreational areas" weakens the rule, and therefore proposes to retain that language.

Purpose

The purpose of the revised, 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, commercial docks, fishing piers, boat ramps and bridges, 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, commercial docks, fishing piers, boat ramps and bridges as intended by the Board in 2007 upon adoption of the rules based on recommendation of the Upland Stakeholder Committee. This minor change will lead to significant efficiencies in permit requirements for applicants and in processing times for projects not subject to the Rules, and more consistent and predictable outcomes.

Main Features

The amended rule will:

1. add “associated with marinas, community docks, commercial docks, fishing piers, boat ramps and bridges” to the definition of an upland component (391-2-3-.02 (2)(q)). These additions will clarify that the upland rules will only apply to these types of 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 clarify that the application of the rule is limited to marinas, community docks, commercial docks, fishing piers, boat ramps and bridges.

Date, Time, and Place of Board Action:

Board Action: February 27, 2024; 9:00 AM; 2 Martin Luther King Jr. Drive, SE, Suite 1252, Atlanta, Georgia.

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.

- 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 19, 2023 – Public comment period extended to October 10, 2023
- September 25, 2023 – Original Public comment period deadline.
- October 10, 2023 - Extended public comment deadline.
- December 5, 2023 – Re-brief Board on revisions to the proposed rule.
- December 6, 2023 – Public Notice of Comment Period.
- January 4, 2024 – Public Hearing in Brunswick.
- January 19, 2024 – Public comment period closes.
- February 27, 2024 – Final Action.



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

WALTER RABON
COMMISSIONER

DOUG HAYMANS
DIRECTOR

October 31, 2023

MEMORANDUM

TO: Board of Natural Resources

FROM: Doug Haymans

SUBJECT: Summary of Public Comments and Responses Related to Rules of the Department of Natural Resources Coastal Resources Division, Regulation of Upland Component of a Project, Chapter 391-2-3-.02

CRD's Public Notice of proposed amendments to Regulation of Upland Component of a Project, Chapter 391-2-3-.02, (herein after Upland Rule or Rule) ran from August 23, 2023 to October 10, 2023. CRD received seventy-three (73) written comments, including sixty-five (65) nearly identical form letter comments. In addition, four (4) comments were made at a Public Hearing held on September 6, 2023, at the Coastal Resources Division in Brunswick, GA. Several common themes (bolded) emerged across the comments which are summarized and responded to below.

Stakeholder Engagement and Public Involvement

Summary of Comments:

- The original rule making process was based on an extensive stakeholder process and public input. CRD is relying on this 20-yr old stakeholder group to recommend changes but has applied rules more broadly than marinas, community, and commercial docks since then. Rulemaking should be delayed until a new stakeholder group can be convened to deliver cooperative recommendations, to be comprised of EPD, local issuing authorities, developers, and NGOs.
- Insufficient information was provided in the public notice. The public cannot understand the rationale for amending the rules, or the effects the rule would have on the environment.
- CRD has not adequately explained how the proposed changes affect public interest.

CRD's Response:

CRD proposed the Upland Rule amendments to align with the results of an extensive stakeholder and public input process conducted in 2006-2007, the outcome of which is the current Upland Rules. After more than a decade of implementation, it is now apparent the need to address vagaries within the rule. The sole purpose of the proposed amendment is to clarify the original intent of the Rule. As a result of public comment, CRD recognizes the need for an additional public hearing and comment period.

Recommendations for Amending the Proposed Changes

Summary of Comments:

- The Upland Rule's original purpose was to be applied to commercial, community and public projects. The Rule was not to apply to CMPA exempt private recreational docks or marshfront properties without a CMPA project. Include "fishing piers, boat ramps and bridges-to-hammocks" in the definition of Upland Component.
- Retain "amenities and recreational areas" in the definition of Upland Component.
- Explain how redirected resources from bulkhead permitting will be reassigned.
- Include additional project types such as multi-home residential developments and athletic fields into regulations.
- Keep regulations and enforcement in-house and don't depend on other entities to protect the river.
- Small projects that are proposed to not be covered because of the amendments can seek hardship buffer variance if there is a true hardship.
- Lessening the requirements appears to defeat the purpose of CRD's directive to issue permits to all projects regardless of size.
- CRD has been applying Upland Rules to projects w/upland facilities, including bulkheads. "Facilities" is not defined in rule; as a result, it can be construed that definition of Upland Component of a Project may extend to project other than marinas, community or commercial docks.
- CRD should ensure wildlife and habitat needs come before profit.

CRD's Response:

The original Rules applied primarily to *community, commercial and public projects* such as marinas, community and commercial docks. As was presented during the public hearing, and later confirmed with additional documentation posted on CRD's website, the rules were in fact, also intended to apply to fishing piers, boat ramps and bridges.

Regarding deletion of "amenities and recreations areas", CRD agrees "amenities and recreational areas" is important in the definition and should remain.

Regarding additional project types, CRD recognizes there is a wide range of projects that could have associated upland components. CRD's goal at this time is to maintain the original intent of the Rules and not to extend the rule beyond what was discussed by stakeholders, vetted by the public and ultimately adopted by the Board.

Regarding defining "facilities" the term is simply descriptive of dry stack storage, dockmasters shop, fuel systems, and bathrooms (paragraph (2)(q)) and therefore does not need further definition.

CRD should require buffers on shoreline hardening projects with an upland component; incentivize nature-based solutions and living shorelines:

Summary of Comments:

- Incentivize living shorelines and other bioengineering solutions as opposed to bulkheading.
- Require buffers for shoreline hardening projects with an upland component.
- Conditions should be applied to the Revocable Licenses issued for bulkheads, i.e. requiring planting of native grasses in the applicable upland buffer to filter pollutants and help stabilize adjacent upland from further erosion behind the bulkhead.
- CRD should reconsider removal of buffer for certain developments such as bulkheads.

- CRD should maintain its enforcement of 50-ft buffer requirement for bulkheads and other shoreline hardening projects to maintain marsh migration.

CRD's Response:

CRD proposed the amendments to be consistent with the recommendations of the Stakeholder group who, to CRD's present knowledge, did not discuss or analyze buffers for bank stabilization projects with an upland component, nor buffers for projects on residential parcels. CRD believes the Upland Stakeholder group did not intend for the Rules to apply to bank stabilization projects because they were not subject to the CMPA until August 2022 when CRD updated its permitting procedures. Thus, the applicability of the upland standards to such projects was neither meaningfully analyzed nor presented to the Board.

CRD works with agencies, property owners and other stakeholders to understand and promote the use of "living shorelines," or nature-based solutions, as alternatives for shoreline hardening. To date, CRD has supported the installation of approximately one dozen living shoreline projects throughout the coast. The proposed amendments, while not incentivizing living shorelines, will keep them on a level playing field with bulkheads that otherwise can often be constructed without an upland component, as both would be subject to the CMPA.

Procedural Concerns with CRD's Rulemaking Process

Summary of Comments:

- CRD rulemaking has several "fatal flaws."
- Failure to uphold regulatory responsibility over all significant upland projects is a failure to uphold the charge specific to CRD under 391-2-3-.02(1)(a)(2)
- Not in compliance with GA Environmental Policy Act (GEPA) which requires environmental effects report, detailed statement of rationale.
- "Background and synopsis" does not meet requirements of GA Administrative Procedures Act (GAPA); needs statement of purpose, main features of the proposed rule and differences between the existing and proposed rule.
- CRD should not characterize this as a minor change; it would strip the entire coast of a 50-ft buffer.
- CRD's proposed changes are arbitrary or capricious.
- No evidence in the public notice that DNR intended to apply the upland rules as narrowly as currently proposed.
- If two interpretations of a rule are possible, the more reasonable is to be chosen.
- CRD is decreasing the level of protection of the marsh which goes against the CMPA.
- Definition of marshlands component includes "bridges" and "bulkheads" suggesting DNR did not intend to limit rule to just marinas, community, and commercial docks.
- Current broad application of the Rules demonstrate that was exactly the original intent.

CRD's Response:

CRD acknowledges that not all commentors were clear as to the purpose and the potential effects of the proposed changes; however, the proposed amendment is compliant with the GAPA. In response to public requests, an extended opportunity for public comment was issued. CRD has reviewed these comments and appropriately amended the proposal for clarification. A re-brief to the Board of Natural Resources and an additional public comment period prior to final action is proposed.

Regarding the purported inconsistency with the Georgia Environmental Policy Act (O.C.G.A. 12-16-1 et seq.), the Act *excludes* from its requirements actions by an agency to promulgate or implement rules and regulations (O.C.G.A. 12-16-3(7)(D)).

Regarding the broad, more conservative approach CRD has taken in applying the current Upland Rule, the fact that the Rule can have multiple interpretations is exactly the reason CRD has recommended the proposed amendments. CRD's goal is a regulation that is clear so as to be applied consistently today as when it was adopted.

Coordination with Environmental Protection Division Related to Buffers

Summary of Comments:

- CRD/EPD should offer assurances that the shift in buffer responsibility will be honored, or details as to how the shift will be implemented when EPD has so many buffer exemptions; what agreement/documents describe how CRD/EPD work to share responsibility; and how will CRD/EPD work with local issuing authorities to understand their charge, update local ordinances and monitor the situation to ensure marshes and state waters are not negatively impacted by the proposal?
- EPD buffers exemptions could leave certain marsh projects without any buffer requirements.
- CRD has not explained how EPD 25-ft buffer will be applied in absence of 50-ft buffer.
- Given LIA's role in enforcing EPD's buffer regulation, will relying on EPD's enforcement of the buffer achieve desired goal of protecting marshlands?

CRD's Response:

CRD notes that EPD has authority through the Erosion and Sedimentation Act to regulate activity in the area 25 feet landward of the CRD-established JD line. For any project where there is a CMPA permit with an upland component subject to the Rules, the marshlands buffer requirement administered through the CMPA permit issued by CRD applies, and that activity is exempt from the E&S buffer variance requirements administered by EPD. Should a hardship be granted under the CMPA Rules and the buffer requirement waived, the E&S buffer still would not apply to that project site. In a similar manner, if the Upland Rules are not applied to a project and the activity in the area landward of the CRD-established JD line is not included in the CMPA permit, the E&S buffer requirements will apply. There is also a process by which an E&S buffer variance can be granted by EPD.

Because CRD/EPD regulations are so closely related, coordination occurs to ensure streamlined and predictable regulation and enforcement of projects associated with coastal marshlands. Written agency guidance has been developed as to when E&S buffer requirements apply. Anytime there is either no CMPA permit for an activity or there is a CMPA permit that does not include an upland component, the agencies coordinate to ensure that applicable regulations are enforced.

For bank stabilization activities, CRD/EPD have a long-standing coordination process to determine when and if an E&S buffer variance is required. CRD does not process an application until a determination is made by EPD about whether the proposed activity in the area 25 feet landward of the CRD-established JD is or is not subject to an exemption to the requirement to obtain a variance from EPD. This process existed prior to August 2022 and will continue after this proposed rule change is effective. Nothing in CRD's proposed amendments affect other state or local regulations.



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

WALTER RABON
COMMISSIONER

DOUG HAYMANS
DIRECTOR

October 30, 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

Subject 391-2-3

Coastal Marshlands Protection

STRIKETHROUGH VERSION
ADDITIONS ARE UNDERLINED AND DELETIONS ARE
~~STRIKETHROUGH~~

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
Component of a Project**

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, amenities, and recreational areas associated with marinas, community docks, commercial docks, fishing piers, boat ramps and bridges 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.

EXACT COPY VERSION

**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
Component of a Project**

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 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, amenities, and recreational areas associated with marinas, community docks, commercial docks, fishing piers, boat ramps and bridges 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.

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(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.