

Minutes
Environmental Protection Committee
A.W. Jones Heritage Center
610 Beachview Drive
St. Simons Island, GA 31522

January 29, 2016

Attending:

Committee Members

William Bagwell, Chairman
Dwight Evans, Vice Chairman
Dwight Davis
Rob Leebern
Aaron McWhorter
Matt Sawhill
Brother Stewart
Ray Lambert, Jr., Board Chair, ex-officio

Board Members

Nancy Addison
Duncan Johnson, Jr.
Bill Jones
Mark Mobley
Paul Shailendra
Bodine Sinyard
Philip Watt
Philip Wilheit
Dee Yancey

Guests

Bryan Tolar, Georgia Agribusiness Council
Ronny Just, Georgia Power Company
Mark Berry, Georgia Power Company
Tracy Bible Raulerson, Opterra Energy
Craig Campbell, Opterra Energy
Kris Anderson, GEFA
Tom Ulmer, Opterra Energy
David Kyler, Center for a Sustainable Coast

Staff Members

Mark Williams
Walter Rabon
Kyle Pearson
Zachary Harris
Mary Kathryn Yearata
Cathy Barnette
Amber Carter
Dave Crass
Dan Forster
Jon Ambrose
Mary Pffka
Steve Friedman
Eddie Henderson
Stephen Adams
Keil Toney
Chris Ridley
Jeff Weaver
Spud Woodward
Karl Burgess
Doug Haymans
Shawn Jordan
Bob Sargent
Jennifer Kline
Jill Andrews
Stacia Hendricks
Skye Stockel
John Erbele
Terry West
Jud Turner
Mary Walker
Jac Capp
Jeff Cown
Chuck Mueller

The January 29, 2016 meeting of the Environmental Protection Division was called to order by Chairman Ray Lambert.

Chairman Lambert called on William Bagwell, Chairman of the Environmental Protection Committee.

Mr. Bagwell called on Jac Capp, Chief of the Water Protection Branch of the Environmental Protection Division, to present the proposed amendments to Rules for Erosion and Sedimentation Control, Chapter 391-3-7.

Mr. Capp stated that the proposed amendments were in response to Senate Bill 101 which was adopted by the legislature in 2015 (the Erosion and Sedimentation Act Amendments). He further stated that Senate Bill 101 generally establishes a process for protecting coastal marshlands by preserving buffers that parallels the existing process we have for protecting other state waters. He added that Senate Bill 101 also establishes variance and variance by rule regulatory programs to be administered by the Environmental Protection Division (EPD).

Mr. Capp stated that a new paragraph added at Code Section 12-7-6 establishes a 25 foot buffer along coastal marshlands except where the Director of EPD determines to allow a variance that is at least as protective of natural resources as the environment. He further stated that there are eight exemptions/exceptions in total which are all carried forward into the rule verbatim. He added that Senate Bill 101 directed the Department of Natural Resources (DNR) to promulgate rules and regulations that contain criteria for the grant or denial by the EPD Director of requests for variances and provide for variances by rule for certain categories of activities within the buffer that will have minimal impact on the water quality or aquatic habitat of the adjacent marsh.

Mr. Capp stated that the proposed rule amendments includes the variance process, meaning the exceptions carried forward from statute into proposed rule and that the variance criteria and procedures generally parallel the stream buffer rules modified for coastal context. He further stated that the procedures require application, minimization, restoration, and mitigation procedures as well as public notice and comment period. He added that the timing would be within 60 days of application receipt, and the EPD will provide written comments to the applicant or propose issuance.

Mr. Capp stated that the variance by rule process is an alternative to the standard variance process. He further stated that the eligible criteria are activities where the area within the buffer is less than 500 feet squared and activities that have a “minor buffer impact” and total area of buffer impacts is less than 5,000 feet squared. He added that the bank and shoreline stabilization projects are not eligible but may be considered for a standard variance.

Mr. Capp stated that the variance by rule procedures include no public notice, but may construct fourteen days after notification to EPD. He further stated that the notice to EPD includes description of the activity and photographs of the area to be affected. He added that standard

conditions imposed by the rule include a site plan, adequate erosion control measures, minimized disturbance of existing buffer vegetation, temporary stabilization measures during project, and final stabilization which includes a re-vegetation plan.

Mr. Capp stated that other proposed changes were the modernization of the public notice process and cleaning up the buffer variance application to also include permitting from USACE. He further stated that during the public comment period, seven groups commented including governmental entities, environmental groups, and law firms. He added that a summary of the comments includes definitions being too broad, EPD needing to regulate the use of yard chemicals within the buffer, living shorelines should not be discouraged, public notices should be required to be published in the legal organ, and that the variance by rule program needs clarification.

Mr. Capp stated that the Board was briefed on October 27, 2015 of this proposed rule change. He further stated that the public notice was posted November 4, 2015 and the public hearing was December 2, 2015.

Mr. Capp stated he would request the Committee recommend that the Board approve the item as presented.

Mr. Bagwell stated that Mr. Leebern would recuse himself from this vote.

Mr. Bagwell introduced speaker David Kyler, the Director of the Center for Sustainable Coast.

Mr. Kyler stated that the Board needs to consider herbicides which kill vegetation and allow soil to get into the water. He further stated that the focus needs to be on keeping the vegetation intact. He added that the proposed rule includes no practice to evaluate the cumulative effect of the buffer variances.

Mr. Kyler stated the importance of protecting our water.

Mr. Bagwell called on Mr. Capp to respond to Mr. Kyler's comments.

Mr. Capp stated that the Erosion and Sedimentation Act does not pertain to yard chemicals. He further stated that EPD has an entire program to improve and protect water quality. He added that there is no need for a redundant program just for buffers alone.

Mr. Bagwell called for a motion.

A motion was made by Mr. Davis, seconded by Mr. Stewart and carried unanimously that the Committee recommend that the Board adopt the Resolution to approve the proposed amendments to Rules for Erosion and Sedimentation Control, Chapter 391-3-7, as presented.

There being no further business, the meeting was adjourned.