

**PROPOSED AMENDMENTS TO THE RULES
OF THE DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION
RELATING TO CERTIFICATION OF
ENVIRONMENTALLY SENSITIVE PROPERTY, CHAPTER 391-3-18**

The Rules of the Department of the Natural Resources, Chapter 391-3-18, Rules for Certification of Environmentally Sensitive Property, are hereby amended and revised for specific Rules, or such subdivisions thereof as may be indicated.

[Note: Underlined text is proposed to be added. ~~Lined-through~~ text is proposed to be deleted.]

CHAPTER 391-3-18 RULES FOR CERTIFICATION OF ENVIRONMENTALLY SENSITIVE PROPERTY

Rule 391-3-18-.01 Purpose

The purpose of these rules is to establish the procedures for certification of environmentally sensitive tracts of property. ~~Chapter 5 of Title 48 of the Official Code of Georgia Annotated (O.C.G.A.) § 48-5-7.4(a)(2) requires that the Department of Natural Resources certify environmentally sensitive property for purposes of ad valorem taxation for conservation use, in accordance with O.C.G.A. Sec. 48-5-7.4(a)(2). Six categories of environmentally sensitive property are listed including: steep mountain slopes, wetlands, significant groundwater recharge areas, undeveloped barrier islands, habitats containing endangered or threatened species, and river corridors. These rules also are also designed to complement the Department of Revenue's Rules for Conservation Use Property, (Chapter 560-11-6). The rules of the Department of Revenue concerning requirements, maintenance of the land in its natural condition, covenants, and breach of covenants shall be applicable to lands designated as environmentally sensitive.~~

Authority: O.C.G.A. Secs. 48-5-7.4, 12-2-4(k) and 12-2-24(a).

391-3-18-.02 Definitions

All terms used in this ~~paragraph~~rule chapter shall be interpreted in accordance with the definitions as set forth in ~~Chapter 5, of Title 48 of the Official Code of Georgia Annotated~~O.C.G.A. Sec. 48-5-7.4 and Rule Chapter 560-11-6.

- (a) "Department" means the Georgia Department of Natural Resources.
- (b) ~~"FEMA" means the Federal Emergency Management Agency.~~
- (c) ~~"Habitat (for endangered or threatened species)" means any area verified by the Department as:~~
1. ~~actually containing naturally occurring individuals of a species that has been listed as endangered or threatened under the Federal Endangered Species Act, as amended, and;~~
 2. ~~being likely to support the continued existence of that species by providing for a significant portion of that species' biological requirements.~~

(2) "Maintenance in its natural condition" means to manage the land in such a manner that would not ruin, erode, harm, damage, or spoil the nature, distinctiveness, identity, appearance, utility or function that originally characterized the property as environmentally sensitive under O.C.G.A. Section 48-5-7.4(a)(2).

~~(d) — "Natural condition" means the flora, fauna, soil, and water conditions that would develop on a specific tract of land if all human interference were to be removed. The tract of land must have been undisturbed for a sufficient period of time for natural processes to dominate the tract. This period of time will vary among environments. The natural environment for specific areas are described in Georgia Geologic Survey Bulletin 114, "The Natural Environments Of Georgia." Habitats may require human management of the tract in order to maintain the conditions for which the land was deemed to be environmentally sensitive.~~

~~(e) — "Owner" or "owners" means:~~

- ~~1. — one or more natural or naturalized citizens; or~~
- ~~2. — an estate of which the devisees or heirs are one or more natural or naturalized citizens; or~~
- ~~3. — a trust of which beneficiaries are one or more natural or naturalized citizens; or~~
- ~~4. — a family owned farm corporation, the controlling interest of which is owned by one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning, an estate of which the devisees or heirs are one or more natural or naturalized citizens, or trust of which the beneficiaries are one or more natural or naturalized citizens and which family farm corporation derived 80 percent or more of its gross income from bona fide conservation uses within this state within the year immediately preceding the year in which eligibility is sought; or~~
- ~~5. — a bona fide nonprofit conservation organization designated under Section 501(c)(3) of the Internal Revenue Code.~~

(3) "Primary use" means the principal use to which the property is devoted, as distinct from an incidental, occasional, intermediate or temporary use for some other purpose not detrimental to or in conflict with its primary purpose.

~~(f) — "Quadrangle map" means a 1:24,000 scale, 7.5 minute topographic map published by the U.S. Geologic Survey.~~

~~(g) — "Qualified consultant" means any individuals or company that have been so certified by the Department of Natural Resources.~~

~~(h) — "Registered forester" means any persons holding a valid and current registration as a Forester pursuant to O.C.G.A. Sec. 12-6-90 et seq.~~

~~(i) — "Registered land surveyor" means any person holding a valid and current registration as a Land Surveyor pursuant to O.C.G.A. Sec. 43-15-1 et seq.~~

~~(j) — "Slope" means the ratio of the difference in elevation between two points on the ground, separated by 500 feet or more, and the horizontal distance between those two points.~~

~~(k) — "Tax map" means a map, prepared by local governments, that shows the locations of tracts of land within the jurisdiction, and the legal ownership and zoning, if any, of such tracts.~~

~~(l) — "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.~~

Authority: O.C.G.A. Secs. 48-5-7.4, 12-2-4(k) and 12-2-24(a).

Rule 391-3-18-.03 Environmentally Sensitive ~~Lands~~Property

~~The six categories of environmentally sensitive lands are the follows:~~

~~(a) — Steep Mountain Slopes. Any area that:~~

~~1. — is shown on a quadrangle map to be higher than the following elevations (in feet):~~

~~COUNTY — ELEV.~~

~~Bartow — 1600~~

~~Chattooga — 1580~~

~~Cherokee — 1840~~

~~Cobb — 1740~~

~~Dade — 1655~~

~~Dawson — 1980~~

~~Fannin — 2475~~

~~Floyd — 1570~~

~~Forsyth — 1900~~

~~Gilmer — 1860~~

~~Gordon — 1590~~

~~Habersham — 1760~~

~~Hall — 1800~~

~~Lumpkin — 2080~~

~~Murray — 1630~~

~~Pickens — 1860~~

~~Rabuns — 1900~~

~~Towns — 2930~~

~~Unions — 2600~~

~~Walker — 1655~~

~~White — 2100~~

~~Whitfield — 1630~~

~~2. — has a slope exceeding 25%; and~~

~~3. — meets the definitions of "natural conditions" (as defined in 391-3-18-.02 (d)) shall be considered to be a steep mountain slope for the purposes of this legislation. Steep mountain slopes shall include the crests, summits, and ridge tops which lie at elevations higher than those of adjacent steep mountain slopes (even though the crest, summits, and ridge tops may have a slope of less than 25%), provided that such crests, summits, and ridge tops are in a natural conditions as defined in 391-3-18-.02 (d).~~

~~(b) — Wetlands. Any area delineated as a wetlands by the U.S. Army Corps of Engineers under their jurisdiction, pursuant to Section 404 of the federal Clean Water Act, as amended; or any area shown on a 1:24,000 scale, U.S. Fish and Wildlife Service Wetland Inventory Map as being a wetland; or any area shown on a 1:24,000 scale, Georgia Department of Natural Resources Landcover Database maps as being a wetlands; that meets the definition of a wetland (as defined in 391-3-19-.02 (1)); and meets the definition of "natural conditions" (as defined in 391-3-18-.02 (d)) shall be considered to be a wetland for the purpose of this legislation.~~

~~(c) — Significant Ground-water Recharge Areas. Any area shown on the most recent edition of Georgia Geologic Survey Hydrologic Atlas 18 to be a significant ground-water recharge area, and that meets the definition of "natural conditions" (as defined in 391-3-18-.02 (d)) shall be treated as a significant ground-water recharge area for the purpose of this legislation.~~

~~(d) — Underdeveloped Barrier Islands. Any area identified in the U.S. Department of Interior's Report to Congress: Coastal Barrier Resources System", Volume 13, Georgia, and meets the definition of "natural conditions" (as defined in 391-3-18-.02 (d)) shall be treated as an undeveloped barrier island for the purposes of this legislation.~~

~~(e) — Habitats for Endangered or Threatened Species. Any area that meets the definition of a "habitat" for endangered or threatened species (as defined in 391-3-18-.02 (e)) and meets the definition of "natural conditions" (as defined 391-3-18-.02 (d)) shall be treated as a habitat for endangered and threatened species for the purposes of this legislation.~~

~~(f) — River Corridors. Any areas, proximal and perennial streams, shown on a published FEMA flood insurance map to be in the 100-year floodplain and that meet the definition of "natural conditions" (as defined in 391-3-18-.02 (d)) shall be treated as a river corridors for the purpose of this legislation.~~

(1) Environmentally sensitive property includes real property that meets the definition of one or more categories of paragraph (2) and where the primary use of such property is:

(a) for categories (2)(a) through (2)(f), maintenance in its natural condition; or

(b) for categories (2)(a) through (2)(c), enhancing the water quality of surface or ground waters;
or

(c) for category (2)(g), controlling or abating pollution of surface or ground waters by storm water runoff or otherwise enhancing the water quality of surface or ground waters.

(2) In accordance with O.C.G.A. § 48-5-7.4(a)(2), the categories of environmentally sensitive property are:

(a) Mountainous Terrain, defined as any land area 1,000 feet or more above the lowest elevation of the county in which such area is located that has a percentage slope of 25 percent or greater, including the crests, summits, and ridge tops which lie at elevations higher than any such area;

(b) Wetland areas that are determined by the United States Army Corps of Engineers to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean Water Act, as amended, or wetland areas that are depicted or delineated on maps compiled by the Department or the United States Fish and Wildlife Service pursuant to its National Wetlands Inventory Program;

(c) Significant groundwater recharge areas as identified on maps or data compiled by the Department;

(d) Undeveloped barrier islands or portions thereof as provided for in the federal Coastal Barrier Resources Act, as amended;

(e) Habitats certified by the Department as containing species that have been listed as either endangered or threatened under the federal Endangered Species Act of 1973, as amended;

(f) River or stream corridors or buffers which shall be defined as those undeveloped lands which are:

1. Adjacent to rivers and perennial streams that are within the 100 year flood plain as depicted on official maps prepared by the Federal Emergency Management Agency; or

2. Within buffer zones adjacent to rivers or perennial streams, which buffer zones are established by law or local ordinance and within which land-disturbing activity is prohibited; and

(g) Constructed storm-water wetlands of the free-water surface type certified by the Department under O.C.G.A. § 12-2-4(k) and approved for such use by the local governing authority.

Authority: O.C.G.A. Secs. 48-5-7.4, 12-2-4(k) and 12-2-24(a).

Rule 391-3-18-.04 Procedures for Certification of Environmentally Sensitive Property

(1) — Steep Mountain Slopes.

(a) — Owners complete requesting certification that a tract of land is a steep mountain slope must submit:

1. — a completed application form provided by the Department;
2. — a quadrangle map on which the tract of land proposed for certification has been plotted by a registered land surveyor;
3. — a report prepared by a registered land surveyor giving the slopes and elevation as measured for the tract of land and assessing its character as a steep mountain slope (as defined in 391-3-18-.03 (a)).
4. — a report by a qualified consultant describing the environment of the tract of land, and certifying that the tract is in a natural condition for the area (as defined in 391-3-18-.02 (d)).
5. — a copy of a county tax map that shows the tract of land and delineates the section of the tract that qualifies as steep mountain slope, plotted by a registered land surveyor.

(b) — The Department may field verify the application. Only those areas will be field verified for which the Department has received complete application materials (as listed 391-3-18-.04 (1)(a)).

(c) — Upon receipt of all application materials, and if the tract of land meets the qualifications as a steep mountain slope based upon the application materials and the Department's field verification, if any, the Department will certify the tract of land as being environmentally sensitive and will provide written certification to the legal owner.

(2) — Wetlands.

(a) — Owner requesting certification that a tract of land is a wetland area must submit:

1. — completed application form provided by the Department;
2. — either:
 - (i) — a map verified and currently validated by the U.S. Army Corps of Engineers showing wetlands areas, using the most recent Federal Manual for Identifying and Delineating Jurisdiction Wetlands. The tract of land proposed for the certification must be plotted on this map by a registered land surveyor; or
 - (ii) — a 1:24,000 scale, U.S. Fish and Wildlife Service Wetland Inventory Map. The tract of land proposed for certification must be plotted on this map by a registered land surveyor; or
 - (iii) — a copy of a 1:24,000 scale, Georgia Department of Natural Resources Landcover Database map. The tract of land proposed for certification must be plotted on this map by a registered land surveyor;
3. — a report by a qualified consultant describing the environment of the tract of land, and certifying that the tract is in a natural condition for the area (as defined in 391-3-18-.02 (d));
4. — a copy of a county tax map that shows the tract of land and delineates the section of the tract that qualifies as a wetland, plotted by a registered land surveyor.

(b) — The Department may field verify the application. Only those areas will be field verified for which the Department has received complete application materials (as listed in 391-3-18-.04 (2)(a)).

(c) — Upon receipt of all application materials, and if the tract of land meets the qualification as a wetland based upon the application materials and the Department will certify the tract of a land as being environmentally sensitive and will provide written certification to the legal owner.

(3) — Significant Ground Water Recharge Areas.

(a) — Owners requesting certification that a tract of land is a significant ground-water recharge area must submit:

1. — a complete application form provided by the Department;
2. — a quadrangle map on which the tract of land proposed for certification has been plotted by a registered land surveyor. This map must also show significant ground-water recharge area as delineated in Hydrologic Atlas 18 (unless a more recent or larger scale map is available from the Department);
3. — a report by a qualified consultant describing the environment of the tract of land, and certifying that the tract is in a natural condition for the area (as defined in 391-3-18-.02(d));
4. — a copy of a county tax map that shows the tract of land and delineates the section of the tract that qualified as a significant ground-water recharge area, plotted by a registered land surveyor.

(b) — The Department may field verify the application. Only those areas will be field verified for which the Department has received complete application materials (as listed in 391-3-18-.04(3)(a)).

(c) — Upon receipt of all application materials, and if the tract of land meets the qualification as a significant ground-water recharge area based upon the application materials and the Department's field verification, if any, the Department will provide written certification to the legal owner.

(4) — Undeveloped Barrier Islands.

(a) — Owner requesting certification that a tract of land is an undeveloped barrier islands must submit:

1. — a completed application form provided by the Department;
2. — a quadrangle map on which the tract of land proposed for certification has been plotted by a registered land surveyor. This map must also show land include in the Coastal Barrier Resources System as delineated in the U.S. Department of Interior's "Report Congress: Coastal Barrier Resources Systems", volume 13, Georgia or as defined in any amendments to the federal Coastal Barrier Resources Act.
3. — a report by a qualified consultant describing the environment of the tract of land, and certifying that the tract is in natural condition for the area (as defined in 391-3-18-.02(d));
4. — a copy of a county tax map that shows the tract of land and delineates the section of the tract that qualifies as an undeveloped barrier islands, plotted by a registered land surveyor.

(b) — The Department may field verify the application. Only those areas will be field verified for which the Department has received complete application materials (as listed in 391-3-18-.04(4)(a)).

(c) — Upon receipt of all application materials, and if the tract of land meets the qualification as an undeveloped barrier island based upon the application materials and the Department field verification, if any, the Department will certify the tract of land as being environmentally sensitive and will provide written certification to the legal owner.

(5) — Endangered or Threatened Species.

(a) — Owner requesting certification of habitat for federally protected species must submit:

1. — a complete application form provided by the Department; and
2. — a report by a qualified consultant written according to guidelines provided by the Department. These guideline will specify the habitat components necessary to satisfy a significant portions of a species biological requirements on a species by species basis.
3. — a report by a qualified consultant describing the environment of the tract of land, and certifying that the tract is in a natural condition for the area (as defined in 391-3-18-.02(d));

4. — a copy of a county tax map that shows the tract of land and delineates the section of the tract that qualified as habitat for endangered or threatened species, plotted by a registered land surveyor.

(b) — The Department may field verify the application. Only those areas will be verified for which the Department has received complete application materials (as listed in 391-3-18-.04 (5)(a)) and on which a qualified consultant has documented the presence of a federally protected species. As required by the Federal Endangered Species Act, under absolutely no circumstances are actual specimens to be collected, distributed or harmed or submitted to the Department.

(c) — Upon receipt of all application materials, and if the tract of land meets the qualification as a habitat for federally protected species based upon the application materials and the Department field verification, if any, the Department will certify the tract of land as being environmentally sensitive.

(6) — River Corridors.

(a) — Owners requesting certification that a tract of land is a river corridor must submit:

1. — complete application form provided by the Department;

2. — a quadrangle map on which the tract of land proposed for certification has been plotted by a registered land surveyor. This map must also show areas delineated on published FEMA flood insurance maps to be in a 100-year floodplain;

3. — a report by a qualified consultant describing the environment of the tract of land, and certifying that the tract is in a natural condition for the area (as defined in 391-3-18-.02 (d));

4. — a copy of a county tax map that shows the tract of land and delineates the section of the tract that qualifies as a river corridors, plotted by a registered land surveyor.

(b) — The Department may field verify the application. Only those areas will be field verified for which the Department has received complete application materials (as listed in 391-3-18-.04 (06)(a)).

(c) — Upon receipt of all application materials, and if the tract of land meets the qualifications as a river corridors based upon the application materials and the Department's field verification, if any, the Department will certify the tract of land as being environmentally sensitive and will provide written certification to the legal owner.

(7) — Overlapping Areas. On any tract of land that contains more than one category of environmentally sensitive land, a map must be prepared jointly by a registered land surveyor and a qualified consultants showing the areas of overlap of the individuals categories of environmentally sensitive land. These multiple categories and any zones of overlap should be plotted on a county tax map.

(8) — Land Surveyor's Seal. Any report prepared by a registered land surveyor for the purpose of qualifying an area of land as environmentally sensitive, must bear the land surveyor's seal and, if applicable, a statement that the area are approximately and that the information provided is not prepared from an on-the-ground survey and may not be used for sale, conveyance or recording. An on-the-ground survey is not required for certification.

(9) — Certification of Qualified Consultants.

(a) — The Department of Natural Resources will certify consultants and maintain a list of consultant qualified to submit reports describing the environment of a tract of land, or the endangered and the threatened species on a tract of land being considered for status as environmentally sensitive property. In order for a consultant to be a certified, the consultant must submit to the Department a resume presenting their technical training and experience, and any relevant support material (such as college transcripts, reports, or publications). All material

~~including resumes and transcripts submitted for certification will be open for public inspection. Minimum requirements for certification by the Department as a qualified consultant are:~~

~~1. either:~~

~~(i) A B.A. or B.S. degree in biology, botany, zoology, forestry or other relevant field; and~~

~~(ii) a minimum of to year relevant experience.~~

~~2. or:~~

~~(i) an MS. or Ph.D degree in biology, botany, zoology, forestry or other relevant field; and~~

~~(ii) a minimum of one year relevant experience.~~

~~3. or be a registered forester.~~

~~(b) Upon exhibiting a pattern of incompetency, false reports, or failure to be supported by the Department verification, Departmental certification can be revoked and the consultant's name removed from the list of qualified consultants. The names of the consultants removed from the list will be provided to the Department of Revenue.~~

(1) Property owners who wish to have all or portions of their property certified as environmentally sensitive for tax assessment purposes must submit the information set forth below using an application form provided by the Department.

(a) The qualifying property must be owned by an entity meeting the ownership requirements of O.C.G.A. § 48-5-7.4(a)(1)(C).

(b) The application for certification must include a property map or survey providing the total acreage of the owner's property and showing the property boundaries. The total acreage and boundaries should correspond to the records maintained by the county tax assessor.

(c) The application for certification must also include a map identifying those portions of the property that the applicant believes meets one or more of the categories in paragraphs (3) through (9).

(2) In order for the Department to verify the primary use of those portions of the property identified in paragraph (1)(c), the property owner must provide a written statement regarding the primary use of those portions of the property. Where appropriate, the Department may also require photographic documentation.

(a) Where the primary use is maintenance in its natural condition, as defined in 391-3-18-.02(2), the written statement should indicate how long those portions of the property have been undisturbed and how they have been and will be managed. The written statement should include as much historical information as is available to the property owner.

(b) Where the primary use is enhancing the water quality of surface or ground waters, the written statement should describe how the use of those portions of the property enhance the water quality of surface or ground waters. Any measures being taken to reduce, control or eliminate pollution should be described.

(c) For the constructed storm water wetlands category of paragraph (9), the applicant should provide a signed statement from an authorized employee or agent of the local governing authority that, pursuant to Rule 560-11-6-.04(5), they have inspected the site and determined that the property is being used for controlling or abating pollution of surface or ground waters of this state by storm-water runoff or by otherwise enhancing the water quality of surface or ground waters.

(3) **Mountainous Terrain.** For this category, the property owner must provide:

(a) a map showing the elevations on the property and indicating the areas of the property that meet or exceed the minimum elevations for that county that are designated on the application form provided by the Department;

- (b) an identification on the map of the areas above the minimum elevations where the percentage slope is 25 percent or greater, measured as the difference in elevation between two points 500 feet apart divided by the horizontal distance between those two points; and
- (c) an identification on the map of any crests, summits, or ridge tops that lie at elevations higher than the areas identified in (b); and
- (d) the total acreage of those portions of the property identified under (b) and (c).
- (4) Wetlands.** For this category, the property owner must provide one of the following:
- (a) A map identifying those portions of the property containing wetlands, as depicted on maps compiled by the U.S. Fish and Wildlife Service pursuant to its National Wetlands Inventory Program, and the total acreage for those portions of the property containing wetlands. The Fish and Wildlife Service maintains an online Wetlands Mapper tool that depicts wetlands included in the National Wetlands Inventory.
- (b) A map identifying those portions of the property containing wetlands, as depicted on maps compiled by the Department, and the total acreage for those portions of the property containing wetlands.
- (c) A map identifying those portions of the property containing wetlands, as determined by the United States Army Corps of Engineers pursuant to a jurisdictional determination completed under Section 404 of the federal Clean Water Act, and the total acreage for those portions of the property containing wetlands. An expired jurisdictional determination will be considered, as long as the property owner can attest that the area included in the jurisdictional determination has not been disturbed.
- (5) Significant groundwater recharge areas.** For this category, the property owner must provide a map identifying those portions of the property containing significant groundwater recharge areas, as depicted on the digital version of Hydrologic Atlas 18 (HA-18) that is available from the Department, and the total acreage for those portions of the property.
- (6) Undeveloped barrier islands.** For this category, the property owner must provide a map identifying those portions of the property that are identified as undeveloped barrier islands by the federal Coastal Barrier Resources Act, as amended, and the total acreage for those portions of the property. The U.S. Fish and Wildlife Service maintains an online Coastal Barrier Resources System Mapper tool that depicts the undeveloped barrier islands identified in the Act.
- (7) Habitats for federal endangered or threatened species.** For this category, the property owner must make a site-specific request to the Department for information regarding the occurrence of federal endangered or threatened species on those portions of the property that are and will remain undisturbed. The property owner should follow the instructions for making a site-specific request that are included on the application form provided by the Department.
- (8) River or stream corridors or buffers.** For this category, the property owner must provide a map identifying the undeveloped areas of the property that meet the requirements of (a) or (b) and the total acreage for those portions of the property.
- (a) Undeveloped areas adjacent to rivers and perennial streams that are within the 100 year flood plain, as depicted on maps prepared by the Federal Emergency Management Agency. The Department maintains an online Georgia Flood Map Program that identifies 1% annual chance flood zones that correspond to the 100 year flood plain.
- (b) Undeveloped areas within buffer zones adjacent to rivers or perennial streams, which buffer zones are established under the Erosion and Sedimentation Act, O.C.G.A. Secs. 12-7-1 et seq., or by local ordinance. Where the buffer zone is established by local ordinance, the property owner should include a reference to the applicable local ordinance.

(9) **Constructed storm water wetlands.** For this category, the property owner must provide a plat of the property prepared by a licensed land surveyor, in accordance with Rule 560-11-6-.03(e), showing the location and measured area of the constructed storm water wetlands.

Authority: O.C.G.A. Secs. ~~48-5-7(a).4~~, 12-2-4(k) and 12-2-24(a).