

Shore Protection Act
O.C.G.A. § 12-5-230

§ 12-5-230. Short title

This part shall be known and may be cited as the "Shore Protection Act."

HISTORY: Code 1981, § 12-5-230, enacted by Ga. L. 1992, p. 1362, § 1.

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES. --Authority of General Assembly to restrict land use so as to protect and preserve natural resources, environment, and vital areas of state, Ga. Const., 1983, Art. III, Sec. VI, Para. II. Game and fish generally, T. 27. Water rights generally, Ch. 8, T. 44.

LAW REVIEWS. --For annual survey of law on environment, natural resources, and land use, see *35 Mercer L. Rev. 147 (1983)*. For article discussing recent developments in environmental law, see *39 Mercer L. Rev. 411 (1987)*.

NOTES APPLICABLE TO ENTIRE CHAPTER

LAW REVIEWS. --For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev. 145 (1982)*. For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see *41 Mercer L. Rev. 865 (1990)*.

NOTES APPLICABLE TO ENTIRE ARTICLE

ADMINISTRATIVE RULES AND REGULATIONS. --Coastal resources, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-2.

NOTES APPLICABLE TO ENTIRE PART

EDITOR'S NOTES. --Ga. L. 1992, p. 1362, § 1, effective July 1, 1992, repealed the Code sections formerly codified as this part and enacted the current part. The former part, relating to shoreline management, was based on Ga. L. 1979, p. 1636, § § 1-17 and Ga. L. 1984, p. 404, § 4.

ADMINISTRATIVE RULES AND REGULATIONS. --Shore protection, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-2-2.

LAW REVIEWS. --For article surveying recent legislative and judicial developments in zoning, planning and environmental law, see *31 Mercer L. Rev. 89 (1979)*. For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev. 145 (1982)*. For article, "Hazardous Waste Issues in Real Estate Transactions," see *38 Mercer L. Rev. 581 (1987)*.

For note discussing the historical aspects and current law concerning the state's ownership rights in tidelands, see *17 Ga. L. Rev. 851 (1983)*. For note on 1992 amendment of this part, see *9 Ga. St. U.L. Rev. 205 (1992)*.

JUDICIAL DECISIONS

CITED in *Goodyear v. Trust Co. Bank*, *247 Ga. 281, 276 S.E.2d 30 (1981)*.

§ 12-5-231. Legislative findings and declarations

The General Assembly finds and declares that coastal sand dunes, beaches, sandbars, and shoals comprise a vital natural resource system, known as the sand-sharing system, which acts as a buffer to protect real and personal property and natural resources from the damaging effects of floods, winds, tides, and erosion. It is recognized that the coastal sand dunes are the most inland portion of the sand-sharing system and that because the dunes are the fragile product of shoreline evolution, they are easily disturbed by actions harming their vegetation or inhibiting their natural development. The General Assembly further finds that offshore sandbars and shoals are the system's first line of defense against the potentially destructive energy generated by winds, tides, and storms, and help to protect the onshore segment of the system by acting as reservoirs of sand for the beaches. Removal of sand from these bars and shoals can interrupt natural sand flows and can have unintended, undesirable, and irreparable effects on the entire sand-sharing system, particularly when the historical patterns of sand and water flows are not considered and accommodated. Also, it is found that ocean beaches provide an unparalleled natural recreation resource which has become vitally linked to the economy of Georgia's coastal zone and to that of the entire state. The General Assembly further finds that this natural resource system is costly, if not impossible, to reconstruct or rehabilitate once adversely affected by man related activities and is important to conserve for the present and future use and enjoyment of all citizens and visitors to this state and that the sand-sharing system is an integral part of Georgia's barrier islands, providing great protection to the state's marshlands and estuaries. The General Assembly further finds that this sand-sharing system is a vital area of the state and is essential to maintain the health, safety, and welfare of all the citizens of the state. Therefore, the General Assembly declares that the management of the sand-sharing system has more than local significance, is of equal importance to all citizens of the state, is of state-wide concern, and consequently is properly a matter for regulation under the police power of the state. The General Assembly further finds and declares that activities and structures on offshore sandbars and shoals, for all purposes except federal navigational activities, must be regulated to ensure that the values and functions of the sand-sharing system are not impaired. It is declared to be a policy of this state and the intent of this part to protect this vital natural resource system by allowing only activities and alterations of the sand dunes and beaches which are considered to be in the best interest of the state and which do not substantially impair the values and functions of the sand-sharing system and by authorizing the local units of government of the State of Georgia to regulate activities and alterations of the ocean sand dunes and beaches and recognizing that, if the local units of government fail to carry out the policies expressed in this part, it is essential that the department undertake such regulation.

HISTORY: Code 1981, § 12-5-231, enacted by Ga. L. 1992, p. 1362, § 1.

NOTES:

CROSS REFERENCES. --Control of soil erosion and sedimentation by means of regulation of clearing, dredging, grading, etc., of land, Ch. 7 of this title.

LAW REVIEWS. --For note discussing the historical aspects and current law concerning the state's ownership rights in tidelands, see *17 Ga. L. Rev. 851 (1983)*.

RESEARCH REFERENCES

C.J.S. --39A C.J.S., Health and Environment, § § 115 et seq., 125 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-232. Definitions

As used in this part, the term:

- (1) "Applicant" means any person who files an application for a permit under this part.
- (2) "Bare sand surface" means an area of nearly level unconsolidated sand landward of the ordinary high-water mark which does not contain sufficient indigenous vegetation to maintain its stability.
- (3) "Barrier islands" means the following islands: Daufuskie, Tybee, Little Tybee, Petit Chou, Williamson, Wassaw, Ossabaw, St. Catherines, Blackbeard, Sapelo, Cabretta, Wolf, Egg, Little St. Simons, Sea, St. Simons, Jekyll, Little Cumberland, Cumberland, Amelia, and any ocean-facing island which is formed in the future and which has multiple ridges of sand, gravel, or mud built on the seashore by waves and currents; ridges generally parallel to the shore; and areas of vegetation.
- (4) "Beach" means a zone of unconsolidated material that extends landward from the ordinary low-water mark to the line of permanent vegetation.
- (5) "Board" means the Board of Natural Resources.
- (6) "Boardwalk" or "crosswalk" means a nonhabitable structure, usually made of wood and without a paved or poured surface of any kind, whose primary purpose is to provide access to or use of the beach, while maintaining the stability of any sand dunes it traverses.
 - (6.1) "Commissioner" means the commissioner of natural resources.
- (7) "Committee" means the Shore Protection Committee.
- (8) "Dynamic dune field" means the dynamic area of beach and sand dunes, varying in height and width, the ocean boundary of which extends to the ordinary high-water mark and the landward boundary of which is the first occurrence either of live native trees 20 feet in height or greater or of a structure existing on July 1, 1979. The landward boundary of the dynamic dune field shall be the seaward most line connecting any such tree or structure as set forth in this part to any other such tree or structure if the distance between the two is a reasonable distance not to exceed 250 feet. In determining what is a reasonable distance for purposes of this paragraph, topography, dune stability,

vegetation, lot configuration, existing structures, distance from the ordinary high-water mark, and other relevant information shall be taken into consideration in order to conserve the vital functions of the sand-sharing system. If a real estate appraiser certified pursuant to Chapter 39A of Title 43 determines that an existing structure, shoreline engineering activity, or other alteration which forms part of the landward boundary of the dynamic dune field has been more than 80 percent destroyed by storm driven water or erosion, the landward boundary of the dynamic dune field shall be determined as though such structure had not been in existence on July 1, 1979.

(9) "Erosion" means the wearing away of land whereby materials are removed from the sand dunes, beaches, and shore face by natural processes, including, but not limited to, wave action, tidal currents, littoral currents, and wind.

(9.1) "Letter of Permission" means written authorization from the department to conduct a proposed activity in an area subject to the jurisdiction of this part, provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months, inclusive of the time needed to return all affected areas to a condition approximate to, or better than, that which existed before commencement of the activity.

(10) "Local unit of government" means a county, as defined by *Code Section 36-1-1*, or an incorporated municipality, as defined by *Code Section 36-40-21*, or any combination thereof which has been authorized by an Act of the General Assembly, any of which has within its jurisdiction any sand dune or beach.

(11) "Ordinary high-water mark" means the position along the shore of the mean monthly spring high tide reached during the most recent tidal epoch. This term is not synonymous with "mean" high-water mark.

(12) "Ordinary low-water mark" means the position along the shore of the mean monthly spring low tide reached during the most recent tidal epoch. This term is not synonymous with "mean" low-water mark.

(13) "Permit-issuing authority" means the Shore Protection Committee or a local unit of government which has adopted a program of shore protection which meets the standards of this part and which has been certified by the board as an approved program.

(14) "Person" means any association, individual, partnership, corporation, public or private authority, or local unit of government, and shall include the State of Georgia and all its departments, boards, bureaus, commissions, authorities, any other government agencies or instrumentalities, and any other legal entity.

(15) "Sand dunes" means mounds of sand deposited along a coastline by wind action, which mounds are often covered with sparse, pioneer vegetation and are located landward of the ordinary high-water mark and may extend into the tree line.

(16) "Sand-sharing system" means an interdependent sediment system composed of sand dunes, beaches, and offshore bars and shoals.

(16.1) "Serviceable" means usable as is or with only minor maintenance, but not so degraded as to essentially require reconstruction, as determined by the department.

(17) "Shoreline engineering activity" means an activity which encompasses any artificial method of altering the natural topography or vegetation of the sand dunes, beaches, bars, submerged shoreline lands, and other components of the sand-sharing system. This includes, but is not limited to, such activities as:

(A) Grading, clearing vegetation, excavating earth, or landscaping, where such activities are for purposes other than erection of a structure;

(B) Artificial dune construction;

(C) Beach restoration or renourishment;

(D) Erosion control activities, including, but not limited to, the construction and maintenance of groins and jetties;

(E) Shoreline stabilization activities, including, but not limited to, the construction and maintenance of seawalls and riprap protection; and

(F) The construction and maintenance of pipelines and piers.

(18) "Stable sand dune" means a sand dune that is maintained in a steady state of neither erosion nor accretion by indigenous vegetative cover.

(19) "Structure" means an institutional, residential, commercial, or industrial building.

(20) "Submerged shoreline lands" means the intertidal and submerged lands from the ordinary high-water mark seaward to the limit of the state's jurisdiction in the Atlantic Ocean.

(21) "Tidal epoch" means the variations in the major tide-producing forces that result from changes in the moon's phase, declination of the earth, distance of the moon from the earth, and regression of the moon's modes, and which go through one complete cycle in approximately 19 years.

HISTORY: Code 1981, § 12-5-232, enacted by Ga. L. 1992, p. 1362, § 1.

NOTES:

LAW REVIEWS. --For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev. 145 (1982)*.

JUDICIAL DECISIONS

"NATIVE TREE" DEFINED. --"Native tree," referred to in paragraph (8), means any tree, indigenous to the area, whether it sprang up naturally or was planted. *Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980)*, aff'd, *254 Ga. 183, 327 S.E.2d 489 (1985)*.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-233. Area of operation of part

The area of operation of this part shall be:

(1) The dynamic dune fields on the barrier islands of this state as determined by reference to *Code Section 12-5-232*. Such determination shall be made by the permit-issuing authority on the basis of site inspection and evaluation of other pertinent information as provided for in subsection (d) of *Code Section 12-5-239*;

(2) The submerged shoreline lands of this state from the seaward limit of this state's jurisdiction landward to the dynamic dune fields or to a line projected from the westernmost point of the dynamic dune field on the southern end of a barrier island, to the westernmost point of the dynamic dune field on the northern end of the adjacent barrier island to the south; and

(3) If an area has dynamic dune fields as defined by *Code Section 12-5-232*, and marshlands as defined by *Code Section 12-5-282*, it is subject to the jurisdiction of this part and Part 4 of this article. In the event of a conflict between this part and Part 4 of this article, the commissioner shall determine which part shall apply so as to best protect the public interest.

HISTORY: Code 1981, § 12-5-233, enacted by Ga. L. 1992, p. 1362, § 1.

NOTES:

LAW REVIEWS. --For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev. 145 (1982)*.

JUDICIAL DECISIONS

CITED in *Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980)*.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-234. Powers and duties of department

(a) The department shall have the following authority:

(1) To administer and enforce this part and all rules, regulations, and orders issued pursuant to this part;

(2) To accept moneys from persons, government units, and private organizations;

(3) To conduct public hearings and to institute and to prosecute court actions as may be necessary to enforce compliance with this part and any rules and regulations promulgated pursuant to this part; provided, however, that all such actions shall be in the name of the department;

(4) To make reasonable inspections of the lands within jurisdiction of this part to ascertain whether the requirements of this part and the rules, regulations, and permits promulgated or issued pursuant to this part are faithfully complied with;

(5) To issue letters of permission and impose a reasonable fee for processing such letters of permission; and

(6) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The foregoing powers and duties may be exercised and performed by the department through such duly authorized agents and employees as it deems necessary and proper.

HISTORY: Code 1981, § 12-5-234, enacted by Ga. L. 1992, p. 1362, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-235. Shore Protection Committee

(a) There is created the Shore Protection Committee within the department. The committee shall be composed of five members, including the commissioner of natural resources and four people selected by the board. Each of three persons selected by the board shall be a resident of Camden, Glynn, McIntosh, Liberty, Bryan, or Chatham County. Three members of the committee shall constitute a quorum. The members of the committee shall be entitled to and shall be reimbursed from moneys appropriated to the department for their expenses, such as mileage and per diem, as set by the board.

(b) The committee, in the absence of an approved local shore protection program as provided by this part, shall act as permit-issuing authority and shall have the authority to issue orders and to grant, suspend, revoke, modify, extend, condition, or deny permits as provided in this part. Permits may, at the committee's discretion, be revoked, suspended, or modified upon a finding that the permittee is not in compliance with permit conditions or that the permittee is in violation of any rule or regulation promulgated pursuant to this part.

(c) The chairman of the committee, upon application by the permittee, may issue renewal of a permit previously granted by the committee. Such action must be based upon recommendations of staff, past committee actions, and the results of public comments. The chairman may refer the request for renewal to the committee to decide on renewals that, in his judgment, should receive broader consideration. A committee member may choose to have the full committee decide on renewals that the member feels should receive broader consideration.

HISTORY: Code 1981, § 12-5-235, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2004, p. 400, § 1.

NOTES:

THE 2004 AMENDMENT, effective July 1, 2004, in subsection (a), in the second sentence, substituted "five members, including" for "three members," and substituted "four people" for "two people", in the third sentence, substituted "Each of three persons" for "A person" at the beginning and added "County." at the end, and added the fourth sentence.

ADMINISTRATIVE RULES AND REGULATIONS. --Official Compilation of Rules and Regulations of the State of Georgia Department of Natural Resources, Ch. 391-2-2.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-236. Rules and regulations

The board shall have the power to promulgate rules and regulations for the implementation and enforcement of this part consistent with the purpose of this part.

HISTORY: Code 1981, § 12-5-236, enacted by Ga. L. 1992, p. 1362, § 1.

RESEARCH REFERENCES

C.J.S. --39A C.J.S., Health and Environment, § 137.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-237. Permit required; exceptions

(a) No person shall construct or erect any structure or construct, erect, conduct, or engage in any shoreline engineering activity or engage in any land alteration which alters the natural topography or vegetation of any area within the jurisdiction of this part, except in accordance with the terms and conditions of a permit therefor issued in accordance with this part. A permit may authorize the construction or maintenance of the project proposed in an application. After construction of a project pursuant to a permit, the project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation of the site or increase the size or scope of the project, and remains in serviceable condition.

(b)(1) No permit shall be required for a structure, shoreline engineering activity, or land alteration which exists as of July 1, 1979, provided that a permit must be obtained for any modification which will have a greater adverse effect on the sand-sharing system or for any addition to or extension of such shoreline engineering activity, structure, or land alteration; provided, further, that, if any structure, shoreline engineering activity, or land alteration is more than 80 percent destroyed by wind, water, or erosion as determined by an appraisal of the fair market value by a real estate appraiser certified pursuant to Chapter 39A of Title 43, a permit is required for reconstruction.

(2) No permit shall be required for any activity conducted pursuant to a letter of permission. At least 15 days prior to the commencement of any activity authorized pursuant to a letter of permission, the department shall provide public notice describing such activity and the location thereof; provided, however, that public notice shall not be required for any such activity that is necessary for public safety or the delivery of public services.

HISTORY: Code 1981, § 12-5-237, enacted by Ga. L. 1992, p. 1362, § 1.

NOTES:

CROSS REFERENCES. --Certification of professional engineers, Ch. 15, T. 43.

LAW REVIEWS. --For survey article on environment, natural resources, and land use, see *34 Mercer L. Rev. 145 (1982)*.

JUDICIAL DECISIONS

CITED in *Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980)*.

RESEARCH REFERENCES

C.J.S. --39A C.J.S., Health and Environment, § § 117, 134.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-238. Form and contents of application for permit

All applications for permits required by this part must be on forms prescribed by the permit-issuing authority, must be properly executed, and must include the following:

- (1) The name and address of the applicant;
- (2) A brief description of the proposed project;
- (3) Construction documents showing the applicant's proposed project and the manner or method by which the project shall be accomplished. Such document shall identify the dynamic dune field affected;
- (4) A copy of the deed or other instrument under which the applicant claims title to the property or, if the applicant is not the owner, a copy of the deed or other instrument under which the owner claims the title together with written permission from the owner to carry out the project on his land. In lieu of a deed or other instrument referred to in this paragraph, the permit-issuing authority may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property. If all or any part of the proposed construction or alteration shall take place on property which is owned by the State of Georgia, the applicant shall present an easement, revocable license, or other written permission from the state to use the property for the proposed project; in the alternative, the permit-issuing authority may condition the issuance of the permit on the requirement to obtain written permission from the state. The permit-issuing authority will not adjudicate title disputes concerning the property which is the subject of the application; provided, however, that the permit-issuing authority may decline to process an application when submitted documents show conflicting deeds;
- (5) A plat showing the boundaries of the proposed project site;
- (6) The names and addresses of all landowners of property adjoining or abutting the parcel of land on which the proposed project is to be located. If the property to be altered is bordered on any side by other property of the applicant, the applicant shall supply the names and addresses of the nearest landowners, other than the applicant, of property adjoining the applicant's property. If the applicant cannot determine the identity of adjoining landowners or their addresses, the applicant shall

file in lieu thereof an affidavit stating that a diligent search, including a search of the records of the county tax assessor's office, has been made but that the applicant was not able to ascertain the names or addresses of adjoining landowners;

(7) An application fee in such reasonable amount as is designated by the permit-issuing authority or, if the committee is the permit-issuing authority, a nonrefundable application fee as set by the board which reflects the cost to the department to evaluate the application. Fees for the renewal of a permit shall be equal to the application fee. Application fees shall not exceed \$1,000.00 for any one proposal. If the committee is the permit-issuing authority, such fees shall be paid to the department;

(8) Site plans for the proposed project site showing existing and proposed streets, utilities, buildings, and any other physical structures;

(9) A certification by a registered architect or engineer licensed by this state certifying that all proposed structures, if any, for which the permit is applied are designed to meet suitable hurricane-resistant standards;

(10) Any and all other relevant data required by the permit-issuing authority for the purposes of ascertaining that the proposed improvements, activities, and uses will meet the standards of this part;

(11) A certificate or letter from the local governing authority or authorities of the political subdivision in which the property is located stating that the applicant's proposal is not violative of any zoning law; and

(12) A statement from the applicant that he has made inquiry to the appropriate authorities that the proposed project is not over a landfill or hazardous waste site and that the site is otherwise suitable for the proposed project.

HISTORY: Code 1981, § 12-5-238, enacted by Ga. L. 1992, p. 1362, § 1.

JUDICIAL DECISIONS

CITED in *Rolleston v. State*, 245 Ga. 576, 266 S.E.2d 189 (1980).

RESEARCH REFERENCES

C.J.S. --39A C.J.S., Health and Environment, § § 117, 134.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-239. Completion of permit; notice of proposed activity; requirements and restrictions regarding issuance of permit

(a) The permit-issuing authority shall take action on each permit application within 90 days after the application is completed; provided, however, that this provision may be waived upon the written request of the applicant. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by this part. An application must be

completed sufficiently in advance of the permit-issuing authority meeting at which the project will be considered to allow for public notice and evaluation by the permit-issuing authority.

(b) After receipt of a completed application and at least 30 days prior to acting on the application, the permit-issuing authority shall notify all persons identified by the applicant as owning land adjacent to the location of the proposed project and to all persons who have filed a written request with such permit-issuing authority that their names be placed on a mailing list for receipt of such notice. Any person desiring to be placed on such mailing list must so request in writing and renew such request in December of each year. The name of any person who has not renewed such request shall be removed from the list. The landowners who have not requested to be placed on a mailing list shall be notified in writing if their addresses are known. Such notice shall be in writing and shall include a general description of the proposed project and its location. The applicant shall post such notice in a conspicuous place on the subject property at or prior to the time the permit-issuing authority issues public notice of the application. If the applicant has filed an affidavit that the names or addresses of the adjoining landowners were not ascertained after a diligent search, the permit-issuing authority shall cause a notice of the proposed activity and a brief description of the land to be affected to be published in the legal organ or a newspaper of general circulation in the county in which such land lies. Cost of such public notices shall be paid by the applicant. Whenever there appears to be sufficient public interest, the permit-issuing authority may call a public hearing.

(c) No permit shall be issued except in accordance with the following provisions:

(1) A permit for a structure or land alteration, including, but not limited to, private residences, motels, hotels, condominiums, and other commercial structures, in the dynamic dune field may be issued only when:

(A) The proposed project shall occupy the landward area of the subject parcel and, if feasible, the area landward of the sand dunes;

(B) At least a reasonable percentage, not less than one-third, of the subject parcel shall be retained in its naturally vegetated and topographical condition;

(C) The proposed project is designed according to applicable hurricane-resistant standards;

(D) The activities associated with the construction of the proposed project are kept to a minimum, are temporary in nature, and, upon project completion, restore the natural topography and vegetation to at least its former condition, using the best available technology; and

(E) The proposed project will maintain the normal functions of the sand-sharing mechanisms in minimizing storm-wave damage and erosion, both to the unaltered section of the subject parcel and at other shoreline locations;

(2) No permits shall be issued for a structure on beaches, eroding sand dune areas, and submerged lands; provided, however, that a permit for a pier, boardwalk, or crosswalk in such an area may be issued, provided that:

(A) The activities associated with the construction of the proposed land alterations are kept to a minimum, are temporary in nature, and, upon project completion, the natural topography and vegetation shall be restored to at least their former condition, using the best available technology; and

(B) The proposed project maintains the normal functions of the sand-sharing mechanisms in minimizing storm-wave damage and erosion, both to the unaltered section of the subject parcel and at other shoreline locations;

(3) A permit for shoreline engineering activity or for a land alteration on beaches, sand dunes, and submerged lands may be issued only when:

(A) The activities associated with the construction of the proposed project are to be temporary in nature, and the completed project will result in complete restoration of any beaches, dunes, or shoreline areas altered as a result of that activity;

(B) The proposed project will insofar as possible minimize effects to the sand-sharing mechanisms from storm-wave damage and erosion both to the subject parcel and at other shoreline locations;

(C) In the event that shoreline stabilization is necessary, either low-sloping porous rock structures or other techniques which maximize the dissipation of wave energy and minimize shoreline erosion shall be used. Permits may be granted for shoreline stabilization activities when the applicant has demonstrated that no reasonable or viable alternative exists; provided, however, that beach restoration and renourishment techniques are preferable to the construction of shoreline stabilization activities; and

(D) A copy of the permit application has been transmitted to the local unit of government wherein the project site lies, if such local unit of government has been certified by the board, requesting comments on such application.

(d) In evaluating a permit application in order to determine compliance with the provisions set forth in subsection (c) of this Code section, the permit-issuing authority may use the following assessment tools and techniques, as appropriate and as available:

(1) Historic photographs and topographic data of the project site, which can be used in determining the impact of a proposed project on the stability of the shoreline;

(2) On-site inspections to determine the impact of a proposed project on topographic and vegetative conditions, erosion or accretion rates, and other factors influencing the life cycles of dune plants;

(3) Any recognized or accepted scientific investigations necessary to determine the proposed project's impacts on the surrounding biological and geological systems, and the historic and archeological resources;

(4) When present, the potential effects of shoreline engineering structures (seawalls, groins, jetties, etc.), their condition, and their apparent influence on the sand-sharing system as it relates to the proposed project;

(5) Historic, climatological, tidal data, and meteorological records of the vicinity of the project and possible potential effects of a proposed project upon erosion and accretion rates; and

(6) New scientific information which, through recent advances, would effect a more competent decision relative to wise use and management of Georgia's sand-sharing system.

(e) Every permit shall require that the proposed project be completed within five years after the date of issuance of the permit and shall expire five years after the date of issuance. Such time may be

extended five additional years upon a showing that all due efforts and diligence toward the completion of the project have been made. If a permit holder sells, leases, rents, or otherwise conveys the land or any portion of the land for which the permit was issued, such permit shall be continued in force in favor of the new owner, lessee, tenant, or other assignee so long as there is no change in the use of the land as set forth in the original application. The permittee must notify the permit-issuing authority within 30 days after change of ownership of property.

(f) All plans, documents, and materials contained in any application for any permit required by this part shall be made a part of the permit, if granted, and conformance to such plans, documents, and materials shall be a condition of the permit. No change or deviation from any such plans, documents, or materials shall be permitted without the prior notification and approval of the permit-issuing authority.

(g) Compliance with all other federal, state, and local statutes, ordinances, and regulations shall also be a condition of every permit issued pursuant to this part. If, prior to completion of review of an application under this part the committee receives notice of the denial of a permit or authorization necessary for the project, review of the project shall be suspended and, if the denial becomes final, the application shall stand denied.

(h) All permit-issuing authorities may place such conditions on any permit issued under this Code section as are necessary to carry out this part.

(i) In passing upon the application for a permit, the permit-issuing authority shall consider the public interest which for purposes of this part shall be deemed to be the following considerations:

(1) Whether or not unreasonably harmful, increased alteration of the dynamic dune field or submerged lands, or function of the sand-sharing system will be created;

(2) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of marine life, wildlife, or other resources; and

(3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with reasonable access by and recreational use and enjoyment of public properties impacted by the project.

(j) Issuance of a permit under this part and construction of the permitted project shall not remove the designated property from the jurisdiction of this part. All changes in permitted uses which increase impacts to any land subject to the provisions of this part must be ruled upon by the permit-issuing authority to determine if the proposed change is consistent with this part and the permit. Each permitted alteration within the area of operation of this part shall be reviewed by the permit-issuing authority on a five-year basis or when noncompliance with the purpose for which the permit was issued is evident to determine if the use within the area of operation of this part is consistent with the intent of this part. If the permit holder is found not to be in compliance with this part, the permit-issuing authority shall take action as authorized under *Code Section 12-5-247*.

(k) (1) A permit granted by the permit-issuing authority becomes final immediately upon issuance, but no construction or alteration may commence until the expiration of 30 days following the date of the permit-issuing authority meeting at which the application is approved, except as otherwise provided in paragraph (2) of this subsection; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative proceedings are terminated except as otherwise provided in paragraph (2) of this subsection.

(2) If the permit-issuing authority, either at the request of the applicant or on its own motion, finds that an emergency exists in any particular geographic area or in regard to any particular permit issued by the permit-issuing authority, the permit-issuing authority is authorized to allow a permittee to commence immediately or to continue the construction or alteration authorized by the permit. The permit-issuing authority in determining an emergency shall base its determination on imminent peril to the public health, safety, or welfare or a grave danger to life, real property, structures, or shoreline engineering activities. If the permit-issuing authority makes such a finding of an emergency, the permittee may commence immediately or continue the construction or alteration authorized by the permit, but such construction or alteration is undertaken at the risk to the permittee of an administrative or judicial order requiring the sand dunes, beaches, and submerged lands to be returned to their condition prior to such construction or alteration.

(1) When work has been completed in accordance with provisions of a permit, the permittee shall so notify the permit-issuing authority in writing within 30 days of such completion.

HISTORY: Code 1981, § 12-5-239, enacted by Ga. L. 1992, p. 1362, § 1.

NOTES:

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following the second occurrence of "issued" in paragraph (c)(2).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-240. Posting of permit

A copy of every permit issued to an applicant shall be prominently displayed within the area of proposed activity. If the permit-issuing authority deems it advisable, the applicant may be required to cause a sign to be erected bearing the permit number, date of issuance, name of applicant, and such other information as the permit-issuing authority may reasonably require. The permit-issuing authority may specify the type of and, within reasonable dimensions, the size of the sign.

HISTORY: Code 1981, § 12-5-240, enacted by Ga. L. 1992, p. 1362, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-241. Local shore assistance programs

Reserved. Repealed by Ga. L. 2015, p. 385, § 2-3/HB 252, effective July 1, 2015.

§ 12-5-242. Technical assistance to local governments; model ordinance

The department shall provide technical assistance to any local unit of government which requests such assistance in order to develop an ordinance meeting the requirements of this part. The department shall also develop a model ordinance which may be used by such local units of government.

HISTORY: Code 1981, § 12-5-242, enacted by Ga. L. 1992, p. 1362, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-243. Local governments not prohibited from adopting more restrictive ordinances

Nothing in this part shall be construed as prohibiting a local unit of government from adopting ordinances more restrictive in regard to activity on sand dunes and beaches than the standards set forth in this part.

HISTORY: Code 1981, § 12-5-243, enacted by Ga. L. 1992, p. 1362, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § § 374, 375.

C.J.S. --62 C.J.S., Municipal Corporations, § 139.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-244. Administrative and judicial review

(a) Any person who is aggrieved or adversely affected by any order or action of the committee shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the board. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the committee, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(b) Where a local unit of government has, pursuant to this part, granted, suspended, modified, extended, conditioned, or denied a permit, any person aggrieved or adversely affected by such action shall be afforded a right to administrative and judicial review of such action.

(c) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by this part. In the event the committee or local unit of government, as appropriate, asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

HISTORY: Code 1981, § 12-5-244, enacted by Ga. L. 1992, p. 1362, § 1.

NOTES:

ADMINISTRATIVE RULES AND REGULATIONS. --Official Compilation of Rules and Regulations of the State of Georgia Department of Natural Resources, Ch. 391-1-2.

JUDICIAL DECISIONS

CITED in *Rolleston v. State*, 245 Ga. 576, 266 S.E.2d 189 (1980).

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § 369 et seq.

C.J.S. --39A C.J.S., Health and Environment, § 145 et seq.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-245. Injunctive relief

Any activity in violation of this part or of any ordinance or regulation adopted pursuant to this part shall be a public nuisance; and such activity may be enjoined or abated by an action filed in the appropriate superior court by the Attorney General on behalf of the department, by any local unit of government affected, or by any person. Upon showing of any activity in violation of this part or of any ordinance or regulation adopted pursuant to this part, a temporary restraining order, a permanent or temporary injunction, or other order shall be granted without the necessity of showing lack of an adequate remedy at law and irreparable injury. The relief granted by the court in an action filed pursuant to this Code section may include, but shall not be limited to, an order requiring the sand dunes, beaches, and submerged lands to be returned to their condition prior to such violation.

HISTORY: Code 1981, § 12-5-245, enacted by Ga. L. 1992, p. 1362, § 1.

RESEARCH REFERENCES

C.J.S. --39A C.J.S., Health and Environment, § 150.

ALR. --Requirement that there be continuing violation to maintain citizen suit under federal environmental protection statutes -- post-Gwaltney cases, *158 ALR Fed. 519*.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-246. Jurisdiction of superior court

The superior court of the county in which the land or any part thereof is located or in which jurisdiction is otherwise proper shall have jurisdiction to restrain a violation of this part at the action of any person.

HISTORY: Code 1981, § 12-5-246, enacted by Ga. L. 1992, p. 1362, § 1.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-247. Enforcement of part; civil penalty

(a) If the department determines that any person is violating any provision of this part or any rule or regulation adopted pursuant to this part or the terms and conditions of any permit issued under this part, and such violation is in an area where the committee is the permit-issuing authority, the department may employ any one, or any combination of any or all, of the enforcement methods specified in paragraphs (1) through (4) of this subsection:

(1) The department may issue an administrative order specifying the provision of this part or the rule, or both, alleged to have been violated and require the person so ordered to cease and desist from such activity and to take corrective action within a reasonable period of time as prescribed in the order; provided, however, that the issuance of such order shall not affect the availability of relief under *Code Section 12-5-244*. Such corrective action may include, but shall not be limited to, requiring that the sand dunes, beaches, and submerged lands be returned to their condition prior to the violation of this part or a rule adopted pursuant to this part. Any such order shall become final unless the person named therein requests in writing a hearing before a hearing officer appointed by the board no later than ten days after the issuance of such order. Review of such order shall be available as provided in subsection (a) of *Code Section 12-5-244*;

(2) Whenever the committee finds that an emergency exists requiring immediate action to protect the public or private interest where the public interest is served, it may issue an order reciting the existence of such an emergency and requiring or allowing that such action be taken as it deems necessary to meet the emergency. Notwithstanding any other provision of this part, such order shall be effective immediately. If an order requiring a person to take action is issued pursuant to this paragraph, such person shall be entitled to a hearing within ten days of the date of issuance of the order. Any person who is aggrieved or adversely affected by an emergency order of the committee, upon petition within ten days after issuance of such order, shall have a right to a hearing before an administrative law judge appointed by the board. The committee shall hold a meeting no sooner than

30 days after the issuance of an emergency order to review such order to determine whether the order has been complied with, whether the order should continue in force, and any possible effects of such order on the sand-sharing system;

(3) The committee may file in the appropriate superior court a certified copy of an unappealed final order of the administrative law judge or of a final order of the administrative law judge affirmed upon appeal or other orders of the committee, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereof shall thereafter be the same, as though such judgment has been rendered in an action duly heard and determined by the court; and

(4) The department may seek injunctive relief pursuant to *Code Section 12-5-245*.

(b) Any person who violates any provision of this part or any rule or regulation adopted under this part, any permit issued under this part, or final or emergency order of the department shall be subject to a civil penalty not to exceed \$10,000.00 for each act of violation. Each day of continued violation shall subject said person to a separate civil penalty. An administrative law judge appointed by the board after a hearing conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall determine whether or not any person has violated any provision of this part, any rule or regulation adopted under this part, any permit, or any final or emergency order of the department or permit-issuing authority and shall upon proper finding issue an order imposing such civil penalties as provided in this subsection. Review of such order shall be available as provided in subsection (a) of *Code Section 12-5-244*. All civil penalties recovered by the department as provided in this subsection shall be paid into the state treasury to the credit of the general fund.

(c) Any person who causes or permits any removal, filling, or other alteration of the dynamic dune field or submerged lands in this state without first obtaining a permit from the permit-issuing authority shall be liable in damages to the state and any political subdivision of the state for any and all actual or projected costs and expenses and injuries occasioned by such alteration of the dynamic dune field or submerged lands. The amount of damages assessed pursuant to this Code section shall include, but shall not be limited to, any actual or projected costs and expenses incurred or to be incurred by the state or any political subdivision thereof in restoring as nearly as possible the natural topography of the sand-sharing system and replacing the vegetation destroyed by any alteration of the dynamic dune field or submerged lands. Damages to the state shall be recoverable in a civil action instituted by the department and shall be paid to the department to cover cost of restoration. Damages to a political subdivision shall be recoverable in a civil action instituted by said subdivision.

(d) Owners of property with knowledge of unauthorized activities occurring thereon are responsible under this part.

HISTORY: Code 1981, § 12-5-247, enacted by Ga. L. 1992, p. 1362, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --2 Am. Jur. 2d, Administrative Law, § 376.

C.J.S. --39A C.J.S., Health and Environment, § § 139, 144.

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.

§ 12-5-248. Criminal violations

(a) It shall be unlawful for any person to:

(1) Operate any motorized vehicle or other motorized machine on, over, or across sand dunes or beaches except as authorized by the permit-issuing authority, except that individual disability vehicles, emergency vehicles, and governmental vehicles utilized for beach maintenance or research may operate within sand dunes and beaches without authorization from the permit-issuing authority as long as those vehicles operate across existing cross-overs, paths, or drives; or

(2) Store or park sailboats, catamarans, or other commercial or recreational marine craft on any sand dune.

(b) All such lawful activities conducted under this part shall provide protection to nesting sea turtles and their hatchlings and habitats and to nesting shore birds and their hatchlings and habitats.

(c) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

HISTORY: Code 1981, § 12-5-248, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 2002, p. 521, § 1.

NOTES:

THE 2002 AMENDMENT, effective April 25, 2002, in subsection (a), substituted "sand dunes" for "the dynamic dune field" twice in paragraph (a)(1) and substituted "on any sand dune" for "in any dynamic dune field" in paragraph (a)(2); added subsection (b) and redesignated former subsection (b) as present subsection (c).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, chapter or title.