

INSTRUCTIONS FOR COMPLETING A GEORGIA COASTAL MARSHLANDS PROTECTION PERMIT APPLICATION

Applicants proposing to impact areas below the ordinary high water mark need to complete these application forms. Each and every blank must be filled in completely. For questions that are not applicable to your project, write N/A in the blank. Only those applicants proposing to impact areas below the ordinary high water mark in Effingham, Long, Wayne, Brantley, Chatham, Glynn, Camden, McIntosh, Bryan, Liberty, or Charlton Counties need to complete the Revocable License request. This form requests permission to use publicly owned submerged lands. The Army Corps of Engineers can help you determine if you will need a water quality certification for your project. Contact the Ecological Services Section of the Coastal Resources Division, Georgia Department of Natural Resources at (912) 264-7218 for assistance with state requirements.

➤ Forms:

___ Joint Application for an ACOE Permit and GA CMPA Permit

___ Revocable License Request

___ Coastal Marina, Community or Commercial Dock Checklist

___ Request for JD line

➤ Project Summary:

___ Narrative with project details and dimensions, construction method(s), materials, and access points/locations. Narrative should identify all areas that are planned to be used in connection with the project.

___ Distance of the project into the waterway from MLW.

___ Distance of the project from the navigable channel.

___ Depths of the waterway at MLW.

___ Total width of the waterway from MLW to MLW.

___ Distance to the next structure to either side of the proposed project.

revised 11.2012

➤ Project Drawings:

___ Plan or drawing showing the applicant's proposal and the manner or method by which such proposal shall be accomplished. Such plan shall identify all coastal marshlands, as verified by CRD staff, within the extended property lines of the project area.

*All drawings should be:

- a. Submitted on a registered survey (signed, stamped and dated) or on the recorded plat of the property.
- b. Submitted on 8 1/2 " by 11" paper or 11" by 17" (if needed to see details clearly), leave a 1" margin on the long side of each page for binding purposes.
- c. Drawn to scale. Include a bar scale or other graphic scale and a North arrow.

➤ Site plans:

___ Vicinity map that shows the location of the project, latitude and longitude, name of waterway, distance to nearest town or interstate highway and a North arrow.

Marshland Component of Project

___ DNR Marsh Jurisdiction Line (this line must be surveyed in by a registered surveyor), high and low waterlines and the method used to establish the waterlines. DNR staff must verify the Marsh Jurisdiction Line within the project area. Marsh jurisdiction line is validated for one year.

___ Existing features such as structures, boardwalks, etc. within jurisdiction.

___ Proposed features such as structures, boardwalks, etc. within jurisdiction.

___ Dimensions of the proposed structure/project that is the marshland component of the project. Marshland component is defined as the part of the project in an estuarine area or any structure on or over an estuarine area. The dimensions must consist of the distance the project will extend into the waterway, distance from the navigable channel, and the total width and depths of the waterway from MLW to MLW. Label existing structures in the navigable waters near the proposed activity.

___ Total square footage of proposed project footprint within jurisdiction and total square footage over vegetated marshlands.

___ Section/Elevation view showing a cross-section view of the project using the same water elevations as the Site Plan.

___ Depth of water at the water-ward face of the proposed project, the dimensions and names of structures supported on floats or piles, the distance between pilings, the number of pilings, and types of materials used.

* Include additional CONSTRUCTION DRAWINGS as needed to clearly show the proposed project and how the project will be completed. For SHORELINE ENGINEERING ACTIVITIES (bulkheads, revetments, etc.) show typical construction methods with respect to mean, sea level for tiebacks, footings/foundations, type of material, slope of face, etc. For Boardwalks (walkways, decks, etc.) and BRIDGES show typical arrangement of posts/beams/decking, height above the marsh vegetation, and height above any waters at both MLW and MHW.

Upland Component of the Project

_____ Delineation of the upland component of the project- Upland component is defined as, all those service areas, amenities, and recreational areas located inland of the CMPA jurisdiction line that serve or augment the functioning of the marshlands component of the project. Include any facilities adjacent to or in proximity to the marshlands component of the project that will serve exclusively or primarily the users of the marshlands component of the project.

_____ Existing features such as structures, roadways, parking areas, dry-stack storage, fueling facilities, etc.

_____ Proposed features such as structures, roadways, parking areas, dry-stack storage, fueling facilities, etc.

Marshlands Buffers for Upland Component

_____ Delineation of 50-foot marshlands buffer applicable to the upland component of the project as measured horizontally inland from the coastal marshlands-upland interface (verified JD line).

_____ Documentation of existing condition of delineated buffer.

_____ Description of buffer design, installation, and maintenance plans. Applicant should refer to the current edition of the Georgia Stormwater Management Manual for technical specifications and standards specific to buffers.

_____ Description and identification on site plan of any temporary structures proposed within the delineated buffer that are necessary for the construction of the marshlands component of the project.

_____ Description and identification on site plan of any permanent structures proposed within the delineated buffer that are necessary for the function of the marshlands component of the project.

_____ Description and identification on site plan of any permanent structures proposed within the delineated buffer that are required to provide permanent access to the marshlands component of the project.

_____ Description and identification on site plan of any vegetated plantings or grading of vegetation within the delineated buffer. Applicant is referred to the Georgia Stormwater Management Manual and the “Riparian Buffers in Your Backyard”. Note: Planting and grading within the buffer must be designed and installed to enhance stormwater treatment.

_____ Description and identification on site plan of pedestrian access for passive recreation to be located within the delineated buffer.

____ Description including dimensions and identification on the site plan of any existing impervious surfaces or structures pre-existing within the delineated buffer.

Stormwater Management Plan of the Upland Component

____ Description of Stormwater Plan for upland component of the project. Note: No discharge of untreated stormwater is allowed from developed or disturbed areas, whether surface or piped, to coastal marshlands from the upland component of the project, unless waiver is granted by Committee

____ If waiver is being requested, detailed description of the site or project characteristics that prohibit treatment, why there is no practicable alternative, and documentation demonstrating how the stormwater runoff will have minimal adverse impact.

Impervious Surface Calculations of the Upland Component

____ Description and delineation of the pervious surfaces and impervious surfaces proposed for the upland component of the project. Note: 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 in account existing structures that are apart of the project and that available land area that is part of the upland component of the project.

____ Detailed documentation of the calculation of Effective Impervious Cover rate.

➤ Deed or other legal instrument:

____ A copy of the deed, or other legal conveyance, putting title to or an interest in the real property, into the name of the applicant, together with any plat(s) referenced in the deed or conveyance that show the boundaries of the real property conveyed.

____ Any later deed or conveyance whereby any full or partial interest, such as, an inter-spousal transfer, trust agreement, lease agreement, partnership, corporation, limited liability company or executor or decedent's estate took an ownership interest in the real property.

____ If the applicant is not the owner of the property, then provide a copy of the owner's deed or other legal conveyance **AND** the written permission from the owner to carry out the project on his/her land. The owner must acknowledge that it is aware of the application and that it is familiar with the applications plans for the property and that the owner gives permission to the applicant to carry out the project on his/her land as outlined in the application.

____ Specific plat(s) referenced in the vesting deed showing the upland boundary of the project area in relation to the natural resource coastal marshlands and tidal waterbottoms.

____ Identification of any marshlands within project area designated as Natural Heritage Preserve.

- ___ If the property was subdivided after the applicant acquired the property, then the new subdivision plat, in addition to the plat referenced in the vesting deed.
 - ___ Corporate owners must submit their Articles of Organization or other legal documentation to show signatory's capacity to bind the corporation to the permit and/or waterbottoms lease.
 - ___ Homeowners Association By-laws and Restrictive Covenants pertaining to the project area (upland and marsh component).
 - ___ Conservation Easements or other easements pertaining to the project area (upland and marsh component).
 - ___ Deed restrictions if applicable.
-

➤ **Adjoining Land Owners:**

- ___ List of all adjoining landowners together with such owners' addresses.
 - ___ If the names or addresses of adjoining land owners cannot be determined, a sworn affidavit 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.
-

➤ **Zoning Letter & Signed Drawings from Local Gov:**

- ___ Letter from the local zoning authority stating that this proposal is in compliance with any zoning laws. This letter must be specific to the project and cannot be conditional in any way.
 - ___ Copy of the most current version of plans, signed and dated by the local zoning authority. If the project is redesigned, the zoning authority must sign the latest plans to ensure there is no confusion about which "version" of the project is approved.
-

➤ **Non-refundable Application Fee:**

- ___ Check or money order made payable to the GEORGIA DEPARTMENT OF NATURAL RESOURCES is required. Include the amount listed below for the type of project you are proposing. Renewal fees will be equal to application fees. This list does not include all possible projects and should be used only as a guide.

\$100 Routine: Simple modification, research, simple pier, bridge (no fill), deck, etc.

\$250 Moderate: Community dock, boat ramp, bridge (minor fill), culverts/gates, pier, etc.

\$500 Complex: Marina, marina modification, roadway, mosquito ditching, dredging, wastewater treatment, commercial dock, etc.

➤ **Alternative Analysis:**

____ Brief description of alternative sites the applicant considered and why they are not feasible. Include a discussion of why the permit should be granted. Describe water dependent nature of project.

➤ **Landfill or Hazardous Waste Statement:**

____ Statement from the applicant that he has made inquiry to the appropriate authorities that the proposed project is not over **landfill or hazardous waste sites** and that the site is otherwise suitable for the proposed project. Contact your local government engineer to find out if your site is over a hazardous waste site or landfill. If your county engineer is unable to answer your question, please check the following: For hazardous waste sites check with the GA Environmental Protection Division (EPD) Hazardous Waste Support Unit at (404) 656-7802, or <http://www.gaepd.org/Documents/hazsiteinv.html> for a complete list. For landfill sites check with the GA EPD Land Protection Branch at (404)362-2692, or http://www.gaepd.org/Documents/regcomm_lpb.html#sw under List of Closed Landfills.

➤ **Water Quality Certification:**

____ Copy of the water quality certification issued by EPD, if required for the proposed project. The USCAE determines whether a proposed project requires water quality certification under their 401 regulations.

*(Note: If required, certification **MUST** be issued prior to CMPC consideration of the project.)*

➤ **Erosion and Sedimentation Statement:**

____ Statement certifying that the project will be conducted in compliance with applicable erosion and sediment control responsibilities. Please refer to the section above regarding marshland buffers, stormwater management, and impervious surface calculations.

➤ Public Interest Statement:

_____ Documentation how the project is not contrary to the public interest, specific to the following public interest considerations:

- a. Whether or not unreasonably harmful obstruction to or alteration of the natural flow of navigational water within the affected area will arise as a result of the proposal.
- b. Whether or not unreasonably harmful or increased erosion, shoaling of channels, or stagnant areas of water will be created.
- c. Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources, including but not limited to water and oxygen supply.

WHERE TO MAIL COMPLETED APPLICATION PACKAGES

An application package cannot be considered until all of the items listed above are submitted. After the Department has reviewed your application materials, additional information may be required for the Coastal Marshlands Protection Committee to fully evaluate your permit request. Additionally, the 30-day public notice cannot be published until the application package is substantially complete.

Please submit ONE (1) original copy to the GA DNR-CRD, Marsh & Shore Management Program, ONE (1) original copy to US Army Corp of Engineers, Savannah District and one original copy to GA DNR-EPD, Water Protection Branch (three copies total). See addresses below.

<p>Marsh & Shore Management Program Coastal Resources Division Georgia Department of Natural Resources One Conservation Way, Suite 300 Brunswick, GA 31520</p>	<p>Telephone: (912) 264-7218 Fax: (912) 262-3143</p>
<p>Regulatory Division Chief US Army Corps of Engineers Savannah District, Regulatory Branch 100 West Oglethorpe Avenue Savannah, GA 31401-3640</p>	<p>Telephone: (800) 448-2402 (912) 652-5279 Fax: (912) 652-5995</p>
<p>Bradley Smith Water Quality Certification EPD Water Protection Branch Georgia Department of Natural Resources 400 Commerce Drive Brunswick, GA 31523</p>	<p>Telephone: (912) 264-7284 Fax: (912) 262-3160</p>

JOINT APPLICATION
FOR
A DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS PERMIT,
STATE OF GEORGIA MARSHLAND PROTECTION PERMIT,
REVOCABLE LICENSE AGREEMENT
AND REQUEST FOR
WATER QUALITY CERTIFICATION
AS APPLICABLE

INSTRUCTIONS FOR SUBMITTING APPLICATION:

Every Applicant is Responsible to Complete The Permit Application and Submit as Follows: One copy each of application, location map, drawings, copy of deed and any other supporting information to addresses 1, 2, and 3 below. If water quality certification is required, send only application, location map and drawing to address No. 4.

1. For Department of the Army Permit, mail to: Commander, Savannah District, US Army Corps of Engineers, ATTN: CESAS-RD, 100 W. Oglethorpe Avenue, Savannah, Georgia 31401-3640. Phone (912) 652-5347 and/or toll free, Nationwide 1-800-448-2402.

2. For State Permit - State of Georgia (six coastal counties only) mail to: Habitat Management Program, Coastal Resources Division, Georgia Department of Natural Resources, 1 Conservation Way, Brunswick, Georgia 31523. Phone (912) 264-7218.

3. For Revocable License - State of Georgia (six coastal counties plus Effingham, Long, Wayne, Brantley and Charlton counties only) - Request must have State of Georgia's assent or a waiver authorizing the use of State owned lands. All applications for dock permits in the coastal counties or for docks located in tidally influenced waters in the counties listed above need to be submitted to Real Estate Unit. In addition to instructions above, you must send two signed form letters regarding revocable license agreement to: Ecological Services Coastal Resources Division, Georgia Department of Natural Resources, 1 Conservation Way, Brunswick, Georgia 31523. Phone (912) 264-7218.

4. For Water Quality Certification State of Georgia, mail to: Water Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 4220 International Parkway, Suite 101, Atlanta, Georgia 30354 (404) 675-1631.

The application must be signed by the person authorized to undertake the proposed activity. The applicant must be the owner of the property or be the lessee or have the authority to perform the activity requested. Evidence of the above may be furnished by copy of the deed or other instrument as may be appropriate. The application may be signed by a duly authorized agent if accompanied by a statement from the applicant designating the agent. See item 6, page 2.

1. Application No. _____

2. Date _____

3. For Official Use Only _____

4. Name and address of applicant.

5. Location where the proposed activity exists or will occur.

Lat. _____ Long. _____

County	Military District	In City or Town
Near City or Town	Subdivision	Lot No.
Lot Size	Approximate Elevation of Lo	State
Name of Waterway	Name of Nearest Creek, River, Sound, Bay or Hammock	

6. Name, address and title of applicant's authorized agent for permit application coordination.

Statement of Authorization: I hereby designate and authorize the above named person to act in my behalf as my agent in the processing of this permit application and to furnish, upon request, supplemental information in support of this application.

Signature of Applicant

Date

7. Describe the proposed activity, its purpose and intended use, including a description of the type of structures, if any to be erected on fills, piles, of float-supported platforms, and the type, composition and quantity of materials to be discharged or dumped and means of conveyance. If more space is needed, use remarks section on page 4 or add a supplemental sheet. (See Part III of the Guide for additional information required for certain activities.)

8. Proposed use: Private Public Commercial Other (Explain)

9. Names and addresses of adjoining property owners whose property also adjoins the waterway.

10. Date activity is proposed to commence. _____

Date activity is expected to be completed. _____

11. Is any portion of the activity for which authorization is sought now complete YN

a. If answer is "Yes", give reasons in the remarks in the remarks section.
Indicate the existing work on the drawings.

b. If the fill or work is existing, indicate date of commencement and completion.

c. If not completed, indicate percentage completed.

12. List of approvals or certifications required by other Federal, State or local agencies for any structures, construction discharges, deposits or other activities described in this application. Please show zoning approval or status of zoning for this project.

Issuing Agency

Type Approval

Identification No. Date/Application

Date/Approval

13. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein?
 Yes NO (If "yes", explain).

Note: Items 14 and 15 are to be completed if you want bulkhead, dredge or fill.

14. Description of operation: (If feasible, this information should be shown on the drawing).

a. Purpose of excavation or fill _____.

1. Access channel length _____ depth _____ width _____

2. Boat basin length _____ depth _____ width _____

3. Fill area length _____ depth _____ width _____

4. Other _____ length _____ depth _____ width _____

(Note: If channel, give reasons for need of dimensions listed above.)

b. If bulkhead, give dimensions _____

-- Type of bulkhead construction (material) _____

1. Backfill required: Yes _____ No _____ Cubic yards _____

2. Where obtained _____

c. Excavated material

1. Cubic yards _____

2. Type of material _____

15. Type of construction equipment to be used _____

a. Does the area to be excavated include any wetland? Yes No

b. Does the disposal area contain any wetland? Yes No

c. Location of disposal area _____

d. Maintenance dredging, estimated amounts, frequency, and disposal sites to be utilized: _____

e. Will dredged material be entrapped or encased? _____

f. Will wetlands be crossed in transporting equipment to project site? _____

g. Present rate of shoreline erosion (if known) _____

16. Description of Avoidance, Minimization and Compensation: Provide a brief explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also, provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts.

17. Water Quality Certification: In some cases, Federal law requires that a Water Quality Certification from the State of Georgia be obtained prior to issuance of a Federal license or permit. Applicability of this requirement to any specific project is determined by the permitting Federal agency. The information requested below is generally sufficient for the Georgia Environmental Protection Division to issue such a certification if required. Any item, which is not applicable to a specific project, should be so marked. Additional information will be requested if needed.

a. Please submit the following:

1. A plan showing the location and size of any facility, existing or proposed, for handling any sanitary or industrial waste waters generally on your property.
2. A plan of the existing or proposed project and your adjacent property for which permits are being requested.
3. A plan showing the location of all points where petro-chemical products (gasoline, oils, cleaners) used and stored. Any aboveground storage areas must be diked, and there should be no storm drain catch basins within the dike areas. All valving arrangements on any petro-chemical transfer lines should be shown.
4. A contingency plan delineating action to be taken by you in the event of spillage of petro-chemical products or other materials from your operation.
5. Plan and profile drawings showing limits of areas to be dredged, areas to be used for placement of spoil, locations of any dikes to be constructed showing locations of any weir(s), and typical cross sections of the dikes.

b. Please provide the following statements:

1. A statement that all activities will be performed in a manner to minimize turbidity in the stream.
2. A statement that there will be no oils or other pollutants released from the proposed activities which will reach the stream.
3. A statement that all work performed during construction will be done in a manner to prevent interference with any legitimate water uses.

18. Application is hereby made for a permit or permits to authorize the activities described herein; Water Quality Certification from the Georgia Environmental Protection Division is also requested if needed. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities.

Signature of Applicant

19. U.S.C. Section 1001 provides that: Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined no more than \$10,000 or imprisoned not more than 5 years or both.

PRIVACY ACT NOTICE

The Department of the Army permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972. These laws require permits authorizing structures and work in or affecting navigable waters of the United States, the discharge of dredged or fills material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Information provided will be used in evaluating the application for a permit. Information in the application is made a matter of public record through issuance of a public notice. Disclosure of the information requested is voluntary; however, the data requested are necessary in order to communicate with the applicant and to evaluate the permit application. If necessary information is not provided, the permit application cannot be processed nor can a permit be issued.

SUPPORTING REMARKS:

**U.S. Army Corps of Engineers
Regulatory Branch, Coastal Area Section
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3640**

To Whom It May Concern:

This is to certify the work subject to the jurisdiction of the U.S. Army Corps of Engineers as described in my application dated _____, is to the best of my knowledge, consistent with the Georgia Management Plan.

Since my project is located in the Coastal Area of Georgia, I understand the U.S. Army Corps of Engineers must provide this statement to the Georgia Department of Natural Resources, Coastal Resources Division, Ecological Services Section (GADNR-CRD) for its review, and a Department of Army permit will not be issued until the GADNR-CRD concurs with my findings. I also understand additional information may be required by the GADNR-CRD to facilitate its review of my project and the additional information certifications may be required for other Federal or State authorizations.

Signature of Application: _____

Date: _____

Printed Name of Applicant: _____

Street Address: _____

City, State, Zip Code: _____

Phone Number: _____

Fax Number: _____

E-Mail Address: _____

**For questions regarding consistency with the Georgia Coastal Management Program,
Please contact Kelie Moore, GADNR-CRD, (912) 264-7218.**

Coastal Marina, Community or Commercial Dock Checklist

(fill in the blanks as indicated or answer yes or no)

LOCATION:

County _____
Municipality _____

Landmarks _____
Waterway _____

FACILITY:

Facility Type _____ Private _____ Public _____ Commercial _____ Other _____
Dock Space _____ Leased _____ Sold _____ Rented _____ Other _____

Size of Upland Area (sq. ft.) _____ Size of Submerged Area (sq. ft.) _____

WATERWAY INFORMATION:

open water _____ river _____ creek _____ basin _____

Tidal Range (ft MLW) _____ Water Depth (ft. MLW) _____
Channel Width (ft. MLW) _____ Depth of Dredging (ft. MLW) _____

Distance facility will extend into the waterway beyond MLW _____

EXISTING OR PLANNED SERVICES IN JURISDICTION:

_____ boat ramp	_____ hoist	_____ mobile lift	_____ vessel TV hookup
_____ railway	_____ fuel	_____ propeller repair	_____ electrical repair
_____ pump-out vessels	_____ hull repair	_____ engine repair	_____ vessel electric hookup
_____ boat building	_____ ship's store	_____ dockmaster's office	_____ fire protection
_____ restrooms	_____ showers	_____ restaurant	_____ laundromat
_____ hotel	_____ # of vehicle parking spaces		_____ # of trailer parking spaces

DREDGING/FILLING/SHORELINE STABILIZATION:

_____ Will dredging be required for the access channel?
_____ Will dredging be required for boat basin?
_____ Is filling proposed in tidal wetlands?
_____ Is filling proposed in open water?
_____ Will dredge disposal sites be required?
_____ Have future dredge disposal sites been identified?
_____ Have future dredge spoil sites been set aside with deeds or easements?
_____ Is shoreline stabilization proposed? If so, what type? _____
_____ Is the project in or near a US Army Corps of Engineers maintained channel or basin with an authorization depth of 12 feet or greater? (if so, contact the Corps of Engineers)

HABITAT/WILDLIFE/CULTURAL RESOURCES: (contact GADNR Wildlife Resources Division, US Fish & Wildlife Service, GADNR Coastal Resources Division- Marine Fisheries, National Marine Fisheries Service OR GADNR Historic Resources)

_____ Is this site located near a wildlife refuge, wilderness area, special management area, or other area specifically located for the protection of fish and wildlife?
If yes, what is the distance? _____

_____ *Is this habitat identified as “essential fish habitat”?

_____ Are rare, threatened, endangered or otherwise designated unique or outstanding aquatic or terrestrial species or their habitats known to be present at or near the project site?

_____ Do oyster or clam beds occur in or near the project site or access channels?
If yes, what is the distance? _____ If yes, what is the acreage? _____

_____ *Is project site near active crabbing areas?

_____ *Is the project site in designated bait zones?

_____ Is the project site in or near an area of historic, archeological, or scenic value?
If yes, explain _____

* GA DNR Coastal Resources Division’s Marine Fisheries staff can direct the applicant to appropriate source materials.

STATE OF GEORGIA

REQUEST FOR A REVOCABLE LICENSE FOR THE USE OF TIDAL WATERBOTTOMS

APPLICANT NAME(S): _____

MAILING ADDRESS: _____
(Street) (City) (State) (Zip)

PROJECT ADDRESS/LOCATION: _____

COUNTY: _____ WATERWAY: _____

LOT, BLOCK & SUBDIVISION NAME FROM DEED: _____

Georgia Department of Natural Resources
Coastal Resources Division
One Conservation Way
Brunswick, Georgia 31520-8687

I am requesting that I be granted a revocable license from the State of Georgia to encroach on the beds of tidewaters, which are state owned property. Attached hereto and made a part of this request is a copy of the plans and description of the project that will be the subject of such a license. I certify that all information submitted is true and correct to the best of my knowledge and understand that willful misrepresentation or falsification is punishable by law.

I understand that if permission from the State is granted, it will be a revocable license and will not constitute a license coupled with an interest. I acknowledge that this revocable license does not resolve any actual or potential disputes regarding the ownership of, or rights in, or over the property upon which the subject project is proposed, and shall not be construed as recognizing or denying any such rights or interests. I acknowledge that such a license would relate only to the property interests of the State and would not obviate the necessity of obtaining any other State license, permit, or authorization required by State law. I recognize that I waive my right of expectation of privacy and I do not have the permission of the State of Georgia to proceed with such project until the Commissioner of DNR or his/her designee has executed a revocable license in accordance with this request.

Sincerely,

By: _____
Signature of Applicant

Date: _____

Title, if applicable

By: _____
Signature of Applicant

Date: _____

Title, if applicable

Attachments

Coastal Marshlands Protection Act
O.C.G.A. § 12-5-280

TITLE 12 Chapter 5 Article 4 Part 4 Note

PART NOTES:

ADMINISTRATIVE RULES AND REGULATIONS. --Coastal marshlands protection, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-2-3.

LAW REVIEWS. --For article, "Georgia's Environmental Law: A Survey," see *23 Mercer L. Rev. 633 (1972)*. For article, "Public Rights in Georgia's Tidelands," see *9 Ga. L. Rev. 79 (1974)*. For article, "Hazardous Waste Issues in Real Estate Transactions," see *38 Mercer L. Rev. 581 (1987)*. For article, "Georgia Wetlands: Values, Trends, and Legal Status," see *41 Mercer L. Rev. 791 (1990)*.

For notes, "Regulation and Ownership of the Marshlands: The Georgia Marshlands Act," see *5 Ga. L. Rev. 563 (1971)*. 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)*.

OPINIONS OF THE ATTORNEY GENERAL:

GEORGIA PORTS AUTHORITY EXEMPT FROM PART. --Because the Georgia Ports Authority, at time of enactment of O.C.G.A. Pt. 4, Art. 4, Ch. 5, T. 12, was empowered and charged with responsibility of development and improvement of rivers and seaports of this state, as a general matter, it is exempt from requirements of this part. 1981 Op. Att'y Gen. No. 81-85.

LIMITATION ON EXEMPTION OF GEORGIA PORTS AUTHORITY FROM THIS PART. --While the Georgia Ports Authority is generally exempt from provisions of O.C.G.A. Pt. 4, Art. 4, Ch. 5, T. 12, it must obtain prior written approval of the Coastal Marshlands Protection Committee for any proposed alteration of marshlands adjacent to Colonels Island which were conveyed to the Georgia Ports Authority pursuant to Ga. L. 1973, p. 747. 1981 Op. Att'y Gen. No. 81-85.

THE BRUNSWICK PORT AUTHORITY falls within terms of exception to O.C.G.A. Pt. 4, Art. 4, Ch. 5, T. 12 for state agencies responsible for navigation, and is, thus, exempt from provisions of this part. 1982 Op. Att'y Gen. No. 82-21.

RESEARCH REFERENCES

ALR. --Conservation: validity, construction, and application of enactments restricting land development by dredging or tilling, 46 ALR3d 1422.

O.C.G.A. § 12-5-280

§ 12-5-280. Short title

This part shall be known and may be cited as the "Coastal Marshlands Protection Act of 1970."

HISTORY: Ga. L. 1970, p. 939, § 1; Ga. L. 1992, p. 2294, § 1.

NOTES:

LAW REVIEWS. --For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see *41 Mercer L. Rev. 865 (1990)*. For annual survey law on administrative law, see *62 Mercer L. Rev. 1 (2010)*. For article, "The Chevron Two-Step in Georgia's Administrative Law," see *46 GA. L. Rev. 871 (2012)*. For annual survey on administrative law, see *64 Mercer L. Rev. 39 (2012)*.

For comment, "Wrest' in Peace: The Effect of the Georgia Environmental Protection Division's "Wrested Vegetation Rule" on Coastal Salt Marshes," see *32 Georgia St. U.L. Rev. 953 (2016)*

§ 12-5-281. Legislative findings and declarations

The General Assembly finds and declares that the coastal marshlands of Georgia comprise a vital natural resource system. It is recognized that the estuarine area of Georgia is the habitat of many species of marine life and wildlife and, without the food supplied by the marshlands, such marine life and wildlife cannot survive. The General Assembly further finds that intensive marine research has revealed that the estuarine marshlands of coastal Georgia are among the richest providers of nutrients in the world. Such marshlands provide a nursery for commercially and recreationally important species of shellfish and other wildlife, provide a great buffer against flooding and erosion, and help control and disseminate pollutants. Also, it is found that the coastal marshlands provide a 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 coastal marshlands 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. The General Assembly further finds that the coastal marshlands are a vital area of the state and are 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 coastal marshlands 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 in the coastal marshlands must be regulated to ensure that the values and functions of the coastal marshlands are not impaired and to fulfill the responsibilities of each generation as public trustees of the coastal marshlands for succeeding generations.

HISTORY: Code 1981, § 12-5-281, enacted by Ga. L. 1992, p. 2294, § 1.

§ 12-5-282. Definitions

As used in this part, the term:

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(1) "Applicant" means any person who files an application under this part.

(2) "Board" means the Board of Natural Resources.

(3) "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 (*Borrchia 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.

(4) "Commissioner" means the commissioner of natural resources.

(5) "Committee" means the Coastal Marshlands Protection Committee created by this part.

(6) "Eligible person" means any person who is the owner of high land adjoining the state owned marshland or water bottoms, or combination thereof, sought to be leased by said person such that at least 100 percent of the landward boundary of the state owned marshland or water bottom, or combination thereof, sought to be leased is bordered by said adjoining high land.

(7) "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.

(7.1) "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.

(8) "Live-aboard" means a floating vessel or other water craft capable of safe, mechanically propelled navigation under average Georgia coastal wind and current conditions which is utilized as a human or animal abode and is located at a marina or a mooring area established by the department.

(9) "Minor alteration" means any change in the marshlands which, taken singularly or in combination with other changes, involve less than 0.10 acres. Minor alteration also includes renewal of permits previously issued by the committee.

(10) "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 specifically exempted by this part.

(11) "Political subdivision" means the governing authority of a county or a municipality in which the marshlands to be affected or any part thereof are located.

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(12) "Private dock" means a structure built onto or over the marsh and submerged lands which is used for recreational fishing and other recreational activities, is not available to the public, does not have enclosures, and does not create a navigation hazard; provided, however, that a private dock may be covered and screened with wainscotting not higher than three feet and may be equipped with a hoist.

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

HISTORY: Ga. L. 1970, p. 939, § 2; Code 1981, § 12-5-281; Ga. L. 1982, p. 3, § 12; Ga. L. 1989, p. 574, § 1; Ga. L. 1990, p. 8, § 12; Code 1981, § 12-5-282, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2012, p. 1074, § 2/SB 319; Ga. L. 2013, p. 874, § 4/HB 402.

JUDICIAL DECISIONS

"ELIGIBLE PERSON." --There are two components of eligibility under *O.C.G.A. § 12-5-282(6)* for a marshland/water bottom lease: (1) the ownership interest in the high land (or upland): and (2) the metes and bounds of the high land contiguous to the water bottom so that at least 100 percent of the landward boundary of the state owned water bottom is bordered by this adjoining high land. *DBL, Inc. v. Carson, 284 Ga. App. 898, 645 S.E.2d 56 (2007)*, cert. denied, *2007 Ga. LEXIS 566 (2007)*.

RESEARCH REFERENCES

AM. JUR. 2D. --*56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 12.*

§ 12-5-283. Coastal Marshlands Protection Committee created; members; powers; per diem and expenses; administrative hearings and review; permits for minor alterations

(a) There is created the Coastal Marshlands Protection Committee to be composed of five members. The commissioner of natural resources and four persons selected by the board shall be the members of this committee. 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 committee shall issue all orders and shall grant, deny, revoke, and amend all permits and leases provided for by this part. The members of the committee shall be entitled to reimbursement of actual expenses and mileage together with a per diem as set by the board to be paid out of funds appropriated for use by the department.

(b) 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 the 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

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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.

(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 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.

(d) Any permit for minor alteration of the marshlands may be issued by the commissioner based on the recommendations of staff, past committee actions, and the results of public comments. The commissioner may refer the application to the committee to decide on permits for minor alterations that, in his judgment, should receive broader consideration. A committee member may choose to have the full committee decide on permit applications for minor alterations that the member feels should receive broader consideration.

HISTORY: Ga. L. 1972, p. 1015, § 17; Ga. L. 1973, p. 564, § 1; Code 1981, § 12-5-282; Ga. L. 1984, p. 404, § 5; Ga. L. 1985, p. 1465, § 3; Ga. L. 1989, p. 574, § 2; Code 1981, § 12-5-283, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2004, p. 400, § 2.

NOTES:

THE 2004 AMENDMENT, effective July 1, 2004, in subsection (a), substituted "five members" for "three members" at the end of the first sentence, substituted "four persons" for "two persons" in the second sentence, in the third sentence substituted "Each of three" for "Both" and substituted "a resident" for "residents", and added the fourth sentence.

CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, in 1989, a comma was inserted following "Act" in the second sentence of subsection (b).

ADMINISTRATIVE RULES AND REGULATIONS. --Procedure for disposition of contested cases, Official Compilation of Rules and Regulations of the State of Georgia, Department of Natural Resources, Chapter 391-1-2.

LAW REVIEWS. --For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see *30 Mercer L. Rev. 75 (1978)*.

JUDICIAL DECISIONS

BOARD MAY NOT FURTHER REVIEW DECISIONS OF COMMITTEE. Department of Natural Resources v. American Cyanamid Co., 239 Ga. 740, 238 S.E.2d 886 (1977).

CITED in *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007).*

RESEARCH REFERENCES

O.C.G.A. § 12-5-280

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law, § 364.*

C.J.S. --73A C.J.S., Public Administrative Law and Procedure, §§ 313, 314, 316.

§ 12-5-284. Authority of department as to coastal marshlands generally

(a) The department shall have the following authority:

(1) To administer and enforce this part and all rules, regulations, and orders promulgated under this part and to determine jurisdiction under this part;

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

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

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

(5) 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: Ga. L. 1970, p. 939, § 4; Ga. L. 1972, p. 991, § 1; Code 1981, § 12-5-283; Code 1981, § 12-5-284, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2013, p. 874, § 5/HB 402.

RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law, §§ 64, 181, 182, 188, 192, 193, 291, 464, 465.*

C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § 180. 73A C.J.S., Public Administrative Law and Procedure, §§ 481, 483. 81A C.J.S., States, § 256.

§ 12-5-285. Power of board to promulgate rules and regulations

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

HISTORY: Ga. L. 1970, p. 939, § 4; Code 1981, § 12-5-284; Code 1981, § 12-5-285, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

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AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law*, §§ 64, 181, 182, 188, 192, 193, 291, 464, 465.

C.J.S. --73 C.J.S., *Public Administrative Law and Procedure*, § 180. 73A C.J.S., *Public Administrative Law and Procedure*, §§ 481, 483. 81A C.J.S., *States*, § 256.

§ 12-5-286. Permit required; application; notice; public hearing; issuance; denial; dynamic dune fields

(a)(1) No person shall remove, fill, dredge, drain, or otherwise alter any marshlands or construct or locate any structure on or over marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee or, in the case of minor alteration of marshlands, the commissioner. A permit may authorize the construction or maintenance of the project proposed in an application. After construction pursuant to a permit, a project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation at the project site and remains in serviceable condition.

(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.

(b) Each application for such permit shall be properly executed and filed with the department on forms prescribed by the department and shall include:

(1) The name and address of the applicant;

(2) A plan or drawing showing the applicant's proposal and the manner or method by which such proposal shall be accomplished. Such plan shall identify the coastal marshlands affected;

(3) A plat of the area in which the proposed work will take place;

(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, then a copy of the deed or other instrument under which the owner claims 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 committee may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property. The committee will not adjudicate title disputes concerning the property which is the subject of the application; provided, however, that the committee may decline to process an application when submitted documents show conflicting deeds;

(5) A list of all adjoining landowners together with such owners' addresses, provided that if the names or addresses of adjoining landowners cannot be determined, the applicant shall file in lieu thereof a sworn affidavit that a diligent search, including, without limitation, 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, as the case may be, of adjoining landowners;

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

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(7) A nonrefundable application fee to be set by the board in an amount necessary to defray the administrative cost of issuing such permit. Renewal fees shall be equal to application fees, which shall not exceed \$1,000.00 for any one proposal and shall be paid to the department;

(8) A description from the applicant of alternative sites and why they are not feasible and a discussion of why the permit should be granted;

(9) 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;

(10) A copy of the water quality certification issued by the department if required for the proposed project;

(11) Certification by the applicant of adherence to soil and erosion control responsibilities if required for the proposed project; and

(12) Such additional information as is required by the committee to properly evaluate the application.

(c) A copy of each application for a permit shall be delivered to each member of the committee at least seven days prior to any meeting of the committee.

(d) The department, after receipt of an application, shall notify in writing all adjoining landowners that the application has been received. Such notice shall indicate the use the applicant proposes to make of the property. Should the applicant indicate that any adjoining landowner is unknown or that the address of such landowner is unknown, then the department shall, after receipt of a completed application, cause a notice of the proposed activity and a brief description of the affected land to be published in the legal organ of or a newspaper of general circulation in the county or counties in which such land lies. Cost of such publication shall be paid by the applicant. Should the property to be affected by the applicant be bordered on any side or on more than one side by other property of the applicant, the applicant shall supply the names and addresses of the nearest landowners whose land borders on his land. If the names or addresses, or both, of the nearest landowners cannot be ascertained, the applicant shall supply a sworn statement of diligent search as provided in this Code section. The landowners named by the applicant shall be notified either directly or by advertisement as provided in this Code section. The department may also make inquiry to adjoining landowners to ascertain whether or not there is objection to issuance of a permit.

(e) The committee shall provide notice of applications by either public notice distributed jointly with the United States Army Corps of Engineers or public notice distributed by the committee. In no instance shall a public notice be issued for less than seven days prior to the meeting at which the committee reviews the subject of the public notice. Public notices shall be distributed to all persons who have requested to be placed on the mailing list. Such request shall be made in writing and shall be renewed in December of each year. Failure to renew the request shall result in the removal of such name from the mailing list.

(f) Whenever there appears to be sufficient public interest, the committee may call a public hearing.

(g) In passing upon the application for permit, the committee shall consider the public interest, which, for purposes of this part, shall be deemed to be the following considerations:

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(1) Whether or not unreasonably harmful obstruction to or alteration of the natural flow of navigational water within the affected area will arise as a result of the proposal;

(2) Whether or not unreasonably harmful or increased erosion, shoaling of channels, or stagnant areas of water will be created; and

(3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources, including but not limited to water and oxygen supply.

(h) It is the responsibility of the applicant to demonstrate to the committee that the proposed alteration is not contrary to the public interest and that no feasible alternative sites exist. If the committee finds that the application is not contrary to the public interest and no feasible alternative sites exist, as specified in this subsection, it shall issue to the applicant a permit. Such permit may be conditioned upon the applicant's amending the proposal to take whatever measures are necessary to protect the public interest.

(i) The committee shall act upon an application for a permit within 90 days after the application is complete; provided, however, that this provision may be waived upon the written request of the applicant. An application must be complete sufficiently in advance of the committee meeting at which the project will be considered to allow for public notice and evaluation by the department. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by this part.

(j) In the event a majority of the members of the committee determine that a permit should be denied, the application for permit shall be denied. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in *Code Section 12-5-283*.

(k) Should a majority of the members of the committee agree that a permit should be conditional, the permit shall be issued on such conditions as a majority of the committee directs. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in *Code Section 12-5-283*.

(l) Every permit shall require that the proposed project be completed within five years after the date of the issuance of the permit and such permit shall expire five years after the date of issuance. Such time may be extended an additional five years upon showing that all due efforts and diligence toward the completion of the work have been made. Any permit may be revoked by the committee for noncompliance with or for violation of its terms after written notice of intention to do so has been furnished to the holder thereof.

(m) A permit to alter marshlands that has been granted by the committee becomes final immediately upon issuance, but no construction or alteration may commence until the expiration of 30 days following the date of the committee meeting at which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.

(n) 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 assessed by the committee to determine if the proposed change is consistent with this part and the permit. Each permitted alteration of marshlands shall be reviewed by the department on a five-year basis, or

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when noncompliance with the purpose for which the permit was issued is evident, to determine if the use of the marshland is consistent with the intent of this part. If the permit holder is found not to be in compliance with this part, the committee shall take action as authorized under *Code Section 12-5-291*.

(o) 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 committee.

(p) The permittee shall notify the department of completion of a project within 30 days of completion.

(q) 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.

(r) If an area has both marshlands as defined in *Code Section 12-5-282* and dynamic dune fields as defined in *Code Section 12-5-232*, it shall be subject to the jurisdiction of both such parts. In the event of a conflict between this part and Part 2 of this article, the commissioner shall determine which part shall apply so as to best protect the public interest.

HISTORY: Ga. L. 1970, p. 939, § 5; Code 1981, § 12-5-285; Code 1981, § 12-5-286, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2013, p. 874, § 6/HB 402.

JUDICIAL DECISIONS

STATE REQUIRES THAT PERMIT BE OBTAINED where improvements to boat repair and maintenance facilities involve filling lands between high and low watermarks which are owned by the state. *Isle of Hope Historical Ass'n v. United States Army Corps of Eng'rs*, 646 F.2d 215 (5th Cir. 1981).

REGULATION OF STORM WATER RUNOFF. --The Coastal Marshlands Protection Act can be construed to regulate storm water runoff into the marshlands under the "otherwise alter" provision of *O.C.G.A. § 12-5-286(a)* only to the extent that the runoff alters the marshlands in a direct physical manner akin to removing, filling, dredging, or draining the marshlands; storm water runoff into the marshlands that does not alter the marshlands in this manner is not regulated under the "otherwise alter" provision, despite the fact that the runoff carries pollutants and may have an adverse impact on the marshlands. *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast*, 286 Ga. App. 518, 649 S.E.2d 619 (2007), *aff'd*, 284 Ga. 736, 670 S.E.2d 429 (2008).

Because there was no evidence that storm water runoff generated by a upland residential development "otherwise altered" marshlands in a direct physical manner akin to removing, filling, dredging, or draining under *O.C.G.A. § 12-5-286(a)*, it was error to construe the Coastal Marshlands Protection Act to regulate the runoff from this area. *Coastal Marshlands Prot.*

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Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007), *aff'd*, 284 Ga. 736, 670 S.E.2d 429 (2008).

LEASE ON UPLAND PROPERTY. --Having a lease on upland property can satisfy the ownership component of being an "eligible person" for a water bottom lease under O.C.G.A. § 12-5-287; the upland lease here, however, could not be construed as a written assignment of rights to the water bottom or as permission to apply for the water bottom lease under O.C.G.A. § 12-5-286(b)(4). *DBL, Inc. v. Carson*, 284 Ga. App. 898, 645 S.E.2d 56 (2007), cert. denied, 2007 Ga. LEXIS 566 (2007).

NO AUTHORITY REGARDING RESIDENTIAL UPLAND AREAS. --Committee's authority to issue a permit under the Coastal Marshlands Protection Act, O.C.G.A. § 12-5-280 et seq., did not extend to residential upland areas of the development at issue because the use of the term "otherwise alter" in O.C.G.A. § 12-5-286(a) was not authority for such a determination and, although the developer was required to secure a permit because the developer intended to place structures in the marshlands, the permitting process was not triggered because of any other activity that could have been deemed to "otherwise alter" the marshlands. *Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm.*, 284 Ga. 736, 670 S.E.2d 429 (2008).

PERMIT PROPERLY AFFIRMED. --Under an "any evidence" standard of review, an ALJ did not err in affirming portions of a permit issued by the Coastal Marshlands Protection Committee where the permit contained conditions to reduce erosion and use of best management practices to comply with the Erosion and Sedimentation Act of 1975, as a biological assessment and other conditions of the permit provided a sufficient basis for the finding that granting the permit and completing the proposed project would not unreasonably interfere with the conservation of gopher tortoises, indigo snakes, shorebirds, and wood storks; private docks were not part of the permitted project and were not regulated to the extent they complied with the provisions of O.C.G.A. § 12-5-295, and the developer had agreed to restrict the number and size of the private docks that could be built. *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast*, 286 Ga. App. 518, 649 S.E.2d 619 (2007), *aff'd*, 284 Ga. 736, 670 S.E.2d 429 (2008).

PERMIT IMPROPERLY REVERSED. --Trial court reviewing an administrative law judge's (ALJ) decision affirming the issuance of a permit to build a dock over marshlands, under the Coastal Marshlands Protection Act of 1970, O.C.G.A. § 12-5-280 et seq., by the Coastal Marshlands Protection Committee (Committee) erroneously reversed the decision because the court focused on the Committee's decision, instead of deciding whether the ALJ correctly affirmed the Committee's decision, since the ALJ conducted a de novo review of the Committee's decision at which new evidence could be received. *Coastal Marshlands Prot. Comm. V. Altamaha Riverkeeper, Inc.*, 315 Ga. App. 510, 726 S.E.2d 539 (2012)

§ 12-5-287. Leasing of state owned marshland or water bottoms

(a) The committee, acting for and on behalf of and in the name of the state, is further authorized and empowered to grant and convey to any eligible person a lease of state owned marshland or water bottoms, or a combination thereof, upon such terms and conditions as the committee deems advisable for the purpose of constructing, operating, and maintaining thereupon a marina or marinas

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or dock providing more than 500 linear feet of dock space, including the installing, maintaining, repairing, removing, and replacing of buildings, structures, piers, docks, floating docks, marine railways, dolphins, pilings, appurtenances thereto, and all facilities and improvements that shall be reasonably used for or in connection therewith, subject always to the initial and continuing compliance by the lessee with all applicable laws pertaining to the use of the leased property and subject always to the use and enjoyment of the public of any navigable waters upon or over the leased property. The applicant for any such lease shall inform the committee of the total linear footage of dock space proposed, but the final decision as to the total dock space available to moor boats shall be in the sound discretion of the committee.

(b) Upon application by any interested person for a lease pursuant to this Code section, the committee shall determine whether or not the applicant is an eligible person. The committee must also determine whether or not the applicant has sufficient lands properly to service the area to be leased. If the committee determines that the applicant is an eligible person and that sufficient lands exist to service the marina or dock, then the committee is authorized to grant and convey to the applicant a lease of the state owned marshland or water bottoms, or a combination thereof, described in the application without the necessity of public bid.

(c) The application for the lease shall be in writing and shall contain a request for a lease of the state owned property described therein. Such application shall include all of the information required for a permit under this part. The entire application must be in a form acceptable to the committee.

(d) Each lease granted under this Code section shall be upon such provisions, requirements, and conditions as the committee shall make and shall, except as provided in subsection (h) of this Code section, provide for a primary term of not more than ten years. Each lease, except as provided in subsection (h) of this Code section, shall require the payment of an annual rental fee which, as of May 5, 2009, shall be \$1,000.00 per acre, which acreage shall consist of the covered area of dock structures and a ten-foot buffer surrounding such dock structures; and the committee shall in each calendar year thereafter adjust the amount of the annual rental fee per acre to reflect the effect of annual inflation or deflation for the immediately preceding calendar year in accordance with rules and regulations adopted by the board, which rules and regulations may use for this purpose the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor or any other similar index established by the federal government, if the board determines that such federal index reflects the effect of inflation and deflation on the lessees. Except as provided in subsection (h) of this Code section, an initial lease shall be for the annual fee in effect and established by the committee at the time such lease is entered into. Such lease shall be adjusted annually thereafter as provided in this subsection. Each lease may provide for two renewal terms, each of which shall not be for a term of more than equal duration to the primary term. Rental fees shall be paid in one installment to the department not later than July 15 of each year. A penalty of 10 percent of the annual rental shall be assessed for late payment. Failure to pay rental by August 1 of the year due shall result in the cancellation of the lease.

(e) Each lease granted under this Code section shall protect the interest of owners of marshland and high land adjoining the high land of the lessee upon which the lessee's eligibility for lease was based to a right of access to the state owned marshland or water bottoms adjoining the state owned

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marshland or water bottoms leased to the applicant; provided, however, said owners of adjoining high land may assign their rights in writing in favor of the applicant and such written assignment may be used to determine the percentage of landward boundary required for eligibility to lease the state owned marshland and water bottoms described in the application.

(f) If the eligible person desires the ability to transfer or convey ownership interests in the leasehold to individuals purchasing or leasing on a long-term basis the slips of the marina or marinas, each lease granted under this Code section shall require the formation of a condominium pursuant to Code Section 44-3-72.

(g) Reserved.

(h) Upon application of any eligible person who is either a nonprofit corporation, a nonprofit organization, or a public entity, the committee may grant a lease of state owned marshland or water bottoms for the construction and operation of a marina as a community or public dock. Each lease granted under this subsection shall be for a term of ten years from the date of its execution with a nominal rental of \$1.00 for the entire term.

(i) The department shall make an annual report of its activities each calendar year to the General Assembly. The report shall include a summary of all applications received and leases granted, including length of terms, rentals, and locations. Copies of the annual report shall be provided to the director of the State Properties Commission, the chairperson of the House Natural Resources and Environment Committee, the chairperson of the House Committee on State Properties, the chairperson of the Senate Natural Resources and the Environment Committee, and the chairperson of the Senate Committee on State and Local Governmental Operations. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient.

(j) The committee may place such terms, limitations, restrictions, and conditions in such leases as are deemed necessary to ensure that the utilization of the property is in the public interest. Leased areas shall be deemed to be areas where resources are managed by the state and lessee for the protection of wildlife and other natural resources.

(k) The committee may designate staff of the department to act on its behalf to evaluate, enforce, and execute leases issued under this part.

(l) A lease granted under this part shall be issued only to applicants who agree not to discriminate against any person on the basis of race, gender, color, national origin, religion, or disability. Discrimination by lessee may be punished by termination of the lease, by injunction, or by any other legal remedy available to the committee.

HISTORY: Code 1981, § 12-5-285.1, enacted by Ga. L. 1989, p. 574, § 3; Code 1981, § 12-5-287, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 1995, p. 10, § 12; Ga. L. 1995, p. 462, § 1; Ga. L. 2005, p. 1036, § 6/SB 49; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2009, p. 778, § 1/HB 170; Ga. L. 2013, p. 141, § 12/HB 79; Ga. L. 2015, p. 385, § 2-4/HB 252.

NOTES:

THE 2013 AMENDMENT, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “House Committee on State Properties” for “House Committee on State Institutions and Property” in the third sentence of subsection (i).

THE 2015 AMENDMENT, effective July 1, 2015, substituted “provided in subsections (g) and (h)” in the first, second and third sentences of subsection (d); and substituted “Reserved.” For the former provisions of subsection (g), which read: “Upon application of any eligible person who either is the owner of a marina in existence on March 1, 1989, or holds a permit subsequently granted by the committee under this part on an application for a permit filed with the committee prior to March 1, 1989, the committee shall grant to that eligible person a lease of the state owned marshland or water bottoms upon which such marina is actually located for a term of 20 years beginning March 1, 1989, with a nominal rental of \$1.00 per year; provided, however, that any extensions of the dock space or expansion of the area of state owned marshland or water bottoms actually used in conjunction with the marina shall be subject to the provisions of subsection (d) of this Code section; and provided, further, that any such application made on or after January 1, 1999, shall be subject to the provisions of subsection (d) of this Code section.”

JUDICIAL DECISIONS

STANDING TO CHALLENGE LEASE. --As landowners had a property interest in the water fronting their property, which *O.C.G.A. § 12-5-287(e)* protected, and they showed that this interest was being harmed by the operation of a marina in front of their property, they had standing to sue the marina operator and to challenge the validity of its water bottom lease. *DBL, Inc. v. Carson*, 262 Ga. App. 252, 585 S.E.2d 87 (2003).

ELIGIBILITY TO APPLY FOR WATER BOTTOM LEASE. --Having a lease on upland property can satisfy the ownership component of being an "eligible person" for a water bottom lease under *O.C.G.A. § 12-5-287*; the upland lease here, however, could not be construed as a written assignment of rights to the water bottom or as permission to apply for the water bottom lease under *O.C.G.A. § 12-5-286(b)(4)*. *DBL, Inc. v. Carson*, 284 Ga. App. 898, 645 S.E.2d 56 (2007), cert. denied, 2007 Ga. LEXIS 566 (2007).

§ 12-5-288. Restriction on granting of permits; size restriction; activities and structures considered contrary to public interest

(a) If the project is not water related or dependent on waterfront access or can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities, a permit usually should not be granted pursuant to *Code Section 12-5-286*.

(b) The amount of marshlands to be altered must be minimum in size. The following activities and structures are normally considered to be contrary to the public interest when located in coastal marshlands but the final decision as to whether any activity or structure is considered to be in the public interest shall be in the sound discretion of the committee:

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- (1) Filling of marshlands for residential, commercial, and industrial uses;
- (2) Filling of marshlands for private parking lots and private roadways;
- (3) Construction of dump sites and depositing of any waste materials or dredge spoil;
- (4) Dredging of canals or ditches for the purpose of draining coastal marshlands;
- (5) Mining;
- (6) Construction of lagoons or impoundments for waste treatment, cooling, agriculture, or aquaculture which would occupy or damage coastal marshlands or life forms therein;
- (7) Construction of structures which constitute an obstruction of view to adjoining riparian landowners, including signs and enclosures; and
- (8) Occupying a live-aboard for more than 90 days during any calendar year; provided, however, that the commissioner may grant extensions of time beyond 90 days to persons making a request in writing stating the reasons for such extension. Owners of docks where live-aboards are moored as well as owners and occupants of live-aboards are responsible under this part.

HISTORY: Code 1981, § 12-5-288, enacted by Ga. L. 1992, p. 2294, § 1; Ga. L. 2012, p/ 1074, § 3/SB 319.

NOTES:

THE 2012 AMENDMENT, effective July 1, 2012, in paragraph (b)(8), twice substituted “90 days” for “30 days”.

§ 12-5-289. Inspection of marshlands

The department, through its officers, staff, and conservation rangers, shall, in addition to its other duties prescribed by law, make reasonable inspections of the marshlands to ascertain whether the requirements of this part and the rules, regulations, and permits promulgated or issued under this part are being faithfully complied with.

HISTORY: Ga. L. 1970, p. 939, § 6; Code 1981, § 12-5-286; Code 1981, § 12-5-289, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law*, § 264.

C.J.S. --73 *C.J.S., Public Administrative Law and Procedure*, § 145.

§ 12-5-290. Jurisdiction to restrain violation of part

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

HISTORY: Ga. L. 1970, p. 939, § 7; Code 1981, § 12-5-287; Code 1981, § 12-5-290, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

C.J.S. --21 C.J.S., Courts, § 186 et seq.

§ 12-5-291. Enforcement of part

(a) In order to enforce this part or any orders issued under this part or any rules and regulations promulgated under this part, any one or any combination of any or all of the following methods may be employed:

(1) Whenever any person not exempted from this part by *Code Section 12-5-295* is altering the marshlands without a permit, altering the marshlands in violation of the terms and conditions of a permit, or violating this part in any other manner, the committee may, prior to any hearing, issue a cease and desist order or other appropriate order to such person; provided, however, that the issuance of such order shall not affect the availability of relief under paragraph (4) of this subsection. Any such order becomes 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 (b) of *Code Section 12-5-283*;

(2) Whenever, after a hearing is held in accordance with *Code Section 12-5-283* and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," at the request of the committee, for the imposition of civil penalties, the administrative law judge determines that any person has failed, neglected, or refused to comply with any provision of this part or any order of the committee or administrative law judge, the administrative law judge may issue an order imposing a civil penalty not to exceed \$10,000.00 for such violation and an additional civil penalty not to exceed \$10,000.00 for each day during which such violation continues. All penalties and interest recovered as provided in this Code section, together with the cost thereof, shall be paid into the state treasury to the credit of the general fund;

(3) The committee may file in the superior court in the county in which the person under order resides or in the county in which the violation occurred or, if the person is a corporation, in the county in which the corporation maintains its principal place of business a certified copy of the final order of the committee or administrative law judge, unappealed from, or of a final order of the administrative law judge affirmed upon appeal; 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;

(4) Whenever the committee, either before or after a hearing, determines that any person is or has been violating any of the provisions of this part or any orders issued under this part or any rules and regulations promulgated under this part, the committee may file a petition for injunction in the proper superior court of this state against such person for the purpose of enjoining such actions or, if appropriate, may make application for a writ of mandamus in the proper superior court of this state

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against such person for the purpose of compelling the proper performance of his official duty. It shall not be necessary for the committee to allege or prove that it has no adequate remedy at law; and

(5) The superior court, upon finding that any person is or has been violating any of the provisions of this part or any orders issued under this part or any rules and regulations promulgated under this part, may order the person to restore, as nearly as possible, all marshland to the condition existing prior to the alteration of the marshland.

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

HISTORY: Ga. L. 1972, p. 991, § 2; Code 1981, § 12-5-288; Ga. L. 1984, p. 404, § 6; Code 1981, § 12-5-291, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law*, §§ 248, 368, 369.

C.J.S. --73 C.J.S., *Public Administrative Law and Procedure*, §§ 68, 69, 70, 180. 73A C.J.S., *Public Administrative Law and Procedure*, §§ 481, 483.

§ 12-5-292. Posting of permit

A copy of every permit issued to an applicant shall be prominently displayed within the area of proposed activity. If the committee 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 committee may reasonably require. The committee may specify the type of sign to be erected and may designate, within reasonable dimensions, the size of the sign.

HISTORY: Ga. L. 1970, p. 939, § 8; Code 1981, § 12-5-289; Code 1981, § 12-5-292, as redesignated by Ga. L. 1992, p. 2294, § 1.

§ 12-5-293. Effect on permit of sale, lease, or other conveyance of land

If a permit holder sells, leases, rents, or otherwise conveys the land or any portion thereof for which the permit was issued, and if the permittee has notified the department within 30 days of such transfer or conveyance, 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.

HISTORY: Ga. L. 1970, p. 939, § 9; Code 1981, § 12-5-290; Code 1981, § 12-5-293, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --51 *Am. Jur. 2d, Licenses and Permits*, § 97.

C.J.S. --53 C.J.S., Licenses, § 81.

§ 12-5-294. Existence of an emergency; order; right to hearing

In the event of an emergency, whether created by act of God or by actions of domestic or foreign enemies, or in circumstances where grave peril to human life or welfare exists, the committee shall 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 provisions of this part to the contrary, such order shall be effective immediately. If an order requiring a person to take action is issued pursuant to this Code section, such person shall be entitled to a hearing within ten days of the date of issuance of the order.

HISTORY: Ga. L. 1970, p. 939, § 12; Code 1981, § 12-5-291; Code 1981, § 12-5-294, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --73 *Am. Jur. 2d, Statutes*, § 262.

C.J.S. --82 C.J.S., *Statutes*, § 304.

§ 12-5-295. Applicability of part

This part shall not apply to the following:

- (1) Activities of the Department of Transportation incident to constructing, repairing, and maintaining a public road system in Georgia;
- (2) Activities of the Department of Transportation and political subdivisions in maintaining existing drainage systems and ditches as long as such activities do not impact additional marshlands;
- (3) Agencies of the United States charged by law with the responsibility of keeping the rivers and harbors of this state open for navigation, and agencies of this state charged by existing law with the responsibility of keeping the rivers and harbors of this state open for navigation including areas for utilization for spoilage designated by such agencies;
- (4) Activities of public utility companies regulated by the Public Service Commission, electric membership corporations, public authorities operating electric systems, or municipal electric systems incident to constructing, erecting, repairing, and maintaining utility lines for the transmission of gas, electricity, or telephone messages;
- (5) Activities of companies regulated by the Public Service Commission incident to constructing, erecting, repairing, and maintaining railroad lines and bridges;

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(6) Activities of political subdivisions incident to constructing, repairing, and maintaining pipelines that have been approved by the department or appropriate authority for the transport of drinking water and sewage;

(7) The building of a private dock exclusively for the noncommercial use of the owner or his or her invitees and constructed on pilings, the walkways of which are above the marsh grass not obstructing tidal flow, by:

(A) The owner of a lot on which a detached single-family residence is located on high land adjoining such dock; or

(B) The owner of a lot having at least 50 front feet of land abutting the marshlands which contains high land suitable for the construction of a detached single-family residence and where the construction of such a residence is not prohibited.

The lot owner shall and is authorized to maintain the structure in good condition and repair the same as necessary, and the use of repair or replacement materials comparable in quality to the original authorized materials shall be sufficient for such purposes;

(7.1) The building of a single private dock by the owners of up to four adjoining lots, each of which is riparian and would qualify for an exemption as provided in paragraph (7) of this Code section, for the exclusive noncommercial use of such owners or their invitees and constructed as a single walkway on pilings above the marsh grass not obstructing tidal flow and in a size to be determined by the department taking into consideration the number of adjoining lots utilizing the dock; provided, however, that the exemption provided by this paragraph shall apply only if each of the owners of such adjoining lots has entered into a binding covenant that runs with the land, in favor of the state, which covenant prohibits the building of any future private dock on his or her lot unless the dock exempted pursuant to this paragraph is removed or converted to a single-family private dock which would qualify for an exemption as provided in paragraph (7) of this Code section. The granting of the exemption provided by this paragraph shall be the state's consideration for the covenant of each such lot owner. The lot owners shall and are authorized to maintain the structure in good condition and repair the same as necessary, and the use of repair or replacement materials comparable in quality to the original authorized materials shall be sufficient for such purposes; or

(8) The reclamation of manmade boat slips as a part of any publicly funded construction project and ancillary development projects including, without limitation, hotels, restaurants, retail facilities, and recreational facilities, whether public or private, within any industrial areas continued in existence pursuant to Article XI, Section I, Paragraph IV, subparagraph (d) of the Constitution which are wholly contained on an island.

HISTORY: Ga. L. 1970, p. 939, § 11; Code 1981, § 12-5-292; Ga. L. 1989, p. 574, § 4; Code 1981, § 12-5-295, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 1995, p. 462, § 2; Ga. L. 2003, p. 316, § 1; Ga. L. 2008, p. 117, § 1/ HB 68; Ga. L. 2009, p. 778, § 2/ HB 170.

NOTES:

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THE 2008 AMENDMENT, effective July 1, 2008, in paragraph (7), substituted a period for "or" at the end of subparagraph (7)(B) and added the last undesignated paragraph; and added paragraph (7.1).

JUDICIAL DECISIONS

PRIVATE DOCK NOT SUBJECT TO COASTAL MARSHLANDS PROTECTION ACT. – Landowners’ claims against the state for declaratory judgement, mandamus, an unconstitutional taking, and due process and equal protection violations, all arising out of the issuance of a license to the landowners’ neighbors to build a private dock in a coastal marshland area, all failed. The Coastal Marshlands Protection Act, O.C.G.A. § 12-5-280 et seq., did not apply to a private dock, pursuant to O.C.G.A. § 12-5-295(7); therefore, the landowners were not entitled to a hearing under the Act pursuant to O.C.G.A. § 12-5-283(b) and the Administrative Procedure Act, O.C.G.A. §§ 50-13-13(a) and 50-13-2(2). *Hitch v Vasarhelyi*, 302 Ga. App. 381, 691 S.E.2d 286 (2010)

CORPS OF ENGINEERS MAY NOT FOLLOW PLANNING DOCUMENTS NOT ADOPTED BY COUNTY. --The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., contemplates a relationship of cooperation between local and federal authorities with the central aspect of such relationship being the respect for the sovereignty of local authorities. Thus, the United States Army Corps of Engineers, a federal agency, was never intended by that Act to have the power or responsibility of a planning and zoning review board, and could not follow planning documents which the local county had not adopted, nor engage in independent analysis of inconsistencies which those specifically charged with zoning enforcement did not find. *Isle of Hope Historical Ass'n v. United States Army Corps of Eng'rs*, 646 F.2d 215 (5th Cir. 1981).

RESEARCH REFERENCES

AM. JUR. 2D. --64 *Am. Jur. 2d, Public Utilities*, §§ 1, 2. 78 *Am. Jur. 2d, Waters*, §§ 136, 138.

C.J.S. --15 C.J.S., Commerce, § 19. 73 C.J.S., Public Utilities, § 1.

§ 12-5-296. Criminal violation

Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

HISTORY: Ga. L. 1970, p. 939, § 10; Code 1981, § 12-5-293; Code 1981, § 12-5-296, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --21 *Am. Jur. 2d, Criminal Law*, § 20.

C.J.S. --22 C.J.S., Criminal Law, § 24.

§ 12-5-297. Liability for damages

Any person who causes or permits any removal, filling, dredging, or draining or other alteration of marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee shall be liable in damages to the state and any political subdivision thereof for any and all actual or projected costs, expenses, and injuries occasioned by such alteration of the marshlands. 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 by the state or any political subdivision thereof in restoring as nearly as possible the natural movement of the waters in the marshlands and replacing the vegetation and aquatic life destroyed by any alteration of marshlands. Damages to the state shall be recoverable in a civil action instituted by the department and shall be paid to the department to cover the cost of restoration. Damages to a political subdivision shall be recoverable in a civil action instituted by said subdivision.

HISTORY: Code 1981, § 12-5-297, enacted by Ga. L. 1992, p. 2294, § 1.

Ga. Comp. R. & Regs. r. 391-2-3-.02 Regulation of Upland Component of a Project
Georgia Administrative Code
Department 391. RULES OF GEORGIA DEPARTMENT OF NATURAL RESOURCES
Chapter 391-2. COASTAL RESOURCES
Subject 391-2-3. COASTAL MARSHLANDS PROTECTION

Current through Rules filed through February 2, 2018

**Rule 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 (*Borrchia 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 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.

Cite as Ga. Comp. R. & Regs. R. 391-2-3-.02

Authority: O.C.G.A. Title 12, O.C.G.A. Sec. 12-5-285.

History. Original Rule entitled "Permit Procedures" adopted as R. 391-4-12-.02. F. Jan. 15, 1975; eff. Feb. 4, 1975.

Repealed: New Rule of same title renumbered as R. 391-2-3-.02. F. Dec. 28, 1979; eff. Jan. 17, 1980.

Repealed: F. June 26, 1992; eff. July 16, 1992.

Amended: New Rule entitled "Regulations of Upland Component of a Project" adopted. F. Mar. 6, 2007; eff. Mar. 26, 2007.

Amended: F. July 25, 2007; eff. Aug. 14, 2007.

Amended: F. May 5, 2011; eff. May 25, 2011

**Ga. Comp. R. & Regs. r. 391-2-3-.03 Regulation of Marinas, Community Docks and
Commercial Docks**
Georgia Administrative Code
Department 391. RULES OF GEORGIA DEPARTMENT OF NATURAL RESOURCES
Chapter 391-2. COASTAL RESOURCES
Subject 391-2-3. COASTAL MARSHLANDS PROTECTION

Current through Rules filed through February 2, 2018

Rule 391-2-3-.03. Regulation of Marinas, Community Docks and Commercial Docks

- (1) **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 standards and procedures to be applied by the Coastal Marshlands Protection Committee when reviewing applications for a permit to construct or modify a marina, commercial dock, or community dock on or over marshlands within the estuarine area of the state.
- (2) **Definitions use d in this Rule.**
 - (a) "303(d) listed stream" means a stream, stream segment, or other surface waterbody identified on a list submitted biannually to the U.S. Environmental Protection Agency by the Georgia Environmental Protection Division, known as the 303(d) list. Inclusion on the 303(d) list denotes the waterbody segment as impaired because it does not meet one or more designated uses (i.e. Fishing, Recreation, etc.) and for which one or more total maximum daily loads needs to be developed.
 - (b) "Approved Disposal System" means an on-site wastewater disposal system suitable for domestic or other sewage approved by the Georgia Environmental Protection Division and/or local sanitation regulatory authority, as applicable.
 - (c) "Commercial Dock" means a dock providing 500 linear feet or less of docking space for vessels inclusive of commercial vessels.
 - (d) "Committee" means Coastal Marshlands Protection Committee.
 - (e) "Community dock" means a dock providing 500 linear feet or less of docking space which is a subdivision or community recreational amenity providing water access for residents, and which may or may not entail a fee. A dock meeting this definition, but providing more than 500 feet of docking space shall be treated as a marina, as define d in these rules.
 - (f) "Department" means the Georgia Department of Natural Resources.
 - (g) "Effective shading" means the amount of shading realized by utilizing alternative walkway decking material or alternative walkway design when compared to shading associated with traditional planking construction.

- (h) "Fixed dock" means a dock, constructed on pilings, that is fixed in elevation, i.e., that does not float on the water.
- (i) "Fixed terminal platform" means the platform constructed on pilings at the terminal, waterward end of a dock.
- (j) "Floating dock" means a dock that floats on the water to which watercraft are tied for mooring.
- (k) "Heritage preserve marshlands" means those marshlands that have been dedicated as a heritage preserve by the Governor pursuant to O.C.G.A. 12-3-75.
- (l) "Impaired water" means a stream, stream segment, or other surface waterbody that does not meet water quality standards and that is identified in the most recent 303(d) list as an "Impaired Water. "
- (m) "Improvements" means additions to or enhancements of raw land or structures that normally increase its usefulness and/or value, which are constructed in accordance with applicable legal requirements at the time of such construction and are intended to remain attached to or associated with the project.
- (n) "Live-aboard" means a floating vessel or other watercraft capable of safe, mechanically propelled navigation under average Georgia coastal wind and current conditions which is utilized as a human or animal abode and is located at a marina or a mooring area established by the department.
- (o) "Manatee Basics for Boaters" means a 3' by 4' manatee educational display sign referenced in certain leases or permits, which contains standardized content pre - approved by the Wildlife Resources Division Nongame Conservation Section.
- (p) "Manatee Travel Corridor" means channel(s) or waterway(s) that manatees are known to frequent and/or travel through, as determined by telemetry studies, aerial surveys and the Wildlife Resources Division's Nongame Conservation Section's public sightings database.
- (q) "Marina" means any dock facility which has any one or more of the following:
 - 1. Includes fueling, maintenance or repair services (regardless of dock length);
 - 2. Is greater than 500 linear feet of dock space; or
 - 3. Has dry storage for boats in an upland storage yard or vertical rack system.
- (r) "Minor alteration" means any change in the marshlands which take n singularly or in combination with other changes, involves less than 0.10 acres.
- (s) "Model Ordinance within the Guide for Molluscan Shellfish Control in the National

Shellfish Sanitation Program" means the requirements which are minimally necessary for the sanitary control of molluscan shellfish, as established by the National Shellfish Sanitation Program, a voluntary and cooperative program established in 1925 and comprised of federal, state and municipal authorities and representatives of the shellfish industry.

- (t) "Modification" means a structural change to a community dock, commercial dock, or marina facility, whether existing but not permitted, existing and permitted, or permitted and yet to be constructed.
 - (u) "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 in Rule 391-2-3-.02(1).
 - (v) "Serviceability" means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.
 - (w) "Tier One Community Crab Dock" means a community dock consisting of a single fixed walkway and an "L" or "T" shaped fixed terminal platform, supported on pilings, lacking floats, and from which water dependent activities such as fishing may be conducted.
 - (x) "Tier Two Community Dock" means a community dock consisting of a single fixed walkway and terminal fixed platform, supported on pilings, connecting ramp(s), and floating dock(s), and from which water dependent activities such as boating and fishing may be conducted.
 - (y) "Tier Three Community Dock" means a community dock consisting of a single fixed walkway and terminal fixed platform, supported on pilings, connecting ramp(s), and floating dock(s), and which does not qualify under a Tier One Community Crab Dock or a Tier Two Community Dock, and from which water dependent activities such as boating and fishing may be conducted.
- (3) **Tier One Community Crab Dock.**
- (a) To qualify for the permitting procedures as set out in paragraph (c) below, a proposed Tier One Community Crab Dock project must comply with the following standards or conditions:
 1. There shall be no improvements on the upland component of the project, other than for pedestrian access to the marsh component and driveways and parking area landward of the 50' marshlands buffer, all of which must be pervious.
 2. The community dock must be for water-dependent activities that access a channel with defined banks and not ponded areas or mudflats.

3. The community dock must terminate at the first channel that is 10 feet wide grass to grass.
4. If the community dock walkway spans a tributary that can be bridged (a tributary less than 10 feet wide), it must have a minimum clearance of six feet above the mean high water line to the bottom of the walkway bridge. Piling spacing must provide for safe navigation in the channel.
5. A single "L" or "T" shaped fixed terminal platform up to 180 square feet is allowed.
6. The width of the fixed terminal platform may not exceed 6 feet.
7. The fixed terminal platform may not extend more than one-third of the width of the creek at mean high water.
8. The fixed terminal platform may not be enclosed but may be covered and screened with wainscoting not higher than three feet.
9. The fixed terminal platform may be roofed; provided, however, the roof may not exceed a maximum height of 12 feet above the fixed terminal platform decking at the lowest deck height.
10. A second deck, attic, or ceiling storage is not allowed on any roofed section of the fixed terminal platform.
11. The community dock walkway may not exceed 4 feet in width and may not exceed 500 feet maximum length. The walkway is measured from the delineated marshlands jurisdiction line as determined or verified by the Department, channelward to the fixed terminal platform.
12. The community dock walkway decking shall be of same material for its entire length, and standardized materials must be used when grating is used.
13. The community dock walkway must be constructed at a height above all vegetation, but not more than six feet above grade.
14. No floating dock or docks are allowed as part of the marshland component of the project.
15. No hoists or lift davits are allowed as part of the marshland component of the project.
16. No boats are allowed except for kayaks and canoes.
17. The community dock may not have fish cleaning stations, restrooms, retail or

commercial activity.

18. Lighting if used must be shielded and on a timer.
 19. No dredging is allowed in association with the community dock project.
 20. The community dock may not be located in heritage preserve marshlands.
 21. The applicant must operate and maintain the dock in a manner that will not unreasonably obstruct navigation to and from neighboring properties.
- (b) Professional drawings of the project are required to be submitted as a part of the application. The drawings must be stamped by a Registered Land Surveyor, Professional Engineer, or Architect licensed to do business in Georgia.
- (c) Upon receipt of a substantially complete project application and application fee, an abbreviated review and processing period shall apply.
1. Staff to the Committee shall have 21 days to review the project permit application.
 2. The Committee shall provide Public Notice of the application for 15 days.
 3. Upon a determination that the project application is complete (including staff review and public notice) and the project meets all requirements of the Coastal Marshlands Protection Act and these rules, the Commissioner may issue a Coastal Marshlands Protection Act permit unless a Committee member requests the application be brought to a Coastal Marshlands Protection Committee meeting for broader consideration.
 4. Provided the project application is not called to a Coastal Marshlands Protection Committee meeting, total processing time of a Tier One Community Crab Dock shall not exceed 45 days following a preliminary determination by staff of completeness.
- (d) No construction or alteration of a Tier One Community Crab Dock may commence until the expiration of 30 days following the date on which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.
- (e) The applicant/permittee must demonstrate the capacity to establish sufficient power and authority to enforce the conditions of the permit.
- (f) Any modification to a Tier One Community Crab Dock is subject to review pursuant to the appropriate Tier criteria.

- (g) If a proposed project does not qualify as a Tier One Community Crab Dock the application will be processed using the review and processing protocol for a Tier Two Community Dock, Tier Three Community Dock and Commercial Dock, or Marinas, using the lowest tier review and processing protocol for which the proposed project meets the standards. An application for multiple dock structures automatically defaults to the review and processing protocol for a Tier Three Community Dock and Commercial Dock.
- (h) Permittee must provide a post-construction survey that locates the Tier One Community Crab Dock as indicated in the application materials. Such survey shall comply with the Georgia Plat Act, O.C.G.A. § 15-6-67*et seq.*

(4) Tier Two Community Dock.

- (a) To qualify for the permitting procedures as set out in subparagraph (c) below, a proposed Tier Two Community Dock project must comply with the following standards or conditions:
 1. The upland component of the project is limited to pedestrian access and pervious parking landward of the 50' marshland buffer.
 2. There shall be no commercial activity at the community dock.
 3. The community dock shall provide mooring space on a first come, first served basis and is open to all in the community served by the dock.
 4. Live-aboard vessels may not be occupied for more than 90 days during any calendar year, without the grant of an extension by the Commissioner. The permittee is responsible for precluding from the dock anyone occupying a vessel for more than 90 days during any calendar year. Floating homes, abodes, or dwellings are specifically prohibited.
 5. The community dock does not require a water bottoms lease, i.e., the dock has 500 linear feet or less of mooring space.
 6. The community dock walkway shall not exceed 6 feet in width, 750 feet in length, and 3,000 square feet of effective shading impact. The walkway is measured from the delineated marshlands jurisdiction line as determined or verified by the Department, channelward to the fixed terminal platform.
 7. The community dock walkway decking shall be of same material for its entire length, and standardized materials must be used when grating is used.
 8. The community dock walkway must be constructed at a height above all vegetation, but not more than six feet above grade.

9. The community dock must be for water-dependent activities that access the first channel with defined banks and not ponded areas or mudflats.
10. The creek on which the community dock is located must be a minimum of 25 feet in width mean low water to mean low water.
11. A community dock located in a creek 25 feet to 39 feet width mean low water to mean low water may occupy a maximum of one-fourth of the creek width mean low water to mean low water.
12. A community dock located in a creek 40 feet wide or greater mean low water to mean low water may occupy a maximum of one-third of the creek width mean low water to mean low water.
13. If the community dock walkways pans a tributary that can be bridge d (a tributary less than 10 feet wide, grass to grass), it must have a minimum clearance of six feet above the mean high water line to the bottom of the walkway bridge. Piling spacing must provide for safe navigation in the channel.
14. The community dock may have a single fixed terminal platform at the end of the walkway, which is limited to a maximum of 400 square feet, including screened and/or roofed sections.
15. The fixed terminal platform or floating docks shall not be constructed over vegetation.
16. The fixed terminal platform may not be enclosed but may be covered and screened with wainscoting not higher than three feet.
17. The fixed terminal platform may be roofed; provided, however, the roof may not exceed a maximum height of 12 feet above the fixed terminal platform decking at the lowest deck height.
18. A second deck, attic, or ceiling storage is not allowed on any roofed section of the fixed terminal platform.
19. The community dock may have floating docks, which shall be limited in size to that which is reasonable for the documented, intended use, not to exceed 800 sq. feet maximum floating dock structure. Documentation of need must be submitted to justify the size of the proposed floating dock.
20. Floating docks may not rest on the waterbottom at low tide and must be supported on pilings or by cradle at least two feet above the mud.

21. No fish cleaning station, fueling, restrooms, pump out, or retail activities are allowed.
 22. No dredging is allowed in association with the community dock project.
 23. Lighting if used must be shielded and on a timer.
 24. The community dock may not be located in heritage preserve marshlands.
 25. The community dock or its operation shall not cause or create a measurable adverse water quality impact to the waterbody in which it is built, as measured by dissolved oxygen, fecal bacteria, or nutrient enrichment. At a minimum, the community dock must not be in a body of water listed on Georgia EPD's most recent 303(d) list as an "Impaired Water."
 26. If the Department determines through its own water quality sampling or other resource analyses that there are environmental impacts of concern associated with the project, the Department may require the applicant/permittee at the applicant/permittee's expense, to have water, substrate, and/or tissue samples collected and analyzed for metals, petroleum hydrocarbons, or other constituents.
 - (i) Sample collection and analyses must be according to methods approved by the Department.
 - (ii) All results from such sampling results must be provided to the Department as obtained and may be used by the Department to further restrict the dock to reduce water quality impacts.
 27. The permittee must operate and maintain the dock in a manner that will not unreasonably obstruct navigation to and from neighboring properties.
 28. The applicant/permittee must post temporary manatee awareness signage during construction of the facility and permanent posting and maintenance of the informational display signage, "Manatee Basics for Boaters" post-construction.
- (b) Professional drawings of the project are required to be submitted as a part of the application. The drawings must be stamped by a Registered Land Surveyor, Professional Engineer, or Architect licensed to do business in Georgia.
 - (c) Upon receipt of a substantially complete Tier Two Community Dock project application and application fee, an abbreviated review and processing period shall apply.

1. Staff to the Coastal Marshlands Protection Committee shall have 60 days to review the project permit application.
 2. The Committee shall provide Public Notice of the application for 15 days, which period shall be concurrent with the staff review.
 3. Staff to the Coastal Marshlands Protection Committee shall have 15 days to review the public comment received.
 4. If the Tier Two Community Dock project is a minor alteration, Committee members shall have 10 days to request broader consideration of the project at a meeting of the Coastal Marshlands Protection Committee.
 - (i) Upon a determination that the project application is complete (including staff review and public notice) and the project meets all requirements of the Coastal Marshlands Protection Act and these rules, the Commissioner may issue a Coastal Marshlands Protection Act permit for a Tier Two Community Dock which is a minor alteration unless a Coastal Marshlands Protection Committee member requests that the project be heard at a Coastal Marshlands Protection Committee meeting for broader consideration.
 - (ii) If no Committee member requests the application receive broader consideration at a Coastal Marshlands Protection Committee meeting, the application shall be processed to the Commissioner of Natural Resources for his review and action within 15 days.
 - (iii) Provided the project application is not called to a Coastal Marshlands Protection Committee meeting, total processing time of a Tier Two Community Dock shall not exceed 115 days following a preliminary determination by staff of completeness.
 5. Upon determination that a Tier Two Community Dock project application that is not a minor alteration is complete (including staff review and public notice), the project application shall be placed on the meeting agenda of the Coastal Marshlands Protection Committee.
 6. If a second public notice is issued, an additional 15 days would be added to the processing time.
- (d) No construction or alteration of a Tier Two Community Dock may commence until the expiration of 30 days following the date on which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.

- (e) The "Minor Alteration" acreage provision of the Coastal Marshlands Protection Act shall not take into consideration any reduction in acreage calculation for the effective shading impact reduction attributable to alternative walkway decking material or alternative walkway design.
- (f) The applicant/permittee must demonstrate the capacity to establish sufficient power and authority to enforce the conditions of the permit.
- (g) Any modification to a Tier Two Community Dock is subject to review pursuant to the appropriate Tier criteria.
- (h) If a proposed project does not qualify as a Tier Two Community Dock the application will be processed using the review and processing protocol for a Tier Three Community Dock and Commercial Dock, or Marinas, using the lowest tier review and processing protocol for which the proposed project meets the standards. An application for multiple dock structures automatically defaults to the review and processing protocol for a Tier Three Community Dock and Commercial Dock.
- (i) Permittee must provide a post-construction survey that locates the Tier Two Community Dock as indicated in the application materials. Such survey shall comply with the Georgia Plat Act, O.C.G.A. § 15-6-67*et seq.*

(5) Tier Three Community Dock or Commercial Dock.

- (a) To qualify for the permitting procedures as set out in subparagraph (d) be low, a proposed Tier Three Community Dock or Commercial Dock project must comply with the following standards or conditions:
 1. The community dock walkway or commercial dock walkway shall not exceed 6 feet in width, 1,000 feet in length, and not exceed 3,000 square feet of effective shading impact. The walkway is measured from the delineated marshlands jurisdiction line as determined or verified by the Department, channelward to the fixed terminal platform.
 2. The Coastal Marshlands Protection Committee may provide for an exception to the limitations on maximum walkway length and square footage. Documentation of need must be submitted to justify an exception, which shall be granted or denied in the sole discretion of the Committee.
 3. The community dock or commercial dock walkway decking shall be of same material for its entire length, and standardized materials must be used when grating is used.
 4. The community dock or commercial dock walkway must be constructed at a height above all vegetation, but not more than six feet above grade.

5. Live-aboard vessels may not be occupied for more than 90 days during any calendar year, without the grant of an extension by the Commissioner. The permittee is responsible for precluding from the dock anyone occupying a vessel for more than 90 days during any calendar year. Floating homes, abodes, or dwellings are specifically prohibited.
6. If the community or commercial dock walkway spans a tributary that can be bridged (a tributary less than 10 feet wide, grass to grass), it must have a minimum clearance of six feet above the mean high water line to the bottom of the walkway bridge.
7. The fixed terminal platform may not be enclosed but may be covered and screened with wainscoting not higher than three feet.
8. A second story or deck is not allowed on any roofed section of the fixed terminal platform.
9. Floating docks may not rest on the waterbottom at low tide and must be supported on pilings or by cradle at least two feet above the mud.
10. No dredging is allowed in association with the initial community or commercial dock project.
11. The applicant must operate and maintain the dock in a manner that will not unreasonably obstruct navigation to and from neighboring properties.
12. The community dock or its operation shall not cause or create a measurable adverse water quality impact to the waterbody in which it is built, as measured by dissolved oxygen, fecal bacteria, or nutrient enrichment.
13. If the Department determines through its own water quality sampling or other resource analyses that there are environmental impacts of concern associated with the project, the Department may require the applicant/permittee at applicant/permittee's expense, to have water, substrate, and/or tissue samples collected and analyzed for metals, petroleum hydrocarbons, or other constituents.
 - (i) Sample collection and analyses must be according to methods approved by the Department.
 - (ii) All results from such sampling results must be provided to the Department as obtained and may be used by the Department to further restrict the dock to reduce water quality impacts.
14. The applicant/permittee must post temporary manatee awareness signage

during construction of the facility and permanent posting and maintenance of the informational display signage, "Manatee Basics for Boaters" post-construction.

- (b) Professional drawings of the project are required to be submitted as a part of the application. The drawings must be stamped by a Registered Land Surveyor, Professional Engineer, or Architect licensed to do business in Georgia.
- (c) A needs assessment must be submitted to justify the size of the proposed community dock or commercial dock. The Coastal Marshlands Protection Committee may opt for phased build out based on demonstrated need. If the permit requires a phased build out based on demonstrated need, the permit may be extended for an additional five years upon a showing that all due efforts and diligence have been made toward completion of the phases authorized to date based on demonstrated need.
- (d) Upon receipt of a substantially complete Tier Three Community Dock or Commercial Dock project application and application fee, the application shall be reviewed and processed subject to a higher degree of examination and scrutiny and longer review times than a Tier One Community Crab Dock or a Tier Two Community Dock.
 1. The Coastal Marshlands Protection Committee shall provide Public Notice of the application for 30 days.
 2. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by the Coastal Marshlands Protection Act, and such additional information as is required by the Committee to properly evaluate the application.
 3. The Coastal Marshlands Protection Committee shall act upon an application for a permit within 90 days after the application is complete; provide d, however, that this provision may be waived upon the written request of the applicant.
- (e) No construction or alteration of a Tier Three Community Dock or Commercial Dock may commence until the expiration of 30 days following the date on which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.
- (f) The "Minor Alteration" acreage provision of the Coastal Marshlands Protection Act shall not take into consideration any reduction in acreage calculation for the effective shading impact reduction attributable to alternative walkway decking material or alternative walkway design.

- (g) The applicant/permittee must demonstrate the capacity to establish sufficient power and authority to enforce the conditions of the permit.
- (h) Permittee must provide a post-construction survey that locates the Tier Three Community Dock or Commercial Dock as indicated in the application materials. Such survey shall comply with the Georgia Plat Act, O.C.G.A. § 15-6-67*et seq.*

(6) **Marinas.**

- (a) The Coastal Marshlands Protection Committee may issue a permit for a marina in accordance with the requirements of the Coastal Marshlands Protection Act. Unless otherwise determined by the Committee in accordance with subparagraph (h) below, a marina must comply with the following standards or conditions:
 1. The marina launch pier shall not exceed 1,000 feet in length. The marina launch pier is measured from the delineated marshlands jurisdiction line as determined or verified by the Department, channelward to the boat launching area.
 2. The marina pedestrian walkway shall not exceed 1,000 feet in length and shall not exceed 3,000 square feet of effective shading impact. The walkway is measured from the delineated marshlands jurisdiction line as determined or verified by the Department, channelward to the fixed terminal platform.
 3. The Coastal Marshlands Protection Committee may provide for an exception to the limitations on maximum marina launch pier length, and to the limitations on marina pedestrian walkway length and square footage. Documentation of need must be submitted to justify an exception, which shall be granted or denied in the sole discretion of the Committee.
 4. The marina may not be sited within 1,000 feet of waters classified as approved for shellfish harvesting by the Coastal Resources Division, or located where its presence or operation would cause a closing of waters classified for shellfish harvest based on the Model Ordinance within the Guide for Molluscan Shellfish Control in the National Shellfish Sanitation Program.
 5. A marina to be located on open water must be sited at the first navigable creek that has a defined channel, adequate width and depth for the intended use, and established history of navigational access or use.
 6. Any marina component proposed to be constructed on or over coastal marshlands must be for water dependent activities. No restaurants or structures for non-water dependent uses may be constructed on or over coastal marshlands.
 7. Floating docks may not rest on the waterbottom at low tide and must be

supported on pilings or by cradle at least two feet above the mud.

8. A marina proposed to be located in a manatee travel corridor or on a waterway where manatees may be found must have protective measures to minimize manatee/boat interactions to include:
 - (i) An education plan for boaters using the marina;
 - (ii) Regular monthly maintenance of dock facilities' hoses, faucets, or any apparatus or equipment capable of producing a stream of fresh water in close proximity to the access of the facility;
 - (iii) A contingency plan for emergency repair of freshwater sources;
 - (iv) Temporary manatee awareness signage during construction of the facility and permanent posting and maintenance of the informational display sign, "Manatee Basics for Boaters" post-construction; and
 - (v) Speed zones may be required if the marina is in a manatee travel corridor.
9. No dredging of tidal waterbottoms or vegetated coastal marshlands is allowed in association with the initial marina project.
10. If the marina could require maintenance dredging in the future, a permanent, dedicated spoil site with the capacity for the initial dredge volume and anticipated maintenance needs must be identified at the time of application.
11. Dry boat storage is encouraged as a supplement or alternative to in-water mooring, to the extent feasible.
12. Live-aboard vessels may not be occupied for more than 90 days during any calendar year, without the grant of an extension by the Commissioner. The permittee is responsible for precluding from the dock anyone occupying a vessel for more than 90 days during any calendar year. Floating homes, abodes, or dwellings are specifically prohibited.
13. The marina should provide onshore restrooms, shower and laundry facilities in the upland component of the project. The applicant/permittee must take specific measures (such as, but not limited to, signs or dock regulations) to encourage boaters to use the washrooms, laundromat and restrooms onshore, if any.
14. A marina must have an approved disposal system for disposal of wastewater generated by boats and upland facilities at the marina.

15. A marina must install, for collection of solid wastes, trashcans, dumpsters or other suitable containers in compliance with The Act to Prevent Pollution from Ships (33 USCA 1901 and 33 CFR 158). Adequate separate containers for toxic substances shall be available.
16. A marina shall not allow any person to operate a marine toilet at a marina at any time so as to cause or permit to pass or to be discharge d into the waters adjacent to the marina any untreated sewage or other waste matter or contaminant of any kind.
 - (i) A marina must have a working pump- out facility and docks ide wastewater collection system for sanitary wastes from vessels, adequate for the capacity of the marina (number and size of vessels) and require their use by boats using the marina, unless specific exceptions are allowed by the Coastal Marshlands Protection Committee.
 - (ii) Pump- out facility maintenance logs must be kept.
 - (iii) The marina must prominently display signage showing the location of the nearest pump out facility.
17. The Coastal Marshlands Protection Committee may permit marina fueling facilities which conform to U.S. Environmental Protection Agency and GADNR Environmental Protection Division laws and regulations, and which meet the following requirements:
 - (i) Fuel storage tanks and fuel lines between tank, dock, and vessels shall be equipped with emergency shut off valves.
 - (ii) Dispensing nozzles shall be the automatic closing type without a hold- open latch.
 - (iii) A marina must have adequate booms available either on-site or under contract to contain any oil spill.
 - (iv) The marina shall have a current "Operations Manual" containing the following:
 - (I) Description of how the applicant meets the conditions of this permit,
 - (II) The geographic location of the dock,
 - (III) A physical description of the facility showing mooring areas,

- fuel storage and dispensing areas, and locations of safety equipment,
- (IV) A description and the location of each emergency shut-off system,
 - (V) The names and telephone numbers of the facility, U.S. Coast Guard Marine Safety Office, Environmental Protection Division Emergency Response Center, and other personnel who may be called by employees of the facility in an emergency, including fire and police, and
 - (VI) The names and telephone numbers of available hazardous spill clean-up contractors nearest the dock.
18. All components of a marina must be designed, installed, operated and maintained in a manner that will not unreasonably obstruct navigation to and from neighboring properties.
19. The marina or its operation shall not cause or create a measurable adverse water quality impact to the waterbody in which it is built, as measured by dissolved oxygen, fecal bacteria, or nutrient enrichment.
20. If the Department determines through its own water quality sampling or other resource analyses that there are environmental impacts of concern associated with the marina project, the marina may be required to have at applicant's/permittee's expense, water, substrate, and/or tissue samples collected and analyzed for metals, petroleum hydrocarbons, or other constituents.
- (i) Sample collection and analyses must be according to methods approved by the Department.
 - (ii) All results from such sampling must be provided to the Department as obtained and may be used by the Department to further restrict the dock to reduce water quality impacts.
- (b) Professional drawings of the marina project are required to be submitted as a part of the application. The drawings must be stamped by a Registered Land Surveyor, Professional Engineer, or Architect licensed to do business in Georgia.
- (c) A needs assessment must be submitted to justify the size of the proposed marina. The Coastal Marshlands Protection Committee may opt for phased build out based

on demonstrated need. If the permit requires a phased build out based on demonstrated need, the permit may be extended for an additional five years upon a showing that all due efforts and diligence have been made toward completion of the phases authorized to date based on demonstrated need.

- (d) Upon receipt of a substantially complete marina project application and application fee, the application shall be reviewed and processed subject to a higher degree of examination and scrutiny and longer review times than a Tier One Community Crab Dock or a Tier Two Community Dock.
 - 1. The Coastal Marshlands Protection Committee shall provide Public Notice of the application for 30 days.
 - 2. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by the Coastal Marshlands Protection Act, and such additional information as is required by the Committee to properly evaluate the application.
 - 3. The Coastal Marshlands Protection Committee shall act upon an application for a permit within 90 days after the application is complete; provide d, however, that this provision may be waived upon the written request of the applicant.
 - (e) No construction or alteration of a marina may commence until the expiration of 30 days following the date on which the application is approved; provide d, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.
 - (f) The applicant/permittee must demonstrate the capacity to establish sufficient power and authority to enforce the conditions of the permit.
 - (g) Permittee must provide a post-construction survey that locates the marina as indicated in the application materials. Such survey shall comply with the Georgia Plat Act, O.C.G.A. § 15-6-67*et seq.*
 - (h) Nothing in these rules shall be construed to preclude the Committee from developing or issuing permits suitable to the circumstances of a particular application.
- (7) Community Dock, Commercial Dock, or Marina Modification.
- (a) A permit modification may be issued by the Committee in accordance with subparagraph (c) below for a community dock, commercial dock, or marina modification that complies with all the following standards or conditions:
 - 1. The project modification entails no improvements to the upland component of the project; and

2. The project is a modification or addition to an existing dock facility permitted by the Coastal Marshlands Protection Committee for water-dependent activities; and
 3. The project modification involves less than 0.1 acre of new impacts to coastal marshlands; and
 4. The project modification will not affect a change in use of the originally permitted community dock or marina; and
 5. The project modification does not necessitate the issuance of an initial marina lease for the facility undergoing modification; and
 6. No fueling is allowed in association with the community dock, commercial dock, or marina modification; and
 7. No fish cleaning station may be located on or over coastal marshlands in association with the community dock, commercial dock, or marina modification; and
 8. No dredging is allowed in association with the community dock, commercial dock, or marina modification.
- (b) Professional drawings of the project are required to be submitted as a part of the application. The drawings must be stamped by a Registered Land Surveyor, Professional Engineer, or Architect licensed to do business in Georgia.
- (c) Upon receipt of a substantially complete Community Dock, Commercial Dock, or Marina Modification project application and application fee that meets the standards of subparagraph (a), above, an abbreviated review and processing period shall apply.
1. Staff to the Committee shall have 21 days to review the project permit application.
 2. The Committee shall provide Public Notice of the application for 15 days.
 3. Upon a determination that the project application is complete (including staff review and public notice), the Commissioner may issue a Coastal Marshlands Protection Act permit unless a Committee member requests the application be brought to a Coastal Marshlands Protection Committee meeting for broader consideration.
 4. Provided the project application is not called to a Coastal Marshlands Protection Committee meeting, total processing time of a community dock modification, commercial dock modification, or marina modification meeting

the standards of subparagraph (a), above, shall not exceed 45 days following a preliminary determination by staff of completeness.

- (d) No construction or alteration of a community dock or marina modification may commence until the expiration of 30 days following the date on which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.
- (e) The applicant/permittee must demonstrate the capacity to establish sufficient power and authority to enforce the conditions of the permit.
- (f) Any modification not meeting the standards of subparagraph (a) above, shall be reviewed and processed subject to a higher degree of examination and scrutiny applying the standards and review times of the tier that would apply if it were a new project.
- (g) Permittee must provide a post-construction survey that locates the Community Dock, Commercial Dock, or Marina Modification indicated in the application materials. Such survey shall comply with the Georgia Plat Act, O.C.G.A. § 15-6-67 et. seq.

Cite as Ga. Comp. R. & Regs. R. 391-2-3-.03

Authority: O.C.G.A. Title 12, O.C.G.A. Sec. 12-5-285.

History. Original Rule entitled "Guidelines for Permit Evaluations" adopted as R. 391-4-12-.03. F. Jan. 15, 1975; eff. Feb. 4, 1975.

Repealed: New Rule of same title renumbered as R. 391-2-3-.03. F. Dec. 28, 1979; eff. Jan. 17, 1980.

Repealed: F. June 26, 1992; eff. July 16, 1992.

Amended: New Rule entitled "Regulation of Marinas, Community Docks and Commercial Docks" adopted. F. Nov. 17, 2009; eff. Dec. 7, 2009.

Amended: F. Jun. 27, 2012; eff. Jul. 17, 2012.