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## COASTAL MARSHLANDS PROTECTION ACT STAFF'S FINDINGS & RECOMMENDATIONS

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April 6, 2023

**TO:** Coastal Marshlands Protection Committee:  
Commissioner Mark Williams, Chairman  
Mr. Chad Barrow  
Mr. Brad Brookshire  
Mr. Davis Poole  
Dr. Valerie Hepburn

**FROM:** Department Staff to the Committee

**APPLICANT:** Mr. Troy Evans  
Mapache, LLC  
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Atlanta, GA 30308

**AGENT:** Alton Brown  
Resource and Land Consultants  
41 Park of Commerce Drive, Suite 101  
Savannah, GA 31405

**LOCATION:** Raccoon Key, St. Andrews Sound, Camden County, Georgia

**PROJECT:** The proposed project is for temporary construction activities in coastal marshlands associated with creation of a mitigation bank located on St. Andrews Sound, Camden County, Georgia.

**ARMY CORPS NUMBER:** SAS-2012-00938, Nationwide Permit #27

**APPLICABLE LAW:** O.C.G.A. §12-5-280 *et seq.*, as amended, Coastal Marshlands Protection Act (CMPA) of 1970.

**SUMMARY OF PUBLIC COMMENTS:** The Public Notice of the Coastal Marshlands Protection Committee (CMPC) ran from February 9, 2023 to March 10, 2023. Two comments were received opposing the project. One comment claims the project is contrary to the public interest due to the loss of migratory and federally-listed bird species habitat and states the need to cap artesian wells. The second comment claims the project is contrary to the public interest due to negative impacts of the loss of the freshwater habitat, long-term integrity of the project, and the loss of important habitat for financial gain.

**FINDINGS:** Department Staff to the CMPC make the following findings regarding this application:

**Project Scope and Justification: O.C.G.A. § 12-5-286(b): O.C.G.A § 12-5-286 (b) (8) requires a discussion of why the permit should be granted.**

1. The proposed project is to conduct temporary construction activities associated with saltmarsh restoration and enhancement in accordance with the proposed "Banking Instrument, Isla de Mapache Mitigation Bank, Camden County, Georgia" dated September 2022. A Saltmarsh mitigation bank is an aquatic resource area that has been restored, established, or enhanced. The resource area is then set aside to compensate for future impacts to aquatic resources at other locations resulting from permitted activities.
2. A mitigation bank prospectus was placed on joint public notice with the US Army Corps of Engineers and the Department on March 12, 2014 and was referred by the Department to the Attorney General's Office for ownership validation. The resulting petition for quiet title (Civil Actions 14V659SSN and 15 V 174 RLN, Mapache, LLC v. State of Georgia, Carl M. Drury, III, Margaret's Key, LLC) was resolved via a negotiated settlement agreement March 12, 2018.
3. The existing site consists of a network of dikes that were built in the 1950's and 1960's to create freshwater impoundments within what was historically coastal marshlands.
4. On September 4, 2008 Department staff issued a Notice of Violation letter to the previous owner for unauthorized filling of a tidal creek and coastal marshlands. The enforcement action was referred to the U.S. Environmental Protection Agency (EPA) who took the lead on resolving the unauthorized activities.
5. On June 6, 2016, a Letter of Authorization, Revocable License and Federal Consistency Concurrence was issued to the current owner for the modification of an existing single family, private recreational dock facility that provides access to the project area via Umbrella Creek, Camden County, Georgia.
6. On November 2, 2016, Emergency Order #11 was issued for emergency repairs to approximately 345ft. of dike that was damaged during Hurricane Matthew.
7. On May 16, 2018, Emergency Orders #11 and #13 were issued to repair dikes and causeways located at 5 sites on Raccoon Key. However, the Emergency Orders did not resolve the pending disputes regarding ownership with the Department and the EPA.
8. In a letter dated June 21, 2018, the EPA approved a restoration plan to resolve the previous unauthorized activities.
9. In August 2018, construction of the EPA-approved restoration plan was completed and was monitored for two years.
10. The project area consists of a total of 101 acres that includes the following habitat types: 72.1 acres of freshwater impoundments, 1.2 acres of CMPA jurisdictional saltwater impoundments, 19.9 acres of upland and 7.8 acres of non-CMPA jurisdictional tidal wetlands.
11. In conformance with the proposed Banking Instrument (BI) referenced in the application, the proposed CMPA project calls for excavating portions of the dike system and filling portions of the interior canal/ditch system to restore a semi-diurnal tide cycle and allow natural regeneration of adjacent coastal marshlands. This plan was developed after reviewing topographic survey data to determine elevations of dikes, canals within the impoundments, and existing marsh adjacent to the project site.
12. The undisturbed areas within the impoundments currently contain elevations similar to the tidal marsh outside of the impoundments and no manipulation of these areas is proposed.

13. A target elevation of 2.0-2.5 feet NAVD88 has been established for all dike excavation and canal fill areas. This elevation is based on existing adjacent marsh and was used to calculate cut and fill volumes associated with the project.
14. The applicant proposes to excavate approximately 6.2 acres of dike, from which approximately 49,300 cubic yards of total material is proposed to be removed. A 1.2 acre jurisdictional tidal impoundment that is currently tidal open water will be filled with approximately 6,000 cubic yards of excavated dike material to an elevation that supports coastal marshlands vegetation. Remaining fill material (approximately 46,300 cubic yards) will be used to fill areas of interior canals/ditches within the existing non-jurisdictional freshwater impoundments or placed atop the remaining dikes.
15. No fill of naturalized tributaries on the exterior of the dike will occur. Following completion of the project, the site will consist of restored coastal marshlands.
16. The marshlands component for this project includes areas of temporary impacts during the removal of portions of the dikes and the filling of existing jurisdiction coastal marshlands to support vegetation.
17. The CMPA jurisdictional area within the project site identified for temporary impacts during construction totals 7.8 acres. Most activities within coastal marshlands are associated with temporary disturbance required for the restoration of coastal marshlands. No permanent impacts to jurisdictional marshlands are proposed.

**O.C.G.A. § 12-5-286 (b) (8) requires a discussion of why the permit should be granted.**

18. The applicant contends that the permit should be granted in order to restore and enhance coastal marshlands adjacent to Umbrella Creek and St. Andrews sound. The project proposes restoration of semi-diurnal tidal hydrology, tidal marsh elevations, natural hydrologic regime, and natural and native vegetation.

**Application Form, Applicant Name and Address, Project Plans, Plat, Deed or other instrument, Written permission to carry out project by owner of land, O.C.G.A. § 12-5-286(b)(1-4):**

19. Applicant has submitted the application form, name and address, project plans, and the negotiated Settlement Agreement.

**Adjoining Landowners, Non-refundable application fee, O.C.G.A. § 12-5-286 (b)(5,7):**

20. The adjoining property owner is the State of Georgia.
21. The applicant has provided the non-refundable application fee.

**Local Government Zoning, O.C.G.A. § 12-5-286(b)(6):**

22. A zoning letter was issued by the Camden County Board of Commissioners Office of Planning and Development stating that the proposed request complies with all zoning requirements. The letter is not conditioned.

**Alternative Sites Description and Feasibility 12-5-286 (b)(8):**

23. No alternative sites were considered. Alternatives were limited to design considerations associated with providing maximum functional lift for the mitigation project.

**Landfill, Hazardous Waste Inquiry, O.C.G.A. § 12-5-286(b)(9):**

24. Applicant has reviewed the Hazardous Site Index maintained by Georgia Environmental Protection Division. There are no landfills or hazardous waste sites near the proposed project location.

**Water Quality Certification, O.C.G.A. § 12-5-286(b)(10):**

25. A 401 Water Quality Certification has been issued for the Nationwide Permit #27, Aquatic Habitat Restoration, Enhancement and Establishment Activities.

**Adherence to Erosion and Sediment Control Responsibilities, O.C.G.A. § 12-5-286 (b)(11):**

26. Applicant has stated the intention to adhere to soil and erosion control responsibilities.

**Notification of Proposed Project, O.C.G.A. § 12-5-286(d)(e):**

27. Adjacent property owners and interested parties who have requested to be placed on the mailing list were notified in writing of the proposed project. The public notice of the CMPC ran from February 9, 2023 to March 10, 2023. Two comments were received opposing the project. One comment claims the project is contrary to the public interest due to the loss of migratory and federally-listed bird species habitat and states the need to cap artesian wells. The second comment claims the project is contrary to the public interest due to negative impacts of the loss of the freshwater habitat, long-term integrity of the project, and the loss of important habitat for financial gain.

**Public Interest Considerations, O.C.G.A. § 12-5-286(g):**

28. In passing upon application for a permit, the CMPC shall consider the public interest.

- a) **The design of the project is such that no 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.** The applicant contends, in response to the Department's request for additional information (RAI), that the proposed project is not expected to alter natural flow of navigable waters nor will it obstruct public navigation. The proposed project seeks to restore and enhance saltwater tidal wetlands in perpetuity through the Corps mitigation banking program. Therefore, no negative effects on navigable waters will occur.
- b) **The design of the project is such that no unreasonably harmful or increased erosion, shoaling of the channels, or stagnant areas of water will be created.** The applicant contends, in response to the Department's RAI, that there will be no unreasonable harmful or increased erosion, shoaling of channels or stagnant areas of water created. The applicant references page 22 of the BI that contemplates adaptive management measures that could be implemented should this become an issue after initial construction. Currently the areas that are to be filled are ponds of stagnant water and only portions of those existing ponds are going to be filled. Staff summarize the possible problems listed on page 22 of the BI as: 1) insufficient revegetation of coastal marshland species, 2) barriers to reestablishment of tidal hydrology, 3) ponding of water, and 4) instability of material in excavated/filled areas. Staff summarize the possible solutions proposed in the BI should any of these problems arise as: 1) creation of additional connection points to existing tidal creeks, additional excavating of dike or filling of canal, planting marshland species, invasive species management, and/or mitigation credit reduction; 2) additional excavation of material, removal of excess material/overflow, removal of storm debris and soil build up with amphibious equipment, planting marshland species, and/or mitigation credit reduction; 3) creation of additional connection points to existing tidal creeks, adding material within ponded area, and/or mitigation credit reduction; and 4) stabilization of eroding area by planting of marshland species, removal of sediment deposits, excavation of eroding areas, and/or establishment of marsh.

- c) **The proposal will not unreasonably interfere with the conservation of fish, shrimp, oysters, crabs, and clams or any marine life or wildlife or other natural resources including but not limited to water and oxygen supply.** The applicant contends, in response to the Department's RAI, that the proposed project will not interfere with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources but rather restore and enhance natural habitat required to support fish and wildlife species that would be present within the site were it not for the historic alterations of the marsh. The project site has been highly altered/manipulated and contains artificial and managed habitat types that exhibit little to no natural analogs. In a natural condition, this site would contain tidal marsh dominated by tidal marsh habitat, twice daily flood and ebb tidal events, and a variety of saltwater fish and macroinvertebrate species. These natural tidal marsh conditions currently exist within adjacent areas which have not been maintained as impoundments. Recognizing the current managed site condition and wildlife species which have been introduced as a result of habitat alterations, changes in wildlife species composition will occur. However, the overall goal of this or any other mitigation project is not to manage for a preferred or desired species. Rather the goal of the project is to restore and sustain chemical, biological, and physical characteristics (including restoration of fish and wildlife species composition) which occur within a functioning and natural tidal wetland environment. Staff summarized public comments and ownership documents contained in the application [PDF page 22 & 23 of 104, Settlement Agreement, 2.4(c) and 2.4(e)] acknowledge the presence of a bird rookery (also referred to a Parcel A-1 Area 4) and an expressed desire to preserve it. While steps have been taken to ensure continued public viewing of the bird habitat should this area be included in a mitigation bank, Mapache, LLC has agreed in the Settlement Agreement to maintain and repair the dikes around the rookery for a period of 50 years, where feasible, to facilitate preservation if this area is not approved for development of a mitigation bank.

**Restriction on granting of permits; size restriction; activities and structures considered contrary to the public interest, O.C.G.A. § 12-5-288 (a) and (b):**

29. The proposed project is intended to restore altered saltmarsh to its original state and function.

**Leasing of state owned marshland or water bottoms, O.C.G.A. § 12-5-287:**

30. The proposed project will not require a waterbottoms lease upon completion of construction.

**Determining Project Boundaries, Rule 391-2-3-.02(3):**

31. The marshlands component for this project includes the areas where temporary impacts will occur during construction related to the mitigation bank, associated with the removal of portions of the dikes and the filling of existing jurisdiction coastal marshlands.
32. The upland component of the project includes 19.9 acres of upland within the project area consisting of 6.2 acres of excavated dike areas, 8.3 acres to be used for staging equipment and the upland dike areas where excess material from the restoration activities will be deposited and stabilized, and a 5.4 acres upland hammock to remain undisturbed. All activities within the upland component area are associated with the construction of the mitigation bank. Post construction, the areas that are excavated will be restored to marsh and the remainder will be undeveloped.

**Marshland Buffers for Upland Component of the Project, Rule 391-2-3-.02(4):**

33. Activities in the 50ft. marshlands buffer adjacent to existing coastal marshlands will consist of land disturbances limited to planting and grading and may include the deposition and stabilization of excavated materials from marsh restoration activities. No construction of temporary or permanent structures in the buffer are proposed.

**Stormwater Management Standards for the Upland Component of the Project, Rule 391-2-3-.02(5):**

34. The upland component is proposed to remain 100% pervious. There will be no untreated discharge of stormwater to coastal marshlands.

**Impervious Surface, Rule 391-2-3-.02(6):**

35. All surfaces will remain 100% pervious.

**RECOMMENDATION:** Should the Committee determine that the proposed project is in the public interest, Department staff recommends the following STANDARD and SPECIAL conditions:

**COASTAL MARSHLANDS PROTECTION ACT STANDARD CONDITIONS**

1. The project must comply, as applicable, for areas permitted herein, with all other federal, state, and local statutes, ordinances, and regulations and the applicant must obtain all licenses and permits prior to commencement of construction.
2. This permit does not resolve actual or potential disputes regarding ownership of, 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.
3. All plans, documents and materials contained in this permit application, required by Coastal Marshlands Protection Act of 1970, as amended O.C.G.A. § 12-5-280 et seq. are a part of this permit and conformance to such plans, documents, and materials are a condition of this permit. No change or deviation from these plans, documents, and materials shall be permitted without prior notification and approval by the Department or CMPC.
4. No further encroachment or construction shall take place within state jurisdiction, except as permitted by the CMPC. Any modification of the plans or structure in the jurisdictional area must be reviewed and approved by the Department or the CMPC, as necessary, prior to construction.
5. No construction or alteration of a project 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.
6. The permit must be posted onsite within 24 hours of beginning construction.
7. A copy of these and all permit conditions must be supplied to the person in charge of construction. All contractors and subcontractors are responsible for strict adherence to all permit conditions.
8. All Best Management Practices (BMPs) should be used to prevent any erosion and sedimentation at the site. No unauthorized equipment, materials, or debris may be placed in, disposed of, or stored in jurisdictional areas. Any visible alterations in the marsh topography will be restored immediately using low-impact hand tools. Any damage to the marsh vegetation that has not recovered naturally during the next growing season will be repaired by a method acceptable to the Department.

9. If the permitted improvements are damaged, fall into disrepair, become dilapidated, or are not meeting their expected usefulness and are not maintained at a serviceable level, it is the responsibility of the owner to remove the improvements. A new permit will be required to retain and repair the structure, improvement, or asset if it loses its structural integrity and is no longer serviceable.
10. The CMPC is not bound in the future to protect any improvement or asset authorized by the permit.

### **SPECIAL CONDITIONS**

1. No construction activities may occur under this Permit until or unless a mitigation banking instrument is approved by the US Army Corps of Engineers.
2. Permittee must submit the Mitigation Work Plan, which details the construction activities proposed on the site, to the Department for written acknowledgement at least 30-days prior to commencement of construction.
3. Any impacts to coastal marshlands proposed in the Mitigation Work Plan that were not described in the application materials may require modification of the CMPA permit.
4. Any future modifications to the Mitigation Work Plan must be submitted to the Department for approval by the Department or the CMPC.
5. Should the Department determine during its inspections that unreasonably harmful or increased erosion, shoaling of the channels, or stagnant areas of water within existing or restored coastal marshlands are created or worsen as a result of the permitted construction, the permittee shall conduct restoration or maintenance activities to remedy these impacts at the direction of, or in accordance with a plan submitted to and approved by the Department or the CMPC.
6. Should the Department find that excavated materials deposited onto dikes within the upland component have resulted in erosion and sedimentation into existing or restored coastal marshlands, the Department and or the CMPC may require the permittee to remove eroded materials from coastal marshlands and/or stabilize the upland component through plantings or other means.
7. Permittee is required to provide post-construction topographical surveys to the Department within 120-days of completion of the permitted construction activities.