#### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#### COASTAL MARSHLANDS PROTECTION ACT

# STAFF’S FINDINGS & RECOMMENDATIONS

## May 20, 2022

## **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:** Georgia Department of Natural Resources

### Coastal Resources Division

One Conservation Way

Brunswick, GA 31520

**AGENT:** Cameron Brinton

 Georgia Department of Natural Resources

###  Coastal Resources Division

One Conservation Way

Brunswick, GA 31520

**LOCATION:** Multiple Locations throughout Coastal Georgia

**PROJECT:** The proposed project is for the restoration and enhancement of oyster reefs at multiple locations throughout coastal Georgia.

**ARMY CORPS NUMBER:** Nationwide Permit #27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities)

**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 April 14, 2022 to May 14, 2022. No comments were received.

**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. CMPA Permit #600 was issued to the Department of Natural Resources on February 27th, 2009, that allowed for the restoration and enhancement of oyster reefs across coastal Georgia. The permit allowed for restoration/enhancement of sites located within intertidal areas of sounds, rivers, and tidal creeks and located adjacent to upland properties owned by the State of Georgia or local municipalities. For each project, the applicant provided the Department with the specific locations, dimensions, and scientific method of each individual project for approval prior to its installation.
2. A modification to CMPA Permit #600 was approved June 17, 2011 and allowed for signage notifying the public that restoration sites are closed for public harvesting if not in an approved Public Shellfish Area. The modification also provided a mechanism for the replacement/return of cultch material at those approved areas.
3. CMPA Permit #600 was extended for an additional five-year term June 17, 2016 and expired June 17, 2021.
4. The applicant now proposes to promote the recruitment of wild oysters through the establishment of new reefs or enhancement of existing reefs in state waters through four goals:
	1. Restore habitat by the creation of "essential fish habitat"
	2. Enhance existing reefs
	3. Promote shoreline stabilization
	4. Improve water quality
5. Three general reef types are proposed: intertidal, subtidal, and oyster dam. The reefs will be constructed or enhanced with suitable natural and man-made materials including but not limited to bagged and loose oyster shell, bundled wood mounds, low-relief prefabricated concrete materials, and other materials consistent with project goals.
6. All locations, waterway distances, depths, widths, scientific methods, and square footage of impact to coastal marshlands will be provided for each individual project prior to its installation.
7. Reefs will either be constructed in the inter-tidal zone typically within 20 feet of the adjacent vegetative edge, or in subtidal areas with adequate water. All sites will be situated in a

manner that will not impede navigation within these waterways.

1. Signage will be placed at each site to inform constituents of the benefits of oyster restoration and enhancement, minimize the potential of vessel interactions, and indicate the site is closed to shellfish harvesting if it is not an approved Public Shellfish Area. Signage will be

maintained until the reef is self-sustaining and deemed stable under all normal conditions.

1. Monitoring of the sites will be conducted to document the success of the projects. In the event non-shell cultch material is determined to be unsuccessful at a given site, it will be removed. Unsuccessful will be defined as: (a) material not exhibiting recruitment of oyster spat and/or barnacles within 24 months of deployment and/or (b) material (i.e. oak bundles) becomes nonstationary.

**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)):**

1. Applicant has submitted the application form, name and address and project plans. Adjacent upland property owners will be either local municipalities or the State of Georgia. Permission to carry out the proposed projects will be site specific.

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

1. Proposed projects will be located adjacent to upland properties owned by the State of Georgia or local municipalities. Upon CRD staff receipt of a request for site-specific authorization, the adjacent upland local municipality or appropriate State entity will be notified. The Department of Natural Resources does not require an application fee for projects proposed and conducted by Department agencies.

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

1. A letter has been received from the offices of Chatham, Bryan, Liberty, McIntosh, Glynn, and Camden Counties stating the proposed projects will not violate any zoning ordinances. The letters are not conditioned.

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

1. The alternative is to not engage in shellfish restoration or the enhancement of public shellfish areas. At all sites owned by municipalities, permission will be obtained from the appropriate entity prior to the construction of proposed reefs.

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

1. Part of the site selection process will include consulting with the Georgia Environmental Protection Division's Hazardous Sites website to ensure that a proposed restoration/enhancement site is not a hazardous waste or landfill site.

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

1. Water quality certification is not required for the proposed project. The applicant will apply for NWP #27 on a project by project basis. The Department has issued a blanket 401 Water Quality Certification for the use of all NWP#27 within the coastal zone.

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

1. Each oyster reef restoration/enhancement project will be in compliance with all applicable erosion and sediment control responsibilities set forth by the state and local government. Additionally, these projects will reduce erosion / sedimentation and assist with emerging marsh or bank stabilization.

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

1. 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 Coastal Marshlands Protection Committee (CMPC) ran from April 14, 2022, to May 14, 2022. No comments were received.

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

1. In passing upon application for a permit, the CMPC shall consider the public interest.
2. **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.** Projects will involve the placement of approved cultch material within the intertidal zone or in subtidal waters deep enough to allow for safe navigation over the reef at all tidal stages. The cultch material will provide no more than 1 meter (3.28 feet) vertical relief. The cultch material will not cause a harmful obstruction to or alteration of the natural flow of navigational waters.
3. **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.** There will not be any unreasonably harmful or increased erosion, shoaling of channels, or stagnant areas of water as a result of these projects. Projects located in the intertidal zone will reduce erosion/ sedimentation and assist with bank stabilization.
4. **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.** Oyster reefs are considered "Essential Fish Habitat (EFH)" by SAFMC and NMFS. EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" (16 U.S.C. I 802 (10)). Section 303 (a) (7). Oyster habitat is deemed essential to the enhancement of commercial and recreational species including oysters, shrimp, clams, fish, crabs, and several other species. Additionally, these projects fortify the state's efforts focusing on the management and conservation of marine life, wildlife, and natural resources through habitat restoration and enhancement. Oysters are filter feeders and have been shown to improve water quality by filtering large quantities of suspended organic and inorganic particulate matter. Reduction of particulate matter in the water column increase dissolved oxygen levels thus improving water quality. Therefore, the granting of this permit will not interfere with the management and conservation of marine life, wildlife, or any other resources and will improve water quality.

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

1. There are no dock structures involved with the proposed projects therefore a waterbottoms lease is not required.

**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):**

1. The proposed projects are water related and cannot be satisfied by the use of an alternative non-marshland site.

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

1. The marshland component of the project consists of the proposed oyster application techniques (Intertidal, Subtidal, and Oyster Dams).
2. There is no upland component for this project.

**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 twenty-four (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 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. The permittee shall provide the Department the specific location, distance from navigational channels, depth and widths of waterways, the specific method and materials of restoration/enhancement that will be utilized and the total square footage of impact of each individual project footprint for approval 10 business days prior to installation.
2. The permittee shall post signage at each site to inform constituents of the benefits of oyster restoration/enhancement, minimize the potential of vessel interactions and to indicate the site is closed to shellfish harvesting. Signage must be pre-approved by the Department prior to installation.
3. The permittee shall monitor the stability of the constructed oyster reefs biannually after emplacement and after major storm events. Photographic documentation and a short description of the condition of the reefs after these observation periods must be provided to the Department within one month of the observation. This condition applies for the lifetime of the reef structure or until the structure is shown by the permittee to be stabilized and incapable of movement under normal conditions.
4. Permittee must inform the Department prior to the removal of oyster cultch materials as a result of a determination being made that the project has been unsuccessful.