



COASTAL RESOURCES DIVISION

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

September 27, 2024

TO: Coastal Marshlands Protection Committee:
Mr. Chad Barrow
Mr. Brad Brookshire
Mr. Davis Poole
Dr. Valerie Hepburn

FROM: Department Staff to the Committee

APPLICANTSSS: James H. Alexander
12 Horsepen Point Drive
Tybee Island, GA 31328

Leo K. Sheehan and Margaret B. Sheehan
10 Horsepen Point Drive
Tybee Island, GA 31328

AGENT: Alton Brown
Resource & Land Consultants (RLC)
41 Park of Commerce Way, Suite 101
Savannah, GA 31405

LOCATION: Shared property line between 10 Horsepen Point Drive and 12 Horsepen Point Drive, Horsepen Creek and unnamed tributaries of Horsepen Creek, Tybee Island, Georgia 31328

PROJECT: The proposed project is to construct and maintain a golf cart bridge and private shared-family-family dock, Horsepen Point, Horsepen Creek and unnamed tributaries of Horsepen Creek, Tybee Island, Chatham County, Georgia.

ARMY CORPS NUMBER: 2022-00379

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

SUMMARY OF PUBLIC COMMENTS: The public notice of the Coastal Marshlands Protection Committee (CMPC) ran from April 20, 2024, through May 21, 2024. Sixty-six (66) people commented in response to this public notice. Sixteen (16) comments were supportive of the applicants and/or the application. Fifty (50) comments opposed the project citing the following: the proposed dock location on Horsepen Creek was not navigable at Mean Low Water

(MLW); negative impacts to navigation; size of structure; impacts to wildlife and coastal marshlands; and concerns with limiting access to tributaries.

In response to comments received during the April 20, 2024 public notice, the applicants proposed a modified private shared-family dock structure. A revised 15-day public notice of the CMPC ran from August 24, 2024, through September 9, 2024. Fifteen (15) comments were received in response to the revised public notice. One comment was received after the public comment period was closed. Eight (8) comments were received in support of the applicants modified dock proposal. The remaining comments objected to the size, location, and navigational obstruction that would result from the proposed private shared-family dock structure.

The applicants' agent has responded to comments received during both public notice periods.

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 includes construction of a 6ft. x 174ft. wooden cart bridge to a hammock (1,044sq.ft. / 0.024 acre) that will commence from the shared-family property line of Lot 5 and Lot 6 (also known as 10 Horsepen Point Drive and 12 Horsepen Point Drive).
2. The wooden golf cart bridge will span a tidal tributary of Horsepen Creek and provide access to Parcel A, the 0.927 acre hammock immediately seaward of the applicants' single-family residences.
3. On May 2, 2023, the applicants proposed a private shared-family dock to be constructed from the southeastern side of the hammock. It included a 6ft. x 747ft. elevated walkway (4,482sq.ft.) that, as proposed, would traverse two (2) unnamed tidal tributaries three (3) times. Both tributaries go dry at MLW and measure approximately 20ft. and 10ft. at Mean High Water (MHW). The elevated walkway terminated at Horsepen Creek where the applicants proposed to construct a 15ft. x 26.6ft. fixed deck (400sq.ft.) and two (2) 16ft. x 30ft. (960sq.ft.) covered hoists that would be serviced by approximately 408sq.ft. of catwalk. The fixed deck and two hoists had a contiguous roof that did not exceed 12ft. in height above the decking of the structure. A 4ft. x 30ft. gangway (120sq.ft.) provided access to an 8ft. x 125ft. floating dock (1,000sq.ft.). Total impacts to coastal marshlands for the private shared-family dock that was placed on public notice April 20, 2024 were approximately 7,370sq.ft. (0.169 acre). The alignment of the walkway for the dock had the potential to bisect hammock(s) owned by the State of Georgia. The applicants stated the proposed private shared-family dock would extend approximately 32ft. into Horsepen Creek where it is approximately 116ft. wide at MLW (28% of the waterway at MLW). Combined impacts to coastal marshlands for the proposed cart bridge (1,044sq.ft.) and private shared-family dock total approximately 8,414sq.ft. (0.193 acre).
4. On June 24, 2024, the agent for the project submitted a response to comments received during the public notice of the CMPC that ran from April 20, 2024, through May 21, 2024. The agent provided additional information on bathymetry at the project site. The response also included a modification to the proposed project: the proposed golf cart bridge remained the same and the private shared-family dock structure was modified.
5. The revised project includes construction and maintenance of a 6ft. x 174ft. wooden golf cart bridge to a hammock (1,044sq.ft. / 0.024 acre) that will commence from the shared-family property line of Lot 5 and Lot 6 (also known as 10 Horsepen Point Drive and 12 Horsepen

Point Drive), spanning a tidal tributary to access Parcel A, the 0.927 acre hammock immediately seaward of the applicants' single-family residences.

6. The revised private shared-family dock will be constructed from the hammock seaward of the residential structures on Lot 5 and Lot 6. The revised dock includes a 6ft. x 740ft. ThruFlow elevated walkway (4,400sq.ft.) that will terminate at Horsepen Creek where the applicants propose to construct a 15ft. x 20ft. fixed deck (300sq.ft.) with a roof that does not exceed 12ft. in height above the decking of the structure. A 4ft. x 30ft. gangway (120sq.ft.) will provide access to an 8ft. x 60ft. floating dock (480sq.ft.).
7. The proposed private shared-family dock will be in an area of Horsepen Creek where the applicant states MLW-MLW is variable. At the narrowest location, the floating dock will extend approximately 18ft. into Horsepen Creek where the waterway is approximately 71.25ft.
8. Impacts to coastal marshlands for the revised private shared-family dock total approximately 5,300sq.ft. (0.112 acre).
9. Combined impacts to coastal marshlands for the proposed golf cart bridge and revised private shared-family dock total approximately 6,344sq.ft. (0.146 acre).

Application Form, Applicantss 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):

10. Applicants have submitted the application form, name and address, project plans, plats, and deed.

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

11. Applicants have submitted names and addresses of adjoining property owners, as well as the non-refundable application fee.

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

12. A letter has been received from the City of Tybee Island stating that the proposed project does not violate any local zoning laws. The letter is not conditioned.

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

13. The revised private shared-family dock was sited by the applicants and their agent(s). GA DNR CRD staff advised the applicants and their consultants that as proposed, the structure would require a CMPA Permit. No alternative locations or designs were included for consideration as part of the application. In response to staff's September 28, 2023, Request for Information (RFI) the agent replied January 16, 2024, and stated "...*the proposed dock is exempt from the Coastal Marshlands Act and for this reason, evaluation of alternative dock corridors or designs are not required. However, the applicants chose a layout that minimizes the length of the walkway and reduces the distance from upland to the waterway.*"

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

14. Applicants have reviewed the Hazardous Site Index maintained by the Georgia Environmental Protection Division for Chatham County, Georgia and stated that 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):

15. Water Quality Certification is not required for the proposed project.

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

16. Applicants have stated their intention to adhere to building, land disturbing and storm-water management permit as required by the City of Tybee Island.

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

17. The public notice of the CMPC ran from April 20, 2024, through May 21, 2024. Sixty-six (66) people commented in response to this public notice. Sixteen (16) comments were supportive of the applicants and/or the application. Fifty (50) comments opposed the project citing the following: the proposed dock location on Horsepen Creek was not navigable at Mean Low Water (MLW); negative impacts to navigation; size of structure; impacts to wildlife and coastal marshlands; and concerns with limiting access to tributaries. When citing navigational concerns, the comments included discussion that the proposed structure will occupy the western portion of the current navigational channel at all tides. Other comments stated that if a boat (or boats) were moored on the outside of the float, navigation past the facility would be a challenge for vessels, especially larger vessels, at all tides.
18. In response to comments received during the public notice, the applicants proposed a modified private shared-family dock structure. A revised 15-day public notice of the CMPC ran from August 24, 2024, through September 9, 2024. Fifteen (15) comments were received in response to the revised public notice. One comment was received after the public comment period was closed. Eight (8) comments were received in support of the applicants modified dock proposal. The remaining comments objected to the size, location, and navigational obstruction that would result from the proposed private shared-family dock structure.

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

19. 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 applicants provided bathymetric data for the project site collected on November 19, 2021. The applicants stated that at MLW, the width of Horsepen Creek is variable. Proposed plans show that approximately +/-90 linear feet of the structure (floating dock and fixed deck) will occupy the westernmost navigable portion of the creek. The proposed dock is sited opposite two existing private single-family docks that were originally permitted in 2006 (PRD20060244) and 2007 (PRD20070009). The applicants state that at the narrowest location the proposed floating dock will extend approximately 18ft. into Horsepen Creek where the waterway is approximately 71.25ft. and that no unreasonable harmful obstruction to or alteration of the natural flow of navigational waters is expected.
 - 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 applicants state that the proposed project will not unreasonably harm or increase erosion, shoaling of the channels, or create stagnant areas of water. The proposed floating dock will be located in a portion of the creek that is approximately 2.0ft. deep at MLW and 9.0ft. deep at MHW. The applicants have proposed to cradle the floating dock prevent the float from sitting on the mud at low tide.

The applicants propose to construct a wooden bridge over coastal marshlands in addition to a wooden walkway to the private dock, comprising a total of 5,444sq.ft. (0.12 acre) of shading impact to coastal marshlands which exceeds the Standard Operating Procedures for private docks which limits walkways to 3,000sq.ft., as well as CMPA Rules 391-2-3-.03 which regulates commercial docks, community docks and public and private marinas

and also limits walkways over coastal marshlands to 3,000sq.ft. The applicants have proposed to use ThruFlow decking materials which scientific study in Georgia determined was generally ineffective at increasing sunlight penetration through decking to the marsh such that in 2017 CRD discontinued allowing alternative decking materials to compensate for walkways greater than 3,000sq.ft. for private docks. The cumulative loss of marsh vegetation due to walkway shading impacts has the potential to increase erosion.

- 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 applicants contend the proposed project 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. Coastal hammocks are small islands of maritime forest usually surrounded by brackish water and/or salt marsh. These are restricted to a narrow band of shoreline and barrier islands and provide important habitat for neotropical migrant birds. Many wildlife species, including federally and/or state-listed species or other species of concern, use hammocks as breeding sites. Hammocks are important roost sites for wood storks and other large wading birds as daytime roosts are often used by storks to minimize flight distances to tidally influenced feeding areas. Other birds such as white-eyed vireos, yellow-throated warblers, orchard orioles, northern parulas, summer tanagers, great-crested flycatchers, and blue-gray gnatcatchers nest in hammocks.

Other state-owned hammocks seaward of Parcel A may be located within the proposed project location.

The West Indian Manatee is an endangered and federally protected species and is known to frequent Georgia's coastal waters.

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

20. A waterbottoms lease is not required for the proposed project.

O.C.G.A. § 12-5-288(b) requires that the amount of marshlands to be altered are minimum in size.

21. The proposed project includes a cart bridge to a hammock and a private shared-family dock for two adjacent property owners. On August 5, 2022 the Georgia Department of Natural Resources, Coastal Resources Division (CRD) issued a Standard Operating Procedure (SOP) to provide guidance on how and under what criteria the State, through its authority delegated to the Department may issue a Revocable License for a Private Dock that is exempt from the permitting requirements of the CMPA. The proposed private shared family dock is not exempt for the CMPA due to the dock walkway extending from Parcel A, which is a hammock that does not meet the exemption criteria (O.C.G.A. 12-5-295 (7) - (7.1)). The size of walkway for the proposed private shared-family dock has not been minimized in the following manner: walkways, including cart bridge to hammock and ThruFlow elevated walkway to dock, impact approximately 5,444sq.ft, or 0.12-acres.

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

22. The marshlands component of the project includes the proposed bridge and dock facility. Total impacts to coastal marshlands for the proposed golf cart bridge and revised private shared-family dock total approximately 6,344sq.ft. (0.146 acre).

23. The upland component of the project is approximately 0.927-acres.

Marshlands Buffer For Upland Component, Rule 391-2-3-.02(4):

24. The 50ft. marshlands buffer applicable to the upland component of the project has been delineated as shown on the submitted plans and drawings.
25. The 50ft. marshlands buffer for the project includes the upland area where the cart bridge commences from the residential properties (300sq.ft. / 0.007acre) and terminates on the hammock (Parcel A, 0.927 acre).
26. Combined, the 50ft. marshlands buffer for the proposed project is approximately 0.934 acre. A 9ft. x 467ft. at-grade pervious earthen path (4,203sq.ft.) for pedestrians and carts will provide access to the upland portion of the dock walkway (60sq.ft.).
27. Impervious impacts to the buffer total approximately 180sq.ft. (0.004 acre).
 - a. **Construction and maintenance of temporary structures necessary for construction of the marshland component of the project.** Temporary impacts to the 50ft. marshlands buffer include the use of equipment to remove vegetation and grading to create the earthen path. All temporary impacts within the 50ft. marshlands buffer will be restored to the preconstruction state.
 - b. **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.** Proposed permanent structures within the 50ft. marshlands buffer include impacts from terminal ends of the cart bridge and the private shared-family dock that will result in approximately 180sq.ft. / 0.004 acre of impervious impacts.
 - c. **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.** No planting or grading within the 50ft. marshlands buffer to enhance stormwater management is proposed.

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

28. The applicants state the proposed project does not include upland site development activities and development of a stormwater management plan is not required.

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

29. Approximately 180sq.ft. / 0.004 acre of impervious impacts will result from construction of the project as proposed. The remainder of the upland component (0.930 acre) will be 100% pervious upon project completion.

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

30. The proposed facility includes construction of a golf cart bridge to provide access to a hammock seaward of the applicants' residences. A private shared-family dock will commence from the hammock and as such is reviewed under O.C.G.A. §12-5-280 *et seq.*, as amended, Coastal Marshlands Protection Act of 1970.
31. The structures, as proposed require a CMPA Permit. Consideration of the proposed dock under Rule 391-2-3-.03 "Regulation of Marinas, Community Docks and Commercial Docks" does not apply.

RECOMMENDATION: Staff reviewed the proposed project and finds the amount of marshlands impact to not be minimum in size, per O.C.G.A. 12-5-288(b). The final decision as to whether any activity or structure is considered to be in the public interest, such that the proposed project does not unreasonably obstruct or alter navigational waters, cause erosion, shoaling or stagnation, or interfere with the conservation of marine life or wildlife, shall be in the sound discretion of the Committee. Should the Committee find this project to be in the public interest, standard and special conditions may apply.