TO: Coastal Marshlands Protection Committee:
Commissioner Mark Williams, Chairman
Mr. Zach Harris
Mr. Chad Barrow
Mr. Brad Brookshire
Mr. Davis Poole

FROM: Department Staff to the Committee

APPLICANT: Mr. Shawn Gillen
City of Tybee Island
P.O. Box 2749
Tybee Island, GA 31328

AGENT: Mr. Alton Brown
Resource and Land Consultants
41 Park of Commerce Way Suite 101
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LOCATION: City of Tybee Island Polk Street Right of Way and Private Driveway for 318 Polk Street, Tybee Island, Chatham County, Georgia

PROJECT: The proposed project is to fill coastal marshlands associated with a portion of Polk Street that is a dedicated City of Tybee Island (COTI) Right of Way (ROW) and to fill coastal marshlands for construction of a private residential driveway.

ARMY CORPS NUMBER: SAS-2012-0089


SUMMARY OF PUBLIC COMMENTS: The Public Notice of the Coastal Marshlands Protection Committee (CMPC) ran from October 29, 2020 to November 27, 2020. The project was tabled at a December 11, 2020 meeting by the CMPC who requested further information on...
the project. The subsequent Public Notice of the CMPC in response to receipt of revised application materials ran from June 24, 2021 to July 9, 2021. Fourteen (14) comments were received in opposition to the project. The comments were related to: the lack of sea level rise consideration in the design of the project, inadequate alternatives considered, the project being contrary to the CMPA, project length questions, and the volume of material needed for the project. The agent has provided written responses to the comments received during the public comment period.

**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. Historically, access to the hammock has been via a City of Tybee Island ROW that terminates at a private driveway leading to the hammock.
2. Portions of the driveway and Polk Street ROW are routinely flooded by tidal waters.
3. The applicant states the proposed project is necessary to provide suitable, safe, and maintainable access to the hammock by the property owner as well as by COTI emergency and maintenance vehicles.
4. The proposed project corridor for the private residential driveway and the Polk Street ROW measures approximately 812 linear feet.
5. A CMPA jurisdiction line was verified by the Department on March 17, 2020. Staff observed conditions at the project site to be an existing unpaved COTI ROW and private driveway that consists of partially vegetated coastal marshlands and tidal waterbottoms and is routinely inundated by daily tides.
6. A COTI water line is present within the Polk Street ROW but has not been surveyed.
7. There is no public sanitary sewer service at this location as the two existing residences are served by an existing septic system.
8. The 812 linear feet of the proposed project corridor is broken down in the following manner:
   a. The northern terminus of the Polk Street ROW which is the 43 linear feet adjacent to US Highway 80. This section is upland of CMPA jurisdiction. No improvements are proposed.
   b. Approximately 569 linear feet is COTI Polk Street ROW and within CMPA jurisdiction where fill is proposed.
   c. Approximately 230 linear feet of the private driveway within CMPA jurisdiction where fill is proposed.
9. On December 11, 2020, the CMPC held a public hearing on the proposed project. Using a 2010 topographic survey, the applicant had estimated approximately 182 tons of unspecified stone and an additional 1,008 cubic yards (84 truckloads) of fill material would be needed to construct an 8ft. x 597ft. travel lane with 2ft. shoulders on either side and a gravel slope of 1.5:1 to the desired elevation. As proposed, permanent impacts associated with the construction of the private driveway totaled approximately 3,920.4sq.ft. (0.09 acre). Permanent impacts associated with construction of the COTI Polk Street ROW totaled approximately 9,147.6sq.ft. (0.21acre). Total impacts to coastal marshlands for the proposed project were approximately 13,068sq.ft. (0.30 acre) of CMPA jurisdictional area.
10. The request was tabled by the CMPC who determined, by unanimous vote, that the application as presented was incomplete and deficient in several areas including, but not limited to, a current topographic survey, an updated hydrology report based on current site
conditions, inclusion of all CMPA jurisdictional areas within the project corridor, a maintenance plan for the project, and alternatives analysis.

11. On April 27, 2021, the agent submitted revised application materials that included a current topographical survey, an updated hydrology report, maintenance plan, and alternatives to the proposed project.

12. The revised project proposes placement of fill within the 769 linear feet of project corridor within CMPA jurisdiction to construct a single 8ft. wide vehicular travel lane with elevations at 7.0ft. NAVD29 for the crest of the gravel road and 6.8ft. NAVD29 at the transition point of the shoulder and slope. The minimum and maximum footprint width in CMPA jurisdiction for the roadway will vary from 12ft. to 21.75ft., respectively.

13. The agent submitted a Topographic Survey of a portion of Polk Street & #318 Polk Street. The survey field work was completed February 15, 2021 by Colin Jesse Bearden, GA. P.L.S No. LS003372. The 2021 survey has no contour lines to illustrate existing topography within the proposed project area.

14. Based on the updated topographic survey, the applicant estimates approximately 917 cubic yards of fill material will be needed to construct the travel lane with 2ft. shoulders on either side and a gravel slope of 1.5:1 to the desired elevation, approximately 91 cubic feet less than the project proposed December 11, 2020.

15. The agent confirmed that Downer Davis, GA Registered Engineer No. 14192 completed a detailed estimate of cubic yards of fill using the most recent topographic survey and stated the data provided previously to the CMPC were estimates.

16. The updated hydrology report was conducted by Nutter and Associates Environmental Consultants and is based on a five-day period from January 28, 2021 through February 2, 2021 when water surface elevations were recorded using four (4) stage recorders installed in the project vicinity. The results discussed hydrological and ecological connectivity between the Eastern Salt Marsh (ESM) and Western Salt Marsh (WSM).

17. Findings of the hydrology report state that if the ROW and driveway are built up as proposed, tidal waters will continue to inundate the WSM and ESM with no significant changes in the duration, frequency, height, and volume of tidal waters. It also states that culverts are not necessary for the conveyance of tidal waters to the ESM or WSM and may result in maintenance issues.

18. As proposed, the project includes the installation of three (3) 18-inch culverts that measure 21.15 linear feet, 19.35 linear feet and 15 linear feet respectively, to allow flow of tidewater from EMS and WMS associated with Chimney Creek.

19. As proposed, permanent impacts associated with the placement of fill for a 230 linear foot private driveway total approximately 0.095 acres.

20. As proposed, permanent impacts associated with fill of the 539 linear feet of COTI Polk Street ROW total approximately 0.26 acres.

21. Total impacts to coastal marshlands for the proposed project are approximately 0.355 acre of CMPA jurisdictional area.

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

22. The applicant has stated that currently, access is not afforded to the existing residences during high tide. In addition, any emergency event (i.e. health, fire, etc.) cannot be serviced by emergency responders’ vehicles during high tide.

23. The applicant has stated the proposed project is necessary to provide a safe, functioning, and usable roadway at all tide stages within the Polk Street right-of-way.
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):
24. Applicant has 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):
25. Applicant has 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):
26. A letter has been received from the City of Tybee Island dated February 19, 2020 stating the project needs a variance for the encroachment into the marsh buffer. The application for variance, stating that the proposed project does not violate any local zoning laws, was approved September 1, 2020.

Alternative Sites Description and Feasibility 12-5-286 (b)(8):
27. The applicant contends that due to the location of the road destination (existing residence on an island/hammock) and nature of the project (maintenance of an existing unpaved roadway), alternative sites or access corridors that required less marsh impacts were not afforded.
28. Alternatives considered in the revised application materials include:
   a. 460 linear feet of fill in CMPA jurisdiction;
   b. a 15ft. x 460ft. concrete bridge; a 15ft. x 460ft. timber pile bridge;
   c. three concrete bridges measuring 15ft. x 111ft., 15ft. x 106ft, and 15ft. x 102ft.; and
   d. three timber pile bridges measuring 15ft. x 111ft., 15ft. x 106ft., and 15ft. x 102ft.
29. The agent for the applicant stated that the alternatives provided considered 460 feet of improvements to allow for a direct linear footage comparison of bridge vs. road fill and that any change in linear footage for the project would change the cost relative to the alternative.

Landfill, Hazardous Waste Inquiry, O.C.G.A. § 12-5-286(b)(9):
30. Applicant has reviewed the Hazardous Site Index maintained by the Georgia Environmental Protection Division for Chatham County 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):
31. The United States Army Corps of Engineers has issued a provisional Nationwide Permit #14 which includes water quality certification.

Adherence to Erosion and Sediment Control Responsibilities, O.C.G.A. § 12-5-286 (b)(11):
32. Applicant has stated their intention to adhere to building, land disturbing and storm-water management permit as required by Chatham County, Georgia.

Notification of Proposed Project, O.C.G.A. § 12-5-286(d)(e):
33. Adjacent property owners and interested parties who have requested to be placed on the regulatory mailing list were notified in writing of the proposed project. The Public Notice of the Coastal Marshlands Protection Committee (CMPC) ran from October 29, 2020 to
November 27, 2020. The project was tabled at a December 11, 2020 meeting by the CMPC who requested further information on the project. The subsequent Public Notice of the CMPC in response to receipt of revised application materials ran from June 24, 2021 to July 9, 2021. Fourteen (14) comments were received in opposition to the project. The comments were related to; the lack of sea level rise consideration in the design of the project, inadequate alternatives considered, the project being contrary to the CMPA, project length questions, and the volume of material needed for the project. The agent has provided written responses to comments received during the public comment period.

Public Interest Considerations, O.C.G.A. § 12-5-286(g):  
34. 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 proposed project will be constructed in vegetated and unvegetated, tidally influenced coastal marshlands. The proposed project does not cross or initially impact a navigable waterway.

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 proposed project will be constructed in vegetated and unvegetated tidally-influenced coastal marshlands. The impacts associated with the placement of fill over vegetated coastal marshlands will prevent the growth of emergent coastal marshland vegetation in the project area. The proposed project proposes no erosion control features associated with 769 linear feet of fill of coastal marshlands. The potential for increased erosion of and along the filled ROW and private driveway is expected based on the frequency of tidal inundation within the project area. Three culverts are proposed within the project corridor. Within the project corridor project, erosion may be accelerated because of restricted flow along the 769 linear feet of fill of coastal marshlands.

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. Staff has observed tidal influence in the area proposed to be filled, including inundation by saltwater, jurisdictional vegetation, and active crab burrows. The proposed road and driveway will involve filling of vegetated, tidally influenced coastal marshlands. This habitat is considered Essential Fish Habitat for, among others, penaeid shrimp and red drum by the South Atlantic Fisheries Management Council. GADNR’s 2008 fisheries management plan states that upper marsh estuarine areas are considered to be critical blue crab habitat in Georgia. Any loss of coastal marshlands is expected to have an adverse effect on marine life. Currently, marine and estuarine species routinely access both the ESM and WSM.

Leasing of state owned marshland or water bottoms, O.C.G.A. § 12-5-287:  
35. The proposed project will not require a Waterbottoms Lease.

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):  
36. The applicant contends the project has been designed to minimize impacts to coastal marshlands.
37. Impacts to CMPA jurisdiction associated with the 569 linear feet of COTI Polk Street ROW total approximately 0.26 acre. Permanent impacts associated with the construction of 230 linear foot private driveway total approximately 0.095 acres. Based on a 2021 topographic survey, the applicant estimates approximately 917 cubic yards (76 truckloads) of fill material will be needed to construct an 8ft. wide travel lane, with 2ft. shoulders on either side and a gravel slope of 1.5:1 to the desired elevation. Total impacts to coastal marshlands for the proposed project are approximately 0.355 acre of CMPA jurisdiction.

38. The applicant has stated that the finished grade for the travel lane is 7.0 ft. No monitoring or maintenance plan is provided to ensure this proposed project remains at this target elevation. The applicant has not provided information on the proposed project lifespan.

39. The applicant has stated that reliable transportation will be provided by the construction of the project as proposed. The applicant does not include any data to support this conclusion that the road will be constructed and remain at 7.0ft. elevation. No boring or core sample testing has been performed to within the project area to substantiate that coastal marshlands and hydrology within the project area will support the weight of the fill within the project footprint;

40. The applicant’s maintenance plan is a general statement that does not include a suggested schedule for inspections, nor does it include a plan for storm events or high tide flooding. There is no maintenance plan for the three (3) proposed culverts.

41. Per O.C.G.A. 12-5-288(b)(2), filling of marshlands for private parking lots and private roadways is normally considered contrary to the public interest. Approximately 230 linear feet of the proposed project is a private driveway.

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

42. The applicant has stated in the April 2021 revised application materials that the marshlands component includes the proposed impact areas associated with the ROW and driveway construction.

43. In February and September 2020 submissions, the applicant stated the upland component would consist of all upland areas within the project site.

44. In supplemental materials provided to the Department on October 22, 2020 the applicant contends there is no upland component.

45. Staff finds that the marsh component for the project consists of permanent impacts associated with the fill of coastal marshlands for construction of a private driveway and the COTI Polk Street ROW.

46. Staff finds that the upland component for the project is the 43 linear feet of Polk Street ROW landward of the CMPA jurisdiction line. No improvements are proposed to this area.

**RECOMMENDATION:**

Staff reviewed the proposed project which provides for filling of marshlands for a residential use and finds it to be a project normally considered contrary to the public interest when located in coastal marshlands as outlined in O.C.G.A. 12-5-288(b)(2). However, 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. Should the Committee find this project to be in the public interest, standard and special conditions may apply.