Dear Ms. Barreiro:

In an email dated 9 July 2021, you provided comments received during the Coastal Marshlands Protection Act Application public notice issued for the Polk Street maintenance project. As you requested, the following provides the name of the commenting individual or agency and a response to each comment.

**One Hundred Miles:** In a letter dated 9 July 2021, the One Hundred Miles provided comments regard the proposed project.

**Comment 1.** Overall, the project provides only a short-term band-aid to the larger impending problem of rising sea levels. Mean sea level around Tybee Island has risen 11 inches since the driveway to the Polk Street hammock was constructed around 1950. Furthermore, research documents that regular conditions are changing rapidly, and extreme conditions once expected to occur occasionally are now occurring more regularly. Since 2010, there has been an exponential increase in the number of extreme tides per year. The application fails to adequately address the challenges brought about by rising sea levels and continued flooding.

**Response 1.** The applicant has submitted an application for maintenance to an existing roadway and is not proposing to address local, regional or national challenges brought about by rising sea levels.

**Comment 2.** Not all alternatives were investigated. In the December 2020 Motion to Table, the Committee directed the applicant to review “all alternatives.” Yet, a few alternatives exist that could feasibly protect the public interest and meet the needs of the homeowner while not requiring the Committee to violate the charge of the law. One feasible alternative would be for the City to apply for permission to fill marshlands used for the public right of way and for Mr. Leonard to apply for permission to construct a bridge over the private portion of the roadway. Another alternative is for the City to consider an elevated walkway through the right of way to the private property boundary. Again, Mr. Leonard is responsible for maintaining his private driveway.

**Response 2.** The applicant has reviewed practicable alternatives in accordance with the request of the Committee and the requirements of the Coastal Marshlands Protection Act.

**Comment 3.** The project continues to violate many aspects of the Coastal Marshlands Protection Act. a) The project is not water related or dependent on waterfront access. O.C.G.A. Section 12-5-288 (a) explains that “If the project is not water related or dependent on waterfront access or can be satisfied by the use of an alternative non-marshland site or by use of existing public facilities, a permit usually should not be granted...” The applicant certifies that the project is NOT water related or dependent on waterfront access by describing the application to the Committee for “authorization for impacts associated with maintenance of Polk Street and a driveway which provides access to Mike Leonard’s primary residence.” (see letter from Alton Brown to CRD September 17, 2020).

b) The project is contrary to the public interest. The CMPA describes restrictions on granting permits for activities and structures that are “considered contrary to the public interest.” The list of activities “normally considered to be contrary to the public interest when located in coastal marshlands” includes O.C.G.A Section 12-5-288 (b)(1) filling of marshlands for residential uses and (b)(2) filling of marshlands for private parking lots and private roadways. Although the City of Tybee is the applicant, the public right of way from Highway 80 is requested to be maintained only as an extension of the driveway to the private residence.
c) The project is not exempt under the CMPA. O.C.G.A. Section 12-5-295 lists the projects that can be exempted from permitting through the Committee, including maintenance of drinking water lines for political subdivisions. It appears that the private residences on the Polk Street hammock utilize the city water system, however the two homes are not considered a political subdivision, and therefore not exempt from the act. Additionally, the project is not a Department of Transportation (DOT) project, and it is clearly not a project to maintain drainage ditches – both explicit exemptions in the CMPA.

Response 3.

a) Per § 12-5-286. (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. § 12-5-288. (b) states 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.

b) No response required.

c) No response required.

Comment 4. The 2021 application increases the length of the roadway for the project, yet the amount of fill in the public marshes decreased from the December 2020 application. At the request of CRD staff (see the letter from Deb Barreiro on October 20, 2020), and as directed by the Committee’s Motion to Table in December 2020, the applicant updated the topographic survey used in the 2021 application. They also seem to have revised the cross section drawing and charts to show existing and proposed roadway length, area, and fill. Yet logically the calculations do not add up. Specifically, the 2020 application includes a chart indicating that 1,008 cubic yard of fill material (reported as 84 truckloads of fill with 12 cubic yards of material per truckload) were needed to complete the 812 linear foot project, with 769 linear feet in CMPA jurisdiction. In April 2021 the revised application incorporates an additional 172 linear feet of project that the Committee asked the applicant to address - increasing the project to 900 linear feet in CMPA jurisdiction. These calculations do not add up. The current application has an additional 172 linear feet of roadway but indicates that the amount of roadway fill needed within CMPA jurisdiction decreases from 1,008 to 917 cubic yards of fill material.

a) How does the applicant credibly justify the decrease in fill with an increase in roadway and jurisdictional project area?

b) As we stated in our letter from December 2020, the rate of sea level rise in this area has accelerated significantly since 2010, now rising by over an inch every two years. The new application still does not account for the anticipated rise in sea level. Again, how does the applicant justify reducing the necessary fill material for the project when it is clear that the project area has increased and that the environmental conditions are changing rapidly?

c) Adding 172 linear feet of project area is significant and should require the applicant to present a new application packet to be considered by the regulators. How will the addition of roadway affect provisional permitting handled by the U.S. Army Corps of Engineers?

Response 4.

a) The 1,008 cubic yardage was simply an estimate based on general measurements of height, width and length. The 917 cubic yards is based on the current topo and more detailed estimate of cubic yardage.

b) Addressed above.

c) The USACE has issued a permit for the project that remains valid until 18 March 2022.

Comment 7. It is unclear why the City of Tybee is applying for a permit to construct a private driveway. The 2020 application packet includes a letter from October 21, 2020, in which Mr. Leonard authorizes the City of Tybee to apply for the application on his behalf “for improvements and maintenance of the roadway and driveway.” The application packet does not include any justification for why the City of Tybee City is choosing to apply public taxpayer funds to build up a private driveway that has not been maintained by the homeowner for decades.

Response 7. The City of Tybee is applying for a permit to perform maintenance of an existing. As previously documented the City of Tybee is the applicant for the project and construction cost will be shared by both the City of Tybee and Mr. Leonard. Each
party will be responsible for construction cost and maintenance cost within their property. Many private roads and private causeways providing access to single family residences (both within and outside private residential subdivisions) are present along the coast of Georgia.

Comment 8. The consultant misrepresents the Committee’s intent as expressed in the Motion to Table adopted in December 2020. In an email sent to Mr. Josh Noble, GA CRD on June 22, 2021, Mr. Alton Brown falsely states that, “the Committee requested that we fill all coastal marshlands within the footprint of the road.” The motion passed in December does recognize that 172 feet of driveway was not included the project plan, specifically stating, “This segment of the driveway must be addressed.” The Committee never directed the applicant to fill public marshlands.

Response 8. Alice is correct that the committee did not request that the applicant fill all coastal marshlands within the footprint of the road. The email was responding to a question from Josh regarding the revised length of the project. The project length expanded because the Committee requested that all coastal marshlands within the footprint of the roadway be incorporated into the permit area. This lengthened the project limits to incorporate paved, gravel and dirt areas that were not originally proposed for improvement.

Sheryl Pavlinac of Saint Simons, Jenn Fletcher of Marietta, Jeanne Voxnaes of Savannah, Karen Rolader of Atlanta, Cindy Ray of Savannah, Elizabeth M Reed of Tybee Island, Anna Hightower of Richmond Hill, Helen Wallenborn of Tybee Island, Linda Hills of Tybee Island, Kirsten Muir of Brunswick, Regina McCorquodale of Roswell, Judy Bean, Barbara Hayser of Tybee Island: In emails dated 9 July 2021 each of the individuals reference above provided the following comments.

Comment 1. It is unlawful to fill marshlands for private parking lots and private roadways. The Georgia Coastal Marshlands Protection Act (CMPA) clearly restricts granting permits for activities and structures that are “considered contrary to the public interest”. How can the Committee approve a private driveway since this type of project is specifically listed in the CMPA as contrary to the public interest?

Response 1. Addressed above.

Comment 2. The project description contains too many uncertainties for the Committee to approve. The length of the project increased from a previous application, yet the amount of fill to be dumped in public marshes decreased. How can this be justified?

Response 2. Addressed above.

Comment 3. The project description does not accurately account for rising sea levels. The technical memo by Nutter and Associates mentions that the project should be secure since sea level is rising 3.39 millimeters a year. But recent records from the NOAA Ft. Pulaski Station indicate that the rate of rising seas has accelerated significantly since 2010, now rising by over an inch every 2 years. Shouldn’t any application considered by the Committee require the use of latest data and information on sea level?

Response 3. Addressed above.

If you have any questions or require additional information, please do not hesitate to contact us at (912) 443-5896.

Sincerely,

Alton Brown, Jr.
Principal
Resource & Land Consultants

cc: Mr. Shawn Gillen - City of Tybee
    Mr. Bubba Hughes – City of Tybee
    Mr. Bill Glass – Weiner Shearouse
    Mr. Mike Leonard
    Mr. Mike Smith