



DEPARTMENT OF NATURAL RESOURCES
COASTAL RESOURCES DIVISION
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COASTAL MARSHLANDS PROTECTION ACT STAFF'S FINDINGS & RECOMMENDATIONS

December 11, 2020

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

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
Savannah, GA 31405

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

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 October 29, 2020 to November 27, 2020. Two
comments were received in response to the public notice. Both objected to the project as
proposed and stated that the project was contrary to the public interest, that the project lacked

current data to evaluate the proposed impacts accurately, that climate change was not considered, and that the project is not water dependent. A third comment was received after the public notice was closed. 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 (COTI) right of way (Polk Street ROW) that terminates at a private driveway leading to a hammock. The hammock is privately-owned and has two existing residential structures.
2. Portions of the Polk Street ROW and driveway are routinely flooded by tidal waters.
3. A COTI water line is present within the Polk Street ROW but has not been surveyed. The water line is buried in some locations and partially exposed in other locations within the Polk Street ROW.
4. There is no public sanitary sewer service at this location as the two existing residences are served by an existing septic system on the hammock.
5. The applicant has stated the proposed project for the Polk Street ROW and private driveway measures approximately 812 linear feet and consists of the following four sections:
 - 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 172 linear feet of Polk Street ROW that is within CMPA jurisdiction. No improvements are proposed. This portion of project will continue to be traversed by vehicular traffic.
 - c. Approximately 367 linear feet of Polk Street ROW that is in CMPA jurisdiction and where improvements are proposed.
 - d. Approximately 230 linear feet of the private driveway where improvements are proposed.
6. Based on a 2010 topographic survey, the applicant proposes placement of 597 linear feet of fill within the project corridor 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 width of the roadway will vary from 12ft. to 21.75 ft., respectively.
7. Based on a 2010 topographic survey, the applicant estimates approximately 182 tons of unspecified stone and an additional 1,008 cubic yards (84 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.
8. A Hydrologic Study conducted by Nutter and Associates Environmental Consultants in March 2014 recorded water surface elevations using five (5) 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). Findings in the study 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 reaching the ESM and WSM.

9. The 2014 Hydrologic study also stated that culverts are not necessary for the conveyance of tidal waters to the ESM or WSM and may result in maintenance issues.
10. 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 ESM and WSM associated with Chimney Creek.
11. As proposed, permanent impacts associated with construction of the Polk Street ROW total approximately 9,147.6sq.ft. (0.21acre).
12. As proposed, permanent impacts associated with the construction of a private driveway total approximately 3,920.4sq.ft. (0.09 acre).
13. Total impacts to coastal marshlands for the proposed project are approximately 13,068 square feet (0.30 acre) of CMPA jurisdictional area.

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

14. 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.
15. 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):

16. 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):

17. 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):

18. 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. June 11, 2020, the Mayor and Council of the City approved the application for variance, stating that the proposed project does not violate any local zoning laws.
19. The letter is not conditioned, but the following is stated in the City of Tybee Island Code of Ordinances Sec. 5090. Variances. Variance longevity: "After a variance has been granted by the mayor and council it shall be valid for a period of 12 months from date of approval. Such approval is based on information provided in the application. Building permits may only be granted for plans consistent with the approved application. Any deviation from the information submitted will require separate approval by the mayor and council."

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

20. 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.
21. The two alternate access corridors would be from Cason Street or Eagles Nest Drive. Both roadways contain developed lots with existing homes adjacent to the roads. Creating a new

- access road corridor to the property in question would require impacts to existing residences and would require construction of a new road within undisturbed marsh.
22. Construction of a road from Cason Street would require impacts to approximately 293 linear feet (0.17 acre) of undisturbed marsh and would impact private properties at the end of Cason Street.
 23. Accessing the site from Eagles Nest Drive would require impacts to approximately 948 linear feet (0.32 acre) of undisturbed marsh and bridging a tidal creek.
 24. The applicant considered installation of a corduroy bridge. The corduroy road design would include laying piles at-grade perpendicular to the roadway and installing decking on top of the piles. Piles would be driven at locations along the corridor to hold the corduroy road in place.
 25. Corduroy road designs are typically proposed for temporary access and would not provide a permanent solution to the current access issue.
 26. A corduroy road at this location would rise and fall/continually flex with tide events. Continual movement of the road with the tide would require constant maintenance (replacement of boards, repositioning of structure, etc.) to make sure that the road remained in place and passable. Considering the location, proposed use, and temporary nature of this design, this alternative was determined to be unacceptable.
 27. The applicant considered construction of a single lane concrete bridge suitable to support the daily vehicular traffic as well as emergency vehicles (fire truck, ambulance, etc.). The estimated cost associated with this alternative is \$2,500/linear foot or \$1,312,500 for the project and the applicant rejected this alternative as too expensive.

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

28. 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):

29. 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):

30. 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):

31. 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 October 29, 2020 to November 27, 2020. Two comments were received in response to the public notice. Both objected to the project as proposed and stated that the project was contrary to the public interest, that the project lacked current data to evaluate the proposed impacts accurately, that climate change was not considered, and that the project is not water dependent. A third comment was received after the public notice was closed. The agent has provided written responses to the comments received during the public comment period.

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

32. 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. Based on the proposed project there will be no erosion control features associated with fill of coastal marshlands. The potential for erosion along the filled ROW and driveway is expected based on the frequency of tidal impacts associated with the project area. As proposed, the project will result in increased erosion. Three culverts are proposed within the project corridor. The proposed project is not expected unreasonably create stagnant areas of water.
- 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 peneaid 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.

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

33. 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):

34. The applicant contends the project has been designed to minimize impacts to coastal marshlands.
35. As proposed, approximately 172 linear feet of Polk Street ROW will continue to be within CMPA jurisdiction. This portion of project will continue to be traversed by vehicular traffic.
36. Impacts to CMPA jurisdiction associated with the COTI Polk Street ROW total approximately 9,147.6sq.ft. (0.21acre). Permanent impacts associated with the construction of the private driveway total approximately 3,920.4sq.ft. (0.09 acre). Based on a 2010 topographic survey, the applicant estimates approximately 182 tons of unspecified stone and an additional 1,008 cubic yards (84 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 13,068sq.ft. (0.30 acre) of CMPA jurisdictional area.
37. The applicant has not provided information on post-construction elevations for the project.

38. The applicant has not provided information on the proposed project lifespan of the project based on sea level rise datum.
39. The applicant has not provided a maintenance plan for the project area.
40. 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):

41. The applicant has stated that the marshlands component includes the proposed impact areas associated with the ROW and driveway construction.
42. In February and September 2020 submissions, the applicant stated the upland component would consist of all upland areas within the project site. This would include the 43 linear feet of Polk Street ROW upland of the CMPA jurisdiction line.
43. In supplemental materials provided to the Department on October 21, 2020 the applicant contends there is no upland component.
44. 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 access to the private driveway via the Polk Street ROW.
45. 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.

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.