

Georgia Coastal Protection Laws

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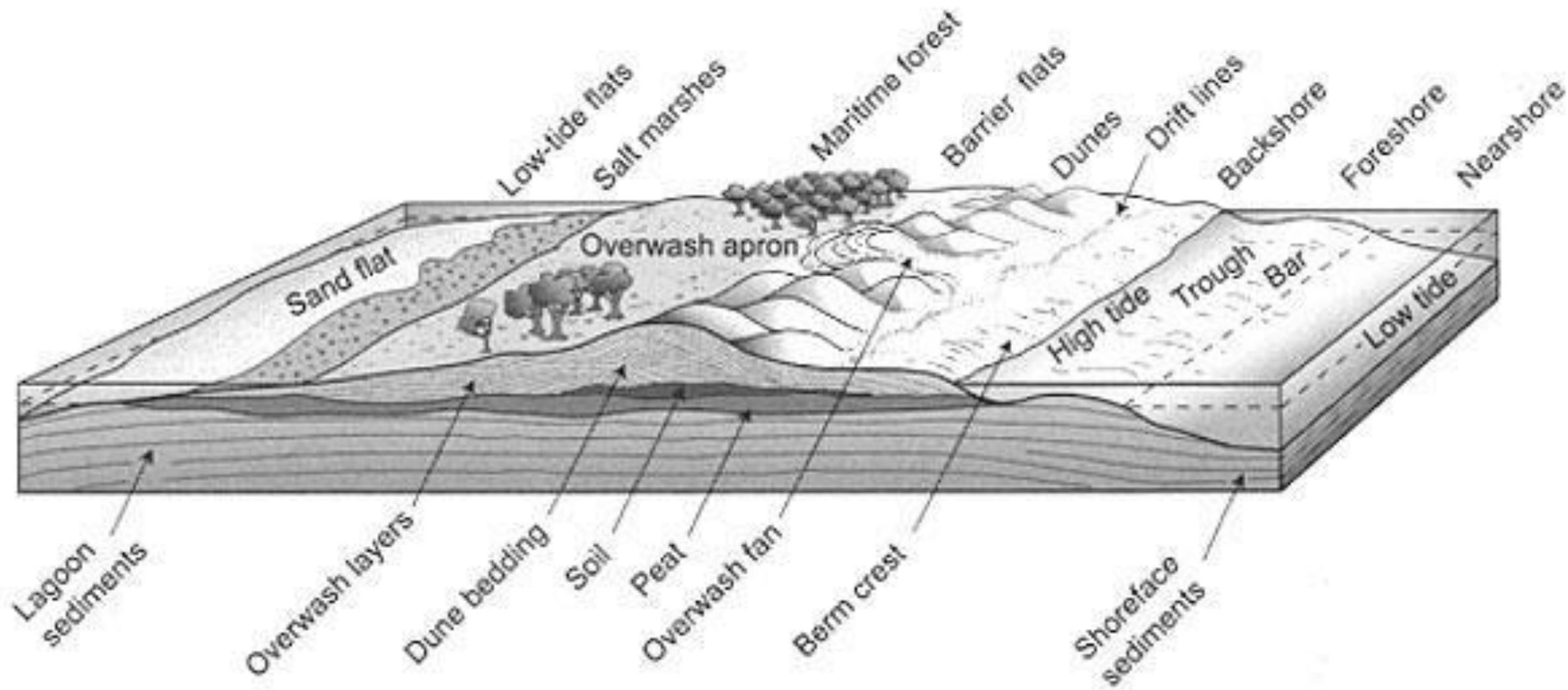
GEORGIA'S BARRIER ISLANDS:

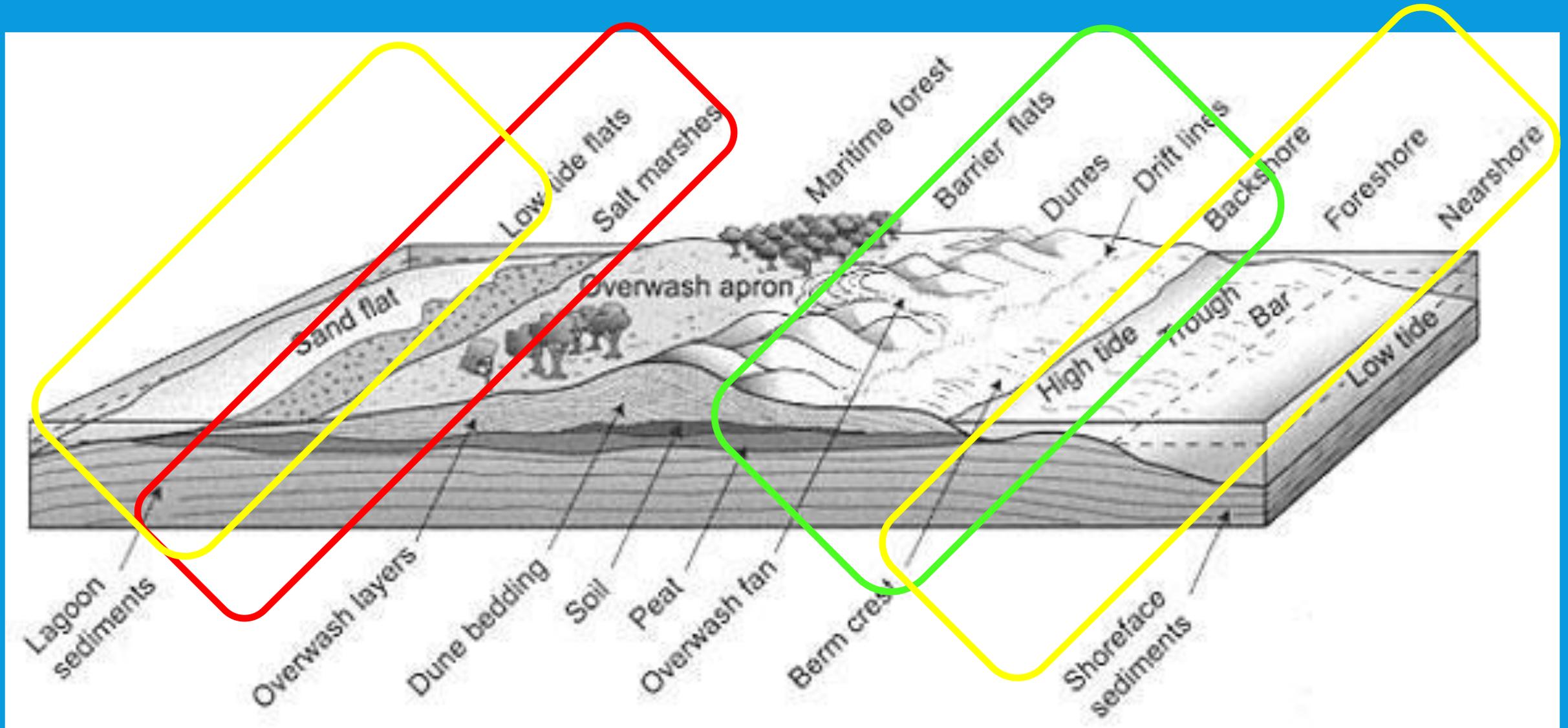
The Georgia coast is made up of a complex system of barrier islands, mud flats, tidal creeks, blackwater rivers, freshwater wetlands, and some 378,000 acres of salt marsh.



GEORGIA COASTAL MANAGEMENT:

- Public Trust Doctrine
 - Georgia Tidewaters Act (O.C.G.A. 52-1-1 et seq.)
 - Revocable License Authority (O.C.G.A. 50-16-61 et seq.)
- Georgia Shoreline Protection Act (1970):
 - O.C.G.A. 12-5-230 et seq.
- Georgia Coastal Marshland Protection Act (1970)
 - O.C.G.A. 12-5-280 et seq.





Shoreline Protection Act

Coastal Marshland Protection Act

Public Trust Doctrine/Revocable License

PUBLIC TRUST DOCTRINE:

- Origins in Roman law and custom translated through a handful of centuries of English common law.
- Common Law principle; both federal and state courts have recognized some version of a PTD.
- Generally states that the government holds title lands below navigable water
- Held “in trust” for the public to preserve certain public benefits derived from that land. Most commonly: Navigation, Fishing, and Recreation.
- Often expanded to include other economic interests and occasionally environmental or ecological concerns.

PUBLIC TRUST DOCTRINE:

- PTD use for environmental protection has been discussed at least since the 1970's.
 - Joseph Sax: "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention."
- In Georgia, there is little case law and the PTD is not heavily developed.
 - State v. Ashmore, 236 Ga. 401 (1976).
- Potential tool for:
 - Basis for state permitting decisions;
 - Standing for challenges to state action;
 - Defense to takings claims for coastal regulation;
 - Expanded judicial review of ecological/environmental consideration into values protected.

PUBLIC TRUST DOCTRINE:

- Georgia's General Assembly codified the PTD in the Tidewater Act.
 - Establishes the State of Georgia as the owner of the beds of all tidewaters within the State, except where title by a private party can be traced to a valid British Crown or State land grant.
- Includes all tidally influenced water capable of use for "fishing, passage, navigation, commerce, or transportation, and which are located within the jurisdiction of the State of Georgia."
- Specifically prohibits the location of residential structures without a permit.

SHORELINE PROTECTION ACT:

- Protects the sand sharing system of the barrier islands and recreational opportunities.
- Regulates construction and other activities in the “dynamic dune field.”
- Seaward boundary: Ordinary high-water mark
 - the position along the shore of the mean monthly spring high tide reached during the most recent tidal epoch.
- Landward boundary: the first occurrence either of live native trees 20 feet in height or greater or of a structure existing on July 1, 1979.



SHORELINE PROTECTION ACT:

- Construction limited to temporary structures such as crosswalks.
- Shore Permits are administered by the Coastal Resources Division.
- Generally prohibits operation of any motorized vehicle on the beach or dunes.
- Also prohibits storage or parking of any marine craft in the dunes.



COASTAL MARSHLAND PROTECTION ACT:

- Protects Tidal Wetlands in the estuarine area.
- "Estuarine area" means all tidally influenced waters, marshes, and marshlands lying within a tide-elevation range from 5.6 feet above mean tide level and below.
- Construction, dredging, or filling requires a Marsh Permit.
- Temporary projects can be approved with a "Letter of Permission"



Photo: Ed Jackson

COASTAL MARSHLAND PROTECTION ACT:

Includes review of upland portions of a project to the extent that the upland portion “that serve or augment the functioning of the marshlands component of the project”.

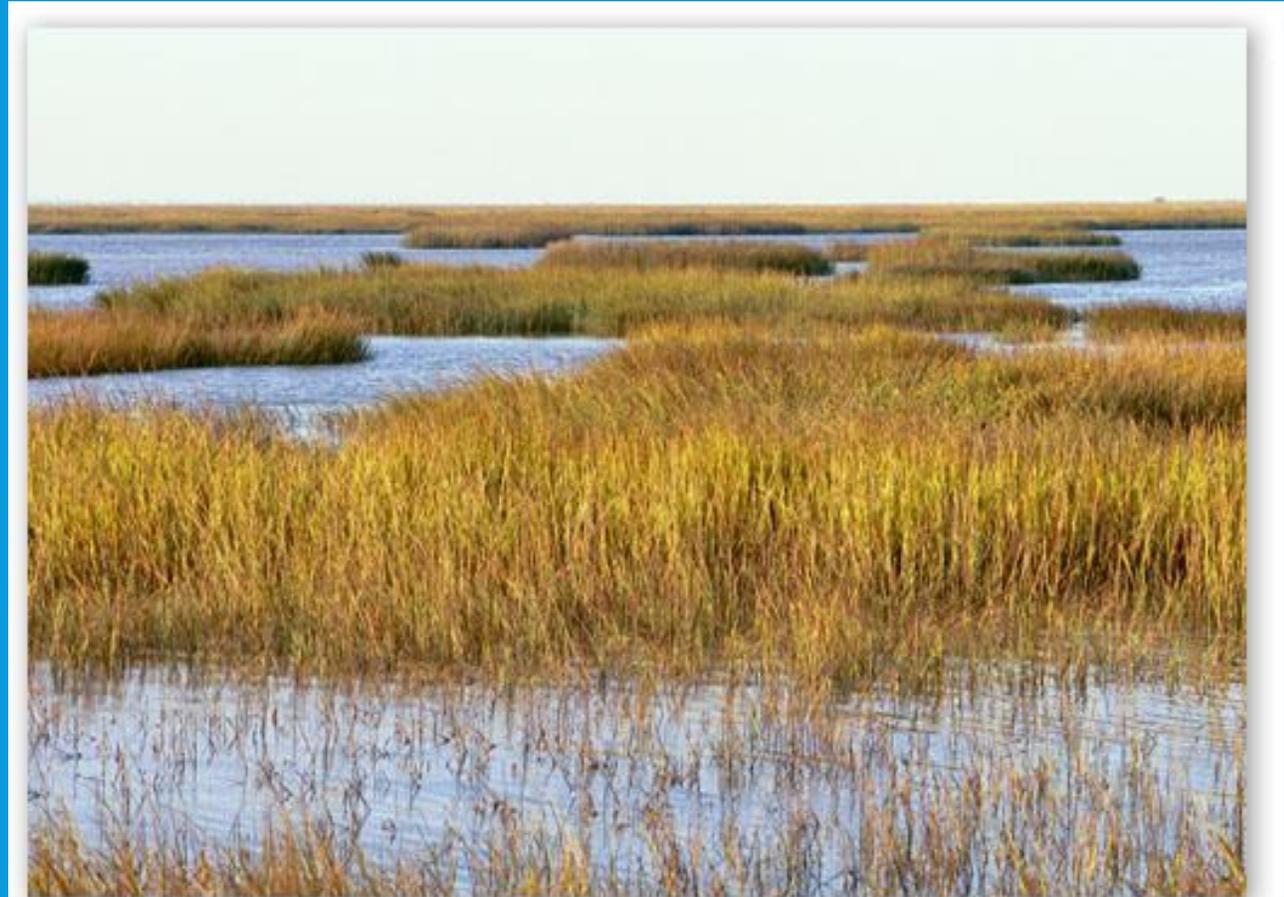


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REVOCABLE LICENSES:

Construction of state owned tidal marsh also requires a revocable license administered by GA DNR.

Includes activities specifically exempted for CMPA permitting.



MORE INFORMATION:

- Georgia DNR Coastal Resources Division:
 - www.coastalgadnr.org
- Georgia Coastal Management Plan
 - Available at: <http://coastalgadnr.org/cm/about/pdoc>
- Scott Pippin, UGA River Basin Center/Carl Vinson Institute of Government.
 - jspippin@uga.edu

QUESTIONS?

▪ Center for a Sustainable Coast v. DNR 284 Ga. 736

- all those service areas, amenities, and recreational areas located inland of the Coastal Marshlands Protection Act jurisdiction line, that serve or augment the functioning of the marshlands component of the project, such as, but not limited to, dry stack boat storage; dockmaster shop; fuel storage and delivery facilities to serve the marshlands component of the project; [**434] and restrooms intended for users of the [***13] marshlands component of the project. This term may extend to and cover such facilities adjacent to or in proximity to the marshlands component of the project that are intended to serve exclusively or primarily the users of the marshlands component of the project if the Committee finds in its sole discretion that such facility is likely to alter the marshlands. Ga. Comp. R. & Regs. r. 391-2-3-.02 (2) (q).
- Upon application by any interested person for a lease [of State-owned marshlands] pursuant to this Code section, the committee shall determine whether or not the applicant [***14] is an eligible person. The committee must also determine whether or not the applicant has sufficient lands properly to service the area to be leased. If the committee determines that the applicant is an eligible person and that sufficient lands exist to service the marina or dock, then the committee is authorized to grant and convey to the applicant a lease of the state owned marshland or water bottoms, or a combination thereof, described in the application without the necessity of public bid. OCGA § 12-5-287 (b)

OCGA 12-5-287

(i) The department shall make an annual report of its activities each calendar year to the General Assembly. The report shall include a summary of all applications received and leases granted, including length of terms, rentals, and locations. Copies of the annual report shall be provided to the director of the State Properties Commission, the chairperson of the House Natural Resources and Environment Committee, the chairperson of the House Committee on State Properties, the chairperson of the Senate Natural Resources and the Environment Committee, and the chairperson of the Senate Committee on State and Local Governmental Operations. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient.

(j) The committee may place such terms, limitations, restrictions, and conditions in such leases as are deemed necessary to ensure that the utilization of the property is in the public interest. Leased areas shall be deemed to be areas where resources are managed by the state and lessee for the protection of wildlife and other natural resources.

- That ruling was issued in December. Since that time the Georgia legislature amended the Coastal Marshlands Protection Act and Shore Protection Act to allow for letters of permission, making the initial complaint moot
- (7.1) "Letter of permission" means written authorization from the department to conduct a proposed activity in an area subject to the jurisdiction of this part, provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months, inclusive of the time needed to return all affected areas to a condition approximate to, or better than, that which existed prior to the commencement of such activity.
- § 12-5-286. Permit required; application; notice; public hearing; issuance; denial; dynamic dune fields
- (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. After construction pursuant to a permit, a project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation at the project site and remains in serviceable condition.
- (2) No permit shall be required for any activity conducted pursuant to a letter of permission. At least 15 days prior to the commencement of any activity authorized pursuant to a letter of permission, the department shall provide public notice describing such activity and the location thereof; provided, however, that public notice shall not be required for any such activity that is necessary for public safety or the delivery of public services

- § 12-5-241. Local shore assistance programs

- (a) If a local unit of government has enacted ordinances which meet or exceed the standards, requirements, and provisions of this part, and which are enforceable by such local unit of government, the board may certify such local unit of government as a permit-issuing authority. In areas in which a local shore protection program has been certified by the board, the local unit of government shall have all permitting authority described in this part, except for shoreline engineering activities and activities proposed to occur in whole or in part on submerged shoreline lands or on other state owned lands. The committee shall exercise exclusive permitting authority for shoreline engineering activities and activities proposed to occur in whole or in part on submerged shoreline lands. Local units of government are authorized to enact ordinances meeting or exceeding the requirements of this part.